

**AN ORDINANCE AMENDING CHAPTER 12 TO INCLUDE SECTION 11 OF THE
REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE
(E-Cigarette Licensing)**

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 supplemented to include Subsection 11, entitled E-Cigarette Licensing as follows:

I. Purpose

The purpose of this Ordinance is to license establishments that sell electronic smoking devices and related products. The funds collected by licensing of such establishments shall be used to fund the development and maintenance of programs related to tobacco cessation, prevention and control as may be established and/or administered by the West Orange Health Department.

II. Definitions

For the purpose of this section, the following terms, phrases, words and their derivations shall have the meaning stated herein unless their use in the text of this section clearly demonstrates different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number shall include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Electronic Smoking Device" shall mean 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.

"License Year" shall mean the time period covering June 1st through May 31st of the year for which a license is issued pursuant to this Ordinance.

"Retail Electronic Smoking Device Establishment" shall mean any establishment that sells, distributes, gives or offers for sale Electronic Smoking Devices designed for consumption through inhalation.

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

III. Licensing Fees

- A. No person shall conduct, maintain or operate a Retail Electronic Smoking Device Establishment that sells, distributes or gives Electronic Smoking Devices without first obtaining from the West Orange Health Department a license to do so.
- B. Fees in accordance with the following schedule shall be paid before any license required in this article shall be issued:

Electronic Smoking Device Establishment License \$1,200.00

- C. Licenses issued under the provisions of this article, unless forfeited or revoked by the West Orange Health Department, shall expire annually on the 31st day of May of each year.
- E. No license is transferrable by sale or otherwise.
- F. Such license shall be posted in a conspicuous place in such establishment. No itinerant establishments shall be permitted to obtain an Electronic Smoking Device Establishment License.
- G. All licensing fees shall be paid to the Township of West Orange to offset budget appropriations in connection with education and enforcement of this ordinance and/or the States Tobacco Age of Sale Inspection Program.

IV. Sale Requirements

- A. No person shall sell, distribute or give Electronic Smoking Devices in the Township of West Orange unless an employee of the establishment controls the sale of such products. A person may only sell Electronic Smoking Devices in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines of Electronic Smoking Devices shall be prohibited.
- B. No person shall sell, distribute, or give Electronic Smoking Devices to any person under the age of 21 years.
- C. No Retail Electronic Smoking Device Establishment 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 of Electronic Smoking Devices and has signed a statement that they have read such ordinances and State laws. Such form statement will be supplied by the West Orange Health Department and all signed original statements shall be kept on file by the Retail Electronic Smoking Device Establishment and made immediately available at all times for review by the West Orange Health Department. All Retail Electronic Smoking Device

Establishments shall be in compliance with this provision by the effective date noted in section IX.

- D. The sale of any Electronic Smoking Device refill liquid, whether or not such liquid contains nicotine, that is intended for human consumption that is not contained in packaging that is child-resistant is prohibited as set forth in N.J.S.A. 2A:170-51.9 et. seq.
- E. License holders can only do in-person marketing and sales of Electronic Smoking Devices at the Retail Electronic Smoking Device Establishment. There shall be no cross marketing or sales at nonregistered retail locations and mobile locations, including but not limited to, street fairs, local fairs, festivals, etc.

V. Enforcement

- A. This section shall be enforced by the West Orange Health Department and/or other municipal officials of the Township of West Orange.
- B. Any person found to be in violation of this section shall be ordered to cease the sale of Electronic Smoking Devices immediately.

VI. Violations and Penalties

- A. Any person(s) who is found to be in violation of the provisions of this section shall be subject to the following penalties. For any and every violation of any of the provisions of this Ordinance, the violator of said provision will be subject to a fine of not less than twelve hundred (\$1,200.00) dollars and not more than twenty five hundred (\$2,500.00) dollars. No fines shall be issued for sixty (60) days after publication of this ordinance.
- 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. 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.
- D. Fines and sanctions associated with this section shall be dedicated and forwarded to the West Orange 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.

VII. Severability

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this Ordinance, or its application to any person or circumstances, shall be

adjudged or otherwise determined to be invalid, unconstitutional, void, or ineffective for any clause or reason, such determination shall not affect the remaining provisions of this Ordinance, and the application of such remaining provisions shall not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are severable.

VIII. Repealer

All ordinances or parts of ordinances contrary to or inconsistent with the provisions of this chapter are hereby repealed to the extent of such conflict or inconsistency.

IX. Effective Date

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

Victor Cirilo
Council President

Karen J. Carnevale, RMC
Municipal Clerk

Robert D. Parisi
Mayor

Introduced: March 22, 2016

Adopted: April 19, 2016