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PRINCETON BOARD OF HEALTH ORDINANCE 2016- 02 BOH

AN ORDINANCE BY THE PRINCETON BOARD OF HEALTH TO AMEND IN ITS ENTIRETY CHAPTER BH: 13 OF THE PRINCETON BOARD OF HEALTH CODE ENTITLED "RETAIL SALE OF TOBACCO PRODUCTS" TO INCLUDE REGULATION AND LICENSING OF THE SALE OF ELECTRONIC SMOKING DEVICES, AND TO AMEND RELATED SECTIONS OF CHAPTER 13.

WHEREAS, Chapter 13 of the Princeton Board of Health Code, entitled "Retail Sale of Tobacco Products," prohibits the sale of tobacco and nicotine delivery products to persons under the age of 21; and

WHEREAS, the Princeton Board of Health desires to amend and supplement the aforesaid Chapter 13 to include regulation and licensing of the sale of electronic smoking devices, and to amend related sections of the chapter;

NOW THEREFORE BE IT ORDAINED by the Princeton Board of Health as follows:

Section 1. Chapter 13 of the Princeton Board of Health Code is hereby amended in its entirety to read as set forth in the attached Exhibit A, which is annexed hereto and made a part hereof.

Section 2. Copies of this Ordinance are on file in the office of the Department of Health where they shall remain available for public inspection.

Section 3. All ordinances and resolutions or parts thereof inconsistent with this Ordinance are repealed.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

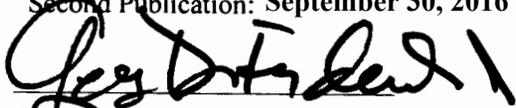
Section 5. This Ordinance shall take effect 30 days after its passage and publication, or as otherwise provided by law, but shall not become operational until January 21, 2017; until said date, the current Chapter 13 of the Princeton Board of Health Code shall remain in full force and effect.

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George DiFerdinando, MD, MPH, Chair

Princeton Board of Health



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Princeton Board of Health

Exhibit A

**CHAPTER BH: 13. RETAIL SALE OF TOBACCO PRODUCTS
AND ELECTRONIC SMOKING DEVICES: LICENSING**

Article I. General.

BH: 13-1. Definitions

As used in this chapter:

Electronic smoking device means an electronic or other powered device that can be used to deliver nicotine or other substances to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, cigarillo or pipe, or any cartridge or other component of the device or related product including but not limited to any substances used in such devices, such as liquids or powders.

Health department means the Princeton Health Department.

Health Officer means the Princeton Health Officer or designee.

Nicotine delivery product means 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 means an individual, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Retail electronic smoking device establishment means a physical establishment, duly licensed by the Board of Health, that sells, offers for sale, gives, distributes or furnishes electronic smoking devices designed for consumption through inhalation.

Tobacco means 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 means 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.

Tobacco vending machine means any automated, self-service device which, upon insertion of money, token, or other form of payment, dispenses nicotine delivery products, cigarettes, or other tobacco products.

BH: 13-2. Requirements and Prohibitions.

(a) No person shall sell tobacco, nicotine delivery products, or electronic smoking devices in Princeton unless an employee of the establishment controls the sale of such products. A

person may only sell tobacco, 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 or electronic smoking devices are prohibited.

(b) No person shall sell or offer for sale at any cost or no cost, distribute, furnish or give tobacco, nicotine delivery products or electronic smoking devices to any person under the age of 21 years.

(c) Tobacco Retailers and licensed retail electronic smoking device establishments shall conspicuously post and reasonably maintain signs having a minimum size of six inches by eight inches where tobacco, nicotine delivery products or electronic smoking devices are displayed and at all check-out counters notifying customers that proof of age is required to purchase such products.

(d) Any person selling tobacco, nicotine delivery 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 containing products or electronic smoking device 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 or electronic smoking devices to a person less than 21 years of age based on a note or any form of communication from any person.

(e) No person or retailer selling tobacco, nicotine delivery products or electronic smoking devices shall allow an employee to sell or distribute such products until the employee has read the Princeton Board of Health Code and state laws pertaining to the sale or distribution of tobacco, nicotine delivery products or electronic smoking devices and has signed a statement that the employee has read such Code and State laws. Form statements will be supplied by the Health Department and the signed original statement shall be filed with the Health Department and a copy shall be kept on file by the retailer and made available for review by the Health Officer.

(f) The sale of any electronic smoking device refill liquid that is intended for human consumption that is not contained in packaging that is child-resistant, whether or not such liquid contains nicotine, is prohibited as set forth in N.J.S.A. 2A:170-51.9 et. seq.

Article II. License Required for Retail Electronic Smoking Device Establishments

BH: 13-3. License Required; Fees.

(a) No person shall conduct, maintain or operate a retail electronic smoking device establishment that sells, or offers for sale at any cost or no cost, distributes, furnishes or gives electronic smoking devices without first obtaining from the Princeton Board of Health a license to do so on the premises

(b) No itinerant establishments or vendors shall be permitted to obtain an electronic smoking device establishment license.

(c) Fees in accordance with the following schedule shall be paid before any license required in this article shall be issued:

Annual electronic smoking device establishment License fee **\$1,200.00**;
license fees will not be prorated for periods of fewer than twelve months.

(d) Licenses issued under the provisions of this article, unless forfeited to or revoked by the Board of Health, shall expire annually on the 31st day of January each year or whenever the licensed establishment is no longer operating as a retail electronic smoking device establishment, whichever occurs first. Renewal applications are to be filed on or before January 31 each year.

(e) Such license shall be posted in a conspicuous place in such establishment.

(f) All licensing fees shall be paid to the Municipality of Princeton and maintained by Princeton's chief financial officer.

BH: 13-4. License Transfers; "Pocket" Licenses.

(a) No license is transferrable by sale or otherwise; a license is valid only for the specific premises and person listed thereon.

(b) No "pocket" licenses shall be issued and no existing license shall be converted to a "pocket" license.

Article III. Enforcement and Penalties

BH: 13-5. Enforcement.

(a) The enforcement authority for this chapter shall be the Chief of Police, Health Officer, or their designees.

(b) The Health Officer may, after giving proper identification, inspect any matter, thing, premise, place, person, record, vehicle, incident, or event as necessary to execute all official duties in a manner prescribed by law.

(c) It shall be unlawful for any person to molest, willfully oppose, verbally abuse or otherwise obstruct the Health Officer in the enforcement of this chapter, and the Health Officer may request the assistance of the Princeton Police Department or other police agency or peace officer when necessary to enforce this chapter. .

(d) Civilian complaints may be filed in Municipal Court against violators of this chapter.

BH: 13-6. Penalties.

(a) Any person who violates the provisions of this chapter, (including any employee of a tobacco retailer licensed under N.J.S.A. 54:40A-1 et seq.) who actually sells or otherwise provides tobacco products or electronic smoking devices to a person under 21 years of age, shall be liable to a civil penalty of not less than \$250 for the first violation, not less than \$500 for the second violation, and \$1,000 for the third and each subsequent violation. Complaint shall be made in the municipal court of Princeton or before such other judicial officer having authority under the laws of the State of New Jersey

(b) Each violation of a provision of this chapter shall constitute a separate violation.

(c) In addition to the penalties set forth in subsection 6(a) above, in accordance with Chapter 1 of this Code, the Princeton Board of Health or Health Officer may:

(i) suspend the retail food establishment license of any person convicted of violation of this chapter for a period of not more than 3 days, pursuant to the authority of the Board of Health to license and regulate food establishments as provided by N.J.S.A. 26:3-31(c); and

(ii) suspend or revoke a retail electronic smoking device establishment license.

(d) The foregoing civil penalties are in addition to any penalties that may be imposed under N.J.S.A. 2A:170-51, et seq. and N.J.S.A. 2C:33-13.1, et seq.

(e) The defenses enumerated in N.J.S.A. 2A: 170-51.4b and N.J.S.A. 2C: 33-13.1b shall constitute defenses to any prosecution brought pursuant to BH: 13-2 (b).

(f) Fines associated with this chapter shall be paid to the Municipality of Princeton and maintained by Princeton's chief financial officer.