

ORDINANCE #04-23

**AN ORDINANCE BANNING SMOKE SHOPS AND VAPE SHOPS AS A PERMITTED USE
IN ANY ZONE DISTRICT IN THE BOROUGH OF SAYREVILLE AND REQUIRING
LICENSURE FOR ALL EXISTING SMOKE SHOPS AND VAPE SHOPS**

WHEREAS, the Borough of Sayreville has the authority to regulate land uses within its municipal boundaries under the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. and the police power, N.J.S.A. 40:48-1, et seq.; and

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

WHEREAS, among middle and high school students, 2.06 million were current users of electronic smoking devices in 2021 according to the US Food & Drug Administration (“FDA”); and

WHEREAS, the Centers for Disease Control has issued multiple alerts identifying a new syndrome of respiratory illness and failure related to vaping and e-cigarettes; and

WHEREAS, under the circumstances, the Mayor and Borough Council have determined that it is in the best interest of the Borough and the health of its residents to ban smoke shops and vape shops as a principal permitted use in all zone districts;

WHEREAS, existing smoke and vape shops shall be grandfathered in, but shall be required to obtain a license to continue its operation.

BE IT AND IT IS HEREBY ORDAINED by the Mayor and Borough Council of the Borough of Sayreville, in the County of Middlesex, that the Revised General Ordinances of the Borough of Sayreville are hereby amended as follows:

Chapter 26- Land Development

Article I- General Provisions

Section 26-6, Definitions, is hereby amended to add the following new definitions (underscores represent additions):

Borough- Borough of Sayreville.

Electronic Smoking Device- 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.

License Year- A calendar year commencing on January 1 and ending on December 31.

Manufacturer- 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.

Sale- 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.

Smoke Shop- shall mean any premises dedicated as a principal business to display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia, including providing an area for smoking tobacco products, but excluding any grocery store, supermarket, convenience store or similar retail use that sells tobacco products, shall not be included within the definition of smoke shop. An area for "smoking" shall mean the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe, or any other matter of substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic device.

Vape Shop- Shall mean any premises dedicated as a principal business to display, sale, distribution, delivery, offering, furnishing or marketing of electronic smoking devices, liquid nicotine containers or vapor product as defined by N.J.S.A. 26:3D-57, N.J.S.A. 2A:170-51.9(a)(2), N.J.S.A. 2A:170-51.9(a)(3) and N.J.S.A. 2A:170-51-9(a)(4), including an area for vaping. AN area for "vaping" shall mean inhaling or exhaling of smoke or vapor from any electronic smoking device.

Article II- Planning Board and Zoning Board of Adjustment

§26-81.8 Smoking Shops and Vape Shops.

a. Prohibition

1. Smoke Shops and Vape Shops are expressly prohibited in all zones within the Borough.

b. Pre-existing Smoke Shops and Vape Shops

1. Pre-existing Smoke Shops and Vape Shops are not subject to the prohibition, provided that they obtain a license within sixty (60) days of the date of passage of this ordinance from the Borough.

c. Licensing, Application, Fees, Display and Transferability

1. License

- a) No person and/or entity shall conduct, maintain or operate a Smoke Shop or Vape Shop without first

obtaining a License from the Borough. License Applications will be available from the Borough.

- b) No person and/or entity shall be issued a License under this section if they are unable to pass a criminal background check.

2. Fees and Duration

- a) Annual fees associated with the licensing requirement for Smoke Shops and Vape Shops shall be assessed at \$1,000.00.
- b) All licenses issued under this section shall be valid for one calendar year, beginning January 1, and expiring on December 31.
- c) All applications for license renewals shall be submitted to the Borough no less than sixty (60) days prior to expiration.

3. Application

- a) The initial application and all subsequent renewals shall include the following information
 - 1. Name and contact information of the owner.
 - 2. Address of the Smoke Shop and/or Vape Shop.
 - 3. Identify if they are retailers and/or manufacturers of electronic smoking devices.

4. Display

- a) All licenses issued shall be posted in a visible location that can be viewed by all patrons entering the establishment.

5. Transferability

- a) Any licenses issued under this section are non-transferable. Any Smoke Shop or Vape Shop that changes ownership shall be required to submit a new application and receive approval of same prior to operating the business.

6. Use of License Fees

- a) All fees collected by the licensing of these shops shall be used to fund the enforcement of this section and promote and maintain programs established by the Borough for smoking prevention.

7. Revocation or Suspension of License

- a) Any license issued under this section may be revoked or suspended by the Code Enforcement Officer, pending a

formal hearing before the Borough council for the following reasons:

1. Conducting the licensed shop within the Borough in an unlawful manner or in a manner which is considered harmful to the health, safety or general welfare of the public.
2. The application to obtain and/or renew the license contains misrepresentations or false statements.
3. Any shop convicted of more than two (2) violations in any one licensing year, or having a total of four (4) violations at any time.

8. Hearing

- a) Any shop that has their license revoked or suspended shall be entitled to a hearing before the Borough Council within thirty (30) days. Written notice of the time and location of such hearing shall be provided to the licensee at least five (5) days prior to the hearing date. Notice may be provided through regular mail and certified mail addressed to the business address of the licensee or by personal delivery. The notice shall contain a brief statement specifying the grounds in which such revocation or suspension is based upon.
- b) During the hearing, the licensee shall have an opportunity to be heard and answer all questions posed by the Borough Council.

9. Enforcement

- a) This section shall be enforced by the Code Enforcement Officer.

d. Violations and Penalties

1. Unless otherwise provided by law, statute, or ordinance, any person(s) who is (are) 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 60 days after publication of this section.

SECTION 2. Severability Clause.

If any article, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect, and to this end the provisions of this ordinance are hereby declared severable. (** sections contain no changes and will remain in full force and effect).

SECTION 3. Repealer.

All other ordinances in conflict or inconsistent with this ordinance are hereby repealed, to the extent of such conflict or inconsistency. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough, the provisions are hereof shall be determined to govern. All other parts, portions and provisions of the Ordinances of the Borough are hereby ratified and confirmed, except where inconsistent with the terms hereof.

SECTION 4. Effective Date.

This Ordinance shall take effect immediately upon adoption and publication in accordance with the laws of the State of New Jersey.

INTRODUCED/APPROVED ON FIRST READING

DATED: February 27, 2023

Jessica Morelos, R.M.C.
Clerk of the Borough of Sayreville

Christian Onuoha, Councilman
(Planning & Zoning Committee)
Borough of Sayreville

ADOPTED ON SECOND READING

DATED: March 13, 2023

Jessica Morelos, R.M.C.
Clerk of the Borough of Sayreville

Christian Onuoha, Councilman
(Planning & Zoning Committee)
Borough of Sayreville

APPROVAL BY THE MAYOR ON THIS ____ DAY OF _____, 2023.

Victoria Kilpatrick, Mayor
Borough of Sayreville

APPROVED AS TO FORM:

SEAN KEAN, ESQ., Borough Attorney