

ORDINANCE NO. 2024-3443

**TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

**ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF
MIDDLETOWN GOVERNING SMOKE AND VAPE SHOPS AND THE
SALE OF VAPING AND SMOKING PRODUCTS AND
PARAPHERNALIA IN BUSINESS ESTABLISHMENTS**

WHEREAS, the Township of Middletown (the “**Township**”) has 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, on August 21, 2023, the Township adopted Ordinance No. 2023-3380 regulating smoke and vape shops and the sale of smoking devices and paraphernalia; and

WHEREAS, Ordinance No. 2023-3380 established regulations whereby pre-existing smoke and vape shops and establishments that sell electronic smoking device paraphernalia as of August 21, 2023 were grandfathered in, but required to obtain a license to continue their operation and/or sale of smoking devices and associated paraphernalia; and

WHEREAS, the Township wishes to amend and supplement the Township Code sections implementing Ordinance No. 2023-3380.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that the Code of the Township of Middletown be and is hereby amended and supplemented by repealing and replacing applicable sections of the Township Code, as follows:

[SECTION 1. Repeal and Replace]

§ 404-15. Definitions

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

ELECTRONIC SMOKING DEVICE - An electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold

separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

ELECTRONIC SMOKING DEVICE PARAPHERNALIA - Cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

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, traffic in, keeping and exposing for sale, displaying for sale, delivering for value, peddling and possessing with intent to sell.

RETAIL VAPING ESTABLISHMENT - A location at which a business entity has been licensed to sell vaping and smoke products and paraphernalia.

SMOKE SHOP - 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. An area for smoking shall mean inhaling or exhaling of smoke.

VAPE SHOP - 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.

VAPING PRODUCTS - Any "liquid nicotine," "liquid nicotine container" and "vapor products," all as defined in N.J.S.A. 2A:170-51.9a; and any electronic or other device designed to permit individuals to inhale liquid nicotine or vapor products.

[SECTION 2. Repeal and Replace]

§ 404-16. Licensing Requirements

- A. No person and/or entity shall conduct, maintain or operate a Smoke Shop or Vape Shop without first obtaining a License from the Township. License Applications will be available from the Township Health Department.
- B. No business shall sell smoking devices and/or paraphernalia as part of any retail establishment without first obtaining a license as a Retail Vaping and Smoking Establishment from the Township Health Department.
- C. No person and/or entity shall be issued a License under this section until a satisfactory criminal background check has been completed with the Township Police Department. Those with prior and valid drug-related convictions will automatically be ineligible.

[SECTION 3. Repeal and Replace]

§ 404-17. Application for license

The initial application and all subsequent renewals shall include the following information:

- A. Name and contact information of the owner(s). If the applicant is a corporation or a partnership, then the names and addresses of each individual holding 10% or more interest in the corporation or partnership shall be provided.
- B. Name of the business establishment.
- C. Address of the Smoke Shop and/or Vape Shop or business establishment.
- D. Identify if vape/e-cigarettes are sold retail and/or tobacco/cigars are sold retail.
- E. Identify retailers and/or manufacturers of vaping and smoke products and paraphernalia and/or tobacco/cigar products.
- F. Provide a detailed inventory list of all smoking products and paraphernalia.

- G. Provide store/retail website address.
- H. Where applicable, provide a copy of New Jersey Vapor Business License or Tobacco Retail License issued by the New Jersey Division of Taxation.
- I. If applicable, provide notice of exemption as a cigar bar or cigar lounge (pursuant to the Smoke Free Air Act), issued by the State of New Jersey.

[SECTION 4. Repeal and Replace]

§ 404-18. Requirements for Licenses

- A. All business establishments must hold a valid and current Business Certificate of Occupancy with the Township.
- B. All licenses issued shall be posted in a visible location that can be viewed by all patrons entering the establishment.
- C. Every entrance door of a Smoke or Vape Shop and any commercial establishment selling smoke and vape products shall have posted at eye-level height 21+ age requirement signage provided by the Township Health Department.
- D. There shall be no other signs or signage advertising vape or electronic cigarette products outside of the building or on any outside facing walls, doors, or windows, other than the commercial façade sign approved under and meeting the requirements of Township Code 540-635 for signage.
- E. The entry of any individual under the age of 21 in a smoke or vape shop is prohibited. Anyone who enters a Smoke or Vape Shop shall promptly be required to produce photographic identification, with date of birth, at point of entry, for inspection by store employees. Any person who fails to produce such identification shall promptly be escorted from the Smoke or Vape Shop. For commercial establishments that sell smoke and/or vape/e-cigarette products as a portion of their product, every purchaser shall produce photographic identification, with date of birth, at point of sale for inspection by store employees.
- F. All employees of a Smoke or Vape Shop shall be at least 21 years of age. Each business principal shall attest to, on the licensing application, that all employees, present and future, are given

instruction with respect to requirements of this chapter and all New Jersey statutes and regulations concerning the sale of smoke and vape products.

- G. The sale of and operation of any class of cannabis business is prohibited in Middletown Township per Ordinance No. 2021-3312.
- H. The sale of flavored vapes and e-cigarette products are prohibited per New Jersey State Legislation S3265. Flavored vape and e-cigarette products shall be confiscated by the Township and violations assessed per Section 9 of this ordinance.
- I. A commercial establishment engaging in the sale of tobacco or vapor products is prohibited from promoting or accepting special offers, coupons, or price reduction promotions per New Jersey State Law PL 2019 c. 396.
- J. Vaping or smoking indoor in any vape shop, by both employees and customers, is prohibited per N.J.S.A. 26:D-55 et seq. Any cigar bar or cigar lounge with indoor smoking must meet state standards as prescribed in the New Jersey Smokefree Air Act and have on file with the Middletown Health Department a notice of exemption from the State.

[SECTION 5. Repeal and Replace]

§ 404-19. Transferability.

Any licenses issued under this section are non-transferable to another/other individual(s) unless said individual(s) fulfill the requirements of this Chapter, including the submission of a complete license application with background check. Any Smoke Shop or Vape Shop or establishment that sells vaping products that changes ownership shall be required to submit a new application for a Pre-Existing Smoke Shops and Vape Shops; And For The Pre-Existing Sale Of Vaping And Smoke Products and Paraphernalia In Business Establishments and receive approval of same prior to operating the business. Licenses issued under this section are non-transferable to a new physical location or street address.

[SECTION 6. Repeal and Replace]

§ 404-22. Violations, Suspension, and Revocation of License

Any person adjudicated as having violated any provision of this chapter shall be subject to the penalties in Chapter 1, General Provisions, § 1-4, of this Code.

Additional fines shall be assessed, and license suspended by the Township Health Department, for any infraction or violation of the terms of this Chapter, any of the Township ordinances, state or federal statute based on the following table. Suspensions shall become effective immediately.

Violation	Fine	Period of License Suspension	Hearing
First Offense	\$500	1 week	Public hearing before the Township Committee on possible license surrender and termination
Second Offense	\$1,000	Minimum 2 weeks/until appearance before Township Committee	Public hearing before the Township Committee on possible license surrender and termination
(If applicable) Third Offense	\$2,000	Minimum 3 weeks/until appearance before and final finding by Township Committee	Final public hearing before the Township Committee on license surrender and termination

License termination shall become effective immediately upon the finding of such violation by the Township Committee. In the event of failure of the licensee to appear before the Committee, the license shall automatically be revoked and canceled.

During the time of license suspension, vape/smoke shops must cease sale and close the establishment for business to the public until the assigned suspension has ended and conditions have been made satisfactory per notice from the Health Department. Retail establishments selling vape and e-cigarette products as a portion of their general inventory and retail sales must remove all vape and e-cigarette products from store shelves and public view and cease sale of such until the assigned suspension has ended and conditions have been made satisfactory per notice from the Health Department. If during time of license suspension any vape/smoke shop is found to be open to the public

and/or selling or distributing vape and e-cigarette products or retail establishment found to be selling or distributing vape or e-cigarette products, the license will be automatically and permanently terminated, regardless of previous offense(s).

[SECTION 7. Repeal and Replace]

§ 404-21. Surrender of License

Upon the expiration of any license issued under the provisions of this chapter, the holder thereof shall surrender the same to the Township Health Department within 24 hours. Upon notice of the-termination or revocation of any license issued under the provisions of this chapter, the holder shall surrender the same to the Township Health Department within 24 hours after notice of such cancellation.

[SECTION 8. Repeal and Replace]

§ 240-41. Smoke and vape shops and sale of smoking devices and paraphernalia

- A. Annual fees associated with the licensing requirement for Smoke Shops and Vape Shops shall be assessed at \$2,500.
- B. Annual fees associated with the licensing requirement for the sale of electronic smoking devices in any establishment shall be assessed at \$2,500.
- C. All licenses issued under this Section shall be valid for one calendar year, beginning January 1 and expiring December 31.
- D. All applications and fees for license renewals are required to be submitted to the Township Health Department between January 1 and January 31.

[Section 9.

[Chapter 540 of the Planning and Development Regulations within the Code of the Township, Appendix A, is hereby amended and supplemented by adding to the list of prohibited uses, the following:]

"Smoke shops"

"Vape shops"

"Sale of smoking devices and paraphernalia"

[Section 10. Chapter 540 Planning and Development Regulations within the Township Code, Appendix A, is hereby amended and supplemented by adding to the list of permitted uses, the following:]

Pre-existing "Smoke shops" and "Vape shops", provided that they obtain a license within 60 days of August 21, 2023.

Pre-existing sale of smoking devices and paraphernalia in business establishments provided that they obtain a license as a "Retail Vaping and Smoking Establishment" as defined herein within 60 days of August 21, 2023.

[SECTION 11. Repealer

All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed. All portions of the ordinance not modified herein remain in full.

SECTION 12. Severability

Should any section, clause, sentence, phrase or provision of this ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

SECTION 13. Effective Date

This ordinance shall take effect upon final passage, adoption and publication in the manner prescribed by law.]¹

¹ Do not codify material in brackets and delete §§ 404-23 through 25 in Township Code.