

Tabled: April 13, 2020

Introduced: April 27, 2020

Adopted: May 11, 2020

THE TOWNSHIP OF SOUTH ORANGE VILLAGE

ORDINANCE #2020-10

AN ORDINANCE AMENDING VILLAGE CODE, CHAPTER 96, BUSINESS LICENSING AND REGULATIONS, BY THE ADDITION OF NEW ARTICLE VI, FACILITATING STATE LAW BY LICENSING RETAIL ESTABLISHMENTS THAT SELL VAPING PRODUCTS.

WHEREAS, the United States Center for Disease Control has determined that vaping is highly detrimental to human health, and in recent years has significantly increased among middle and high school students; and

WHEREAS, the New Jersey legislature has enacted legislation prohibiting the sale of tobacco and Vaping Products to individuals under the age of 21, to wit N.J.S.A. 2A:170-51.4, N.J.S.A. 2A:170-51.9 and N.J.S.A. 2C:33-13.1; and

WHEREAS, the above referenced legislation delegates enforcement to local governments; and

WHEREAS, local governments have found that enforcement of the prohibition of the sale of Vaping Products to Minors is extremely difficult if sold in retail establishments that also sell a variety of other unregulated products, and

WHEREAS, the Township of South Orange Village has determined to enact an ordinance that will make the above referenced statutes enforceable with respect to the sale of Vaping Products to Minors.

NOW THEREFORE BE IT ORDAINED by the Board of Trustees of the Township of South Orange Village, a municipal corporation of New Jersey located in Essex County thereof, as follows:

Section 1.

Chapter 96 is hereby amended by the addition of a new Article VI, Sections 33-36 as follows:

Section 96-33. Definitions

ADMINISTRATOR – The Township of South Orange Village Administrator or his/her designee.

AUTHORIZED SALES PERSON – An employee of a Retail Vaping Establishment who is at least 21 years of age and designated by the Business Principal as a person who may Sell Vaping Products.

BUSINESS PRINCIPAL - A person who possesses an equity interest in a Business Entity.

BUSINESS ENTITY - Any sole proprietorship, joint venture, partnership, limited partnership, limited liability company, corporation or any other legally formed entity.

CCTV CAMERA – A closed circuit surveillance camera, with a video recorder.

HEALTH OFFICER – The Township of South Orange Village Health Officer or his/her designee.

MINORS - Persons under the age of 21.

PHOTOGRAPHIC IDENTIFICATION – either a driver's license or non-driver identification card issued by the New Jersey Motor Vehicle Commission, a similar card issued pursuant to the laws of another state, or a Photographic Identification card issued by a county clerk.

RETAIL VAPING ESTABLISHMENT - A location at which a Business Entity has been licensed to Sell Vaping Products.

SELL - Offer for sale, give, furnish, or distribute for commercial purpose at any or minimal cost or with coupons or rebate offers.

STATE LAW – N.J.S.A. 2A:170-51.4, N.J.S.A. 2A:170-51.9 and N.J.S.A. 2C:33-13.1

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 96-34. Licensure Requirement

Any Business Entity wishing to Sell Vaping Products shall only do so after securing a license for a Retail Vaping Establishment from the Health Officer. Vaping Products shall only be sold within Retail Vaping Establishments. Should a Business Entity wish to Sell Vaping Products from multiple locations, each location shall require a separate license. Licenses shall be issued and renewed annually on December 31, for a fee of \$500. Business Entities and Business Principals previously convicted of Selling Vaping Products to Minors shall be denied a license.

Section 96-35. Retail Vaping Establishment Requirements

Every Retail Vaping Establishment shall comply with the following requirements:

- A. It shall be located on a ground floor, and shall be at least 200 feet from any school measured entrance to entrance.

- B. Prior to the effective date hereof, all existing Retail Vaping Establishments shall install one or more CCTV Cameras. Such CCTV Camera(s) shall be installed at a location so that (1) the production of Photographic Identification by customers and review thereof by the employee, and (2) the release of the Vaping Product to the customer, are all recordable by the CCTV Camera(s).
- C. Before Selling a Vaping Product, the Retail Vaping Establishment shall obtain—Photographic Identification from every purchaser regardless of perceived age.
- D. Before a Business Principal authorizes an employee to become an Authorized Sales Person, the Business Principal shall 1) obtain Photographic Identification indicating that the employee is at least twenty one (21) years old, and 2) submit certification on a form provided by the Health Officer that the employee was instructed with respect to requirements of this Article VI, and all New Jersey statutes and regulations concerning Vaping Products.
- E. Only Authorized Sales Persons shall Sell Vaping Products in a Retail Vaping Establishment.
- F. Vaping Products shall not be displayed in storefront windows, and shall be displayed and stored within Retail Vaping Establishments so that they are not accessible to customers. Vaping Products shall not be dispensed from vending machines.

Section 96-36. Violations/Penalties

- A. Any violation of this Article VI and/or State Law shall subject the licensed Business Entity, Business Principal and employee to a summons before the South Orange Municipal Court. Licensed Business Entities shall also be held responsible for violations by Business Principals and employees. Such summons shall be issued by the Health Officer or any South Orange police officer.
- B. Conviction for failure to request Photographic Identification when required shall subject licensed Business Entities, Business Principals and employees to a fine of \$1,000 or such greater fine as permitted by law. All other violations of this Article VI shall subject a licensed Business Entity to a fine of \$500 for the first offense and \$1,000 for each additional offense or such greater fine as permitted by law. Conviction for Selling Vaping Products to Minors shall subject licensed Business Entities, Business Principals and employees to both civil and criminal penalties pursuant to State Law.
- C. Upon a second conviction of a violation of this Article VI and/or State Law, the Health Officer shall revoke the license to Sell Vaping Products. The licensed Business Entity may appeal the revocation to the Administrator. The Administrator shall conduct an audio recorded hearing within 30 days of the revocation, unless the licensed Business Entity requests a later date, but in no event later than 90 days. The licensed Business Entity may be represented by legal counsel and may, at its expense, choose to have a written record of the hearing by a licensed court reporter. The decision of the Administrator shall be final.

Section 2.

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

Section3.

If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

Section 4.

This ordinance shall take effect after final passage and publication as required by law, except for the following:

- A. The initial licensing fee is not payable until 90 days post closure of any State of New Jersey declared State of Emergency that impacts the Township of South Orange Village.
- B. The requirement to install CCTV Cameras, where needed, is deferred until 90 days post closure of any State of New Jersey declared State of Emergency that impacts the Township of South Orange Village.

Section 5.

On passage this ordinance shall be codified.

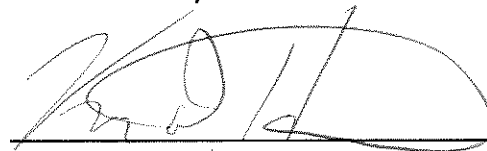
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Table Ordinance Until April 27, 2020

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Clarke		X	X			
Coallier			X			
Hartshorn Hilton			X			
Jones			X			
Schnall	X		X			
Zuckerman			X			

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was tabled by the Board of Trustees at their regular meeting held on Monday, April 13, 2020.



Kevin D. Harris
Village Clerk

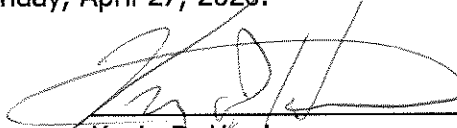
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Introduction – First Reading

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Clarke			X			
Coallier	X		X			
Hartshorn Hilton		X	X			
Jones			X			
Schnall			X			
Zuckerman						X

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was introduced on first reading by the Board of Trustees at their regular meeting held on Monday, April 27, 2020.

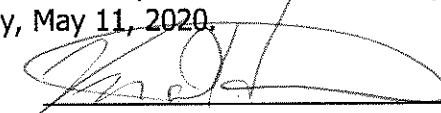

Kevin D. Harris
Village Clerk

Adoption – Second Reading

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Clarke		X	X			
Coallier	X		X			
Hartshorn Hilton			X			
Jones			X			
Schnall			X			
Zuckerman			X			

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was adopted on second reading by the Board of Trustees at their regular meeting held on Monday, May 11, 2020.


Kevin D. Harris
Village Clerk