

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. OF 2016**

**A LOCAL LAW ESTABLISHING CHAPTER 54 OF THE TOWN CODE  
ENTITLED "SALE OF TOBACCO PRODUCTS, LIQUID NICOTINE AND  
ELECTRONIC CIGARETTES TO PERSONS UNDER 21 PROHIBITED".**

**BE IT ENACTED** by the Town Board of the Town of North Hempstead, as follows:

**Section 1. Legislative Intent.**

The Board finds that it is in the best interest of the Town of North Hempstead to establish Chapter 54 of the Town Code entitled "Sale of Tobacco Products, Liquid Nicotine and Electronic Cigarettes to Persons under 21 Prohibited" in order to prohibit any person operating a place of business wherein tobacco products, liquid nicotine and electronic cigarettes are sold or offered for sale from selling such products to individuals under 21 years of age.

**Section 2.**

Chapter 54 of the Town Code is hereby established as follows:

**§ 54-1. Findings; legislative intent.**

**This Town Board hereby finds and determines that the sale of tobacco and related products to individuals under twenty-one years of age should be prohibited in the Town of North Hempstead in order to:**

- A. Further the goals of New York State's tobacco use prevention and control program, as identified in New York State Public Health Law §1399-ii;**
- B. Respond to the fact that tobacco is the leading cause of preventable death and disease in New York State;**
- C. Respond to findings made by the Institute of Medicine, which prepared a report at the request of the U.S. Food and Drug Administration entitled "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products," concluding and suggesting that:**
  - i. Adolescent brains are uniquely vulnerable to the effects of nicotine;**
  - ii. A younger age of initiation is strongly associated with greater nicotine dependence and is also associated with greater intensity and persistence of smoking beyond adolescence and into adulthood;**
  - iii. Almost one in five high school seniors is a current cigarette smoker;**

- iv. Underage users rely primarily on social sources, such as friends and family, to acquire tobacco, and most of these sources are likely to be between eighteen and twenty years old;
  - v. Raising the minimum legal age to twenty-one will mean that those who can legally obtain tobacco are less likely to be in the same social networks as high school students;
  - vi. Delaying initiation rates will likely decrease the prevalence of tobacco users in the U.S. population; and
  - vii. Raising the minimum legal age will likely immediately improve the health of adolescents and young adults by reducing the number who suffer with adverse physiological effects;
- D. Respond to findings that most (nearly 90%) of those addicted to tobacco, start using tobacco before twenty-one years of age;
- E. Respond to the growing rates of electronic cigarette use among youth, which expose users to unhealthy levels of nicotine and other unknown harmful chemicals;
- F. Reduce the exposure of our youth to disease-causing toxins in secondhand smoke and in chemicals emitted from electronic cigarettes, liquid nicotine, shisha, herbal cigarettes, and other age-restricted products as defined herein;
- G. Prevent exposure of youth, who are particularly susceptible to addiction, to the chemically addictive effects of tobacco and related products, in an effort to improve public wellness and reduce health insurance expenditures;
- H. Protect young Town residents from the unregulated and unknown effects of electronic cigarettes, herbal cigarettes, and other age-restricted products;
- I. Act in furtherance of a 2016 report from the Centers for Disease Control and Prevention, which recommended that states and communities work to limit where and how e-cigarettes are sold;
- J. Respond to findings made by the Centers for Disease Control and Prevention that e-cigarette use among teens tripled between 2013 and 2014, and from 2011 to 2015, and the use of e-cigarettes increased nearly 10 times for high schoolers. E-cigarettes are now the primary form of tobacco use amongst teens. Furthermore, after e-cigarettes and cigarettes, the Centers for Disease Control and Prevention reports that hookah tobacco is the third most popular form of tobacco used by middle schoolers;

**K. Respond to findings made by the Centers for Disease Control and Prevention, which prepared a report entitled “Tobacco Use Among Middle and High School Students — United States, 2011–2015” concluding that:**

- i. Electronic nicotine delivery system (ENDS) use among teens has surged in recent years, and now stands at 16 percent among high school students. ENDS are the most commonly used tobacco product among high school students; and**
- ii. In 2015, 8.6 percent of high school students were current cigar smokers; 11.5 percent of boys and 5.6 percent of girls. High school boys smoke cigars at a higher rate than cigarettes.**

**L. Respond to finding that e-cigarettes and similar devices pose health hazards and may contribute to youth smoking and reduced cessation, regardless of nicotine content since the devices contain or produce chemicals other than nicotine known to be toxic, carcinogenic and causative of respiratory and heart distress. E-cigarettes and similar devices look identical whether they contain nicotine or not, and as a result, their use not only normalizes e-cigarette use, but also renormalizes tobacco addiction and use of tobacco products, like combustible cigarettes; and**

**M. Protect young Town residents from smokeless tobacco products, which according to the Centers for Disease Control and Prevention are known to cause lung, larynx, esophageal, and oral and pancreatic cancers. According to the National Institute on Drug Abuse, a dip of smokeless tobacco typically contains 3-5 times more nicotine than a cigarette. Research shows that smokers have difficulty switching from cigarettes to smokeless tobacco resulting in many users becoming dual users of both cigarettes and smokeless products.**

**§ 54-2. Definitions.**

**A. Unless otherwise expressly stated, the following terms shall, for the purpose of this code, have the meanings indicated in this section. Words used in the present tense include the future; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular. Where terms are not defined in this code, then the words as defined in New York State Public Health Law Article 13-F shall prevail; and if the term is not defined in either, then the word as defined in the most current edition of Webster's Dictionary shall prevail.**

**For the purpose of this ordinance, the terms used herein are defined as follows:**

### ACCESSORY

Any product that is intended or reasonably expected to be used with or for the human consumption of a tobacco product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco product; or (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco product but (a) solely controls moisture and/or temperature of a stored tobacco product; or (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

### AGE-RESTRICTED PRODUCTS

- i. Tobacco products, shisha, herbal cigarettes, electronic aerosol delivery systems, and smoking paraphernalia; and
- ii. All other products prohibited from being sold to minors by New York State Public Health Law Article 13-F, as the same may be amended from time to time.

### COMPONENT OR PART

Any software or assembly of materials intended or reasonably expected: (1) to alter or affect the tobacco product's performance, composition, constituents, or characteristics; or (2) to be used with or for the human consumption of a tobacco product. Component or part excludes anything that is an accessory of a tobacco product, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for Electronic Aerosol Delivery Systems.

### ELECTRONIC AEROSOL DELIVERY SYSTEM

An electronic device that, when activated, produces an aerosol that may be inhaled, whether or not such aerosol contains nicotine. Electronic Aerosol Delivery System includes any component or part but not accessory, and any liquid or other substance to be aerosolized, whether or not separately sold. Electronic Aerosol Delivery System does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

**ENFORCEMENT OFFICER**

**Any police officer, building official, code enforcement officer, inspector, county health inspector or other employee of the Town of North Hempstead authorized to enforce this code.**

**SHISHA**

**Any product made primarily of tobacco or other leaf or herbs, or any combination thereof, smoked or intended to be smoked in a hookah or water pipe.**

**SMOKING PARAPHERNALIA**

**Any pipe, water pipe, hookah, rolling papers, vaporizer or any other device, equipment or apparatus designed for the inhalation of tobacco;**

**TOBACCO PRODUCT**

**Any product made or derived from tobacco or which contains nicotine marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption, including cigarettes, cigars, chewing tobacco, powdered tobacco, bidis, gutka, other tobacco products, nicotine water. Tobacco product does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.**

**TOWN**

**The unincorporated areas of the Town of North Hempstead.**

**§ 54-3. Prohibitions.**

- A. No person shall sell or permit the sale of age-restricted products to any person under the age of twenty-one.**
- B. The identification requirements contained in New York State Public Health Law Article 13-F Section 1399-cc(3), as the same may be amended from time to time, are hereby incorporated into this chapter by reference, except that the age to be proven by such identification shall be twenty-one.**
- C. Age-restricted products may not be sold in vending machines located in the Town.**
- D. No person operating a place of business wherein age-restricted products are sold or offered for sale shall sell, permit to be sold, offer for sale or display for sale any age-restricted product in any manner, unless such age-restricted product is stored for sale (a) behind a counter in an area accessible only to the personnel of such business, or (b) in a locked container; provided, however, such restriction shall not apply to tobacco businesses as defined in subdivision eight of §1399-aa of New York State Public Health**

Law Article 13-F, as the same may be amended from time to time, and to places to which admission is restricted to persons twenty-one years of age or older.

§ 54-4. Posting of Signs.

- A. No person shall sell or permit the sale of an age-restricted product in the Town unless a notice is posted in a conspicuous place at the location where the age-restricted product is sold.
- B. The sign shall provide notice, which shall state: "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWDERED TOBACCO, SHISHA, BIDIS, GUTKA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS, OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE, IS PROHIBITED BY LOCAL LAW."
- C. Such sign shall be printed on a white card in red letters at least one-half inch in height. Signs shall be protected from tampering, damage, removal, or concealment.

§ 54-5. Enforcement.

- A. The enforcement officer is charged with ensuring compliance with this chapter.
- B. The enforcement officer shall be authorized to serve official notices of violation of this chapter.
- C. For a violation of this chapter:
  - i. The enforcement officer may issue and serve upon the person complained against a written hearing notice, together with a complaint. Service of such notice shall be deemed complete upon personal delivery or, if delivered by certified first-class mail, after three days in Nassau County or its adjoining counties, or five days for other locations.
  - ii. The complaint shall specify the provision(s) of this chapter of which such person is alleged to be in violation, accompanied by a statement of the manner in which that person is alleged to have violated it, and shall require the person so complained against to answer the charges of such complaint at a public hearing before the Town Clerk or his or designee, at a specified location, date, and time, not fewer than fifteen (15) days after the date of service of the notice;
  - iii. Notwithstanding the above, the Town Clerk or his or her designee may, in his or her discretion, offer a proposed stipulation to the person complained against, in which case the person complained against will

have the option of executing the proposed stipulation within any time frame specified, or proceeding with a formal hearing;

- iv. When the Town Clerk or his or her designee determines after a hearing that a violation of this chapter has occurred, a civil penalty may be imposed by the hearing officer pursuant to § 54-6 of this chapter.
- v. Nothing herein shall be construed as prohibiting the Town Attorney or his or her designee from commencing a proceeding for injunctive relief to compel compliance with this chapter;
- vi. Any person who desires to register a complaint under this chapter may do so through the enforcement officer;
- vii. The decision of the Town Clerk or his or her designee shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules; and
- viii. The Town Attorney or his or her designee, subsequent to any appeal having been finally determined, may bring an action in a court of proper jurisdiction to recover the civil penalty assessed in accordance with § 54-6. of this chapter.

#### § 54-6. Violations and Penalties.

Violation of any provision of this chapter shall be punishable by a civil penalty in an amount determined by the Town Clerk or his or her designee, within the parameters of the minimum and maximum penalties set forth in New York State Public Health Law §1399-ee(2), as the same may be amended from time to time.

#### § 54-7. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or business shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its specific application.

#### § 54-8. Effective Date.

This local law shall become effective March 1, 2017.

#### Section 4.

This Local Law shall be effective March 1, 2017.