

AN ORDINANCE AMENDING CHAPTER 12, SECTIONS 8.1, 8.2, 8.3, 8.4, 8.5, 8.7, 8.8, 8.13, 8.14, and 8.16 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE

(Tobacco Product Vending Machines)

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY that Chapter 12 of the Revised General Ordinances of the Township of West Orange be and are hereby amended as follows:

I. THE TITLE OF CHAPTER 12, SECTION 8 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8 Title of Chapter 12, Section 8

Tobacco and Nicotine Delivery Products

II. CHAPTER 12, SECTION 8.1 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.1 Purpose and Findings.

The purpose of this ordinance is to prohibit the sale of tobacco and nicotine delivery products to persons under the age of 21. The Township Council recognizes the dangers and health risks associated with teenagers and young persons who start smoking, as set forth in various studies conducted by the United States Department of Health, the American Cancer Society, and surveys conducted by other entities. The Township of West Orange has concluded that it is appropriate to prohibit the sale of tobacco and nicotine delivery products within the Township of West Orange to persons under the age of twenty-one (21).

The Township Council adopts the following findings with respect to this section:

- a. Cigarette smoking causes about 1 out of every 5 deaths in the U.S. every year. (Centers of Disease Control and Prevention, 2014).
- b. 90% of all tobacco users start before age 21. (Campaign for Tobacco-Free Kids, 2015).
- c. Every day, more than 1,200 people in this country die due to smoking. (U.S. Surgeon General, 2016)
- d. The younger a child begins smoking, the more likely it is that he/she will become a heavy smoker as an adult. (Surgeon General's Report, 1994).
- e. As of 2015, the American Academy of Pediatrics strongly recommends the minimum age to purchase tobacco products, including e-cigarettes, be increased to age 21.
- f. Raising the minimum age of legal access to tobacco products to at least 21 years old would significantly reduce smoking rates, resulting in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for persons born between 2000 and 2019. (Institute of Medicine, 2015).
- g. 75% of U.S. adults support raising the age of tobacco product sales to age 21 (U.S. Centers for Disease Control and Prevention, 2015).
- h. Teens that use e-cigarettes have a willingness to start smoking conventional cigarettes, more so than teens that do not use e-cigarettes. (Tobacco Control Journal, 2015).

- i. E-cigarette use amongst high school students has tripled from 2013 to 2014. (Center for Disease Control, 2015).

III. CHAPTER 12, SECTION 8.2 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.2 Definitions.

As used in this section:

Health Department shall mean the Department of Health and Welfare of the Township of West Orange.

Health Officer shall mean the Health Officer of the Township of West Orange or his/her designee.

License shall mean any license issued by the Township including, but not limited to, a liquor license, a license to sell or distribute food and beverages or a license to permit vending machines and/or mechanical amusement devices.

Minor shall mean any male or female under the age of eighteen (18) years of age.

Liquor license shall mean any license to sell or distribute alcoholic beverages issued by the Township pursuant to the laws of the State of New Jersey.

Nicotine Delivery Product shall mean any product that is designed to deliver nicotine, nicotine vapor or non-nicotine vapor, including but not limited to, any type of electronic smoking device defined as an electronic or other powered device that can be used to deliver nicotine or other substances to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, cigarillo or pipe, or any cartridge or other component of the device or related product, including but not limited to, any substances used in such devices, such as liquids or powders or other forms of tobacco, but excluding United States Food and Drug Administration approved nicotine patches or nicotine chewing gum.

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

Public place shall mean any building or enclosed structure open to the general public and any street, road, sidewalk, walkway, park or open space located within the Township and maintained for use by the general public.

Tobacco shall mean any product made from the tobacco plant for the purpose of including but not limited to smoking, chewing, inhaling or other use including but not limited to cigars, chewing tobacco, pipe tobacco, snuff, shisha and cigarettes in any form or shall mean any other matter or substance which can be smoked.

Tobacco retailer shall mean any person that operates a store, stand, booth, concession or place at which sales of tobacco are made including a person that owns, operates or uses a vending machine and/or a vending machine location.

Township shall mean the Township of West Orange.

Vending machine shall mean any automated self-service device which, upon insertion of money, tokens or other form of payment, dispenses a tobacco product.

Vending machine location shall mean the room, enclosure, space or area where a tobacco product vending machine is installed and/or operated.

IV. CHAPTER 12, SECTION 8.3 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.3 Prohibition of Tobacco Product and Nicotine Delivery Product Sales to Persons Under Age 21.

- a. No person shall sell, distribute or give tobacco or nicotine delivery products in the Township of West Orange unless an employee of the establishment controls the sale of such products. A person may only sell tobacco or nicotine delivery products in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines of tobacco or nicotine delivery products shall be prohibited.
- b. No person shall sell, distribute, or give tobacco or nicotine delivery products to any person under the age of 21 years.
- c. No person or tobacco retailer selling tobacco or nicotine delivery products shall allow the retailer, employee or any other person to sell, distribute or give such products until the retailer, employee or other person has read the West Orange Ordinances and State laws pertaining to the sale or distribution of tobacco and nicotine delivery products and has signed a statement that they have read such ordinances and State laws. Such form statement will be supplied by the Health Department and all signed original statements shall be kept on file by the tobacco retailer and made immediately available at all times for review by the Health Department. All retailers shall be in compliance with this provision by the effective date noted in section 8.16.

V. CHAPTER 12, SECTION 8.4 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.4 Unlawful Purchase of Tobacco Products

It shall be unlawful for any person to purchase a tobacco product; (a) with funds by a person under 21; or (b) with the intent to sell, distribute or give such a product to a person under 21.

VI. CHAPTER 12, SECTION 8.5 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.5 Identification Required.

No retailer, employee or other person shall sell, distribute or give tobacco or nicotine delivery products shall verify by means of government-issued photographic identification containing the bearer's date of birth that no person purchasing the tobacco or nicotine containing products is younger than 21 years of age. No such verification is required for any person over the age of 26. No person shall sell, distribute or give tobacco or nicotine delivery products to a person less than 21 years of age who has a note or any form of communication from any person.

VII. CHAPTER 12, SECTION 8.7 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.7 Sign Requirement.

The following six (6) inch by eight (8) inch sign shall be posted in a conspicuous place near each cash register in all retail establishments which sell tobacco products and/or nicotine delivery products:

SALE OF TOBACCO PRODUCTS OR NICOTINE DELIVERY PRODUCTS TO PERSONS UNDER THE AGE OF 21 IS PROHIBITED BY LAW. LEGAL PROOF OF AGE MUST BE SHOWN. A PERSON WHO SELLS OR OFFERS TO SELL A TOBACCO PRODUCT OR A NICOTINE DELIVERY PRODUCT TO A PERSON UNDER 21 YEARS OF AGE MAY BE PROSECUTED IN ACCORDANCE WITH STATE STATUTES AND TOWNSHIP OF WEST ORANGE ORDINANCES. IF

YOU ARE AWARE OF ANY RETAILER WHO IS VIOLATING THIS SECTION OF THE LAW, PLEASE CONTACT THE WEST ORANGE HEALTH DEPARTMENT AT (973) 325-4120

VIII. CHAPTER 12, SECTION 8.8 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.8 Restriction of Tobacco Vending Machines and Sales.

- a. Tobacco product vending machines are expressly prohibited unless a tobacco retailer demonstrates to the satisfaction of the Health Officer that only persons over 18 are permitted on the premises or location at any time and under any circumstances. The Health Officer may also obtain from any tobacco retailer a sworn statement that the premises or location is only accessible to persons over 18.
- b. At any premises or location where a tobacco product vending machine is permissible no such machine is permissible unless its operation is possible only by the activation of an electronic switch or device which is installed on the vending machine and controlled by the tobacco retailer or designated employee over the age of 18 from a location separate and distinct from the vending machine. In addition the vending machine must be in full view of the person activating the electronic switch or device and prior to activation the tobacco retailer or employee over 18 must obtain written proof that the person desiring to use the machine is not a person under the age of 21.

IX. CHAPTER 12, SECTION 8.13 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.13 Enforcement.

- a. Whenever the Health Officer, or his or her designee, or a Police Officer of the Township of West Orange reasonably believes there exists a violation of this section, such officer shall issue a summons and complaint not later than thirty (30) days after discovery of the alleged violation. The complaint shall be written and shall state with reasonable particularity the nature of the violation, including reference to the subsection(s) of this section alleged to have been violated. The complaint shall be delivered personally or send via certified mail to the alleged violator.
- b. The Health Officer, his/her designee or a Police Officer of the Township, after giving proper identification, and if no search or other warrant is required by law, may summarily inspect any matter, thing, premise, place, person, record, incident or event as necessary to enforce the provisions of this section.
- c. It shall be unlawful for any person to molest, willfully oppose, or otherwise act to interfere with or obstruct the Health Officer or his/her designee or any Police Officer in the performance of duties under this section. The Health Officer or designee may request the assistance of the Police Department when necessary to execute his or her official duty in the manner prescribed by law.
- d. Citizens may bring complaints against violators of this section.

X. CHAPTER 12, SECTION 8.14 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.14 Penalties.

- a. Unless otherwise provided by law, statute or ordinance, any person violating any provision of this section shall, upon conviction thereof, pay a fine of not less than \$250.00 for the first violation, not less than \$500 for the second violation, and not less than \$1,000 for the third and each subsequent violation. The complaint shall be made in the Municipal Court or before such other judicial officer having authority under the laws of the State of New Jersey.

- b. In addition any violator of this section shall be subject to having any Township License, held by the violator, suspended, revoked or fined. No such action may be taken unless the requirements of due process are satisfied.
- c. Any person who continually violates this section may also be charged in the Municipal Court or in Superior Court with maintaining a nuisance.
- d. These penalties are in addition to any penalties that may be imposed including but not limited to penalties imposed by the New Jersey Code of Juvenile Justice, N.J.S.A. 2A:170-51, et seq. and N.J.S.A. 2C:33-13.1, et seq.
- e. Each sale of tobacco and or nicotine delivery product to any person under the age of 21 shall constitute a separate violation.
- f. Fines and sanctions associated with this section shall be dedicated and forwarded to the Health Department to be used in connection with education and enforcement of this ordinance. The monies shall be maintained by the Chief Financial Officer or Comptroller of the Township of West Orange.

XI. CHAPTER 12, SECTION 8.16 SHALL BE AND HEREBY IS AMENDED AND SUPPLEMENTED TO INCORPORATE THE FOLLOWING:

12-8.16 Effective Date.

This Ordinance shall take effect as of July 1, 2016.

XII. REPEAL OF CONFLICTING ORDINANCES

Any Ordinances of the Township which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

XIII. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

Victor Cirilo
Council President

Karen J. Carnevale, RMC
Municipal Clerk

Robert D. Parisi
Mayor

Introduced: March 22, 2016

Adopted: April 19, 2016

Legislative History

This ordinance is drafted to revise the municipal code and increase the age required to purchase tobacco and related products from 18 to 21. In addition, this ordinance also prohibits the sale of nicotine delivery products to persons under the age of 21. The ordinance includes, but is not limited to, the following revisions: (i) a revised title to reflect the bulk of the provisions which deal directly with the sale of tobacco and nicotine delivery products rather than tobacco vending machines; (ii) a new purpose and findings by the Township Council regarding the dangers and health risks associated with young persons smoking tobacco and e-cigarettes; (iii) a revisions of sections to reflect the increase in minimum age requirement; (iv) an additional requirement on the retailer to sign a form that they have read this ordinance and state laws regarding the sale of tobacco and nicotine delivery products; and (v) increased penalties for violation of this ordinance.

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