

ORDINANCE NO. 2020-46

ORDINANCE AMENDING ORDINANCE 97-78, AS AMENDED, CHAPTER 660 OF THE CODE OF THE CITY OF VINELAND, ENTITLED TOBACCO AND ELECTRONIC SMOKING DEVICES.

WHEREAS, studies performed by the United States Food and Drug Administration have indicated that flavored electronic smoking devices and products, such as mint, candy, fruit, and chocolate are extremely appealing, especially to young individuals, and are therefore designed to attract young individuals to the use of vaping; and

WHEREAS, the State Legislature has determined that it is imperative that flavored vaping products need to be removed from the market in order to protect our youth from experimenting and using electronic vape products which ultimately may lead to an addiction to nicotine; and

WHEREAS, the State of New Jersey has adopted Senate Bill No. 3265 signed into law by Governor Phil Murphy, which restricts the sale of vape products that have characterizing flavors; and

WHEREAS, the City Council of the City of Vineland has heretofore adopted Ordinance No. 2018-58, as amended, further prohibiting the sale of tobacco to minors to include electronic smoking devices; and

WHEREAS, the Health Department and the Board of Health from the City of Vineland recommends the amendment of Ordinance No. 2018-58 to further prohibit the sale of vapor products that have characterizing flavors.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that Chapter 660 of the Code of the City of Vineland be amended as follows:

1. All reference to the term “Electronic Smoking Devices” shall be replaced with the term “Vapor Products.”
2. Section 660-6 Definitions shall be amended as follows:
 1. Electronic Smoking Device shall be deleted in its entirety and replaced as follows.

Vapor Product

Any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limiting to, an E-cigarette, E-pipe, vape pen, or E-hookah. Vapor products further includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, regardless of whether the substance contains nicotine. Vapor Product does not include any drug, device, or combination product approved by the Federal Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301, et seq.

2. The following definition shall be added to Section 660-6 Definitions.

Characterizing Flavor

A distinguishable flavor, taste, or aroma, other than tobacco, including but not limited to, any fruit, chocolate, vanilla, honey, candy, coco, dessert, alcoholic beverage, herb, mint, menthol, wintergreen, or spice flavoring that is imparted, prior to or during consumption, by a Vapor Product, including any smoke or vapor emanating from that Vapor Product.

A Vapor Product shall be deemed to have a characterizing flavor if the product is advertised or marketed as having or producing any or such distinguishable flavor, taste, or aroma.

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3. Section 660-7 shall be renumbered Section 660-8, Section 660-8 shall be renumbered Section 660-9, Section 660-9 shall be renumbered Section 660-10, and Section 660-9.1 shall be renumbered Section 660-10.1.

4. Section 660-7 shall be added as follows:

§ 660-7 Prohibited Acts

Notwithstanding anything contained herein to the contrary, no retailer either directly or indirectly by an agent or an employee, or by a vending machine owned by the retailer or located in the retailers establishment, shall sell, offer for sale, distribute for commercial purposes at no cost or minimum cost, or with coupons or rebate offers, give or furnish to a person any Vapor Product that has a Characterizing Flavor.

5. Section 660-9.1, **Violations and Penalties** shall be amended with the addition of the following:

§ 660-9.1 F

A retailer that violates the provisions of subsection 660-7 of this article shall be liable to a Civil Penalty of not less than \$500 for the first violation, not less than \$1000 for the second violation, and not less than \$2000 for the third and each subsequent violation. The civil penalty shall be collected pursuant to the “Penalty Enforcement Law of 1999,” P.L. 1999, c.274 (C.2A:58-10 et. seq.), in a summary proceeding before the Vineland Municipal Court. An official authorized by statute or Ordinance of the City of Vineland to enforce this State or local health codes or a Law Enforcement Officer having enforcement authority in the City of Vineland shall issue a summons for a violation of the provisions of this subsection 660-7 and shall serve and execute all process with respect to the enforcement to this section consistent to the Rules of Courts. A penalty recovered under the provisions of this subsection shall be recovered by and in the name of the state by the City of Vineland Board of Health. The penalty shall be paid into the treasury of the City of Vineland for the general use of the municipality.

In addition to the provisions herein above set forth, the Division of Taxation in the Department of Treasury:

1. Shall, upon a third and each subsequent violation of the provisions of subsection 660-7, following the hearing by the City of Vineland Board of Health, suspend for a period not less of 3 years, the license issued under section 4 P.L. 2019, c.147 (C54:40B-3.3) of a vapor business; and
2. Notwithstanding the provisions of paragraph 1 of this subsection, a fourth or subsequent violation of the provisions of Section 660-7 made upon the recommendations by the City of Vineland Board of Health, and following the hearing by the Board of Health, revoke the license issued under section 4 P.L. 2019, c.147 (C.54:40B-3.3) of a vapor business.
3. A licensee whose license is subject to suspension or revocation shall additionally be subject to administrative charges, based on a schedule issued by the Director of the Division of Taxation.

Nothing in this subsection shall be construed to apply to medical cannabis, medical cannabis products, paraphernalia, or related supplies dispensed to or on behalf of a registered qualifying patient pursuant to “Jake Honig Compassionate Use Medical Cannabis Act, P.L.2009, c.307 (C.24:6I-1 et. al.)

BE IT FURTHER ORDAINED that the balance of Ordinance 97-78, as amended, not amended hereby shall remain in full force and effect.

BE IT FURTHER ORDAINED that should any portion of this Ordinance be deemed unenforceable by a court of competent jurisdiction, that portion so determined to be unenforceable, shall be void and the balance hereof shall remain in full force and effect.

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BE IT FURTHER ORDAINED that should any Ordinance or portion thereof be inconsistent herewith, such Ordinance or portion thereof shall be void to the extent of such inconsistencies.

This Ordinance shall take effect upon adoption and publication according to law.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk