

ORDINANCE NO. 2018- 58

ORDINANCE AMENDING ORDINANCE 2009-68, AS AMENDED, CHAPTER 660, ARTICLE I OF THE CODE OF THE CITY OF VINELAND, SO AS TO RESTRICT THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 IN ACCORDANCE WITH N.J.S.A. 2A:170-5.1 ET SEQ. AND FURTHER, REQUIRING ALL RETAIL FACILITIES OFFERING FOR SALE TO THE PUBLIC ELECTRONIC SMOKING DEVICES AND RELATED PRODUCTS BE LICENSED IN THE CITY OF VINELAND

WHEREAS, the Surgeon General of the United States has found that tobacco, nicotine and electronic smoking devices pose danger to health and wellbeing, and are unsafe. The surgeon General of the United States has found that most adult smokers started smoking when they were adolescents. Further, the Surgeon General has found that electronic smoking devices pose a significant health risk for youth; and

WHEREAS, the State of New Jersey has banned the sale or furnishing of cigarettes, electronic smoking devices, or tobacco in any form to any individual under the age of 21 pursuant to N.J.S.A. 2A:170-5.1 et seq.; and

WHEREAS, in order to ensure that electronic smoking devices are not being sold to under-age individuals, the City Council deems it appropriate to license the establishments where these products are offered for sale and such licensing by local authorities of establishments that offer for sale electronic smoking devices is permitted by the State of New Jersey.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that Ordinance 2009-68, as amended, chapter 660, Article I of the Code of the City of Vineland be amended as follows:

1. **Chapter 660** shall be renamed as follows:

Chapter 660. Tobacco and Electronic Smoking Devices

2. **Section 66-1 A and B.** shall be deleted in their entirety and replaced as follows:

Section 66-1 A.

It shall be unlawful to sell tobacco and electronic smoking devices and any substance used in such device to a person under the age of 21.

Section 660-1 B.

Sign requirements. Any person to whom a license is issued pursuant to N.J.S.A. 54:40A-1 et seq. shall, as a condition of the license, conspicuously post a sign at the point of display of any tobacco product and/or electronic smoking device at the point of sale. The sign shall be of a size and contain language in compliance with N.J.S.A. 54:40A-4.1 for tobacco as well as electronic smoking devices.

3. **Section 660-2** shall be deleted in its entirety and replaced as follows:

It shall be unlawful for a tobacco and/or electronic smoking device retailer to sell or permit to be sold to any individual without requesting and examining identification from the purchaser positively establishing the purchaser's age as 21 years or greater unless the seller has some other conclusive basis for determining the buyer is over the age of 21 years.

4. **Section 660-3** shall be renamed as follows:

Section 660-3 Prohibition of vending machines and self-service tobacco and/or electronic smoking device displays.

5. **Section 660-3 A., B. and C.** shall be deleted in their entirety and replaced as follows:

Section 660-3A.

It shall be unlawful to offer for sale or to sell tobacco and/or electronic smoking devices or any substance used in such device through a vending machine in the City of Vineland.

Section 660 B.

Self-service tobacco and/ or electronic smoking devices or any substance used in such devices are prohibited in all retail and wholesale establishments where retail sales are permitted.

Section 660 C.

Exceptions.

- (1) Self-service tobacco and/or electronic smoking devices or any substance used in such device displays and the sale of the same through a vending machine are permitted in the following establishments, provided that such vending machines are non-self-service vending machines as defined herein:
 - (a) Tobacco retail establishments
 - (b) All establishments wherein alcoholic beverages are sold to the public except restaurants as defined in Ordinance No. 97-15, provided, however, that if such restaurant maintains a bar or bar area and there exists restricted access by way of walls, partitions, or such similar barriers with a minimum height of 42 inches and the means of access does not exceed total of 10 feet, sale of tobacco and/or electronic smoking devices or any substance used in such device shall be permitted in the bar or bar area only and shall be sold in the manner as provided herein.
- (2) All such permitted vending machines shall be placed in a conspicuous location in such establishments and shall be in clear view at all times by the owner or designee of such establishment.

6. **Section 660-4** shall be renamed as follows:

Section 660-4 Admission to tobacco and electronic smoking device retail establishments; sign to be posted.

7. **Section 660-4 A and B** shall be deleted in their entirety and replaced as follows:

Section 660-4 A.

It shall be unlawful for a tobacco and/or electronic smoking device retail establishment to permit admission to said establishment to any person under the age of 21 years unless such person is accompanied by a parent or guardian or spouse over the age of 21 years.

Section 660-4 B.

Sign requirements. The following six-inch by eight-inch sign shall be posted on each entrance to said tobacco and/or electronic smoking device establishment:
“Admission to the premises by persons under the age of 21 are prohibited unless accompanied by a parent, guardian or spouse over the age of 21 years.”

8. **Section 660-5** shall be deleted in its entirety and replaced as follows:

Section 660-5 Removal of tobacco and/or electronic smoking device vending machines and self-service tobacco and/or electronic smoking device displays.

All tobacco and/or electronic smoking device machines made unlawful by the terms of this Article shall be removed within 30 days from the effective date of this Article.

9. **Section 660-6 Definitions** shall be amended as follows:

As used in this Article, the following terms shall have the meanings indicated:

Electronic Smoking Device shall mean an electronic or other powered device that can be used to deliver nicotine, vapor or other substance to the person inhaling from the device, including but not limited to electronic cigarettes, commonly known as “e-cigarettes”, electronic 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 powers or other forms of tobacco. A reference to “Electronic Smoking Device” shall also refer to any cartridge, substance or other component of the device or related product.

Non-Self-Service Tobacco and/or Electronic Smoking Device Vending Machine shall mean a vending machine which vends tobacco and/or electronic smoking device products and

- A. Which has attached thereto or constructed therein a device which precludes the self-service operation of said machine.
- B. Can only be unlocked or activated by the owner or designees of such establishment wherein the machine is located after such owner or designee has made a proper identification as described in Section 660-2 herein; and
- C. Has permanently affixed thereto in a conspicuous location, on the front of the machine a six-inch by eight-inch sign which shall state the following: “This vending machine is not self-service. A person desiring to purchase tobacco and/or electronic smoking devices from this machine is required to show proper identification to attendant. The sale of tobacco and/or electronic smoking devices to persons under the age of 21 is illegal.”

Retail Electronic Smoking Establishment shall mean a physical establishment, duly licensed by the City of Vineland Department of Health that sells, offers for sale, gives, distributes or furnishes electronic smoking devices designed for consumption through inhalation as defined herein.

Self-Service Tobacco and/or Electronic Smoking Device Display shall mean a display or rack where any person shall have the capability of direct access to tobacco, tobacco products, and electronic smoking devices as defined herein.

10. **Section 660-7** shall be renumbered to **Section 660-8**, **Section 660-8** shall be renumbered to **Section 660-9** and **Section 660-9** shall be renumbered to **Section 660-10**.

11. **Section 660-7** shall be added as follows:

Section 660-7 License Required For Retail Sale of Electronic Smoking Devices: Fees.

- A. No person shall conduct, maintain or operate a retail electronic smoking device establishment without first obtaining from the Department of Health a license to do so.
- B. No itinerant establishments or vendors shall be permitted to obtain an electronic smoking device establishment license.
- C. The fees collected for the license may be used to fund the administration of this Article and the development and maintenance of a Health Department age of sale enforcement program and other smoking cessation, prevention and control programs. Fees in accordance with the following schedule shall be paid before any license required in this Article shall be issued:

Annual electronic smoking device establishment license fee: Six Hundred (\$600) Dollars for the initial annual license and Three Hundred (\$300) Dollars per year for each renewal license thereafter.

- D. Licenses issued under this Article, unless forfeited or revoked by the Board of Health, shall expire annually on the 31st day of December each year or whenever the licensed establishment is no longer operating as a retail electronic smoking device establishment, whichever first occurs. Renewal applications are to be filed on or before December 31st of each year.
- E. No license is transferrable by sale or otherwise; a license is valid only for the specific premises and retail electronic smoking device establishment listed thereon.
- F. Such license shall be posted in a conspicuous place in the retail electronic smoking device establishment.

12. **Section 660-9** shall be amended as follows:

Section 660-9 B.

Each sale of tobacco and/or electronic smoking devices to persons under the age of 21 shall constitute a separate violation.

Section 660-9 E. shall be added as follows:

- E. In addition, the Health Officer may, upon a second or subsequent conviction of a violation of this Article, revoke the license issued pursuant hereto. The vendor may request a hearing regarding the suspension before the Board of Health if, within 10 days after notice of such revocation, it requests a hearing in writing addressed to the Health Officer. A hearing shall be scheduled within 10 days of such request.

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BE IT FURTHER ORDAINED that should any portion of this Ordinance be deemed unconstitutional, invalid or inoperative in whole or in part by a Court of Competent Jurisdiction, such section or subsection shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining sections or subsections of this Ordinance.

BE IT FURTHER ORDAINED that any Ordinance or portion thereof that is inconsistent with the terms contained herein shall be void and vacated to the extent of such inconsistencies.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk