

ORDINANCE NO. 21-2019

**BOROUGH OF ROSELAND
COUNTY OF ESSEX, STATE OF NEW JERSEY**

**AN ORDINANCE AMENDING AND SUPPLEMENTING THE BOARD OF
HEALTH CODE CHAPTER BH:XIV OF THE REVISED GENERAL ORDINANCES
OF THE BOROUGH OF ROSELAND ENTITLED "TOBACCO SALES"**

WHEREAS, the Mayor and Council of the Borough of Roseland wish to amend the Board of Health Code Chapter BH:XIV of the Revised General Ordinances of the Borough of Roseland entitled "Tobacco Sales";

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Roseland that the Board of Health Code Chapter BH:XIV of the Revised General Ordinances of the Borough of Roseland entitled "Tobacco Sales" shall be amended as follows:

**CHAPTER BH:XIV SALE OR DISTRIBUTION OF TOBACCO OR
ELECTRONIC SMOKING DEVICES AND PRODUCTS**

BH:14-1 DEFINITIONS.

As used in this chapter:

ELECTRONIC SMOKING DEVICE - an electronic 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 or pipe.

HEALTH OFFICER—The administration officer of the Roseland Board of Health and/or his or her authorized representative.

LICENSED PREMISES—Any place licensed by the State of New Jersey to primarily sell at retail beer, wine and/or mixed spirits for consumption on the premises.

LIQUID ELECTRONIC SMOKING SOLUTION - Any solution which is designed or sold for use with an electronic smoking device.

LIQUID ELECTRONIC SMOKING SOLUTION CONTAINER - A bottle or other container of liquid, wax, gel or other substance, where the liquor or other contained substance is sold, marketed or intended for use in a vapor product that does not include containers prefilled and sealed by the manufacturer and not intended to be opened by the consumer.

PERSON—An individual, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee or any other legal entity.

SELF-SERVICE DISPLAY—Any shelving or storing of tobacco products in an area of the establishment to which customers have access and, or in a location where a customer

could reach the tobacco products and take the same without the assistance of an employee of the establishment.

TOBACCO—Any product made from the tobacco plant for the purpose of smoking, chewing, inhaling and other personal use, including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

TOBACCO PRODUCT—Any product made from the tobacco plant for the purpose of smoking, chewing, inhaling and other personal use including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

TOBACCO RETAILER—Any person or entity who or which operates a store, stand, booth, concession or place at which sales of tobacco are made to purchasers for consumption or use and shall mean a person or entity that owns or operates a vending machine and/or a vending machine location.

VAPOR PRODUCT - Any non-combustible product that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape or size, to produce a vapor from a solution or any form, including any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device, and any vapor cartridge or other container in the a solution or other form intended to be used with, or in, any such device.

VENDING MACHINE—Any automated, self-service device which, upon insertion of money, tokens or any other form of payments, dispenses cigarettes or other tobacco products.

VENDING MACHINE LOCATION—The room, enclosure, space or area where a tobacco vending machine is installed and operated.

BH:14-2 SALE OR DISTRIBUTION OF TOBACCO OR ELECTRONIC SMOKING DEVICES AND PRODUCTS TO PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE PROHIBITED.

BH:14-2.1 PROHIBITION OF SALES OF TOBACCO PRODUCTS OR ELECTRONIC SMOKING DEVICES AND PRODUCTS TO PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE.

It shall be unlawful for any person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment to sell, offer for sale, give or permit to be given to a person under Twenty One (21) years of age any tobacco, including any cigarettes made of tobacco or any other matter or substance which can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco and/or any electronic smoking 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, or pipe or any liquid electronic smoking solution, liquid electronic smoking solution container, or vapor product.

BH:14-2.2 IDENTIFICATION REQUIRED.

Any person selling tobacco or electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers or vapor products shall verify by means of government issued photographic identification containing the bearer's date of birth that no person purchasing the tobacco or electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers or vapor products is younger than Twenty One (21) years of age. No person shall sell tobacco or electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers or vapor products to a person under Twenty-One (21) years of age who has a note from an adult requesting such sale.

BH:14-2.3 NOTICE.

Tobacco retailers shall conspicuously post and reasonably maintain signs, having a minimum size of six inches by eight inches, where tobacco or electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers, and vapor products are displayed and at all checkout counters notifying customers that proof of age is required to purchase such products.

BH:14-2.4 EMPLOYEE TRAINING.

No tobacco retailer selling tobacco or electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers, and/or vapor products shall allow an employee to sell or distribute such products until the employee has read the Borough ordinances and state laws pertaining to the sale and distribution of tobacco and electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers, and vapor products and has signed a statement that the employee has read such ordinances and state laws. Such form statement shall be supplied by the Board of Health, and the signed original statement shall be filed with the Health Department, and a copy shall be kept on file by the tobacco retailer and made available for review by the Board of Health.

BH:14-3 SELF-SERVICE DISPLAYS FOR TOBACCO OR ELECTRONIC SMOKING DEVICES, LIQUID ELECTRONIC SMOKING SOLUTIONS, LIQUID ELECTRONIC SMOKING SOLUTION CONTAINERS, AND VAPOR PRODUCTS PROHIBITED.

Self-service displays of tobacco products or electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers or vapor products are prohibited, and it shall be unlawful to offer for sale or to sell such products from a self-service display in the Borough of Roseland.

BH:14-4 RESTRICTION OF TOBACCO VENDING MACHINES AND SALES.

BH:14-4.1 VENDING MACHINES; CONDITIONS FOR USE.

a. It shall be unlawful for a tobacco retailer to offer for sale or to sell any tobacco product through a vending machine in the Borough, except in the following instances:

1. In any premises or portion thereof to which access by minors is expressly prohibited by law or by the expressed policy of the owner of the premises; provided, however, that the tobacco vending machine is:

- (a) Located fully within such premises or section of the premises from which minors are prohibited;
- (b) Inaccessible to the public when the businesses are closed; and
- (c) In compliance with all other applicable sections of this chapter.

2. Any premises such as a factory, business, office, industrial plant or other place where the public is generally not given access and where such machines are intended for the use of employees Twenty One (21) years of age or older or other adults; provided, however, that the tobacco vending machine in each premises is:

- (a) Located fully within such premises and not located in a coatroom, restroom, waiting area or similar unmonitored area;
- (b) Inaccessible to the public when the businesses are closed; and
- (c) In compliance with all other applicable sections of this chapter.

3. In any premises or portion thereof where the principal use therein is for the retail sale of alcoholic beverages pursuant to the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., where access by persons under Twenty-One (21) years of age is prohibited by law, provided that the tobacco vending machine is:

- (a) Located fully within such premises or section of premises from which minors are prohibited;
- (b) Inaccessible to the public when the businesses are closed; and
- (c) In compliance with all other applicable sections of this chapter.

b. In all other instances, locations and places, a tobacco vending machine shall be permitted to operate only if:

1. The operation of the machine to vend tobacco products is possible only by the activation of an electronic switch or other device, which is controlled by the attendant or deputy attendant, as set forth in subsection BH:14-4.3 of this chapter, and only after the attendant or deputy attendant has positively established the purchaser's age as Twenty One (21) years or greater by the purchasers production of two (2) forms of identification setting forth the purchaser's date of birth; and

2. There is compliance with all other applicable sections of this chapter.

c. It shall be unlawful in the Borough of Roseland to offer for sale or to sell any electronic smoking device, liquid electronic smoking solution, liquid electronic smoking solution container or vapor product through a vending machine.

BH:14-4.2 TAMPERING WITH MACHINES OR DEVICES.

It shall be unlawful for any tobacco retailer responsible for the operation of a tobacco vending machine to remove, disconnect or otherwise disable the remotely activated electronic switch or device on a tobacco vending machine where provisions of this chapter provide for a vending machine to be so equipped.

BH:14-4.3 ATTENDANTS REQUIRED.

No cigarette vending machine shall be placed on or in any establishment permitted by this chapter unless the owner or lessee of the machine provides, in writing, to the Borough, for each individual cigarette vending machine, the names and business addresses of a person or persons who shall serve as attendant and deputy attendant for that machine. More than one (1) attendant and/or deputy attendant may be appointed in reference to a single cigarette vending machine, provided that the owner or lessee states the time periods when each of two (2) or more attendants and/or deputy attendants for a single cigarette vending machine shall be the attendant or deputy attendant on duty and thus responsible for compliance with this chapter.

BH:14-4.4 RESPONSIBILITIES OF ATTENDANT.

The attendant and, in his/her stead, the deputy attendant shall be responsible for the penalties and fees which may, upon conviction, be imposed for violations of this chapter. Nothing in this chapter shall prohibit the employer of an attendant from paying penalties imposed under this chapter, but payment by the employer shall not be required.

BH:14-4.5 QUALIFICATIONS AND DUTIES OF ATTENDANT AND DEPUTY ATTENDANT.

The attendant and, in his/her stead, the deputy attendant shall:

a. Be at least Twenty-One (21) years of age or more, as certified by the Borough Health Officer;

b. Be responsible for placing and maintaining the cigarette vending machine in accordance with the provisions of this chapter;

c. Have a clear unobstructed line of sight between his/her normal place of transacting business and the location of the cigarette vending machine;

d. Be responsible to make those cigarette vending machines for which he/she is responsible inoperable during any time when the public has access to said machines but for any reason the attendant or deputy attendants are not available to attend the machines;

e. Be an employee or agent of the firm, corporation, partnership or entity having possessory interest, including but not limited to leaseholds, in the establishment where the cigarette vending machine is located; and

f. Be deemed in violation of this chapter if he/she permits a person who is under the age of Twenty-One (21) years to purchase a product from a cigarette vending machine.

BH:14-5 VIOLATIONS AND PENALTIES.

a. Any person, firm or corporation who or which shall violate any of the provisions of this chapter shall, upon conviction, be punished by a fine of one thousand dollars (\$1,000.00) dollars for the first violation and up to a fine of two thousand dollars (\$2,000) and/or imprisonment for a term not exceeding 90 days for each subsequent violation. For each and each violation of any of the provisions of this chapter and each day the same is violated shall be deemed and taken to be a separate and distinct offense.

b. The Borough Health Officer or his/her designee and the Roseland Police Department have authority to enforce this chapter.

c. The Borough Health Officer or his/her designee or the Borough Police Department, after giving proper identification, may inspect any matter, thing, premises or place as may be necessary for the proper enforcement hereof.

d. It shall be unlawful for any person to oppose or otherwise obstruct a Borough Health Officer or his/her designee in the performance of duties hereunder, and they may request the assistance of a law enforcement agency or peace officer when necessary to execute his or her official duty in a manner prescribed by law.

BH:14-6 SEIZURE OF UNAUTHORIZED TOBACCO VENDING MACHINES.

A tobacco vending machine which is not permitted under this chapter may be seized, forfeited and disposed of in the same manner as other unlawful property seized under N.J.S.A. 2C:64-1 et seq. Any machine so seized shall be returned to its owner, upon payment of the reasonable costs incurred in connection with the seizure. As an alternative, or in addition to the provisions of this section, any tobacco retailer, for each unauthorized tobacco vending machine remaining at any prescribed location after the effective date of this chapter, may be fined five hundred (\$500.00) dollars for each day placement of the vending machine is in violation of this chapter.

SECTION II

If any section or provision of this ordinance shall be invalid in any court the same shall not affect the other sections or provisions of this ordinance except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

SECTION III

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION IV

This ordinance shall take effect in accordance with applicable law.

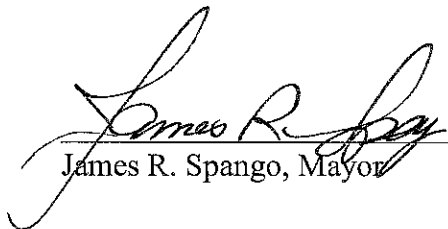
DATE OF INTRODUCTION: July 16, 2019

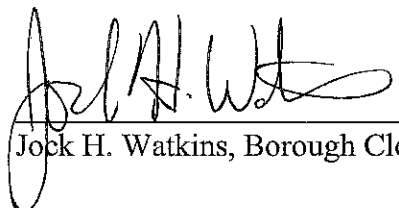
Motion to Introduce by: Councilwoman Tolli
Motion Seconded by: Councilwoman Fishman
Introduction Approved: 6-0 Voice Vote

DATE OF ADOPTION: August 20, 2019

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	RECUSE	ABSENT
Councilman Bardi			X				
Councilwoman Fishman							X
Councilman Freda			X				
Councilman Jacobs	X		X				
Councilwoman Perrotti		X	X				
Councilwoman Tolli			X				
Mayor Spango (In case of tie)							
VOTE:			5	0			

I hereby certify that the above Ordinance was duly adopted by the Mayor and Council of the Borough of Roseland at a meeting of Borough Council held on the 20th day of August, 2019.


James R. Spango, Mayor


Jock H. Watkins, Borough Clerk

Date of Publication: August 29, 2019, The Progress