

# Ordinance of the City of Paterson, N.J.

No. ...5...1st Reading No. 15-078.....

No. ....2.....Public Hearing  
(2nd Rdg. & Final Passage)

Division .. HEALTH & HUMAN SERVICES....

TITLE: AN ORDINANCE PROHIBITING THE  
SALE OF TOBACCO, NICOTINE, NICOTINE  
DELIVERY PRODUCTS, SMOKING DEVICES  
AND ANY MATTER THAT CAN BE SMOKED  
TO PERSONS UNDER THE AGE OF TWENTY-ONE (21)

Date October 27, 2015.....

Date to Mayor October 28, 2015.....

Date Returned .....

Date Submitted to .....

Council ..OCTOBER 13, 2015.....

Factual Contents Certified to By .....

Title

Approved As To Form and Legality  
on Basis of Facts Set Forth

CORPORATION COUNSEL

Date

Date

COUNCILPERSON . ANDRE SAYEGH..... Moved the Following Ordinance:

**WHEREAS, BE IT ORDAINED** by the Municipal Council of the City of Paterson, in the County of Passaic, State of New Jersey, as follows:

**WHEREAS**, the Municipal Council of the City of Paterson finds that it is in the public interest to protect impressionable children and young adults from the temptations of experimenting with all tobacco products, nicotine, smoking devices and electronic smoking devices; and

**WHEREAS**, there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat; and

**WHEREAS**, the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin, the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain; and development, and that it is addiction to nicotine that keeps youth smoking past adolescence; and

**WHEREAS**, the Institute of Medicine's 2015 report projected that raising the minimum age of legal access to tobacco products to at least 21 years old would significantly reduce smoking rates, resulting in 223,000 fewer premature deaths for persons born between 2000 and 2019; and

**WHEREAS**, the American Medical Association's 2015 recommendation is to increase the minimum age of selling tobacco and electronic smoking devices to 21 years of age; and

**WHEREAS**, 75% of U.S. adults support raising the age of tobacco product sales to age 21, including 7 out of 10 smokers, according to a July 6, 2015 U.S. Centers for Disease Control and Prevention survey; and

**WHEREAS**, 90% of all tobacco users start before age 21 according to the U.S. Surgeon General, with nearly half of adult smokers transition to regular, daily smoking before age 18, and more than three-quarters transitioning to regular, daily smoking before they turn 21; and

**WHEREAS**, *The American Journal of Public Health* reported that the cumulative risk of smoking initiation does not begin to plateau until age 22 years; and

**WHEREAS**, overall, one-third of all youth who become regular smokers before adulthood, will eventually die from smoking; and

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**WHEREAS**, surveys from Needham, Massachusetts, a Boston suburb and the first city in the United States to raise the minimum age of tobacco sales to 21, show that high school smoking rates dropped by 47% in five years after the minimum age of sale was raised to 21; and

**WHEREAS**, teens who use e-cigarettes have a willingness to start smoking conventional cigarettes, moreso than teens who do not use e-cigarettes, according to a study in the journal *Tobacco Control*; and

**WHEREAS**, the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle and high school students tripled from 2013 to 2014; and

**WHEREAS**, raising the age of sale to 21 for tobacco and electronic smoking devices aligns with other age restricted products such as alcohol sales, and federal law already requires retailers to check ID for proof of age if the buyer of tobacco appears to look under age 27, thus a 21 minimum age requirement does not add a new responsibility for retailers; and

**WHEREAS**, in 1994 the New Jersey Supreme Court ruled in favor of East Brunswick to uphold the town's local ordinance banning the sale of cigarette vending machines as it was not preempted by state law; and

**WHEREAS**, the 2009 federal Family Smoking Prevention Act's Guidelines allow for states and localities to have more stringent age requirements than the federal regulation's minimum age of 18 for the sale of tobacco products; and

**WHEREAS**, the City Council of Paterson has concluded that it is appropriate to prohibit the sale of tobacco and nicotine delivery products within Paterson to persons under the age of twenty-one (21);

**WHEREAS**, many jurisdictions in the United States have come to the conclusion that smoking and ingesting tobacco in any form is harmful to the public's health, and have passed similar legislation;

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Paterson, in the County of Passaic, State of New Jersey, that Ordinance #\_\_\_\_, entitled "An Ordinance Prohibiting the Sale of Tobacco, Nicotine, Nicotine Delivery Products, Smoking Devices and Any Matter that can be Smoked to Persons Under Age Twenty-One (21) of the Paterson, County of Passaic, State of New Jersey hereby amends and supplements Chapter 421 (SMOKING) of the code of the City of Paterson by establishing Article II (Prohibiting Sale and Distribution to Persons Under 21 Years of Age) with the following provisions:

**SECTION 1.** Chapter 421 (SMOKING) of the code of the city of Paterson is hereby amended and supplemented by establishing an Article II (Prohibiting Sale and Distribution to Persons Under 21 Years of Age) to read as follows:

**AN ORDINANCE PROHIBITING THE  
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**§421-6 Definitions**

As used in this article, the following words shall have the meaning indicated:

**TOBACCO** – Any product made from the tobacco plant for the purpose of smoking, chewing, inhaling and other person use including cigars, shewing tobacco, pipe tobacco, snuff, dip, cigars and cigarettes in any form.

**NICOTINE** - (Natural or Synthetic) An addictive chemical which is made by several types of plants, including the tobacco plant or produced synthetically that has powerful pharmacologic effects (including increased heart rate, heart stroke volume, and oxygen consumption by the heart muscle), as well as powerful psychodynamic effects (such as euphoria, increased alertness, and a sense of relaxation) . Nicotine is the primary addictive agent in cigarettes, chewing tobacco, and cigars. Liquid nicotine is commonly used in electronic smoking devices like e-cigarettes, e-hookah and hookah pens.

**NICOTINE DELIVERY PRODUCTS** – Any product that is designed to deliver tobacco or nicotine or vapor or smoke or any matter that can be smoked, including, but not limited to, electronic nicotine delivery systems what are commonly known as “e-cigarettes” or e-hookah or hookah pens or other types of electronic smoking devices, or any cartridge or other component of such device, or tobacco and nicotine paraphernalia or related products including but not limited to any substance used in such devices, such as liquids or powders or other forms of tobacco or nicotine, but excluding United States Food and Drug Administration (FDA) tobacco cessation approved nicotine patches and FDA tobacco cessation approved nicotine chewing gum.

**SMOKING DEVICE** – A device that can be used to deliver tobacco, nicotine, alcohol, or any matter that can be smoked or vaporized, or that are not FDA approved smoking cessation devices, including, but not limited to, any electronic smoking devices, electronic cigarette, cigar, cigarillo, pipe, bongs, hookah, electronic and vape pens (portable vaporizers/cigarettes) or vaporizers, including but not limited to alcohol vaporizers.

**ELECTRONIC SMOKING DEVICE** - Electronic smoking device” means an electronic device that can be used to deliver nicotine or vapor or smoke or any matter that can be smoked or other substances that can be smoked and that are not FDA approved tobacco cessation nicotine patches or nicotine chewing gum, including, but not limited to, an electronic cigarette, cigar, cigarillo, pipe, hookah, electronic and vape pen (portable vaporizers/cigarettes) or vaporizers, including but not limited to alcohol vaporizers.

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**SMOKING -** The burning of, inhaling from, exhaling the smoke or vapor from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked or vaporized, or the inhaling or exhaling of smoke or vapor from a smoking device or electronic smoking device, including but not limited to alcohol or other liquid vaporizing (smoking).

**MATTER THAN CAN BE SMOKED -** any substance that can be smoked or vaporized, including but not limited to alcohol or Salvia Divinorum, synthetic cannabinoids or items similar to or commonly referred to as K2 or Spice, shredded plant material that is typically sprayed with a synthetic compound chemically similar to THC (the psychoactive ingredient in marijuana), synthetic cannabis, fake pot, synthetic marijuana, legal weed, herbal incense or potpourri or other smoke blends or spray-on liquids.

**TOBACCO RETAILER –** Any person or entity that owns, leases, operates or otherwise exercises control over a store, stand, booth, concession, or place at which the selling, furnishing or giving of tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized, are made to purchasers for consumption or use. The term shall also mean any person or entity that owns, operates, leases or otherwise exercises control over vending machines that dispense tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such devices, and self-service displays of any and all such products.

**SELF-SERVICE DISPLAY –** Implies that a product is directly accessible to the public through, for example, a rack, shelf, or counter-top display.

**TOBACCO VENDING MACHINE –** Any automated, self-service device which, upon insertion of money, tokens, or other form of payment, or uses a remote control device to operate such machine, that dispenses tobacco, nicotine, electronic smoking devices, and/or nicotine delivery products.

**PERSON –** Any individual, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

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**§421-7 Prohibiting Sale and Distribution to Persons Under 21 Years of Age**

- A. Age 21 required to be sold product. No Person or Tobacco Retailer shall sell, furnish or give tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized to any under the age of 21 years.
- B. Age 21 signs at point of sale. Tobacco Retailers of tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized shall conspicuously post and reasonably maintain signs that are a minimum size of six inches by eight inches, at all check-out counters notifying customers that they must be over 21 and proof of age is required to purchase such products.
- C. No Self-Service Sales. No Person shall sell tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized in the City of Paterson unless the Tobacco Retailer, Person, owner or employee of the establishment controls the retail sale of such products in a direct, face-to-face exchange between the Tobacco Retailer and the consumer, with all such products stored behind the counter and out of grasp of the customers.
- D. Self-service Displays and Vending Machines. Self-service displays and vending machines that dispense tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized shall be prohibited in facilities where people under 21 are allowed, including but not limited to people under 21 who are employees, contractors, visitors and patrons.
- E. Entrance signage. Each Tobacco Retailer shall conspicuously post and reasonably maintain signs that are a minimum size of eight inches by eight inches, on all entrances notifying customers they must be over 21 to enter their establishment if the Tobacco Retailer has self-service displays or vending machines that dispense tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized or mostly sells these products, and not allow persons under age 21 to enter such retail outlets.
- F. Age Verification. Any Person selling tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized shall verify by means of government-issued photogenic identification containing the bearer's date of birth that nobody purchasing the tobacco or nicotine or nicotine delivery products is younger than 21 years of age. No Person shall sell tobacco or nicotine or nicotine delivery products to anyone under 21 years of age who has a note from an adult requesting such sale.

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- G. Notice of Ordinance to Employees. No Tobacco Retailer selling tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized allow any employers, managers, employees or Persons to sell, furnish, give or distribute such products until (1) the Tobacco Retailer has provided each such employer, manager, employee or Person with this city ordinance and (2) each such employer, manager, employee or Person has read this ordinance in full and signed paperwork that they have read and understand this ordinance,[s] and that the Tobacco Retailer has filed each signed paperwork at the retail location and (5) the Tobacco Retailer shall also sign paperwork that they have read and understand the laws, and such paperwork shall be retained on file at the retail location.

**§421-8            Enforcement**

- A. The enforcement authority for this ordinance shall be the Paterson Health & Human Services Director or his or her designee, Health Officer or his/her designee, the Police Department or his/her designee.
- B. The enforcement authority may, after giving proper identification, inspect any matter, thing, premise, place, person, record, vehicle, incident, or event as necessary to execute his or her official duties in a manner prescribed by law.
- C. It shall be unlawful for any person to molest, willfully oppose, verbally abuse or otherwise obstruct the enforcing authority in his/her enforcement of this Ordinance, and the enforcing authority may request the assistance of the Paterson Police Department when necessary to execute his or her official duties in a manner prescribed by law.
- D. Citizens may bring complaints against violators of this ordinance to the Paterson Health & Human Services Director or his or her designee, Health Officer or his/her designee, the Police department or his/her designee.

**§421-9            Violations and Penalties**

- A. A Person and/or Tobacco Retailer who violates the provisions of this ordinance, including any employee of a retail dealer license under P.L. 1948, c.65 (C.54.40A-1 et seq.) who actually sells or otherwise furnishes either directly or indirectly tobacco, nicotine, nicotine delivery products, smoking devices, electronic smoking devices or any matter that can be smoked to a anyone under 21 years of age, shall be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and not less than \$1,000 for the third and each subsequent violation. Complaint shall be made in the municipal court of the City of Paterson or before other judicial officer having authority under the laws of the state of New Jersey.

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- B. It shall constitute a separate violation for (1) each direct or indirect sale, furnishing or giving of tobacco, tobacco products, nicotine, smoking devices, electronic smoking devices or nicotine delivery products, or liquids used in any and all such products or devices, or any other matters that can be smoked or vaporized to any anyone under the age of 21, (2) each day the required sign is not posted, (3) each day a self-service display or tobacco vending machine is located in a facility where anyone under 21 years of age is allowed, and (4) each incident of failure to require identification.
- C. In addition to the penalties set forth in subsection 421-8 above, the Paterson Board of Health may suspend the Retail Food Establishment License of any Tobacco Retailer or Person convicted of violation of this Ordinance, for a period of not more than 3 days, pursuant to the authority of the Board of Health to license and regulate food establishments as provided by N.J.S.A. 26:3-31(c).

- SECTION 2. If any section, sub-section, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.
- SECTION 3. All ordinances or parts of ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.
- SECTION 4. This ordinance shall take effect twenty (20) days after final passage and publication as prescribed by law.

STATEMENT OF PURPOSE

This Ordinance authorizing an amendment and supplement to Chapter 421 (SMOKING) of the code of the City of Paterson, by establishing an Article II, (Prohibiting Sale and Distribution to Persons Under 21 Years of Age).

SECONDED BY COUNCILPERSON . DOMINGO .A. .MENDEZ.....

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RECORD OF COUNCIL VOTE ON FINAL PASSAGE	AYE	NAY	ABSTAIN	ABSENT
1. AKHTARUZZAMAN, MOHAMMED	X			
2. COTTON, RUBY N.				X
3. DAVILA, MARITZA	X			
4. McKOY, WILLIAM C.	X			
5. MENDEZ, DOMINGO A.	X			
6. MORRIS, KENNETH	X			
7. SAYEGH, ANDRÉ	X			
8. STATON, JAMES E.	X			
9. TAVAREZ, JULIO		X		

Adopted on first reading at a meeting of the Council of the City of Paterson, N.J., on OCTOBER 13, 2015 Adopted on second and final reading after hearing on OCTOBER 27, 2015

Approved Rejected By JOSE "JOEY" TORRES Mayor Reconsidered By Council Date Council President WILLIAM MCKOY City Clerk SONIA L. GORDON ACTING City Clerk Over Ride Vote Aye Nay

This Ordinance when adopted must remain in the custody of the City Clerk. Certified copies are available. USE REVERSE SIDE FOR POSTPONEMENT AND RECONSIDERATION DATA