

## **ORDINANCE 2336**

### **AN ORDINANCE TO CREATE A NEW CHAPTER ENTITLED, “SALE OF ELECTRONIC SMOKING DEVICES AND ELECTRONIC SMOKING DEVICE PRODUCTS” FOR THE BOROUGH OF SOUTH PLAINFIELD**

**BE IT ORDAINED** by the Borough Council of the Borough of South Plainfield, in the County of Middlesex and State of New Jersey, that the Code of the Borough of South Plainfield shall be amended to create a new chapter entitled “Sale of Electronic Smoking Devices and Electronic Smoking Device Products” as follows:

#### **Section 1. Purpose**

The purpose of this ordinance is to license and limit the establishments that sell electronic smoking devices and prevent the sale of electronic smoking devices to those under the age of 21. A portion of the funds collected by licensing of such establishments may be designated by the Borough Council for salient purposes such as funding smoking cessation, prevention or control programs by the Borough of South Plainfield Police Department and/or other organizations deemed appropriate.

#### **Section 2. Definitions**

For the purpose of this section, the following terms, phrases, words and their derivations shall have the meanings stated herein unless their use in the text of this section clearly demonstrates a 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** – an electronic or other powered device that can be used to deliver a product such as or containing nicotine or any other substances to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, cigarillo, hookah or pipe.

**Electronic Smoking Device Product** – any product such as or containing nicotine or any other substance designed for consumption through inhalation from an electronic smoking device.

**Electronic Smoking Device Establishment** – any individual, partnership, corporation or other legal entity that sells or offers for sale electronic smoking devices and/or electronic smoking device products designed for consumption through inhalation, regardless of whether the sale of such devices or products is the establishment’s primary purpose. Any reference to “an establishment” herein shall be to an Electronic Smoking Device Establishment.

**Sale** – shall mean every delivery of electronic smoking devices or electronic smoking device products, whether the same is by direct sale or the solicitation or acceptance of any 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.

**Borough** – the term “Borough” as used herein shall refer to the Borough of South Plainfield, its officers, employees, and representatives.

### **Section 3. Licensing Fees**

- A. No person shall conduct, maintain or operate an establishment that sells electronic smoking devices without first having obtained a license from the Borough Clerk or his/her designee.
- B. Each person or establishment wishing to sell electronic smoking devices or electronic smoking device products must submit a completed license application on a form obtained from the Borough Clerk’s office, together with the appropriate fee as set forth herein, to be considered for an Initial License.
- C. Fees in accordance with the following schedule shall be paid before any license required in this article shall be issued:
  - Electronic Smoking Device Establishment Initial License: \$750.00
  - Electronic Smoking Device Establishment Annual Renewal License: \$250.00
  - All license fees are non-refundable.
  - Licenses expire annually on March 31st. Renewal applications submitted after March 31<sup>st</sup> will be considered an “initial” license request.
- D. Initial or Renewal Licenses issued under the provisions of this ordinance, unless revoked earlier by the Health Officer or Borough Clerk, shall expire annually on the 31<sup>st</sup> day of March of each year.
- E. The annual license renewal fee must be paid annually by the 31<sup>st</sup> day of March, or a renewal license shall not be issued and the person or establishment wishing to continue to sell electronic smoking devices or electronic smoking device products shall be prohibited from selling them. Any person or establishment that has failed to renew the annual license fee as required herein cannot sell electronic smoking devices or electronic smoking device products until they have again applied for a license which shall be considered an initial license application.
- F. Licenses are not transferable; and
- G. The license issued by the Borough shall be posted conspicuously in the establishment, in a location and manner visible to all customers and all police officers or other inspectors on behalf of the Borough.
- H. The Borough shall inspect each such establishment prior to the issuance of an Initial License to determine if the applicant satisfies the requirements of this chapter in order to qualify to obtain a license. The Borough shall thereafter conduct random periodic inspections during normal business hours of the establishment after issuance of an Initial or Renewal license to determine whether the establishment is acting in compliance with the provisions of this Chapter. Such inspections may be conducted by members of the Borough of South Plainfield Police Department, Zoning Officer, the Health Officer, or Code Enforcement Officer.

#### **Section 4. Penalties for Sale without license**

- A. Any establishment found to be selling or offering any electronic smoking device or any electronic smoking device product without having first obtained a valid license issued by the Borough shall pay a fine of \$500.00 for a first such offense. In addition, any such person or establishment found to be selling or offering any electronic smoking device or electronic smoking device product shall be ineligible to sell any such devices or products unless and until a license is obtained from the Borough of South Plainfield. For a second or subsequent offense, any person or establishment violating this section shall be subject to a fine of not less than \$1,000.00 and not exceeding \$2,000.00. In addition, any establishment violating this section for a second or more time may be subject to permanent disqualification for obtaining an electronic smoking device license, within the discretion of the Borough Clerk or Borough Council.
- B. Each sale shall constitute a separate offense for purposes of this section.

#### **Section 5. Display Regulations**

- A. No electronic smoking device, electronic smoking device product or advertisement relating to either an electronic smoke device or electronic smoking device product shall be displayed in such a manner so as to be visible from the exterior of the establishment.

#### **Section 6. Restriction on Sale of Electronic Smoking Device Establishment:**

- A. No electronic smoking establishment shall be located within 500 feet of a school or public park.

#### **Section 7. Sale to any persons under the age of twenty-one years old prohibited.**

- A. No person or electronic smoking device establishment shall sell electronic smoking devices or electronic smoking device products to anyone under the age of twenty-one (21) years old.

#### **Section 8. Penalties for Sale to any persons under the age of twenty-one years old; Display Regulations; or Location violation**

- A. Penalties for sale to persons under the age of twenty-one years old. Any person or establishment found to have sold an electronic smoking device or an electronic smoking device product to any person under the age of twenty-one years old shall pay a fine of not less than \$500.00 for a first such offense. In addition, any establishment found to be in violation of this section may have their license revoked for the remainder of the calendar year. Upon conviction for a second or subsequent offense of selling an electronic smoking device or electronic smoking device product to anyone under the age of twenty-one (21) years old, any establishment shall be subject to a fine of not less than \$1,000.00, nor more than \$2,000.00. In addition, any establishment violating this section for a second time shall have their license revoked for 90 days. In addition to the other penalties as set forth herein, an establishment found guilty of selling an electronic smoking device or electronic smoking device product for a third time shall have their license permanently revoked.

- B. Jurisdiction for Enforcement of this section shall be laid in the Municipal Court of the Borough of South Plainfield, or any other court so designated by the Municipal Court of the Borough of South Plainfield.
- C. These penalties are in addition to any penalties that may be imposed pursuant to 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.* or any other statute of the State of New Jersey which pertains to the sale of electronic smoking devices or the consumption of electronic smoking device products.
- D. Penalties for Display or Location Violations. Any establishment found guilty of the improper display of an electronic smoking device, product or advertisement as set forth in Section 5 of this chapter, or the sale of an electronic smoking device or product at any location in violation of Section 4 of this chapter shall, for a first such offense, be subject to a fine of \$500.00. For a second or subsequent violation of this section, any such establishment shall be subject to a fine of not less than \$1,000.00, nor more than \$2,000.00. In addition, any establishment violating this section for a second or subsequent time shall have their license revoked for the remainder of the calendar year. Any establishment found guilty of this section for a third or subsequent time shall have their license permanently revoked.

#### **Section 9. Enforcement**

- A. Enforcement shall be by the Borough of South Plainfield Police Department, Zoning Officer, Health Officer, or Code Enforcement Officer.

**BE IT FURTHER ORDAINED** that the Municipal Clerk shall publish this ordinance in an official newspaper of the municipality at least one week prior to the hearing on the adoption of this ordinance; and

**BE IT FURTHER ORDAINED** that this ordinance shall become effective after second reading and publication as required by law.