

Borough of Kinnelon
COUNTY OF Morris, STATE OF NEW JERSEY
ORDINANCE #04-2026

AN ORDINANCE OF THE BOARD OF HEALTH OF THE BOROUGH/TOWNSHIP/TOWN OF Kinnelon, IN THE COUNTY OF Morris, STATE OF NEW JERSEY, AMENDING THE CODE OF ORDINANCES OF THE Kinnelon BOARD OF HEALTH FOR REGULATION OF ELECTRONIC SMOKE DEVICES/VAPE SHOPS/EDIBLES PSYCHOACTIVE SUBSTANCES AND DRUGS

WHEREAS, the proliferation of unregulated establishments that sell products containing psychoactive substances in various forms has become an emerging public health issue in our community; and

WHEREAS, while the retail sale of some of these products is permitted under Federal and State laws, it has become impossible for local enforcement to monitor the legality, the consumer to monitor the safety, and local health departments to monitor the public health risks of some of these types of products being introduced to the market; and

WHEREAS, the lack of feasible oversight and enforcement has resulted in an uncontrolled distribution network for various substances, both legal and illegal, in various forms both regulated and unregulated that undermines the public health and safety of our community; and

WHEREAS, the sale of psychoactive substances by licensed businesses such as health care providers, pharmacists, liquor and cannabis license holders, and retailers holding licenses or permits to sell tobacco and/or nicotine cessation treatments is already regulated and enforced and would not be regulated by this Chapter; and

WHEREAS, there is a need to monitor the sale of electronic smoking devices and psychoactive products by retailers who are not presently regulated and licensed to protect the public health and safety by assuring that only legally compliant products are being offered for sale and that protections are in place to prevent the sale or distribution of such products to unknowing persons and to those under 21 years of age; and

WHEREAS, the licensing of previously unregulated and unlicensed establishments selling electronic smoking devices and/or psychoactive substances is an effective way to protect the public health and safety.

IT IS HEREBY ORDAINED by the Municipal Council of the Borough/Township/Town of Kinnelon, County of Morris, State of New Jersey, as follows:

§ ____-1. Purpose.

§ ____-2. Definitions.

§ ____-3. Prohibition on sales and manufacture; locations restricted.

§ ____-4. Entry and employment of persons under the age of 21 prohibited.

_____ of _____
COUNTY OF _____, STATE OF NEW JERSEY
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§ ____-5 Sale, distribution, use and operational restrictions; persons under the age of 21 prohibited.

§ ____-6. Signage.

§ ____-7. License, application, fees, display and transferability.

§ ____-8. Inspection and access to premises.

§ ____-9. Revocation or suspension of license; hearing.

§ ____-10. Enforcement.

§ ____-11. Re-inspection Fees.

§ ____-12. Violations and penalties.

§ ____-13. Right of entry.

§ ____-14. Severability.

§ ____-15. Repeal.

§ ____-16. When effective.

§ ____-1. Purpose.

The purpose of this chapter is to protect the public's health and general welfare by licensing and regulating establishments that sell electronic smoking devices, vapor products, electronic liquids, liquid nicotine and/or psychoactive drugs/substances as defined in this chapter and to more effectively prohibit the sale, furnishing or giving of these products to persons under the age of 21.

§ ____-2. Definitions.

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning stated herein unless their use in the text of this chapter clearly demonstrates different meaning. The word "shall" is always mandatory and not merely directory.

CBD (Cannabidiol)

Cannabidiol, usually referred to as CBD, is the second most prevalent chemical compound found in cannabis. It can be derived from hemp or from marijuana. Hemp-derived CBD still contains trace amounts of THC, while marijuana-derived CBD may contain more. At the federal level in the U.S., hemp-derived products-including CBD products-are legal under the 2018 Farm Bill as long as they contain no more than 0.3% THC by dry weight.

Cannabis Business

Any "cannabis establishment", "cannabis dispensary", "cannabis delivery service" and "cannabis distributor" within the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, as amended and supplemented, and any and all other persons and entities engaging in any class, kind or type of commercial or noncommercial cannabis related business activity or operation as permitted by the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act and that is also duly approved, licensed and regulated by municipal ordinance.

Characterizing Flavor

A distinguishable flavor, taste, or aroma, including, but not limited to, any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice flavoring, menthol, mint, tobacco, or nicotine in liquid, wax, gel, oil, cartridge, or in any other format that is imparted, prior to or during consumption, by an electronic smoking device or other related product. An electronic smoking device or other related product shall be deemed to have a characterizing flavor if the device is packaged with, contains, or includes such flavors or ingredients in liquid, wax, gel, oil, cartridges, or any in other format and/or is advertised or marketed as having or producing characterizing flavors.

Child-resistant Packaging/Container

A container which is designed and constructed in a manner that meets the federal effectiveness specifications set forth in 16 C.F.R. 1700.15 and the special packaging testing requirements set forth in 16 CFR 1700.20, so that it is significantly difficult for a child five years of age or younger to open the package or otherwise risk exposure.

Custom Produced Vapor and Electronic Liquids/E-Liquids

Liquid, wax, gel, solution or other form of ingredient mixed, prepared, enhanced, and/or combined by the retailer intended to be sold, distributed, given or offered for sale for the purpose of inhaling with or without the use of electronic smoking device and that have not been produced, prepackaged and labeled by a recognized government approved manufacturer/wholesaler.

Delta-8, 9 and 10

Delta-8, 9 and 10 tetrahydrocannabinol, also known as delta-8, 9 or 10 THC, are psychoactive substance found in the *Cannabis sativa* plant, of which marijuana and hemp are two varieties. Delta-8, 9 and 10 THC are three of over 100 cannabinoids produced naturally by the cannabis plant but is not found in significant amounts in the cannabis plant. As a result, concentrated amounts of delta-8, 9 or 10 THC are typically manufactured from hemp-derived cannabidiol (CBD).

It is important for consumers to be aware that delta-8 THC products have not been evaluated or approved by the FDA for safe use in any context.

Edibles

A type of food or beverage item infused with one or more cannabis derivatives or concentrates containing CBD or containing nicotine, THC, and/or other psychoactive substances as defined in this chapter. Edibles can come in a variety of forms including but not limited to baked goods, chocolate bars, gummies, chewing gum, lozenges, and unique

infused items including, but not limited to cooking or salad oils, sauces, condiments, granolas, hard candies and various beverages.

Electronic Smoking Device

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, pipe, vape pen or any cartridge, refill or other component of the device or related product, including but not limited to refills such as liquids, gels, waxes and powders.

Hemp

Legally, hemp is defined as a cannabis plant that contains 0.3 percent or less of tetrahydrocannabinol (THC), the mind-altering substance found in cannabis. A cannabis plant that contains more than 0.3 percent THC is considered marijuana and is heavily regulated by the State of NJ. CBD can be derived from both hemp and marijuana plants, but only CBD derived from hemp is legal.

Itinerant Establishment

A temporary or permanent business operated from a truck, cart, bicycle or other vehicle, hand-carried portable container or device, or mobile platform or unit.

Liquid Nicotine/ Electronic Liquid/E-Liquid

Any solution containing nicotine, other psychoactive substances or any other ingredients which are designed, sold, distributed or given for use with an electronic smoking device or vapor product.

Liquid Nicotine/ Electronic Liquid (E-liquid) Container

A bottle or other container of liquid, wax, gel, or other substance containing nicotine, other psychoactive substances and/or other ingredients where the liquid or other contained substance is sold, marketed or intended for use in a vapor product and said container is not intended to be opened by the consumer and/or is in bulk amounts within the container. This definition does not include cartridges, pens or other containers that are prefilled and sealed by the manufacturer for individual, direct to consumer use.

Manufacturer

Any person, including any re-packer and/or re-labeler, who compounds, modifies, mixes, manufactures, fabricates, assembles, processes, labels, re-packs, re-labels or imports electronic smoking devices, vapor products, tobacco products, electronic liquids and/or psychoactive drugs/substances as defined in this chapter.

Pouches

Type of smokeless product used as a delivery system for CBD or psychoactive substances such as nicotine and THC. Pouches are pre-portioned, may or may not contain tobacco but they do contain flavorings, sweeteners and plant-based fibers and will also contain nicotine and/or other psychoactive substances such as CBD and THC. Pouches are placed between the cheek and gum and allows chemicals to be released and absorbed into the bloodstream.

Psychoactive Substances

Drugs or substances that change the function of the nervous system, affect how the brain works and/or result in alterations of perception, mood, cognition, awareness, thoughts,

feelings, and/or behavior. Psychoactive substances or drugs include but are not limited to alcohol, caffeine, nicotine, cannabis, THC, CBD and CBD with more than 0.3% THC by dry weight. For the purposes of this chapter, all THC classifications including, but not limited to Delta 8, 9 and 10, meet the definition of psychoactive substances. For the purposes of this chapter, this definition also includes hallucinogens, a.k.a. psychedelics, whether natural or synthetic, legal or illicit, FDA approved or non-FDA approved. This definition includes but is not limited to PCP, LSD, Mescaline, Tryptamines, Ketamine, Psilocybin, mushrooms containing Psilocybin, Tianeptine, Kratom, Xylazine and opioids.

For the purposes of this chapter, those drugs or substances legally offered for sale, distributed or given by NJ licensed healthcare providers, licensed cannabis businesses, retailers approved or licensed by the Cannabis Regulatory Commission (CRC) or pharmacies shall be exempt from the regulations set forth in this chapter. Commercially processed foods and beverages containing caffeine such as chocolate, cocoa, coffee, tea, and soft drinks that are legally offered for sale, distributed or given from government approved and licensed retailers shall be exempt from the regulations set forth in this chapter. NJ State regulated alcohol, cannabis from a cannabis business as defined in this chapter or from retailers approved or licensed by the Cannabis Regulatory Commission (CRC) and items containing tobacco leaf or nicotine such as cigarettes, cigars, pipes, chewing tobacco, snuff or pouches, that are legally offered for sale, distributed or given from government approved and licensed retailers shall be exempt from the regulations set forth in this chapter. Patches and/or lozenges that are manufactured and marketed specifically as a smoking/nicotine addiction cessation treatment and that are legally offered for sale, distributed or given from government approved and licensed retailers shall be exempt from the regulations set forth in this chapter.

Psychoactive Substance or Drug Delivery System

Any method used to introduce psychoactive substances or drugs to the human body. This includes but is not limited to liquid nicotine/ e-liquid, vapor products, edibles, tinctures, pouches, topicals and snuff as they are defined in this chapter.

Retail Electronic Smoking Device and Psychoactive Substance Establishments

Any establishment, person, entity or business that stores, displays, sells, offers for sale, distributes or gives electronic smoking devices designed for use through inhalation and/or stores, displays, sells, offers for sale, distributes or gives legal psychoactive substances that are permitted by this chapter and as they are defined in this chapter, in any form, for the purpose of inhalation, ingestion and/or absorption and/or sells any equipment, associated paraphernalia and/or supplies, including but not limited to rolling papers, cartridges, electronic devices, accessories, pipes, hookahs, vape pens, topicals, gummies, candies, gum, pouches, tinctures, snuff, tablets, capsules, food and beverages in any form and/or other psychoactive substance or drug delivery systems as defined in this chapter.

Retail Electronic Smoking Device and Psychoactive Substance Establishments do not include those retail businesses that sell exempted psychoactive substances as specified in this chapter's definition of psychoactive substances.

Smoking

Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, plant or chemical product intended for inhalation, whether natural or synthetic, including but not limited hookahs and marijuana, or the use of

pipes, cigarettes, cigars or any other form of combustible or non-combustible device and including any form of electronic smoking device.

Snuff

A type of smokeless product made from finely ground or pulverized tobacco leaves and/or other chemicals and ingredients. It is snorted or "sniffed" into the nasal cavity, delivering a swift hit of CBD or psychoactive substances such as nicotine and usually has a lasting flavored scent. Snuff is held to the nostrils manually but may include a specially made "snuffing" device.

THC (tetrahydrocannabinol)

THC or Tetrahydrocannabinol is the major psychoactive component in cannabis. Any part of the cannabis sativa plant with more than 0.3% of tetrahydrocannabinol (THC), the mind-altering substance in marijuana, would not meet the legal definition of CBD. For the purposes of this chapter all THC classifications including, but not limited to Delta 8, 9 and 10 are considered THC and thus are considered psychoactive substances as they are defined in this chapter.

Tinctures

Alcohol or oil-based liquids that can be infused with cannabis derivatives or concentrates containing CBD or containing nicotine, THC and/or other psychoactive substances. Tinctures are commonly consumed sublingually, left under the tongue to absorb into the mucus membranes for 10-15 seconds. Consumers can also use tinctures by infusing them into food or beverages or applying them topically for various skin conditions.

Topicals

For the purposes of this chapter, an agent applied to a certain area of the skin and is absorbed into the bloodstream.

Vapor Product

Any non-combustible product containing nicotine or other substances that employs or intends to employ a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor, including but not limited to any form of electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any e liquid, liquid nicotine, vapor cartridge or other container of solution or other form with or without nicotine intended to be used with or in any such device.

§ ____-3. Prohibition on sales and manufacture; locations restricted.

- a. Only Retail Electronic Smoking Device and Psychoactive Substance Establishments licensed by the Health Department shall be permitted to store, display, sell, offer for sale, distribute or give electronic smoking devices, components or parts, electronic liquid, and/or liquid nicotine, vapor products, associated paraphernalia or psychoactive substances permitted by this Chapter, in any form.
- b. Under no circumstances shall illicit substances or drugs be permitted to be sold, offered for sale, given, displayed, stored or distributed.

- c. It shall be unlawful for any business to store, display, sell, offer for sale, distribute or give any psychoactive substances unless:
1. the substances are exempt as set forth in this chapter's definition of psychoactive substances
 2. the substances are not prohibited by law
 3. the substances have not been recalled by the manufacturer, the State of NJ or federal authorities
 4. the substances contain hemp derived CBD with 0.3% or less of THC by weight
 5. the said business is in possession of a Retail Electronic Smoking Device and Psychoactive Substance Establishment license from the Health Department.
 6. the said retailers are approved or licensed by the Cannabis Regulatory Commission (CRC) to sell specific psychoactive substances such as Delta 8, intoxicating hemp beverages, and other products containing THC.
- d. Any product, including intoxicating CBD products with detectable levels of THC or that contain Delta 8, 9 and 10, or take the form of hemp intoxicating beverages may only be sold, stored, displayed, given or distributed by a licensed cannabis business, as it is defined in this chapter, or by retailers licensed or approved by the Cannabis Regulatory Commission (CRC).
- e. It shall be unlawful for any retail business to manufacture electronic smoking devices, components or parts, or psychoactive substances as defined in this Chapter, or to manufacture, handle, use, mix, prepare, store, display, sell, offer for sale, distribute or give any bulk vapor or electronic liquids or to extract them from liquid nicotine/electronic liquid containers, as they are defined in this chapter.
- f. It shall be unlawful for Retail Electronic Smoking Device and Psychoactive Substance Establishments licensed by the Health Department to store, display, sell, offer for sale, distribute or give psychoactive drugs or substances as defined in this Chapter, in any form, that are recalled by the manufacturer of the said product or are recalled or otherwise prohibited by the FDA, USDA or other Federal or NJ State agencies because of an imminent danger or health risk to the consumer that the product in question may pose.
- g. Psychoactive substances that are in the form of edibles, as they are defined in this chapter, are prohibited unless they contain only those psychoactive substances that are exempt by this chapter or contain psychoactive substances not prohibited by this chapter.
- h. Those Retail Electronic Smoking Device and Psychoactive Substance Establishments which store, display, sell, offer for sale, distribute or give edibles permitted under this Chapter are required to also be licensed as a retail food establishment and must adhere to the requirements of N.J.A.C. 8:24, entitled, "Sanitation in Retail Food Establishments and Food and Beverage Vending Machines". Establishments will be subject to compliance inspections by the Health Department.
- i. Retail Electronic Smoking Device and Psychoactive Substance Establishments shall segregate edibles, as defined in this chapter, from all other food and beverages.

- j. It shall be unlawful to sell, display, store, distribute, or give edibles that contain ingredients or substances that are not approved as a food additive by the Food and Drug Administration (FDA) without displaying signage of disclosure in public view as set forth in section ____6c.
- k. It shall be unlawful to sell, display, store, distribute, or give psychoactive substances or other ingredients in any form that are not primarily formulated and marketed for human consumption.
- l. It shall be unlawful for Retail Electronic Smoking Device and Psychoactive Substance Establishments that are not already in operation at the time of the adoption of this chapter to be located within 1000 feet of any of the following:
 - 1. Public, or privately owned commercial recreational field, park or bathing facility
 - 2. Public or private elementary, middle or high schools
 - 3. Child and adult special needs schools
 - 4. Houses of worship and spaces where children's religious studies are routinely offered
 - 5. Other Retail Electronic Smoking Device and Psychoactive Substance Establishments
- m. It shall be unlawful for temporary or itinerant establishments, transient merchants, or peddlers to operate as a Retail Electronic Smoking Device and Psychoactive Substance Establishment or to be issued a license to operate as such.
- n. It shall be unlawful for a person or business entity to sell, offer for sale, or distribute a hemp product that is not derived from naturally occurring biologically active chemical constituents and is not sourced from a person or business entity authorized by the State of NJ to cultivate, handle, or process hemp in the State.

§ ____-4. Entry and employment of persons under the age of 21 prohibited.

- a. The entry of individuals under the age of 21 without a parent or legal guardian into any portion of a Retail Electronic Smoking Device and Psychoactive Substance Establishment that stores, displays, sells, offers for sale, distributes or gives electronic smoking devices and/or psychoactive substances, as they are defined in this chapter, is prohibited, unless it primarily operates and is licensed as a retail food establishment, pharmacy, healthcare provider, gas station or liquor store.
- b. It shall be the duty of a Retail Electronic Smoking Device and Psychoactive Substance Establishment licensee that does not primarily operate as a licensed retail food establishment, pharmacy, healthcare provider, gas station or liquor store to verify that any individual entering any portion of the establishment, that is not accompanied by a parent or guardian, is 21 years of age or older by requesting and examining government-issued photographic identification immediately upon entry of such individual.
- c. No individual under the age of 21 shall be employed by a Retail Electronic Smoking Device and Psychoactive Substance Establishment that stores, displays, sells, offers for sale, distributes or gives electronic smoking devices and/or psychoactive substances, as they are

defined in this chapter, unless it primarily operates and is licensed as a retail food establishment, pharmacy, healthcare provider, gas station or liquor store.

§ ____-5 Sale, distribution, use and operational restrictions; persons under the age of 21 prohibited.

- a. No person or business shall sell, offer for sale, distribute or give electronic smoking devices, electronic smoking device supplies or equipment, vapor products, associated paraphernalia, e-liquids, liquid nicotine and/or legal and permitted psychoactive substances as defined in this chapter, in any form, to any person under 21 years of age.
- b. Any retailer, employee or other person selling, offering, distributing, displaying or giving electronic smoking devices, electronic smoking device supplies or equipment, vapor products, associated paraphernalia, e-liquids, liquid nicotine and/or legal and permitted psychoactive substances as defined in this chapter, in any form, shall verify by means of government-issued photographic identification that contains the bearer's date of birth, that no purchaser of same is younger than 21 years of age.
- c. A Retail Electronic Smoking Device and Psychoactive Substance Establishment, at a minimum, must require proof of age from any customer who is of the appearance of 26 years of age or younger. Proof must come in the form of a valid government-issued photo ID. A customer who appears over the age of 26 shall not be a defense for selling to persons under the age of 21.
- d. Self-service displays and vending machines of electronic smoking devices, electronic smoking device supplies or equipment, vape products, E-liquid, liquid nicotine, associated paraphernalia, and/or psychoactive substances as defined in this chapter, in any form, shall be prohibited.
- e. An employee of a Retail Electronic Smoking Device and Psychoactive Substance Establishment must control the sale of such products described in ____-5 section a., through direct, face-to-face exchange between the retailer and the consumer.
- f. No Retail Electronic Smoking Device and Psychoactive Substance Establishment shall distribute, or cause to be distributed, any samples or allow the sampling of electronic smoking devices, components or parts, associated paraphernalia, electronic liquid, liquid nicotine and/or psychoactive substances as defined in this chapter, in any form.
- g. The sale of any electronic smoking device or vapor product refills, including, but not limited to, any and all liquids, gels, waxes or powders, whether or not such refill contains nicotine or other psychoactive substances, that are not contained in packaging that is child-resistant, as set forth in N.J.S.A. 2A:170-51.9 et seq., is prohibited.

- h. Electronic smoking devices, vapor products, components or parts, associated paraphernalia, electronic liquid containers or cartridges, liquid nicotine containers or cartridges and/or psychoactive substances in any form, including, but not limited to, edibles and pouches, and the packaging for all products listed herein, which are labeled with or in the form or take the shape or illustrate an image or likeness of animals, toys, fruits, vegetables, cartoon or other characters, or other images commonly directed to children or minors, are prohibited to be stored, displayed, sold, offered for sale, distributed or given within the municipality.
- i. Electronic smoking devices and vapor products, components or parts, associated paraphernalia, electronic liquid, liquid nicotine and any other solution, ingredient or other vapor delivery system with characterizing flavors as they are defined in this chapter are prohibited to be given, sold, stored, displayed or distributed within the municipality.
- j. Retail Electronic Smoking Device/Psychoactive Substance Establishment license holders may only do in-person marketing and sales within the licensed establishment. There shall be no cross marketing or sales at unlicensed retail locations, temporary or mobile locations, including, but not limited to, street fairs, local fairs, festivals, other events or from trucks or vehicles, motorized or otherwise. This section does not prohibit the advertising of a licensed Retail Electronic Smoking Device and Psychoactive Substance Establishment in other forms of media.
- k. Smoking or sampling inside Retail Electronic Smoking Device and Psychoactive Substance Establishments is prohibited.
- l. It shall be unlawful for Retail Electronic Smoking Device/Psychoactive Substance Establishments to allow the use or sampling of the devices or smoking related products outdoors within 50 feet of the establishment or within the maximum outdoor area that is under the control of the retailer, whichever is less.

§ ____-6. Signage.

- a. Signage shall be conspicuously posted on entry doors of those Retail Electronic Smoking Device and Psychoactive Substance Establishments that meet the stipulations set forth in ____-4. B. This signage shall be in English with letters of no less than one inch (1") in size which states: "Entry of persons under the age of 21 is prohibited. Government-issued photographic identification must be presented immediately upon entry."
- b. Signage in all Retail Electronic Smoking Device and Psychoactive Substance Establishments shall be conspicuously posted at the point of display and at the point of sale in English with letters of no less than one half inch (1/2") in size which states the following:
 - 1. "A person who sells, offers for sale, distributes or gives electronic smoking devices, supplies or equipment, vapor products, associated paraphernalia, and/or psychoactive substances in any form to a person less than 21 years of age shall be subject to

prosecution, monetary penalty and/or license suspension or revocation. Proof of age is required for purchase."

2. "Smoking or sampling any product or device inside this place of business is prohibited by law. Those establishments or individuals in violation are subject to prosecution."
- c. Signage in all Retail Electronic Smoking Device and Psychoactive Substance Establishments that sell edibles containing CBD shall be conspicuously posted at the point of display and at the point of sale in English with letters of no less than one half inch (1/2") in size which states the following:
 1. "CBD is not approved by the FDA as a food additive. Use of this product may cause side effects and may interact with drugs. Consultation with a physician before using products containing CBD is recommended."

§ ____-7. License, application, fees, display and transferability.

- a. No person shall conduct, maintain, or operate a Retail Electronic Smoking Device/Psychoactive Substance Establishment without first submitting an application for licensure on forms promulgated by the Health Department.
- b. No proprietor shall operate a Retail Electronic Smoking Device/ Psychoactive Substance Establishment unless such proprietor has received a license from the Health Department, acting on behalf of the governing body.
- c. A fee of \$1,000. for a Retail Electronic Smoking Device/Psychoactive Substance Establishment License shall be paid before the required license set forth in this article shall be issued.
- d. Licenses issued under the provisions of this article, shall expire annually on the 31st of December. Each establishment shall apply for a renewal of their license for each retail location. The annual renewal fee shall be \$1,000 per each Retail Electronic Smoking Device/Psychoactive Substance Establishment location, payable by December 31st. For renewal applications and payments that are not received by January 31st, the Health Department shall require a late fee to renew in the amount of \$250.00 in addition to the license fee.
- e. At the time of the initial application and for any subsequent renewals, the applicant shall:
 1. disclose if the applicant is also a manufacturer or distributor of electronic smoking devices, psychoactive drugs or substances, vapor products, e- liquids and/or liquid nicotine and shall list the addresses of where that aspect of their business is conducted.
 2. provide the name, address, telephone number, email address and contact person for the manufacturer or distributor or other business(es) from which the electronic smoking

devices, components or parts, electronic liquid, psychoactive drugs or substances, vapor products and/or liquid nicotine are purchased.

- f. The Retail Electronic Smoking Device and Psychoactive Substance Establishment license shall be posted in a conspicuous location where it may be readily observed at eye level by all patrons before or immediately upon entering the establishment.
- g. It shall be unlawful for any portion of the Retail Electronic Smoking Device and Psychoactive Substance Establishment license to be obstructed from view during display.
- h. The owner or person in charge of an establishment shall permit any municipal official, inspector or police officer who has presented proper identification to fully examine any license issued under this chapter.
- i. No Retail Electronic Smoking Device and Psychoactive Substance Establishment licenses shall be issued to temporary or itinerant establishments, transient merchants, or peddlers.
- j. Retail Electronic Smoking Device and Psychoactive Substance Establishment licenses issued by the Health Department on behalf of the municipality are not transferable by sale or otherwise and are not prorated. Any establishment that changes ownership must submit a new application and receive a new license prior to operation of the establishment under the new ownership.
- k. A person purchasing an existing Retail Electronic Smoking Device and Psychoactive Substance Establishment after the effective date of this chapter shall apply for a new license prior to commencing operation under new ownership. Operators of Retail Electronic Smoking Device and Psychoactive Substance Establishments are required to notify the Health Department of the impending sale of the establishment no less than 30 days prior to the transfer of ownership.

§ ____-8. Inspection and access to premises.

- a. The Health Officer, or his/her designees or authorized agents shall be the primary enforcers of this chapter and shall have the right to inspect any Retail Electronic Smoking Device/Psychoactive Substance Establishment as often as he/she deems it necessary. Any duly appointed police officer of the municipality shall be permitted to enter and inspect the premises for compliance with this chapter. All parts of the establishment shall be made accessible to the Health Officer or his/her designee and to any duly appointed municipal police officer.
- b. At the discretion of the Health Officer, or his/her designees, or authorized agents, the Health Department may conduct age of sale inspections with the assistance of individuals under 21 years of age to verify that licensed Retail Electronic Smoking Device and Psychoactive

Substance Establishments are complying with the prohibition on sales to anyone under 21 years of age. Those establishments who fail age of sale inspections will be considered to be in violation of the applicable sections of ____-4 and ____-5 and/or any other sections of this Chapter in which violations were observed and documented during the said inspections.

- c. At the discretion of the Health Department, Retail Electronic Smoking Device and Psychoactive Substance Establishments will be subject to the collection of random samples of those products stored, displayed, sold, offered for sale, distributed or given at the establishment that may contain, or at the discretion of the health department, are suspected of containing CBD, THC, cannabis or other psychoactive substances.
1. The identified samples selected must be tested by a NJ certified laboratory capable, proficient and certified to test for the psychoactive substances in question.
 2. NJ certified laboratory testing shall confirm the presence or lack thereof, of THC or other specified psychoactive substances.
 3. The cost of the products collected as samples for testing by the Health Department shall be absorbed by the establishment.
 4. The Health Department shall limit the number of samples identified and collected for testing to a maximum of three items/products per calendar year
- d. Inspection placards shall be posted in a conspicuous location where it may be readily observed at eye level by all patrons before or immediately upon entering the establishment. The inspection placard shall reflect the level of compliance with this chapter. The inspection placards shall reflect one of three ratings as follows:
1. Satisfactory rating issued, at the discretion of the Health Department inspector, when establishments are largely or completely in compliance with this chapter;
 2. Conditionally satisfactory rating issued, at the discretion of the Health Department inspector, when violations of this chapter are observed and documented;
 3. Unsatisfactory rating issued, at the discretion of the Health Department inspector, when repeat, flagrant and /or serious violations of this chapter are observed and documented. An unsatisfactory rating will require the license to be suspended and the establishment or portions thereof operating under the said license to cease until all violations are corrected. The establishment may reopen only after it is authorized to do so by the Health Department unless the license is revoked for cause as set forth in this chapter.

§ ____-9. Revocation or suspension of license; hearing.

- a. Licenses issued under this chapter may be suspended by the Health Officer or revoked by the governing body for the following causes:
1. Fraud, misrepresentation or false statement in the establishment's license application.
 2. Fraud, misrepresentation or false statement made to the Health Officer or his/her designee or any duly appointed municipal police officer while operating the licensed business in the municipality.

3. Fraud, misrepresentation or false statement made to customers or to the general public whether verbally, with signage or advertising, in any form, while operating the licensed business in the municipality.
 4. Conducting business within the municipality in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public, as determined by the Health Officer.
 5. The establishment is an existing or threatened menace to the public health as determined by the Health Officer.
 6. The owner and/or operator or any employee refuses to permit, or hinders or obstructs the Health Officer, his/her designee or any duly authorized municipal police officer to inspect the premises or the operations therein at any time.
 7. For repeat violations of this chapter or for any violations of this chapter that constitute a menace to the health, safety, or general welfare of the public as determined by the Health Officer.
 8. For being posted unsatisfactory as a result of an inspection or complaint investigation.
- b. A person, firm, corporation, or other entity whose license has been revoked by the governing body or suspended by the Health Officer shall close the establishment and request all patrons to vacate the premises and/or the establishment ceases all operations associated with the suspended or revoked license. The establishment shall refrain from all business activities for which the license was obtained until the Health Department authorizes operations or parts thereof to commence or the governing body of the municipality authorizes operations to commence at the conclusion of the appeal process that is set forth in this chapter.
- c. The licensee shall be entitled to a hearing before the governing body for the purpose of appealing the suspension or revocation and seeking reinstatement of the suspended or revoked license. The licensee shall submit a written request for the hearing to the Municipal Clerk within five business days of the revocation or suspension. The governing body shall conduct the hearing no more than 15 business days from the date the written request was received. A business day shall be defined for the purposes of this chapter as any weekday, Monday through Friday, except for holidays in which municipal offices are closed.
- d. Written notice of the time and place of such hearing shall be served upon the licensee by the Municipal Clerk or his/her designee at least five business days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking, cancelling, or suspending such license. Notice may be given either by personal delivery thereof to the person identified on the license application or may be sent in a sealed envelope, addressed to the person and business address that appears on such license application, by simultaneously sending the notice both regular mail and certified mail, return receipt requested, via the United States Postal Service.
- e. At the hearing before the governing body, the licensee shall have an opportunity to answer and may thereafter be heard, and upon due consideration and deliberation by the governing body, the complaint may be dismissed, or if the governing body

concludes that the charges have been sustained and/or substantiated, it may uphold the revocation or suspension and deny reinstatement of the license or stipulate the conditions required for reinstatement of the license. The decision of the governing body shall be final.

- f. If any such license shall have been revoked, neither the holder thereof nor any person acting for him or her, directly or indirectly, shall be entitled to another license to carry on the same business within the municipality.

§ ____-10. Enforcement.

- a. The Health Officer or his/her designee, is hereby charged to be the primary enforcer of this chapter. All duly sworn officers of the municipality's police department may also act as enforcers of this chapter.
- b. It shall be unlawful for any person who owns, operates, manages, or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to comply with its provisions.
- c. It shall be unlawful for any person to 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 their duties under this chapter. The Health Officer or designee may request the assistance of the Police Department whenever they deem necessary to execute his or her official duty in the manner prescribed by law.

§ ____-11. Re-inspection Fees.

Should an establishment be found to be in violation of this Chapter or of any applicable state or federal law, and as a result, the Health Department determines that a reinspection is necessary, and/or the establishment is reduced to a less than satisfactory rating, a re-inspection fee in an amount equal to the establishment's annual license fee shall be required to be paid by the owner/operator for every re-inspection performed until the violation(s) have been corrected and/or the establishment's rating is restored to a satisfactory rating. The fee shall be paid within 10 days of the notification of the said re-inspection fee requirement.

§ ____-12. Violations and penalties.

- a. Unless otherwise provided by law, statute, or ordinance, any person(s) who is found to be in violation of any of the provisions of this chapter 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 ordinance, unless the portion of this chapter that was violated was pre-existing in the ordinances of the municipality.

- b. The penalties set forth in a. in this section are in addition to any other 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/or N.J.S.A. 2C:33-13.1 et seq.
- c. Any violator of this article whose license has been revoked and who is also in possession of any other license(s) issued by the municipality, may be subject to the suspension or revocation of those licenses or other penalty determined to be appropriate by the municipality. No such action may be taken unless the requirements of due process as set forth in this chapter are satisfied.
- d. Any person who continually violates this chapter may be charged in Municipal Court or in Superior Court with maintaining a nuisance.
- e. Each violation of this chapter, and every day in which a violation occurs or exists, shall constitute a separate violation.
- f. Each sale, furnishing or giving of electronic smoking devices, electronic smoking device supplies, components, parts or equipment, vapor products, E-liquid, liquid nicotine, and/or psychoactive substances in any form, as defined in this chapter, or tobacco products and/or nicotine delivery products or associated paraphernalia to any person under the age of 21 shall constitute a separate violation. Each violation, and every day in which a violation occurs, shall constitute a separate violation.

§ ____-13. Right of entry.

It shall be the lawful right for the Health Officer and his/her designee and sworn municipal police officers or any other person acting under and by the authority of the Health Department to enter in and upon any premises in the exercise of the powers or in the fulfillment of its or their duties conferred or imposed by law or local ordinance and the rules and regulations thereunder. Any person hindering, obstructing, delaying, resisting, preventing or interfering with such right of access shall be deemed to violate the provisions of this article.

§ ____-14. Severability.

Each section, subsection, sentence, clause and phrase of this chapter is declared to be an independent section, subsection, sentence, clause and phrase. If any portion of this chapter, or its application to any person or circumstances, shall be adjudged or otherwise determined to be invalid, unconstitutional, void, or ineffective for any cause or reason, such determination shall not affect the remaining provisions of this chapter, 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 chapter are severable.

§ ____-15. Repeal.

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.

§ ____-16. When effective.

This chapter shall take effect after publication at the time and in the manner directed by law. Fines, penalties and court summonses shall not be issued for any violations of this chapter that are not pre-existing in the ordinances of the municipality, for a period of 60 days from the date of publication.

ATTEST:

_____, Borough/Township/Town Clerk

I HEREBY CERTIFY this to be a true and correct copy of an Ordinance of the Governing Body of the Borough/Township/Town of _____, adopted on _____, 202_.

_____, Clerk (Signature)