

ORDINANCE NO. 3577

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

INTRODUCED ON: FEBRUARY 18, 2025

PUBLISHED: FEBRUARY 27, 2025

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**TOWNSHIP OF NUTLEY
ESSEX COUNTY, NEW JERSEY**

ORDINANCE NO. 3577

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF NUTLEY IN THE COUNTY OF ESSEX GOVERNING AND REGULATING THE SALE OF TOBACCO, HEMP AND RELATED PRODUCTS TO MINORS

BE IT ORDAINED by the Board of Commissioners of the Township of Nutley, in the County of Essex, New Jersey, being the governing body thereof, that Chapter 652 of the Code of the Township of Nutley is hereby amended and supplemented as follows:

**Chapter 652
TOBACCO AND HEMP**

ARTICLE I

Use by Minors

§ 652-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

MINOR — Any person under the age of 18 years.

PUBLIC PLACE OR AREA — Any place or area to which the public is invited or upon which the public is permitted, including but not limited to any sidewalk, street or any other right-of-way, park, playground and other property owned by the Township, any shopping center and any school property.

HEMP — the plant *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a *total* tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

HEMP PRODUCT — a finished product with a total tetrahydrocannabinol concentration of not more than 0.3 percent, and not more than 0.5 milligrams of total THC per serving and 2.5 milligrams of total THC per package. It shall not mean a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents and shall not mean an intoxicating hemp product as defined in section 3 of Pub. L. 2021, c. 16.

TOBACCO PRODUCT - Any product made from the tobacco plant made for the purpose of smoking or chewing, including cigars, chewing tobacco, pipe tobacco, snuff and cigarettes in any form.

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§ 652-2. Prohibited activity.

No minor shall purchase or use tobacco products, hemp or hemp products within or upon any public place or area within the Township of Nutley.

§ 652-3. Violations and penalties.

Any minor who purchases or within or upon any public place or area uses tobacco products, hemp or hemp products shall be subject to the following noncriminal penalties:

- A. For a first offender, issuance of a written warning by the police officer which explains the risks of tobacco products, hemp, and hemp products and the purposes for which the Township has adopted this article and parental notification by the police officer.
- B. For repeat offenders 16 years of age or older, participate in community service projects as determined by the Juvenile Aid Bureau in the amount of 25 hours for the second offense and up to 50 hours for any subsequent offenses and participate in an educational program determined by the Juvenile Aid Bureau concerning the dangers of tobacco products, hemp, and hemp products.
- C. For repeat offenders under the age of 16 years, participate in community service projects as determined by the Juvenile Aid Bureau in the amount of up to 15 hours for the second offense and up to 30 hours for any subsequent offenses and participate in an educational program determined by the Juvenile Aid Bureau concerning the dangers of tobacco products, hemp, and hemp products.

ARTICLE II

Sale and Advertising

§ 652-4. Definitions.

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

ELECTRONIC SMOKING DEVICE — A device that can be used to deliver aerosolized or vaporized nicotine, CBD and or THC 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.

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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.

HEMP — the plant *Cannabis sativa L.* and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a *total* tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

HEMP PRODUCT — a finished product with a total tetrahydrocannabinol concentration of not more than 0.3 percent, and not more than 0.5 milligrams of total THC per serving and 2.5 milligrams of total THC per package. It shall not mean a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents and shall not mean an intoxicating hemp product as defined in section 3 of Pub. L. 2021, c. 16.

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.

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

HEMP SHOP — Any premises dedicated as a place of business that displays, sells, distributes, delivers, offers, furnishes, manufactures, or markets hemp, hemp products, or hemp paraphernalia.

HEMP RETAILER — Any person or entity that operates a store, stand, booth, concession, or place at which sales of hemp or hemp 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.

HEMP VENDING MACHINE — Any automated, self-service device which, upon insertion of money, tokens, or other form of payment, dispenses hemp or hemp products.

HEMP VENDING MACHINE LOCATION — The room, enclosure, space or area where a hemp vending machine is installed and operated.

HEMP SHOP — Any premises dedicated as a business which displays, sells, distributes, delivers, offers, furnishes, manufactures, or markets electronic smoking devices, hemp, and or hemp products.

SMOKE SHOP — Any premises dedicated as a principal business for the display, sale,

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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, which 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 — Any premises dedicated as a principal business for the 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:170-51.9a(2), N.J.S.A. 2A:170-51.9a(3) and N.J.S.A. 2A:170-51.9a(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 electronic smoking devices, nicotine delivery and hemp products.

- A. No person shall sell tobacco, electronic smoking devices, nicotine delivery products, hemp, or hemp products in the Township of Nutley unless an employee of the establishment controls the sale of such products. A person may only sell tobacco, hemp, hemp products, nicotine delivery products or electronic smoking devices in a direct, face-to-face exchange between the retailer and the consumer. Self-service displays and vending machines of tobacco, nicotine delivery products, electronic smoking devices, hemp or hemp products shall be prohibited.
- B. No person shall sell, distribute, or give tobacco, nicotine delivery products, hemp, hemp products, or electronic smoking devices, to any person under the age of 21 years.
- C. Retailers covered under this article shall conspicuously post and reasonably maintain signs where tobacco, nicotine delivery products, hemp, hemp products, or electronic smoking devices are displayed and at all checkout counters notifying customers that proof of age is required to purchase tobacco, nicotine delivery products, electronic

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smoking devices, hemp, or hemp products.

- D. Any person selling tobacco, nicotine delivery products, hemp, hemp products, or electronic smoking devices shall verify by means of government-issued photographic identification containing the bearer's date of birth that no person purchasing the tobacco, nicotine delivery products, hemp, or hemp 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, nicotine delivery products, electronic smoking devices, hemp, or hemp 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, nicotine delivery products, hemp, hemp products, or electronic smoking devices 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, nicotine delivery products, hemp, hemp products, or electronic smoking devices shall be visible from a public sidewalk, street, or right-of-way, or any other public view.
- B. All tobacco products, nicotine delivery products, hemp, hemp products, or electronic smoking devices shall be stored indoors and on-site.

§ 652-8. Hours of operation.

Smoke shops, vape shops, hemp shops, hemp retailers may only operate between the hours of 8:00 a.m. through 9:00 p.m.

§ 652-9. Enforcement; license required; fees.

- A. The enforcement authority for this article 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 article.
- D. No person shall sell tobacco, nicotine delivery products, hemp, hemp products, or electronic smoking devices 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

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shall have jurisdiction over all license applications under this article.

(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 \$750. All licenses shall expire on December 31 in the year in which they are issued; however, any license issued in 2024 shall expire on December 31, 2025.

§ 652-10. Violations and penalties.

- A. A person who violates the provisions of this article, 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, nicotine delivery products, hemp, hemp products, or electronic smoking devices 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 nicotine delivery products, hemp, hemp products, or electronic smoking devices in violation of this article 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, hemp, hemp products, or electronic smoking devices of any person convicted of more than one violation of this article.