

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2019**

**A LOCAL LAW ESTABLISHING CHAPTER 38A OF THE TOWN CODE
ENTITLED “LANDSCAPING AND GARDENING”**

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 38A of the Town Code entitled “Landscaping and Gardening” in order to regulate commercial landscape gardening activities within the Town.

Section 2.

Chapter 38A of the Town Code is hereby established to read as follows:

§ 38A-1. Legislative Intent.

This Local Law establishes Chapter 38A of the Town Code entitled “Landscaping and Gardening” to advance the interests of Town residents in encouraging green landscaping practices, protecting public health by reducing emissions from the use of gas-powered leaf blowers, and deterring unlicensed landscapers.

The Board enacts this law after discussions between concerned residents, professional landscapers and Town staff about gas-powered leaf blowers; after reviewing legislation enacted by other communities on gas-powered leaf blowers; and after learning from manufacturers of electric landscaping equipment about the state of the industry.

Based on this research and testimony, the Board finds that certain commercial landscaping and gardening activities may pose a risk of noise, odor, pollution or other nuisances and may otherwise disturb the public health and welfare of Town residents. Scientific studies have been presented to this Board indicating that emissions from gas-powered leaf blowing equipment can cause deleterious health effects for those in the vicinity of their use. Further, the use of this equipment causes an unreasonable amount of noise that is detrimental to the enjoyment of property within the Town. These issues have garnered attention in New York and nationally, with a growing number of municipalities choosing to regulate gas-powered leaf blowers.

The Board also finds that certain landscaping companies operate within the Town in violation of the Town Code. The Board finds that since the Town does not license commercial landscapers, the Town does not have the tools it needs for proper enforcement of regulations regarding commercial landscaping.

It is the intent of this law to use the Town’s power under the Town Law and the Municipal Home Rule Law to limit the use of gas-powered leaf blowers and to create a licensing

requirement for commercial landscapers to make it easier to regulate commercial landscapers who do not comply with Town Code.

§ 38A-2. Definitions.

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

COMMERCIAL LANDSCAPING

The business or trade of rendering any landscaping, gardening or groundskeeping services, as defined herein, either as principal, independent contractor, or through an agent or employee, for a fee, charge, or other compensation, to or for the benefit of any owner, tenant, or occupant of lands, grounds, or buildings.

GARDENING

The tilling, sowing, cultivating, trimming, fertilizing, pruning, cutting, shaping, treating, spraying, or otherwise maintaining and/or providing care for any lawn, sod, tree, flower, shrub, bush, plant, or other flora on any lot, plot, or parcel of land.

GAS – POWERED LEAF BLOWER

Any device powered by a gasoline, diesel or similar fuel engine which is used, designed, or operated to produce a current of air for the purpose of pushing, propelling or blowing leaves, dirt, gardening and grass clippings and cuttings, refuse or debris.

GROUNDSKEEPING

The cleaning of any lot, plot, or parcel of land by means of gathering and/or removing weeds or any fallen, diseased, dead, or discarded tree limbs, branches, brush, leaves, grass, or lawn clippings, fruit or flower waste, or other plant waste and any litter, dirt, debris, rubbish, or other refuse or waste present or engendered on or about the premises. Groundskeeping does not include the removal of litter, dirt, debris, rubbish, or other refuse or waste by a commercial refuse carter which is not performing any other commercial landscaping services to or for the benefit of the owner, tenant, or occupant of the lands, grounds, or buildings from which the removal is taking place.

HOLIDAY

New Year's Day, Memorial Day, the Fourth of July, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day.

LANDSCAPER

An individual, firm, corporation, or other entity performing commercial landscaping services.

LANDSCAPING

The planting, transplanting, arranging, placing, and/or removal of any lawns, sod, trees, flowers, shrubs, bushes, plants, or other flora on any lot, plot, or parcel of land for a planned design or purpose or to achieve some aesthetic effect.

TOWN

The Town of North Hempstead.

TOWN BOARD

The Town Board of the Town of North Hempstead.

§ 38A-3. License required; exceptions.

- A. It shall be unlawful for any person to engage in, or practice the trade or business of, commercial landscaping within the Town without having first obtained and having in force a license pursuant to the requirements of this chapter.
- B. Commercial landscaping may be performed without a license by:
- (1) An employee of the owner, lessee, or occupant of the property on which the work is being performed, provided that such employee does not provide commercial landscaping for other properties within the Town within any one calendar year, and such employee has no employees of his or her own who are performing commercial landscaping within the Town. The term "employee" as used in this section 38A-3 is limited to persons who are treated by the owner, lessee, or occupant as an employee pursuant to all New York State and federal labor and income tax laws.
 - (2) A person who is less than 21 years of age and who is performing the commercial landscaping for his or her own account and not as an employee of another person or entity and has no employees of his or her own who are performing commercial landscaping within the Town.

§ 38A-4. Application procedure; fee; expiration; decals.

- A. Any landscaper applying for a license shall file with the Town Clerk a written application upon forms to be furnished by the Town Clerk. Each application shall be accompanied by a copy of a valid license issued by the Nassau County Office of Consumer Affairs necessary to conduct commercial landscaping within Nassau County.
- B. Each applicant for a license shall pay a nonrefundable filing fee with the application. Such fee shall be the fee stated in the Town of North Hempstead Fee

Schedule. The Town Board shall provide for a reduced filing fee for any applicant who can provide receipts showing that five (5) or more pieces of landscape gardening equipment powered by electric or battery motors have been purchased by the applicant.

C. All licenses issued pursuant to this chapter shall expire on the last day of December in the calendar year three (3) years following the year in which they have been issued. Licenses may be renewed for additional three (3) year terms upon the filing of a renewal application and payment of the fee in an amount stated in the Town of North Hempstead Fee Schedule.

D. Landscapers licensed pursuant to this chapter shall, at all times, keep a copy of the license in every truck, dump truck, van, or other motor vehicle owned, leased, or otherwise used by any person engaged in commercial landscaping and shall immediately produce the license for inspection by any person lawfully requesting the production of the license, including but not limited to any peace or police officer and any inspector, official, officer or employee of the Town or other government agency or authority.

E. The Town shall provide decals to each licensed landscaper, which decal shall be attached to the bumper of every truck, dump truck, van or other motor vehicle owned, leased or otherwise used by any person engaged in commercial landscaping at all times when the vehicle is located within the Town.

§ 38A-5. Reciprocity.

The Town Clerk may issue a license pursuant to this chapter without the application required under this chapter to any landscaper who shall submit a certified copy of a license issued by any other municipality within the geographic boundaries of the Town of North Hempstead whose licensing requirements are substantially the equivalent of those established by this chapter, provided that such municipality extends similar reciprocity to licensees of the Town of North Hempstead.

§ 38A-6. Regulations.

A. No landscaper or other person shall individually, or cause or permit any other person who is providing commercial landscaping services for them or who is otherwise within their employ or control to:

1. Blow, rake, place, spill, dump, or otherwise deposit, any leaves, grass, garbage, refuse, cuttings, wood, oil, pesticides or other materials or debris from one property onto any public property, including, but not limited to, streets, sidewalks and rights-of-way, or the private property of another person, without such other person's permission. In any prosecution for a violation of this provision, it shall be an affirmative defense that such other

person gave the alleged offender permission to blow, rake, place, spill, dump or otherwise deposit such material or debris on such other person's property.

- 2. Remove leaves, clippings or other yard waste in a truck, dump truck, van, or other motor vehicle, trailer, container, or other towable device without securing a tarpaulin or other cover to prevent spillage where such leaves, clippings or other yard waste do not remain on the property as mulch.**
 - 3. Spill or dump any oil, gasoline or other petroleum products within the Town.**
 - 4. Fill or refill any machinery or equipment with any fuel or lubricant except over a drop cloth or other device designed to catch and retain any accidental spillage.**
 - 5. Remove, destroy, or alter any tree in violation of Chapter 20A of the Town Code or otherwise in violation of state law.**
 - 6. Perform any commercial landscaping on:**
 - a. Sundays and holidays;**
 - b. Saturdays before 10:00 a.m. or after 5:00 p.m.; and**
 - c. Weekdays before 8:00 a.m. or after 7:00 p.m.**
 - 7. Operate any equipment in violation of Chapter 38 of the Town Code, except as provided herein.**
 - 8. Operate any equipment which emits excessive fumes.**
 - 9. Burn any wastepaper, rubbish, leaves, cuttings, wood, or other waste materials.**
- B. All commercial landscaping shall be performed in accordance with the laws, ordinances, rules, and regulations of the United States, the State of New York, the County of Nassau, and the Town.**

§ 38 A-7. Gasoline or Diesel Powered Leaf Blowers.

- A. No Landscaper or Town employee performing landscaping on Town-owned property shall operate any gas-powered leaf blower during the period from June 15 through and including September 15.**

- (1) During times of emergency as determined by the Supervisor, the Commissioner of Public Safety may temporarily suspend the restriction contained in this subsection.
- (2) The Commissioner of Public Safety may, in his or her discretion and upon application, grant a temporary permit to allow the operation of one or more gas-powered leaf blower to accommodate a special circumstance. By way of illustration, a “special circumstance” includes, among other things, the remediation of an abandoned or neglected property, the cleanup of streets and roadways following a severe storm or any emergency situation which presents an immediate danger to public health and safety.
- (3) This subsection shall not apply to the operation of gasoline or diesel powered leaf blowers operated in the course of performing groundskeeping, gardening or landscaping services at golf courses or cemeteries, except when the equipment is operated within 100 feet of a lot containing a residence.

B. There is hereby established a Landscaper Advisory Committee to assist and advise the Town Board on matters relating to landscaping within the Town. The advisory committee shall be composed of up to nine (9) members and shall include representatives from the Supervisor’s office, the Office of the Town Clerk, the Department of Parks and Recreation, licensed landscapers and such other members as the Supervisor shall appoint. The Landscaper Advisory Committee shall designate one of its members as Chairperson. The Committee is authorized to adopt rules and establish procedures for its meetings.

§ 38A-8. Suspension or revocation of license.

- A. Whenever it shall appear, to the satisfaction of the Town Clerk, that there has been any false statement, or any misrepresentation as to a material fact, in the application on which a license was based, or that any license has been issued in error, or that there has been a material failure to comply with any statute, ordinance, rule, or regulation, or with any condition upon which a license was granted, or that the further use of the license or the exercise of the privilege thereunder could cause or tend to cause injury, damage, or unreasonable annoyance to a reasonable person of normal sensitivities, or to property within the Town, the Town Clerk may, upon not less than five (5) days' notice by certified mail, return receipt requested, suspend such license for a period not to exceed thirty (30) days, without refunding any portion of the registration fee, or revoke the license.
- B. Any applicant who shall have been denied a license under this chapter by the Town Clerk or whose license has been suspended or revoked by the Town Clerk may apply to the Town Board for review of the denial, suspension or revocation as herein provided.

- 1. The application to review the Town Clerk's determination shall be in writing, signed and verified by the applicant, and shall state the reasons for claiming that the Town Clerk's determination was erroneous.**
- 2. The application must be filed with the Town Clerk within twenty (20) days of the receipt by the applicant, either by mail or in person, of the notice of the denial, suspension or revocation.**
- 3. Upon the filing of the application for review, the Town Clerk shall request that the Town Board schedule, and the Town Board shall hold, a hearing at a date, place and hour designated by the Town Board, but in no event shall this date exceed thirty (30) days from the date of the filing of the application for review.**
- 4. The Town Clerk shall give notice of the hearing, stating the name and address of the applicant or license holder concerned, the subject matter of the hearing and date, place and hour designated therefor by mailing a copy thereof to the applicant or license holder concerned at the address shown upon the most recent application or license ten (10) days before such hearing. No general public notice of the hearing shall be required if the hearing is held during a scheduled Town Board meeting.**
- 5. The applicant or licensee shall appear before the Town Board and show cause why the license should not be permanently denied, suspended or revoked and the failure of the licensee to appear at the time and place appointed shall, without more, be deemed adequate grounds for the denial, suspension or revocation of the license.**
- 6. Any individual or entity that has had a license revoked or an application for a license denied may not reapply for a license for a period of one (1) year after the denial or revocation.**

§ 38A-9. Penalties for offenses.

- A. Any person or persons who shall violate any of the provisions of this chapter, except a violation of § 38A-3, shall be subject to the following penalties:**
 - 1. For conviction of a first offense, by a fine of not less than \$500 and not more than \$1,000 or by imprisonment not exceeding 5 days, or by both.**
 - 2. For conviction of the second of two offenses, both of which were committed within a period of five years, by a fine of not less than \$1,500 and not more than \$2,500 or by imprisonment not exceeding 10 days, or by both.**
 - 3. For conviction of a third or subsequent offense, all of which were committed within a period of five years, by a fine of not less than \$3,000 and not more than \$10,000 or by imprisonment not exceeding 15 days, or by both.**

B. Notwithstanding any other provision of this code, any person or persons who violates § 38A-3 of this Chapter shall be subject to the following penalties:

- 1. For conviction of a first offense, by a fine of not less than \$2,000 and not more than \$10,000 or by imprisonment not exceeding 5 days, or by both.**
- 2. For conviction of the second of two offenses, both of which were committed within a period of two years, by a fine of not less than \$5,000 and not more than \$20,000 or by imprisonment not exceeding 10 days, or by both.**
- 3. For conviction of a third or subsequent offense, all of which were committed within a period of five years, by a fine of not less than \$10,000 and not more than \$50,000 or by imprisonment not exceeding 15 days, or by both.**

§ 38A-10. Severability.

If any clause, sentence, paragraph, section, word or part of this chapter is adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined in its operation to the clause, sentence, paragraph, section, word or part of this chapter directly involved in the controversy in which judgment is rendered.

Section 3.

This chapter shall take effect January 1, 2020.