

## PUBLIC NOTICE

Public notice is hereby given that an Ordinance entitled “Ordinance Amending and Supplementing Part IV of the Health Code of the Town of Westfield to Add a New Chapter, Chapter 8, Regulating the Sale and Manufacture of Electronic Smoking Devices” of which the following is a copy was introduced, read and passed on first reading by the Westfield Board of Health at a regular meeting held on November 4, 2019. The Board of Health will further consider the same for final passage on December 2, 2019 at 5:30 P.M. The meeting will be held in the Council Conference Room of the Westfield Municipal Building located at 425 East Broad Street, Westfield, New Jersey at which time and place members of the public will be given an opportunity to be heard concerning said ordinance.

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Megan Avallone,  
Board Secretary

## **BOH ORDINANCE #3-2019**

### **AN ORDINANCE AMENDING AND SUPPLEMENTING PART IV, BOARD OF HEALTH REGULATIONS OF THE TOWN OF WESTFIELD TO ADD A NEW CHAPTER, CHAPTER 8, REGULATING THE SALE AND MANUFACTURE OF ELECTRONIC SMOKING DEVICES**

**WHEREAS**, an executive summary on the use of electronic smoking devices issued in 2016 by the United States Surgeon General indicates that such devices pose a significant health risk to youth and young adults; and

**WHEREAS**, among middle and high school students, 3.62 million were current users of electronic smoking devices in 2018 according to the US Food & Drug Administration (FDA); and

**WHEREAS**, the FDA reports electronic smoking devices use, from 2017 to 2018, increased 78% among high school students (11.7% to 20.8%) and 48% among middle school students (3.3% to 4.9%) from 2017 to 2018; and

**WHEREAS**, the FDA reports that 81% of current youth e-cigarette users cited the availability of appealing flavors as the primary reason for use; and

**WHEREAS**, in order to ensure that electronic smoking devices, components or parts of such devices, electronic liquid, and/or liquid nicotine are not sold to persons under the age of twenty-one (21), the Town of Westfield, through its Board of Health, desires to license and regulate the operation of establishments that sell electronic smoking devices and related products; and

**WHEREAS**, licensure and regulation of said establishments will enhance the Town of Westfield's ability to enforce activities relative to N.J.S.A. 2A:170-51.4 and N.J.S.A. 2C:33-13.1 that ban the sale and furnishing of tobacco products and electronic smoking devices to persons under the age of 21 and with N.J.S.A. 2A:170-51.9 et seq., that requires child-resistant packaging of refills for electronic smoking devices; and

**WHEREAS**, the Board of Health of the Town of Westfield now desires to create a new chapter, Chapter 8, to create a licensing requirement and regulations for retail electronic smoking device establishments.

**NOW, THEREFORE BE IT ORDAINED**, by the Board of Health of the Town of Westfield, County of Union, State of New Jersey, being duly authorized pursuant to N.J.S.A. 26:3-31), that the following Chapter is hereby created as follows:

**SECTION 1.** There is hereby created a new Chapter, Chapter 8, Sale and Manufacture of Electronic Smoking Devices, as follows:

**BOH 8-1. Purpose.**

The purpose of this article is to protect the public's health and general welfare by licensing and regulating establishments that sell electronic smoking devices.

## **BOH 8-2. Definitions.**

As used in this article, the following words shall mean:

**Business** shall mean any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.

**Characterizing Flavor** shall mean a distinguishable flavor, taste, or aroma, including but not limited to, any fruit, candy, chocolate, vanilla, honey, cocoa, wintergreen, dessert, alcoholic beverage, herb or spice flavoring, that is imparted prior to or during consumption by an electronic smoking device, tobacco product, or other related product, including electronic liquid, or any smoke, aerosol, or vapor emanating from that device or product. An electronic smoking device, any cartridge, or other component of the device or other related product, including liquid nicotine, shall be deemed to have a characterizing flavor if the device, cartridge, component, or related product is advertised or marketed as having or producing any such distinguishable flavor, taste or aroma. No tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

**Component or Part** shall mean any software or assembly of materials intended or reasonably expected to alter or affect the electronic smoking device's performance, composition, characteristics, and ingredients.

**Distinguishable** shall mean perceivable by either the sense of smell or taste.

**Electronic liquid** shall mean ingredients, liquids, gels, waxes and powders, including but not limited to those which may contain nicotine and which may be aerosolized or vaporized when using an electronic smoking device.

**Electronic Smoking Device** shall mean a device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**Employee** shall mean any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.

**Employer** shall mean any business or nonprofit entity that retains the service of one or more Employees.

**Health Officer** shall mean the Town of Westfield Health Officer or his/her authorized designee.

**Itinerant Establishment** means a temporary or permanent business operated from a truck, a cart, other vehicle, hand-carried portable container or device, or mobile platform or unit.

**License Year** shall mean a calendar year commencing on January 1 and ending on December 31.

**Liquid Nicotine** shall mean any solution containing nicotine, which is designed or sold for use with an electronic smoking device.

**Liquid Nicotine Container** shall mean a bottle or other container of a liquid, wax or gel, or other substance containing nicotine, where the liquid or other contained substance is sold, marketed, or intended for use in an electronic smoking device. Liquid nicotine container does not include a liquid or other substance containing nicotine in a cartridge that is sold, marketed or intended for use in an electronic smoking device, provided that such cartridge is prefilled and sealed by the manufacturer, with the seal remaining permanently intact through retail purchase and use; is only disposable and is not refillable; and is not intended to be opened by the consumer.

**Nonprofit Entity** shall mean any entity that meets Internal Revenue Service (IRS) Internal Revenue Code section 501(c)(3) as well as any other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain.

**Manufacturer** shall mean any person, including any repacker and/or relabeler, who compounds, modifies, mixes, manufactures, fabricates, assembles, processes, labels, repacks, relabels or imports electronic smoking devices or electronic liquid.

**Person** shall mean an individual, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee or any other legal entity.

**Retail Electronic Smoking Device Establishment** shall mean any establishment that solely sells, distributes, gives, offers or manufactures electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.

**Sale** shall mean every delivery of electronic smoking devices, whether the same is by direct sale or the solicitation or acceptance of an order, including the exchange, barter,

keeping and exposing for sale, delivering for value, peddling and possession with intent to sell, distribute, or give.

**Smoking** shall mean inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. Smoking also includes the use of an electronic smoking device.

**Tobacco Product** shall mean any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. Tobacco product also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and substances used in electronic smoking devices, whether or not they contain nicotine. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration and defined in the Federal Food, Drug and Cosmetic Act.

### **BOH 8-3. Prohibition on sales and manufacture.**

- A. Only retail electronic smoking device establishments licensed by the Town of Westfield Board of Health shall sell electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.

- B. It shall be unlawful for any business within the Town of Westfield to manufacture electronic smoking devices, components or parts, electronic liquid, and or liquid nicotine.
- C. It shall be unlawful for a business which holds a retail food establishment license issued by the Town of Westfield Board of Health, a license for the retail sale of motor fuel issued by the State of New Jersey, and/or a liquor license issued by the State of New Jersey to sell electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.
- D. A business which holds a retail food establishment license issued by the Town of Westfield Board of Health, a license for the retail sale of motor fuel issued by the State of New Jersey, and/or a liquor license issued by the State of New Jersey and which sells and/or manufactures electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine shall comply with this section within sixty (60) days of the passage of this chapter.

**BOH 8-4. Entry and employment of persons under the age of twenty-one (21) prohibited.**

- A. The entry of individuals under the age of twenty-one (21) into any portion of a retail electronic smoking device establishment is prohibited.
- B. It shall be the duty of a retail electronic smoking device establishment licensee and his/her employees to verify that any individual entering any portion of the establishment is aged twenty-one (21) years and older by requesting and examining government-issued photographic identification immediately upon entry of such individual.

C. No individual under the age of twenty-one (21) shall be employed by a retail electronic smoking device establishment.

**BOH 8-5. Sale, distribution, or provision to person under the age of twenty-one (21) prohibited.**

No person shall sell, distribute or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine to any person under the age of 21 years. Each retailer selling or distributing electronic smoking devices shall verify the age of the purchaser by means of valid government-issued photographic identification that contains date of birth.

**BOH 8-6. Location of retail electronic smoking device establishment.**

No retail electronic smoking device establishment, not presently in operation at the time of the adoption of the chapter, shall be located within five hundred (500) feet of any public recreational field or park, public or private elementary or secondary school.

**BOH 8-7. Operational requirements.**

A. No person shall sell, distribute or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine in the Town of Westfield unless an employee of the establishment controls the sale of such product through direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines for the sale of electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine shall be prohibited.



- B. No retail electronic smoking device establishment shall allow an employee to sell, distribute or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine until the employee has confirmed he/she has read this article and state laws pertaining to the sale of electronic smoking devices by signing a form promulgated by the Department of Health, confirming the same. Forms shall be submitted to the Department of Health and a copy of the form shall be kept on file at the retail electronic smoking device establishment and made immediately available at the request of the Health Officer. All retail electronic smoking device establishments shall comply with this provision sixty (60) days after adoption of this article. It shall be the duty of the licensee to ensure that all new employees comply with this section within one (1) week of hire.
- C. No retail electronic smoking device establishment shall distribute, or cause to be distributed, any samples or permit sampling of electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine.
- D. No retail electronic smoking device establishment shall use any device within its establishment to mask or conceal any characterizing flavor or smell of any electronic liquid and/or tobacco product.
- E. A retailer of electronic liquid containers must comply with provisions of N.J.S.A 2A:170-51.9 et. seq., governing child resistant containers, as may from time to time be amended or supplemented.

**BOH 8-8. Signage.**

- A. Signage shall be conspicuously posted on entry doors to the establishments which state:

“Entry of persons under the age of twenty-one (21) is prohibited. Government-issued photographic identification must be presented immediately upon entry.”

B. Signage must be conspicuously posted at the point of display and at the point of sale which states:

1. “A person who sells or offers to sell tobacco products or electronic smoking or vapor devices, components, cartridges or related products to a person less than 21 years of age shall pay a penalty up to \$2,000 and may be subject to a license suspension or revocation. Proof of age may be required for purchase. Those persons or establishments in violation are subject to prosecution.”
2. “Smoking, sampling or using tobacco products or electronic smoking or vapor devices inside this place of business is prohibited by NJ State Law. Those establishments or individuals in violation are subject to prosecution.”

**BOH 8.9. License, application, fees, display and transferability.**

A. No person shall conduct, maintain, or operate a retail electronic smoking device establishment without first submitting an application for licensure on forms promulgated by the Town of Westfield Department of Health.

B. Fees in accordance with the following schedule shall be paid annually:

Retail Electronic Smoking Device Establishment License	\$1,000.00
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C. Licenses issued under the provisions of this article shall expire annually on December 31 of the year in which the license was issued.

D. Applications for license renewal shall be submitted to the Town of Westfield Department of Health no less than sixty (60) days prior to expiration.

- E. At the time of the initial application and any subsequent renewals, the applicant or the licensee shall:
1. Disclose if they are also a manufacturer or distributor of electronic smoking devices and if that part of their business is conducted or takes place at the retail electronic smoking device establishment or another location(s).
  2. Provide contact information for the manufacturer or distributor or other business(es) from which the electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine are purchased.
- F. Each license shall be posted in a conspicuous location where it may be readily observed at eye level by all patrons before or immediately upon entering the establishment. No portion of the license shall be obstructed from view during display.
- G. It shall be unlawful for any person to erase, cancel, deface, or alter a license once it has been issued by the Town of Westfield Department of Health.
- H. The owner or person in charge of an establishment shall permit any Town official, inspector or police officer who has presented proper identification to fully examine any license issued under this Chapter.
- I. No licenses shall be issued to itinerant establishments, transient merchants, or peddlers.
- J. Licenses and/or permits are not transferable and are not prorated. Any establishment that changes ownership must submit a new application and receive a new license and/or permit prior to the opening of the establishment.

**BOH 8.10. Inspection and access to premises.**

- A. The Health Officer or his/her authorized agent shall have the right to inspect any retail electronic smoking device establishment as often as he/she deems it necessary.
- B. Any duly appointed Town Police Officer shall be permitted to enter and inspect the premises for compliance with this subchapter.
- C. All parts of the establishment shall be made accessible to the Health Officer or his/her designee and any duly appointed Town Police Officer.
- D. It shall be unlawful for any licensee or his/her employee to hinder, impede, or fail to allow the Health Officer or his/her designee or any duly appointed Town Police Officer needing to perform an inspection, access to all areas of the establishment.

**BOH 8.11. Revocation or suspension of license; hearing.**

- A. Licenses issued under this Section may be revoked or suspended by the Health Officer or his/her designee, pending a formal hearing before the Town of Westfield Board of Health, for the following causes:
  - 1. Fraud, misrepresentation or false statement in the application for the establishment license.
  - 2. Fraud, misrepresentation or false statement made while operating the licensed business in the Town.
  - 3. Conducting the licensed business within the Town in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public.
  - 4. An existing or threatened menace to the public health as determined by the Health Officer.

5. The owner and/or operator or any employee refuses to permit, hinders, or obstructs, the Health Officer or his/her designee or any duly authorized Town Police Officer to inspect the premises or the operations therein.
- B. A person, firm, corporation, or other entity whose license has been revoked shall close the establishment and request all patrons to vacate the premises.
  - C. The licensee shall be entitled to a hearing before the Town of Westfield Board of Health within a reasonable time, which is not to exceed fifteen (15) days, for the purpose of seeking reinstatement of a suspended or revoked license. Written notice of the time and place of such a hearing shall be served upon the licensee by the Health Officer at least three (3) days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking, cancelling, or suspending such license. Notice may be given either by personal delivery thereof to the person to be notified or be deposited in the United States Post Office in a sealed envelope, postage prepaid, addressed to such person to be notified at the business address appearing upon such license by simultaneous regular mail and certified mail, return receipt requested.
  - D. At the hearing before the Town of Westfield Board of Health, the licensee shall have an opportunity to answer and may thereafter be heard, and upon due consideration and deliberation by the Board, the complaint may be dismissed, or if the Board concludes that the charges have been sustained and substantiated, it may deny reinstatement of the license and stipulate the conditions required for reinstatement of the license.

- E. If any such license shall have been revoked, neither the holder thereof nor any person acting for him, directly or indirectly, shall be entitled to another license to carry on the same business within the Town, unless the application for such license shall be approved by the Board of Health.

**BOH 8.12. Enforcement.**

This article shall be enforced by the Town of Westfield Board of Health and any duly appointed Town Police Officer.

**BOH 8.13. Violations and penalties.**

- A. Unless otherwise provided by law, statute, or ordinance, any person(s) who is found to be in violation of the provisions of this section shall, upon conviction thereof, pay a fine of \$1,000 for the first violation, \$1,500 for the second violation, and \$2,000 for the third violation and each subsequent violation. Each violation, and every day in which a violation occurs, shall constitute a separate violation. No fines shall be issued for sixty (60) days after publication of this ordinance.
- B. These penalties are in addition to any penalties that may be imposed, including but not limited to penalties imposed by N.J.S.A. 2C33-13.1 et seq.

**SECTION 2.** BOH Ordinance #1-2014, an ordinance “Setting Licensing Fees for Electronic Smoking Device Establishments,” is hereby repealed in its entirety.

**SECTION 3.** All ordinances or parts of ordinances inconsistent herewith are repealed to the extent of such inconsistency.

**SECTION 4.** If any word, phrase, clause, section, or provision of this ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

**SECTION 5.** This ordinance shall take effect immediately after final passage and publication in the manner provided by law.

**ATTEST:**

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**ADOPTED:**

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**DATE:**

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