

**ORDINANCE NO. 3514**

**INTRODUCED BY: COMMISSIONER THOMAS J. EVANS ON BEHALF OF THE BOARD OF COMMISSIONERS**

**INTRODUCED ON: APRIL 18, 2023**

**PUBLISHED: APRIL 27, 2023**

**PUBLIC HEARING: MAY 16, 2023**

**PUBLISHED: MAY 25, 2023**

**TOWNSHIP OF NUTLEY  
ORDINANCE NO. 3514**

**AN ORDINANCE TO AMEND AND REVISE CHAPTER 700-3. B and 700-39 “ZONING” OF THE NUTLEY TOWNSHIP CODE**

**WHEREAS**, an executive summary on the use of electronic smoking devices issued in 2016 by the United States Surgeon General indicates that such devices pose a significant health risk, especially to youth and young adults; and

**WHEREAS**, among middle and high school students, 3.62 million were current users of electronic smoking devices in 2018 according to the US Food & Drug Administration (FDA); and

**WHEREAS**, the FDA reports electronic smoking devices use, from 2017 to 2018, increased 78% among high school students, to more than 1 in 5, and 48% among middle school students from 2017 to 2018; and

**WHEREAS**, the Centers for Disease Control has issue multiple alerts in 2019 identifying a new syndrome of respiratory illness and failure related to “vaping” with e-cigarettes; and

**WHEREAS**, under the circumstances, the Board of Commissioners have determined that it is in the best interest of the Township and the health of its residents to regulate vape shops in conjunction with tobacco retail establishments as a single entity known as nicotine retail establishments.

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF NUTLEY, IN THE COUNTY OF ESSEX, NEW JERSEY AS FOLLOWS:**

**SECTION 1.** §700-3.B of the Township Code of the Township of Nutley, entitled “Definitions” is hereby amended to add the following definitions:

**CIGAR**

Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco.

**ELECTRONIC SMOKING DEVICE**

A device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. “Electronic smoking device” includes any component, part, or accessory of such a device, whether sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device.

**SALE**

Every delivery of electronic smoking devices, electronic liquids and/or liquid nicotine, whether the same is by direct sale or the solicitation or acceptance of an order, including exchange, barter, traffic in, keeping and exposing for sale, displaying for sale, delivering for value, peddling and possession with intent to sell, distribute or give.

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**SMOKE SHOP**

Any premises dedicated as a principal business to display, sale, distribution, delivery, offering, furnishing, manufacturing, or marketing of tobacco, tobacco products, or tobacco paraphernalia, but excluding the sale of cigars and any grocery store, supermarket, convenience store or similar retail use that sells tobacco products, shall not be included within the definition of smoke shop.

**VAPE SHOP**

Shall mean any premises dedicated as a principal business to display, sale, distribution, delivery, offering, furnishing, manufacturing, or marketing of electronic smoking devices, liquid nicotine containers or vapor product as defined by N.J.S.A. 26:3D-57, N.J.S.A. 2A:170-51.9(a)(2), N.J.S.A. 2A:170-51.9(a)(3) and N.J.S.A. 2A:170-51.9(a)(4), including an area for vaping. An area for “vaping” shall mean the inhaling or exhaling of smoke or vapor from any electronic smoking device.

**SECTION 2.** §700-39 of the Township Code of the Township of Nutley, entitled “Prohibited uses in all districts” is hereby amended to reads as subsections N-O as follows:

N. Smoke Shop

O. Vape Shop

**SECTION 3.** All ordinances of the Township of Nutley, which are inconsistent with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 4.** If any section, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

**SECTION 5.** All other provisions of §700 of the Code of the Township of Nutley are not further amended and remain in full force and effect.

**BE IT FURTHER ORDAINED** that this Ordinance shall take effect upon its passage and publication according to law.

<i>Record of Vote</i>	<i>Commissioner John V. Kelly, III</i>	<i>Commissioner Thomas J. Evans</i>	<i>Commissioner Alphonse Petracco</i>	<i>Commissioner Mauro G. Tucci</i>	<i>Mayor Joseph P. Scarpelli</i>
<i>Yes</i>	X	X	X		X
<i>No</i>					
<i>Not Voting</i>					
<i>Absent/Excused</i>				X	