

Supervisor Bosworth offered the following resolution and moved its adoption, which resolution was declared adopted after a poll of the members of this Board:

**RESOLUTION NO. 561 - 2018**

**A PUBLIC HEARING TO CONSIDER THE ADOPTION OF A LOCAL LAW AMENDING CHAPTER 70 OF THE TOWN CODE ENTITLED "ZONING."**

**WHEREAS**, the Town Board, as the legislative body of the Town of North Hempstead, is empowered to enact local laws pursuant to the provisions of Article 9 of the New York State Constitution, the Town Law, and the Municipal Home Rule Law; and

**WHEREAS**, a proposed Local Law has been prepared, pursuant to enabling legislation, to amend Chapter 70 of the Town Code entitled "Zoning" to implement zoning regulations for medical marijuana facilities; and

**WHEREAS**, the proposed Local Law, in final form, has been on the desks or tables of all the members of the Town Board for seven calendar days, exclusive of Sunday; and

**WHEREAS**, due notice has been heretofore given of a public hearing to be held on the 20th day of November, 2018, concerning the adoption of the proposed Local Law, which Local Law was available for viewing by the public on the Town's website and during regular business hours in the Office of the Town Clerk; and

**WHEREAS**, the Town Board has carefully considered the proposed Local Law during the seven-day period, conducted a public hearing on November 20, 2018, with respect to the Local Law, which hearing was continued to December 18, 2018, and has afforded all interested persons an opportunity to be heard at the public hearing; and

**WHEREAS**, this Board deems it in the public interest to adopt the proposed Local Law, to be effective immediately upon filing with the Secretary of State of the State of New York (the "Secretary of State").

**NOW, THEREFORE, BE IT**

**RESOLVED** that Local Law No. 12 of 2018 be and it hereby is adopted, which Local Law reads as follows:

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. 12 OF 2018**

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

Section 1. Legislative Intent.

The Town Board finds that the availability of medical marijuana to patients and caregivers is an important public policy that should be furthered in the State of New York. Although the State has enacted statutes and enabling regulations permitting the distribution of medical marijuana under certain circumstances, the regulations for opening and operating a medical marijuana dispensary require applicants to comply with all local regulations. In addition, state law authorizes the Town to enact zoning regulations to protect the health and general welfare of its residents. Accordingly, the Town of North Hempstead may exercise its general zoning powers under state and local law to regulate the location of medical marijuana dispensaries within the Town.

The Town Board finds that the precise location of medical marijuana dispensaries must be carefully considered in light of the purpose of the dispensaries themselves. The Board finds that meaningful public access to these dispensaries, in order to benefit patients and caregivers, must be paramount. The Board finds that, in order to promote the general welfare and health of the community, dispensaries should be located on properties with high-capacity parking to accommodate patients and caregivers, should be located near major highways to facilitate travel to and from the dispensaries and be located in places where medical services are already provided so as to facilitate the timely distribution of medical marijuana to those who need it.

The Board also finds that the clustering of medical marijuana dispensaries in one discrete geographic area is detrimental to the health and welfare of the public. Currently, four medical marijuana dispensaries may be opened in Nassau County. Two of these dispensaries are located in the Town of North Hempstead. In communications with the New York State Department of Health, the Department has stated that it does not consider whether dispensaries are clustered in one location. The clustering of facilities reduces patients and caregivers' access to medical marijuana and places a burden on the community of hosting the dispensaries. To accomplish these goals, the Town Board finds that the number of medical marijuana dispensaries located within the Town of North Hempstead should be limited to two.

The Town Board has also recognized that several states, in addition to permitting the distribution of medical marijuana, have also permitted the distribution of marijuana for recreational purposes.

The Town Board also recognizes that the legalization of marijuana in New York is a subject of current discussion and community forums organized by the State, and that the New York State Commissioner of Health has recommended that the recreational use of marijuana be considered for legalization in New York. Town Board is generally concerned that, despite any potential state regulation, medical marijuana may fall into the hands of those for whom it was not intended, such as children. For these reasons, the Board finds that it is important and prudent to assure that medical marijuana dispensaries are sufficiently distances from schools, parks, day care centers, houses of worship and residential zones.

## Section 2.

Article XXID of Chapter 70 of the Town Code shall be amended to read as follows:

### Article XXID Marijuana

#### § 70-201.11 Prohibitions

No building, structure or premises approved or used as a Medical Marijuana Dispensary pursuant to Article 33 of the New York Public Health Law may be used as a Marijuana Retail Store.

#### § 70-201.12 Medical Marijuana Dispensaries

A. Notwithstanding any other provision of this Chapter, a building, structure or premises may only be used as a Medical Marijuana Dispensary in the following zoning districts:

1. Industrial-A (I-A)
2. Industrial-B (I-B)
3. Planned Industrial Park (PIP)
4. Modified Planned Industrial Park (MPIP)
5. Hospital (H)

; provided, however, that a Medical Marijuana Dispensary may only be located within a building having at least one (1) office in use by a doctor or doctors and other medical staff in the provision of medical services, care and consultation.

B. No Medical Marijuana Dispensary shall be approved by the Department of Building Safety, Inspection and Enforcement unless the owner or operator of the Medical Marijuana Dispensary has received authorization to operate the Medical Marijuana Dispensary from the New York State Department of Health in accordance with Article 33 of the Public Health Law and Part 1004 of Title 10 of the New York Codes, Rules and Regulations.

C. No more than two Medical Marijuana Dispensaries may be located within the Town of North Hempstead at any time.

D. 1. A Medical Marijuana Dispensary may not be located within 1,000 feet of any of the following:

- a. A school; or
- b. A child day care center; or
- c. A park; or
- d. A place of worship, regardless of denomination.

2. A Medical Marijuana Dispensary may not be located within 500 feet of a Town of North Hempstead zoning district permitting any residential use. This provision shall not be deemed to prohibit:

a. the location of a Medical Marijuana Dispensary within a Hospital District that has residential units accommodating doctors and staff directly related to the subject hospital within the Hospital (H) zone, provided that the Medical Marijuana Dispensary is located greater than 500 feet from an adjoining zoning district permitting any residential use.

b. the location of a Medical Marijuana Dispensary within 500 feet of a Residence-AAA (R-AAA) zone that has as the sole use within its boundaries a solid waste facility owned by the Town of North Hempstead and operated by the Town of North Hempstead Solid Waste Management Authority.

c. the location of Medical Marijuana Dispensary within 500 feet of a Residential Open Space (R-O-S) zone, provided that the Medical Marijuana Dispensary is located greater than 500 feet from any other adjoining zoning district permitting any residential use.

3. As used in this § 70-201.12(D), the terms school, child day care center and park shall have the meanings ascribed to them by § 70-201.6 of this Chapter.

4. The required minimum distances stated in this subsection D shall be measured from the outside wall of the Medical Marijuana Dispensary nearest to the nearest lot or zone boundary of the location away from which the Medical Marijuana Dispensary is to be located.

E. Use Regulations. All Medical Marijuana Dispensaries shall comply with the following regulations:

1. Medical Marijuana Dispensaries shall be restricted to hours of operation between 9:00am and 9:00pm.

2. Use or consumption of Marijuana or any Marijuana Product at any time is not permitted on the premises of any Medical Marijuana Dispensary, regardless of whether the use or consumption is indoors or outdoors. This provision shall not be deemed to prohibit the demonstration of the use of Medical Marijuana to a patient or caregiver in accordance with Article 33 of the Public Health Law and Part 1004 of Title 10 of the New York Codes, Rules and Regulations.

3. Persons under the age of eighteen (18) years of age are not permitted to be on the premises of any Medical Marijuana Dispensary at any time unless they are a patient or caregiver or are accompanied by a parent or guardian.

4. Outdoor loudspeakers or other outdoor sound equipment advertising or directing attention to a Medical Marijuana Dispensary, including, but not limited to prerecorded or live music sounds, are prohibited.

#### § 70-201.13 Advertising Provisions

Medical Marijuana Dispensaries shall comply with the advertising and marketing regulations contained in Part 1004 of Title 10 of the New York Codes, Rules and Regulations, as the regulations may be amended from time to time, which shall include, but not be limited to, the following:

A. All physical structures owned, leased or otherwise utilized by a registered organization, including any dispensing facility, shall:

1. Not advertise Medical Marijuana brand names or utilize graphics related to marijuana or paraphernalia associated with Marijuana on the exterior of the physical structures; and

2. Not display Medical Marijuana products and paraphernalia associated with Marijuana so as to be clearly visible from the exterior of a physical structure.

B. All restrictions listed in subdivision (A) of this section shall apply to any item located on any real property on which a Medical Marijuana Dispensary's physical structure or structures is or are located.

C. All restrictions listed in subdivision (A) of this section shall apply to all vehicles owned, leased or utilized by Medical Marijuana Dispensary or its owner or operator.

D. An advertisement for any Marijuana Product shall not contain:

1. any statement that is false or misleading;

2. any statement that falsely disparages a competitor's products;

3. any statement, design, or representation, picture or illustration that is obscene or indecent;

4. any statement, design, representation, picture or illustration that encourages or represents the use of Marijuana for a condition other than a serious condition as defined in subdivision seven of section 3360 of the New York Public Health Law;
5. any statement, design, representation, picture or illustration that encourages or represents the recreational use of Marijuana;
6. any statement, design, representation, picture or illustration related to the safety or efficacy of Marijuana, unless supported by substantial evidence or substantial clinical data;
7. any statement, design, representation, picture or illustration portraying anyone under the age of 18, objects suggestive of the presence of anyone under the age of 18, or containing the use of a figure, symbol or language that is customarily associated with anyone under the age of 18;
8. any offer of a prize, award or inducement to a certified patient, designated caregiver or practitioner related to the purchase of Marijuana or a certification for the use of Marijuana; or
9. any statement that indicates or implies that the product or entity in the advertisement has been approved or endorsed by the State of New York or the Town of North Hempstead or any person or entity associated with the State of New York or the Town of North Hempstead provided that this shall not preclude a factual statement that an entity is a registered organization.

#### § 70-201.14 Other Regulations

The provisions of this Article XXID do not waive or modify any other provision of this Chapter with which Medical Marijuana Dispensaries are required to comply. Nothing in this Article XXID is intended to authorize, legalize or permit the establishment, operation or maintenance of any facility, buildings or use which violates the provisions of this Chapter, any other Chapter of the Town Code or any provisions of applicable law.

#### § 70-201.15 Penalties

- A. Any person or entity that violates any provision of this Article shall be guilty of a violation and subject to a fine not less than five hundred dollars and not more than one thousand dollars for a first violation and not less than one thousand dollars and not more than five thousand dollars for each violation committed within three (3) years of the first violation.
- C. In addition to any of the penalties stated in this Section, the Town Board may revoke any Certificate of Occupancy granted to an owner or operator of a Medical Marijuana Dispensary pursuant to the same procedures provided in § 70-223.1 of this Chapter upon acquiring information that the Medical Marijuana Dispensary is being occupied in violation of the provisions of this Article. The penalties stated in this Section are also in addition to any penalties provided by State laws or regulations pertaining to Medical Marijuana Dispensaries.

#### Section 4.

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person or circumstance 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, or part of this article or in its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

Section 5.

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

**RESOLVED** that the Town Clerk be and hereby is authorized and directed, in the manner required by law, to file a copy of the Local Law with the Secretary of State, and to publish a notice of adoption of the Local Law, which notice shall be in substantially the following form:

**NOTICE OF ADOPTION**

**PLEASE TAKE NOTICE** that pursuant to the provisions of Article 9 of the New York State Constitution, the Municipal Home Rule Law, and the Town Law, at a meeting of the Town Board duly held on December 18, 2018 at Town Hall, 220 Plandome Road, Manhasset, New York, Local Law No. 12 of 2018 was adopted. The local law amends Chapter 70 of the Town Code entitled “Zoning” to implement zoning regulations for medical marijuana facilities.

Dated: Manhasset, New York  
December 18, 2018

**BY ORDER OF THE TOWN BOARD OF  
THE TOWN OF NORTH HEMPSTEAD  
WAYNE H. WINK, JR.  
TOWN CLERK**

Dated: Manhasset, New York  
December 18, 2018

The vote on the foregoing resolution was recorded as follows:

Ayes: Councilperson De Giorgio, Councilperson Ferrara, Councilperson Kaplan, Councilperson Russell, Councilperson Seeman, Councilperson Zuckerman, Supervisor Bosworth

Nays: None

cc: Town Attorney