

BOROUGH OF HO-HO-KUS  
ORDINANCE NO. 2018-10

**AN ORDINANCE AMENDING CHAPTER 85 THE CODE OF THE  
BOROUGH OF HO-HO-KUS, BERGEN COUNTY, NEW JERSEY SO AS TO  
ESTABLISH A NEW SECTION ENTITLED “TOBACCO SHOPS, SMOKE  
SHOPS, CANNABIS SHOPS AND ELECTRONIC VAPOR SUBSTANCE  
INHALATION SHOPS”**

**BE IT ORDAINED** by the Governing Body of the Borough of Ho-Ho-Kus, Bergen County, New Jersey that Chapter 85 of the Code of the Borough of Ho-Ho-Kus is hereby amended and supplemented so as to establish a new Section entitled “Tobacco Shops, Smoke Shops, Cannabis Shops and Electronic Vapor Inhalation Shops” as follows:

**85:45.1a Tobacco Shops, Smoke Shops, Cannabis Shops  
and Electronic Vapor Substance Inhalation Shops**

**85:45.2 Purpose.**

The purpose of this Section is to regulate the location and operation of retail purveyors of tobacco and tobacco products, cannabis, electronic vapor devices, electronic vapor inhalation substances, hookahs, and electronic/vapor substance inhalation shops in the Borough of Ho-Ho-Kus, Bergen County, New Jersey in order to maintain the Borough’s character, the diversity and vitality of the community’s commercial areas, and the quality of life of Ho-Ho-Kus residents. It is presumed that establishing or preserving an appropriate and balanced mix of commercial business will more effectively serve to achieve this purpose as a strategy to maintain the economic health of the Borough’s business districts and its suburban ambiance, and will promote the redevelopment of the Borough’s downtown area.

**85:45.3 Title.**

This Section may be known and cited as “Tobacco Shops, Smoke Shops, Cannabis Shops and Vapor Inhalation Shops Regulations.”

**Definitions.**

The words and terms used in this Section shall have the meanings as provided herein. Where words or terms are not defined in this section they shall have the meanings ordinarily ascribed to them. Should any word, term or phrase defined in this section conflict with any other word, term or phrase defined in this title, the definitions provided in this section shall apply.

“**Advertising**” means media (printed, electronic or otherwise) that calls the public’s attention to things for sale.

“**Business**” means any sole proprietorship, joint venture, limited liability company, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

“**Borough Administrator**” means the Borough Administrator of the Borough or the Borough Administrator’s designee.

**“Cannabis”** means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin and/or oil extracted from any part of the plant; every compound, manufacture, salt, derivative, mixture, concentrate, or preparation of the plant, its seeds, or resin; and edible or topical products containing any of the above.

**“Cannabis retailer”** means any person or entity that operates a store, stand, booth, concession, or other place at which sales, rentals, or other giveaways of cannabis products are made to purchasers for consumption or use.

**“Cannabis shop”** means any store, stand, booth, concession or other place which sells, manufactures, grows, rents or gives away cannabis or any product containing cannabis or allows or permits the use or consumption of cannabis or any product containing cannabis.

**“Creation of a tobacco or smoke shop or an electronic/vapor substance inhalation shop”** means:

1. The opening or commencement of any such establishment as a new establishment; or
2. The conversion of an existing establishment, to a tobacco or smoke shop establishment or an electronic/vapor substance inhalation shop establishment as defined in this chapter; or
3. The relocation of any such establishment.

**“Electronic vapor device”** means any device with a heating element, a battery, or an electronic circuit that provides nicotine or other vaporized liquids to the user in a manner that simulates tobacco products, shisha, herbs, or any other product that produces smoke.

**“Electronic/vapor inhalation substance products”** means cartridges, cartomizers, e-liquid, smoke juice, tanks, tips, atomizers, vaporizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic vapor devices.

**“Electronic/vapor substance inhalation shops”** are defined as those businesses where customers can smoke or inhale vapor from electronic/vapor inhalation substance products, commonly known as “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” “electronic nicotine delivery systems,” and other similar devices.

**“Employee”** means any person who is employed by an employer for consideration for direct or indirect wages or profit, or is an independent contractor, agent or consultant of an employer and any person who volunteers his or her services for a nonprofit entity.

**“Hookah”** means a pipe commonly, but not always, made of glass, used for vaporizing and smoking tobacco, flavored tobacco, non-flavored tobacco, shisha, dried

fruits, cannabis or other substances in which vapor or smoke is passed through a water basin before inhalation.

**“Minor”** means any individual who is less than 21 years old.

**“Nonprofit entity”** means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social, or other similar purpose, the net proceeds from the operation of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

**“Person”** means any individual, partnership, cooperative association, private or private corporation, limited liability company, personal representative, receiver, trustee, assignee, or any other legal entity.

**“Public playground/park/recreation area”** means an area to which the public, and particularly minors, come to participate in athletic or recreational activities, whether or not such activities are supervised or organized. Such areas include, but are not limited to, publicly owned and maintained parks, athletic fields, playgrounds, picnic areas, any outdoor premises or grounds owned or operated by the Borough, a public or private school, child care center, and any youth or recreational facilities that contains any play or athletic equipment used or intended to be used by minors.

**“School”** means an institution of learning for minors, whether public or private, preschool or day care services, kindergarten, elementary school, junior high school, senior high school, or any special institution of learning, a vocational or professional institution or an institution of higher education, including a community or junior college, college, or university.

**“Self-service merchandising”** means open display of tobacco products and point-of-sale tobacco-related promotional products that the public has access to without the intervention of an employee.

**“Tobacco product”** means (1) any product containing tobacco leaf including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human lungs or mouth in smoke or vapor form, using any tobacco paraphernalia, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

**“Tobacco retailer”** means any person or entity that operates a store, stand, booth, concession, or other place at which sales, rentals, or other give-aways of tobacco products, electronic vapor devices, electronic vapor inhalation substances, and hookahs are made to purchasers for consumption or use.

**“Tobacco or smoke shop”** means any store, stand, booth, concession, or other place that either devotes a substantial portion of its display area (i.e., fifteen percent or

more of floor space) to tobacco products, or devotes more than sixteen cubic feet of shelf space, for the display or sale of tobacco or drug paraphernalia to purchasers for consumption or use. This definition includes electronic vapor devices, electronic vapor inhalations substances and hookahs.

**“Transfer of ownership or control of a tobacco or smoke shop or an electronic/vapor substance inhalation shop”** means:

1. The sale, lease or sublease of such establishment; or
2. The transfer of securities which constitute a controlling interest in such establishment, whether by sale, exchange, merger, or similar means; or
3. The establishment of a trust, gift or other similar legal devise which transfers ownership or control of such establishment, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

**“Tobacco vending machine”** means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, that dispenses or releases a tobacco product.

**“Zoning Code”** means Chapter 85 of the Borough Code of the Borough of Ho-Ho-Kus, Bergen County, New Jersey, as it may be amended from time to time.

**85:45.4** Tobacco or smoke shop, or electronic/vapor substance inhalation shop conditional use permit required.

No Person shall cause or permit (i) the creation of a tobacco or smoke shop or an electronic/vapor substance inhalation shop, (ii) any substantial enlargement of a tobacco or smoke shop or an electronic/vapor substance inhalation shop, or (iii) the transfer of ownership or control of any tobacco or smoke shop or electronic/vapor substance inhalation shop, without first obtaining and maintaining a conditional use permit as provided in this chapter.

**85:45.5 Development standards – General and specific.**

An application for a conditional use permit shall be approved by the planning board upon a determination that all of the following standards have been met.

- A. The tobacco or smoke shop, or electronic/vapor substance inhalation shop shall be located within a permitted zone. Tobacco or smoke shops, or electronic/vapor substance inhalation shops may be located only within the GB District. No such establishment shall be permitted to locate in any area outside such zoning classifications.
- B. The tobacco or smoke shop, or electronic/vapor substance inhalation shop shall meet the following minimum spacing and proximity requirements:

1. No tobacco or smoke shop, or electronic/vapor substance inhalation shop shall be located within one mile of any other such shop.
  2. No tobacco or smoke shop, or electronic/vapor substance inhalation shop shall be located within one mile of any parcel of land zoned for residential use.
  3. No tobacco or smoke shop, or electronic/vapor substance inhalation shop shall be located within one mile of any parcel of land that contains any one or more of the following specific land uses:
    - a) Religious facility;
    - b) Courthouse;
    - c) Day nursery;
    - d) Public playground/park/recreation area;
    - e) School;
    - f) Vocational or professional institution; or
    - g) Institution of higher education, including community or junior college, college or university.
  4. No tobacco or smoke shop, or electronic/vapor substance inhalation shop located in a building sharing one or more common walls with another retail or commercial establishment, or sharing common attic space with any other use, shall permit smoking or use of any electronic vapor device or hookah anywhere on the premises.
- C. The tobacco or smoke shop, or electronic/vapor substance inhalation shop shall be in substantial compliance with the requirements of all health and safety codes, including, but not limited to, the building code, fire code, electrical code, mechanical code and plumbing code. Unless delay is caused by refusal of applicant to schedule or permit timely inspection, substantial compliance shall be verified no later than 30 days following the application or the applicant shall be deemed to be in substantial compliance with such requirements for the purposes of permit issuance.
- D. The tobacco or smoke shop, or electronic/vapor substance inhalation shop shall be in substantial compliance with the development standards for the commercial zone in which the establishment is to be located, and with the general provisions of Chapter 85 relating to development standards and of Section 85:37 relating to sign regulations, except that, to the extent that provisions of this Section may conflict or be more restrictive, this Section 85 shall control.
- E. The tobacco or smoke shop, or electronic/vapor substance inhalation shop meets the following minimum specific standards:

1. No person or business shall engage in the sale of tobacco products, hookahs, electronic vapor devices and/or electronic/vapor inhalation substance products without first posting a plainly visible sign at the point of purchase of tobacco products, hookahs, electronic vapor devices and/or electronic vapor inhalation substance products that has wording similar to:

“THE SALE OF TOBACCO PRODUCTS, HOOKAHS, AND ELECTRONIC VAPOR DEVICES AND PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW AND SUBJECT TO PENALTIES. PHOTO IDENTIFICATION IS REQUIRED OF PURCHASERS APPEARING TO BE 26 YEARS OF AGE AND YOUNGER.”

The letters of the sign shall be at least one-quarter inch high, as set forth in the N.J. Department of Health Tobacco Control Regulations.

2. No person, business, tobacco retailer, or owner, manager, employee or operator of any establishment subject to this section shall sell, offer to sell or permit to be sold any tobacco or tobacco product, electronic vapor devices, hookahs and/or electronic/vapor inhalation substance products to an individual without requesting and examining identification of customers appearing to be 26 years and younger for the purpose of establishing the purchaser's age as 21 years or greater, unless the seller has some other clear or convincing basis for determining the buyer's age.
3. No person, business, tobacco retailer or other establishment shall sell or offer for sale cigarettes or other tobacco or smoking products not in the original packaging provided by the manufacturer and with all required health warnings.
4. It shall be unlawful for any person, business or tobacco retailer to sell, permit to be sold, offer for sale or display for sale any tobacco product, electronic vapor devices and/or electronic/vapor inhalation substance products by means of self-service merchandising or by means other than vendor-assisted sales.
5. No person, business or tobacco retailer shall locate, install, keep, maintain, or use, or permit the location, installation, keeping, maintenance, or use on his, her or

its premises, any tobacco vending machine for the purpose of selling or distributing any tobacco product.

6. It shall be unlawful for any person, business or tobacco retailer to distribute free tobacco products or promotional items, except in enclosed areas where minors are not permitted.
7. In addition to the standards in this chapter, each tobacco or smoke shop, or electronic/vapor substance inhalation shop shall comply with each and every provision of this code.

**85:45.6 Measure of distance.**

Distance, without regard to intervening structures, shall be a straight line measured from the closest exterior structural wall of a tobacco or smoke shop or electronic/vapor substance inhalation shop to the closest property line of a religious facility, courthouse, day nursery, public playground/park/recreation area, school, residential zone, vocational or professional institution, institution of higher education, including community or junior college, college, university, other tobacco shops or smoke shops.

**85:45.7 Prohibited in all Districts.**

- a. Cannabis shops and/or retailers.

**85:45.8 Violation; Penalty.**

- a. Any person, firm or corporation violating any of the provisions of this chapter may be charged with either an infraction or a misdemeanor and shall be subject to the provisions of the penalty clause as set forth in Section 1-16 of this code.
- b. Each person found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which a violation of any section of this Ordinance is committed, continued or permitted by such person, and shall be punishable as provided for in Section 1-16. Any use or occupation of any building or structure maintained contrary to the provisions of this title shall constitute a public nuisance.

**85:45.9 Conflicts with other applicable laws.**

This chapter shall not be interpreted or construed to permit tobacco vending machines and distribution of tobacco product samples where they are otherwise restricted by other applicable laws. Nor shall this chapter be construed to be cause for breach of any pre-existing private contract, or cause for interference with regulations imposed by state or federal law or related to interstate commerce.

**85:45.10 Repealer.**

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

**85:45-11 Severability.**

Each subsection, sentence, clause and phrase of this section is declared to be an undisputed subsection, sentence, clause and phrase, and the finding or holding of any such part of this section to be unconstitutional, void or ineffective for any cause or reason shall not affect any other portion of this section.

**85:45-12 Effective Date.**

NOTICE OF PENDING ORDINANCE

This Ordinance published herewith was introduced and pass upon first reading at a meeting of the Municipal Council of the Borough of Hawthorne, in the County of Bergen, New Jersey, held on September 25, 2018. It will be further considered for final passage after the public hearing thereon, at a meeting of said Municipal Council to be held in the Municipal Building, 333 Warren Avenue, Ho-Ho-Kus, NJ 07423-1547, in said Borough on October 23, 2018, at 7:30 p.m. at which time and place all interested member of the public who desire will be given an opportunity to be heard in connection with said Ordinance, and during the week prior to and up to and including the date of such meeting, copies of said has been posted on the bulletin board upon which public notices are customarily posted in the Borough Hall and copies are available at no charge in the Office of the Borough Clerk for members of the general public who may request them.

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF AN ORDINANCE ADOPTED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF HO-HO-KUS AT A REGULAR MEETING ON **OCTOBER 23, 2018.**

ATTEST:

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Douglas Troast, Council President

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Joan Herve, RMC, Borough Clerk

APPROVED:

\_\_\_\_\_ Thomas W. Randall, Mayor