

2017-17
ORDINANCE OF THE
TOWN OF MIDDLETOWN
AN ORDINANCE AMENDING THE TOWN CODE
OF THE TOWN OF MIDDLETOWN

AN ORDINANCE IN AMENDMENT TO TITLE XI, BUSINESS REGULATIONS, OF THE TOWN CODE OF THE TOWN OF MIDDLETOWN ENTITLED "TOBACCO REGULATIONS"

NOW THEREFORE BE IT ORDAINED AS FOLLOWS:

FIRST: Title XI is hereby amended by adding the following new chapter:

Middletown, RI Code of Ordinances

CHAPTER 119: TOBACCO REGULATIONS

Section

- 119.01 Definitions
- 119.02 License required
- 119.03 License eligibility
- 119.04 License application; term
- 119.05 Requirements and prohibitions applicable to licensees
- 119.06 Suspension or revocation of license; fines and costs
- 119.07 Use of premises during license suspension
- 119.08 Vending machines
- 119.09 Severability

§ 119.01 DEFINITIONS.

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHARACTERIZING FLAVOR. A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint, or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

CIGAR. Any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than four pounds per thousand.

CIGARETTE.

- (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and
- (2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be

offered to, or purchased by, consumers as a cigarette described in division (1) above.

COMPONENT PART. Any element of a tobacco product, including, but not limited to, the tobacco, filter, and paper, but not including any constituent.

CONSTITUENT. Any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product. Such term shall include a smoke constituent.

CONSUMER. A person who purchases a tobacco product for consumption and not for sale to another.

COUPON. Any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue; whether in paper, digital, or other form; used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

DISTINGUISHABLE. Perceivable by an ordinary consumer by either the sense of smell or taste.

ELECTRONIC SMOKING DEVICE. An electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. **ELECTRONIC SMOKING DEVICE** includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, and electronic hookah, or any other product name or descriptor. **ELECTRONIC SMOKING DEVICE** does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

ELECTRONIC SMOKING DEVICE ESTABLISHMENT. Any business which does not sell food or beverages and for which the principal or core business is selling electronic smoking devices, as evidenced by any of the following: 33% or more of floor or display area is devoted to electronic smoking devices; or 67% or more of gross sales receipts are derived from electronic smoking devices.

FLAVORED TOBACCO PRODUCT. Any tobacco product, other than a cigarette, that contains a constituent that imparts a characterizing flavor.

FULL RETAIL PRICE. The higher of the price listed for a tobacco product on its packaging or the price listed on any related shelving, posting, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price, and before the application of any discounts or coupons.

LITTLE CIGAR. Any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than four pounds per thousand. **LITTLE CIGAR** includes, but is not limited to, tobacco products known or labeled as "small cigar" or "little cigar."

NON-CIGARETTE TOBACCO PRODUCT. A tobacco product that is not a cigarette.

PACKAGE OR PACKAGING. A pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

PERSON. Any natural person, partnership, firm, limited liability company, joint stock company, corporation, proprietorship or employee thereof, or other legal entity.

SALE or SELL. Any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

SMOKE CONSTITUENT. Any chemical or chemical compound in mainstream or sidestream tobacco product smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives, or other component of the tobacco product.

TOBACCO PRODUCT.

(1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff; and

(2) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

Notwithstanding any provision of divisions (1) and (2) above to the contrary, **TOBACCO PRODUCT** includes any component, part, or accessory of a tobacco product, whether or not sold separately, **TOBACCO PRODUCT** does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

TOWN. The Town of Middletown, Rhode Island.

TOWN COUNCIL. The Middletown Town Council.

VENDING MACHINE. Any mechanical, electric, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses tobacco products.

§ 119.02 LICENSE REQUIRED.

It shall be unlawful for any person to sell or to possess with the intention of selling tobacco products within the town, including without limitation, the sale of tobacco products through vending machines, without having first obtained a tobacco dealer's license from the Town Council pursuant to this chapter. Such license shall be in addition to any other license required by state and/or federal law, shall not be transferable and shall be valid only for the location specified in the license. Failure to obtain and maintain a valid license shall constitute a violation of this chapter and shall be subject to a fine of up to \$500 and revocation or suspension of license, as set forth in § 119.06 of this chapter. The fee for the tobacco dealer's license shall be

\$100 per year. All licenses granted under the provisions of this chapter shall be displayed in a conspicuous place within the business so licensed.

§ 119.03 LICENSE ELIGIBILITY.

Licenses shall only be granted to authorize the sale of tobacco products within the town at a fixed location. The sale of tobacco products by persons on foot or from vehicles is prohibited.

§ 119.04 LICENSE APPLICATION; TERM.

Applications for tobacco dealer's licenses shall be submitted to the Town Clerk. Licenses shall automatically expire on July 1 of each year. Applications for renewal must be submitted at least 30 days prior to the expiration date. No license shall be granted without proof that the applicant has obtained all necessary state and/or federal licenses for the sale of tobacco products. No license fees shall be prorated.

§ 119.05 REQUIREMENTS AND PROHIBITIONS APPLICABLE TO LICENSEES.

(A) No person, or employee or agent of such person, shall sell or possess with the intention of selling a tobacco product to another person who appears to be under the age of 27 years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product.

(B) *Display of price.* The price of each tobacco product offered for sale shall be clearly and conspicuously displayed to clearly indicate the price of the product.

(C) *Packaging and labeling.* No person, or employee or agent of such person, shall sell any tobacco product unless such product:

(1) Is sold in the original manufacturer's packaging intended for sale to consumers; and

(2) Conforms to all applicable federal labeling requirements.

(D) *Prohibition of tobacco coupons and discounts.* No person, or employee or agent of such person, shall:

(1) Accept or redeem, or offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product to a consumer without charge or for less than the full retail price;

(2) Sell any tobacco product to a consumer through a multiple-package discount (e.g., "buy two-get-one-free") or otherwise provide any tobacco product to a consumer for less than the full retail price in exchange for the purchase of any other tobacco product;

(3) Provide any free or discounted item to a consumer in exchange for the purchase of any tobacco product.

(E) *Sale of flavored tobacco products prohibited.*

(1) No person, or employee or agent of such person, shall sell any flavored tobacco product to a consumer. A non-cigarette tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:

(a) Made a public statement or claim that the non-cigarette tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate information about the flavor, taste, or aroma of a non-cigarette tobacco product; or

(b) Taken action directed to consumers that would be reasonably expected to result in consumers believing that the non-cigarette tobacco product imparts a characterizing flavor.

(2) Each person selling, or possessing with the intention of selling, tobacco products shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by such person separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

(3) This division (E) shall not apply to the following businesses:

(a) A smoking bar as defined in R.I. Gen. Laws § 23-20.10-2(15); or

(b) An electronic smoking device establishment.

§ 119.06 SUSPENSION OR REVOCATION OF LICENSE; FINES AND COSTS.

The Middletown Police Department shall enforce the provisions of this chapter. All persons selling, or possessing with the intention of selling, tobacco products shall be subject to a compliance check at least two times a year; violators shall be checked more frequently, until two consecutive compliance checks are completed without violation. If an alleged violation occurs, the Middletown Police Department shall issue a citation requiring the person to appear before the Middletown Municipal Court. If, after a hearing, the Court finds that a violation of this chapter has occurred, the Court shall impose a civil fine of \$250 for a first offense. For a second offense, the Court shall impose a civil fine of \$500, together with a 14-day suspension of the person's tobacco retailer's license. For a third or subsequent offense, the Court shall impose a civil fine of \$500 and the Town Council shall have the authority to revoke or suspend the person's tobacco retailer's license at a show cause hearing. If a person selling, or possessing with the intention of selling, tobacco products maintains its license for 36 consecutive months without a violation, any new violation shall be treated as a first offense. It is the intent of this legislation that all fines collected by the town hereunder shall be used for the purposes of the Middletown Police Department conducting tobacco product compliance checks and the Middletown Prevention Coalition providing tobacco education.

§ 119.07 USE OF PREMISES DURING LICENSE SUSPENSION.

During the period of any suspension of a tobacco dealer's license, the licensee shall remove all tobacco products from the retail display area of the location and secure them in a locked area for the duration of the suspension. If, at any time during the suspension period, the licensee is found to be selling, distributing, or delivering any tobacco products, the license shall be revoked by the
Town Council.

§ 119.08 VENDING MACHINES.

Businesses which have vending machines shall be subject to the same fines and penalties as described in § 119.06 of this chapter. In the event that a tobacco dealer's license is suspended or revoked, then the vending machine shall be removed from the licensed location for the period of suspension or revocation.

§ 119.09 SEVERABILITY.

If any provision of this article, or application thereof to any person or circumstances, is held unconstitutional, illegal, or otherwise invalid, the remaining provisions of this article and the application of such provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected thereby. It is the intent of the Town Council to enact each section and provision of this Ordinance individually. Each section and provision shall stand alone, if necessary, and remain in full force and effect notwithstanding the invalidity of any other section or provision.

SECOND: This ordinance shall take effect upon passage, and its provisions shall supersede any inconsistent or contrary provision in any other ordinance; provided however, that enforcement shall be stayed until February 1, 2018; and provided further that upon passage hereof, Chapter 118 of the Middletown Town Code, entitled "Tobacco Dealers", shall be revoked in its entirety.

DEC - 4 2017

READ AND ADOPTED IN COUNCIL.

Wendy J.W. Marshall

WENDY J.W. MARSHALL, OMC
TOWN CLERK