

ORDINANCE 2024-10

AN ORDINANCE OF THE BOROUGH OF CHESTER, MORRIS COUNTY, STATE OF NEW JERSEY, PROHIBITING THE OPERATION OF COMMERCIAL ESTABLISHMENTS WHICH HAS AS ITS PRINCIPAL BUSINESS THE RETAIL SALE OF OR SERVICE OF ELECTRONIC SMOKING DEVICES, LIQUID ELECTRONIC SMOKING SOLUTIONS, LIQUID SMOKING SOLUTION CONTAINERS AND VAPOR PRODUCTS WITHIN ITS GEOGRAPHICAL BOUNDARIES BY AMENDING CHAPTER 163 (LAND DEVELOPMENT AND PROCEDURES), ARTICLE IX (ZONING REGULATIONS) SECTION 163-70 (GENERAL REGULATIONS AND EXCEPTIONS FOR ALL ZONES), PARAGRAPH L (PROHIBITED ACTIVITIES) OF THE CODE OF THE BOROUGH OF CHESTER

WHEREAS, municipalities are empowered to make, amend, repeal, and enforce its ordinances pursuant to Statute (N.J.S.A. 40:48-1, et seq.); and

WHEREAS, municipalities are required by Statute to follow specific procedures for the passage of ordinances (N.J.S.A. 40:49-2 et seq.); and

WHEREAS, the Borough of Chester has under the Municipal Land Use Law (N.J.S.A. 40:55D-1, et. seq) and pursuant to its police powers (N.J.S.A. 40:48-1, et. seq.), the authority to regulate land uses within its municipal boundaries; and

WHEREAS, the Mayor and Council of the Borough of Chester has determined that, it is necessary and appropriate, and in the best interest of the health, safety and welfare of the Chester Borough's residents and members of the public who visit, travel, or conduct business in the Chester Borough, to amend the Borough's regulations to prohibit commercial establishments which has as its principal business the retail sale of vape or e-cigarette products within the geographic boundaries of Chester Borough.

WHEREAS, the Mayor and Borough Council wish to amend the Borough Code, Section II (General Legislation), Chapter 163 (Land Development and Procedures), Article IX (Zoning-Regulations), Section 163-70 (General Regulations and exceptions for all zones), Paragraph L (Prohibited activities) to include a new subparagraph (14) to prohibit the operation of retail vape or e-cigarette businesses in all zones and districts within the Borough of Chester; and

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Chester, County of Morris, State of New Jersey, that the Borough Code is hereby amended and as follows:

SECTION 1. Section II (General Legislation), Chapter 163 (Land Development and Procedures), Article IX (Zoning-Regulations), Section 163-70 (General Regulations and exceptions for all zones), Paragraph L (Prohibited activities) of the Chester Borough Municipal Code is hereby amended to read as follows:

§163-7(L)(14) Any commercial establishment which has as its principal business the retail sale of or service of electronic smoking devices, liquid electronic smoking solutions, liquid electronic smoking solution containers or vapor products.

For purposes of this Paragraph, the following definitions shall apply:

ELECTRONIC SMOKING DEVICE means 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.

LIQUID ELECTRONIC SMOKING SOLUTION means any solution which is designed or Sold for use with an electronic smoking device.

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

VAPOR PRODUCT means 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 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 a solution or other form intended to be used with, or in, any such device.

SECTION 2. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Morris County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15 and N.J.S.A. 40:26-6.10, including to the Clerk of adjoining municipalities. The Borough Clerk shall execute Affidavits of Proof of Service of the notices required by this Section and keep the Affidavits on file along with the Proof of Publication of the notice of the required public hearing on the proposed Ordinance.

SECTION 3: The Borough Clerk is also directed to submit a copy of this Ordinance to the Chester Borough Land Use Board for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Land Use Board is directed to make and transmit to the Mayor and Council, within thirty-five (35) days after referral, a report including identification of any provision of this Ordinance which is inconsistent with the Master Plan and recommendations concerning any inconsistencies, as well as any other matter as the Board deems appropriate.

SECTION 4: If any Chapter, Article, Section or Subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

SECTION 5: All ordinances or rules or regulations of the Borough of Chester, which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 6: This Ordinance shall take effect upon (i) passage; (ii) publication according to law; and (iii) filing of the final form of adopted Ordinance by the Clerk with the Morris County Planning Board pursuant to N.J.S.A. 40:55D-15 and N.J.S.A. 40:26-6.10.

Dated: November 12, 2024

Janet Hoven, Mayor

Attest:

Dena Dziergoski
Acting Municipal Clerk
Borough of Chester

LEGAL NOTICE OF FINAL ADOPTION

Notice is hereby given that the Ordinance published herewith was introduced and passed upon first reading at a meeting of the Mayor and Council of the Borough of Chester, in the County of Morris, New Jersey, held on the 12th day of November, 2024, and the same came up for final passage at a meeting of said Borough Council on December 17, 2024 at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Borough according to law. By order of the Borough Council of the Borough of Chester, County of Morris, and State of New Jersey.

Dena Dziergoski
Acting Municipal Clerk
Borough of Chester