

**ORDINANCE NO. 3518**  
**INTRODUCED BY: MAYOR AND BOARD OF COMMISSIONERS**  
**INTRODUCED ON: JULY 6, 2023**  
**PUBLISHED: JULY 13, 2023**  
**PUBLIC HEARING: AUGUST 1, 2023**  
**PUBLISHED: AUGUST 10, 2023**

**ORDINANCE NO. 3518**

**AN ORDINANCE TO AMEND CHAPTER 652 OF THE NUTLEY TOWNSHIP CODE ENTITLED  
“TOBACCO”**

**WHEREAS** the Board of Commissioners recognize the significant health risk posed by the use of tobacco, electronic smoking devices, and nicotine delivery products; and

**WHEREAS**, the Board of Commissioners have determined that it is in the best interest of the Township of Nutley and the health of its residents to regulate the sale of tobacco, electronic smoking devices, and nicotine delivery products.

**NOW THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the Township of Nutley, County of Essex, State of New Jersey,

**SECTION 1.** Chapter 652 of the Township Code is hereby amended to add Article II to read as follows:

**ARTICLE II SALE AND ADVERTISING**

**§ 652-4 Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted to give them the meanings they have in common usage and to give this chapter its most reasonable application. As used in this chapter, the following shall have the meanings indicated:

**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.

**LICENSE YEAR**

A calendar year commencing on January 1 and ending on December 31.

**MANUFACTURER**

Any person, including any repacker and/or relabeler, who compounds, modifies, mixes, manufactures, fabricates, assembles, processes, labels, repacks, relabels or imports electronic smoking devices or electronic liquid.

**NICOTINE DELIVERY PRODUCT**

Any product that is designed to deliver nicotine or vapor, including, but not limited to, what are commonly known as "e-cigarettes" or other types of electronic smoking devices, or any cartridge or other component of such device, or related products including but not limited to any substances used in such devices, such as liquids or powders or other forms of tobacco, but excluding United States Food and Drug Administration approved nicotine patches or nicotine chewing gum.

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**PERSON**

An individual, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

**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.

**TOBACCO**

Any product made from the tobacco plant for the purpose of smoking, chewing, inhaling and other personal use, including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

**TOBACCO RETAILER**

Any person or entity that operates a store, stand, booth, concession, or place at which sales of tobacco or nicotine delivery products are made to purchasers for consumption or use. The term shall also mean any person or entity that owns, operates, or uses a tobacco vending machine and/or a tobacco vending machine location as defined herein.

**TOBACCO VENDING MACHINE**

Any automated, self-service device which, upon insertion of money, tokens, or other form of payment, dispenses nicotine delivery products, cigarettes, or other tobacco products.

**TOBACCO VENDING MACHINE LOCATION**

The room, enclosure, space or area where a tobacco vending machine is installed and operated.

**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 inhaling or exhaling of smoke or vapor from any electronic smoking device.

**§ 652-5 Retail sale of tobacco products.**

- A. No person shall sell tobacco, electronic smoking devices, or nicotine delivery products in the Township of Nutley unless an employee of the establishment controls the sale of such products. A person may only sell tobacco, electronic smoking devices or nicotine delivery products in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines of tobacco or nicotine delivery products shall be prohibited.
- B. No person shall sell, distribute, or give tobacco, electronic smoking devices, or nicotine delivery products to any person under the age of 21 years.

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- C. Retailers covered under this Chapter shall conspicuously post and reasonably maintain signs where tobacco, electronic smoking devices or nicotine delivery products are displayed and at all checkout counters notifying customers that proof of age is required to purchase tobacco or nicotine delivery products.
- D. Any person selling tobacco, electronic smoking devices, or nicotine delivery products shall verify by means of government-issued photographic identification containing the bearer's date of birth that no person purchasing the tobacco or nicotine containing products is younger than 21 years of age. No such verification is required for any person over the age of 26. No clerk shall sell tobacco or nicotine delivery products to a person less than 21 years of age who has a note or any form of communication from any person, including an adult.

**§ 652-6 Prohibition of advertising at child eye level.**

It shall be unlawful for retailers to display, advertise, or offer for sale, tobacco products, electronic smoking devices or nicotine delivery products in any location in which minors are permitted at a height of less than four feet or adjacent to candy or items specifically intended for sale to or for children.

**§ 652-7 Product display, storage, and signage**

- A. No tobacco products, electronic smoking devices or nicotine delivery products shall be visible from a public sidewalk, street, or right-of-way, or any other public view.
- B. All tobacco products, electronic smoking devices or nicotine delivery products shall be stored indoors and on-site.

**§ 652-8 Hours of Operation**

Smoke Shops and Vape Shops may only operate between the hours of 8am through 9pm.

**§ 652-9 Enforcement; License required; fees.**

- A. The enforcement authority for this chapter shall be the Nutley Health Officer, Code Enforcement Officer, Police Chief, or his/her designee.
- B. The enforcement official may, after giving proper identification, inspect any matter, thing, premises, place, person, record, vehicle, incident, or event as necessary to execute his or her official duties in a manner prescribed by law.
- C. Citizens may bring complaints against violators of this chapter.
- D. No person shall sell tobacco, electronic smoking devices, or nicotine delivery products in the Township of Nutley without first obtaining a license from the Township of Nutley to do so on the premises. The Board of Commissioners shall have jurisdiction over all license applications under this Chapter.
  - (1) No person and/or entity shall be issued a License under this section if they are unable to pass a criminal background check.
- E. The annual license fee shall be \$1,500.00. All licenses shall expire on December 31 in the year in which it is issued; however, any license issued in 2023 shall expire on December 31, 2024.

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**§ 652-10 Violations and penalties.**

- A. A person who violates the provisions of this chapter, including any employee of a retail dealer licensee under P.L. 1948 c. 65 (N.J.S.A. 54:40A-1 et seq.) who actually sells or otherwise provides tobacco, electronic smoking devices, or nicotine delivery products product to a person under 21 years of age, shall be liable to a civil penalty of not less than \$750 for the first violation, not less than \$1,000 for the second violation, and not less than \$1,500 for the third and each subsequent violation. Complaint shall be made in the municipal court of Nutley or before such other judicial officer having authority under the laws of the State of New Jersey.
- B. Each sale of a tobacco, electronic smoking devices, or nicotine delivery products violation of this Chapter shall constitute a separate violation.
- C. In addition to the penalties set forth in Subsection A above, the Nutley Board of Commissioners may suspend or revoke a license to sell nicotine delivery products of any person convicted of more than one (1) violation of this chapter.

**SECTION 2.** All ordinances or parts of ordinances contrary to or inconsistent with the provisions of this chapter are hereby repealed to the extent of such conflict or inconsistency.

**SECTION 3.** If any section or provision of the chapter be adjudged invalid or unconstitutional, preempted by federal or state law, or otherwise invalid by any court of competent jurisdiction, the same shall not affect the validity of the chapter as a whole or any other section or provision hereof.

**SECTION 4.** This chapter shall take effect 90 days following its passage and publication, or as otherwise provided by law.

**SECTION 5.** 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 6.** 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.

<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	X
<i>No</i>					
<i>Not Voting</i>					
<i>Absent/Excused</i>					