

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

**A LOCAL LAW AMENDING CHAPTER 70 OF THE TOWN CODE  
ENTITLED "ZONING"**

**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 make amendments to Chapter 70 entitled "Zoning" in order to establish restrictions related to the advertising of electronic cigarettes, liquid nicotine and hookah tobacco in any outdoor area within 500 feet of any child day-care center, park or school, or within the interior of any building or structure which is within 500 feet of any child day-care center, park or school, when such advertisement is within five feet of any exterior window or any door which is used for entry or egress to the building or structure by the public; except that such advertisements may be placed or maintained in the interior of any such premises where they are parallel to said windows or entryways and face inward or are affixed to a wall panel or similar fixture that is perpendicular to said windows or entryways.

**Section 2.**

Chapter 70, Article XXIB, § 70-201.6 of the Town Code is hereby amended as follows:

§ 70-201.6. Tobacco and electronic cigarette advertising regulations.

**A. Legislative intent and findings.**

~~[(1) The Town Board and the staff of the Town of North Hempstead have conducted land use studies of the location of tobacco advertisements in proximity to schools, parks and child day care centers. In addition, the Town has examined the actions and codes of other municipalities, including the City of New York, the Town of Huntington and the City of Long Beach.]~~

~~[(2)]~~**1** The Town Board of the Town of North Hempstead finds that restricting the exposure of minors to advertising regarding tobacco and tobacco products is constitutional when achieved through reasonable, targeted limitations on such advertising in the vicinity of schools and other locations where it is well established that children tend to congregate. It is the intention of the Town Board to enhance and augment compliance with and enforcement of federal, state and local laws prohibiting the sale or distribution of tobacco products to minors, and to protect such minors against such illegal sales.

~~[(3)]~~**2** The Centers for Disease Control and Prevention has reported that, while the rate of adult smoking of tobacco products has decreased nationwide by 50% between 1971 and

1993, the rate of smoking among all high school students has increased by 26% during the years 1991 through 1996, and ~~[now stands]~~ **in 2000 stood** at the highest rate since 1981. It is further noted that this dramatic increase has occurred contrary to and at variance with the laws of all 50 states prohibiting sale and distribution of tobacco products to minors, and the pledge of all tobacco product manufacturers to adhere to a voluntary industry code prohibiting advertising of such products in a manner appealing to minors.

([4]3) In 1991, a study of the Journal of the American Medical Association concluded that "...cigarette advertising encourages youth to smoke and should be banned." In 1994, a report of the National Institute of Medicine stated that "...the substantial convergent evidence that advertising and promotion increase tobacco use by youth is impressive and ... provides a strong basis for legal regulation." In 1995, a report of the Federal Centers for Disease Control and Prevention found that "...cigarette marketing practices appeared to be the most likely to account for [the] increase in teen smoking initiation rates."

([5]4) In 1997, Liggett & Myers, Inc., a cigarette manufacturer, made the following acknowledgement in executing a settlement agreement with the Attorney Generals of 17 states, including the State of New York: "...Liggett acknowledges that the tobacco industry markets to 'youth,' which means those under 18 years of age..."

([6]5) Based upon the preponderance of the evidence that tobacco products are advertised and promoted to minors, and that the rate of use of tobacco products by minors has drastically increased contrary to legislation prohibiting the sale or distribution of such products to minors, the Town Board of the Town of North Hempstead hereby finds and declares it to be in the best interests of minors residing and/or otherwise present within the Town to enact affirmative, reasonable and constitutionally permissible restrictions on the advertising of tobacco products.

([7]6) In enacting this legislation, it is the intent of the Town Board to promote compliance with and enforcement of federal, state and local laws prohibiting sale or distribution of tobacco products to minors, and therefore, in deference to the protections afforded by the First Amendment to the Constitution of the United States, this legislation has been narrowly crafted to place reasonable time, place and manner restrictions on such advertising in those locations where it is well established that minors tend to congregate, while not imposing restrictions on such advertising clearly directed at adults.

**(7) In August 2016, the Food and Drug Administration issued new rules clarifying its own definition of "tobacco products" as any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. As nearly all the nicotine currently used in electronic cigarette devices is derived from tobacco leaves, the Food and Drug Administration has imposed federal minimum age standards on electronic cigarette products and devices.**

(8) The Centers for Disease Control and Prevention has reported that nicotine use is harmful, especially to adolescents. Nicotine exposure at a young age may cause lasting harm to brain development, promote addiction, and lead to sustained tobacco use. The Centers for Disease Control has unequivocally provided that there is no "safe" nicotine delivery for a child or teen.

(9) According to the Centers for Disease Control and Prevention, e-cigarette use among teens tripled between 2013 and 2014, and from 2011 to 2015, 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 used form of tobacco used by middle schoolers.

(10) In a 2016 report, the Centers for Disease Control and Prevention recommended that states and communities work to limit where and how e-cigarettes are sold, and reduce ad exposure.

(11) This Board further finds that e-cigarette manufacturers have marketed their products to appeal to and attract young people and these products are commonly referred to as "training wheels" for traditional cigarettes.

(12) Therefore, the purpose of this legislation is to restrict advertising of electronic cigarettes, liquid nicotine and hookah tobacco in any outdoor area within 500 feet of any child day-care center, park or school, or within the interior of any building or structure which is within 500 feet of any child day-care center, park or school, when such advertisement is within five feet of any exterior window or any door which is used for entry or egress to the building or structure by the public; except that such advertisements may be placed or maintained in the interior of any such premises where they are parallel to said windows or entryways and face inward or are affixed to a wall panel or similar fixture that is perpendicular to said windows or entryways.

#### B. Definitions and word usage.

(1) Definitions. For the purposes of this section, the following terms shall have the meanings indicated herein, unless specifically indicated otherwise:

##### CHILD DAY-CARE CENTER

(a) Includes the following:

[1] Any child-care arrangement, public, private or parochial child-care center, school-age child-care program, day nursery school, kindergarten, play school or other similar school or service operating pursuant to authorization, license or permit of New York State.

[2] Any facility that provides child-care services as defined in § 410-p of the New York State Social Services Law.

[3] Any child day-care center as defined in § 390 of the New York State Social Services Law.

(b) Said definition shall apply whether or not care is given for compensation, but shall not include child day-care centers located in private dwellings and multiple dwelling units.

#### CIGAR

Any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco other than a cigarette.

#### CIGARETTE

Includes the following:

- (a) Any roll of tobacco wrapped in paper or any other substance not containing tobacco.
- (b) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco contained therein, or its packaging and labeling, is offered for use or purchase as a cigarette as described in Subsection (a) of this definition.

#### DWELLING

Includes the following:

- (a) **MULTIPLE DWELLING** Any building or group of buildings designed for or occupied exclusively by three or more families living independently of each other.
- (b) **MULTIPLE DWELLING UNIT** Any separate, independent unit of residential accommodation in a multiple dwelling.
- (c) **PRIVATE DWELLING** Any building or structure or portion thereof that may lawfully be occupied for residential purposes by not more than two families, including the grounds of such building or structure.

#### NICOTINE

Includes the following:

- (a) **ELECTRONIC CIGARETTE** An electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge and any other component of such a device.
- (b) **HERBAL CIGARETTE** Any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as a cigarette, cigar, or pipe filler.
- (c) **LIQUID NICOTINE** A liquid composed of nicotine and other chemicals, and which is sold as a product that may be used in an electronic cigarette.
- (d) **NICOTINE PRODUCT** Nicotine in any form, including but not limited to electronic cigarette, herbal cigarette, liquid nicotine, or tobacco.

#### NICOTINE PRODUCT ADVERTISEMENT

Includes any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors or any other indicia of

**product identification identical or similar to, or identifiable with, those used for any brand of nicotine product, or any combination thereof, the purpose or effect of which is to promote the use, sale or distribution of a nicotine product through such means as, but not limited to, the identification of a brand of a nicotine product, a trademark of a nicotine product or a trade name associated exclusively with a nicotine product.**

**PARK**

Includes active and passive public lands designated for park purposes by the Town of North Hempstead, County of Nassau, State of New York, United States of America or any other subdivision of government.

**PERSON**

Any natural person, partnership, copartnership, firm, company, corporation, limited liability corporation, association, joint stock association or other legal entity.

**SCHOOL**

Includes buildings, structures, premises or places, together with the grounds thereof, which are used primarily for public or private educational facilities at or below the twelfth grade level, as recognized and defined by the New York State Department of Education, including but not limited to preschools; kindergartens; nursery, elementary, primary, intermediate, junior high, middle, secondary, high, vocational and special.

**SMOKING PARAPHERNALIA**

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

**SMOKING PARAPHERNALIA ADVERTISEMENT**

**Includes any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of smoking paraphernalia, or any combination thereof, the purpose or effect of which is to promote the use, sale or distribution of smoking paraphernalia through such means as, but not limited to, the identification of a brand of smoking paraphernalia, a trademark of smoking paraphernalia or a trade name associated exclusively with smoking paraphernalia.**

**TOBACCO**

Includes the following:

- (a) CIGARETTE TOBACCO Loose tobacco intended for use in what is commonly advertised as a cigarette.

(b) **HOOKAH TOBACCO** Includes any product made primarily of tobacco or other leaf, or any combination thereof, smoked or intended to be smoked in a hookah or water pipe, including Shisha.

(c) SMOKELESS TOBACCO Includes any cut, ground, powdered or leaf tobacco that is intended to be placed in a person's oral cavity.

~~(e)~~(d) TOBACCO PRODUCT Tobacco in any form, including but not limited to a cigar, cigarette, loose tobacco, **hookah tobacco**, smokeless tobacco or cigarette tobacco.

#### TOBACCO PRODUCT ADVERTISEMENT

Includes any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product, or any combination thereof, the purpose or effect of which is to promote the use, sale or distribution of a tobacco product through such means as, but not limited to, the identification of a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product.

(2) Word usage. Words used in the singular in this section shall include the plural and vice versa. The word "shall" is always mandatory.

C. Restrictions. It shall be unlawful for any person to place, cause to be placed, maintain or cause to be maintained, a tobacco product advertisement, **nicotine product advertisement, or smoking paraphernalia advertisement, that is more than five by eight inches in size, and in any colors besides black, white, and grayscale,** in the following manner:

(1) In any outdoor area within [1,0]500 feet, in any direction, of any child day-care center, park or school. **No more than five of such advertisements may be displayed in such outdoor areas per location.**

(2) In the interior of a building or structure which is within [1,0]500 feet, in any direction, of any child day-care center, park or school, when such advertisement is within five feet of any exterior window or any door which is used for entry or egress to the building or structure by the public; except that such advertisements may be placed or maintained in the interior of any such premises where they are parallel to said windows or entryways and face inward or are affixed to a wall panel or similar fixture that is perpendicular to said windows or entryways.

#### D. Exceptions.

(1) Nothing in this section shall prevent a tobacco product, **nicotine product or smoking paraphernalia** manufacturer, distributor or retailer from placing, causing to be placed, maintaining or causing to be maintained, its corporate or other business name on a building or structure, in any location, where such building or structure or a portion thereof is owned, operated or leased by them as their principal place of business; provided, however, that said corporate or other business name is properly registered or filed in the United States and/or they are duly authorized to do business in any state and said corporate or business name does not include any tobacco product, **nicotine product, or smoking paraphernalia** advertisement as defined in this section.

(2) Nothing contained in this subsection shall be construed to authorize the placement of any sign, advertising device or tobacco product, **nicotine product, or smoking paraphernalia** advertisement in a location where such placement is otherwise prohibited by the Code of the Town of North Hempstead or other applicable law.

E. Compliance. The owner, operator and/or lessee of any location or premises where tobacco product, **nicotine product or smoking paraphernalia** advertisement is prohibited or restricted pursuant to the requirements of this section shall have 30 days from the effective date of this section to remove any noncompliant tobacco product, **nicotine product or smoking paraphernalia** advertisements.

F. Civil proceedings. In addition to any other remedy provided by law, the Town may bring any civil and/or injunction proceeding necessary to enforce and/or enjoin noncompliance with this article.

G. Severability. If any clause, sentence, paragraph, subdivision, section or other part of this article shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder of this article, and it shall be construed to have been the legislative intent to enact this article without such unconstitutional or invalid parts therein.

#### Section 3.

This Local Law shall take effect immediately upon filing with the Secretary of State.