

## Chapter BZ. Building Zone Ordinance

### Article XXXI. General Provisions

#### § 302. Prohibited and restricted uses.

- A. An institution required to be licensed under the Mental Hygiene Law of the State of New York is hereby prohibited in all use districts.
- B. In any use district, no premises may be used or occupied and no structure erected or maintained for the harboring of pigeons, poultry, fowl, ducks, geese, swine, goats, sheep, lambs, horses, ponies, donkeys, snakes, cattle, monkeys, rabbits, chinchillas, minks, skunks, foxes or bees, except when permitted as a special exception by the Board of Appeals pursuant to Article **XXVII** hereof.  
[Effective 8-13-1973]
- C. In any use district, no premises may be used or occupied and no structure may be erected or maintained for the harboring of any dangerous or obnoxious animal which is wild in its natural habitat.
- D. Notwithstanding the provisions of Subsections **B** and **C** of this section, a recognized pharmaceutical, medical, scientific or research laboratory shall be permitted, without a special exception being required therefor, to keep, maintain and harbor upon the premises occupied by it such animals, birds and/or reptiles as shall have a recognized usefulness in scientific study or research and/or the development or production of vaccines and similar substances. Any animals, birds or reptiles kept pursuant to the provisions of this section shall be securely enclosed and shall be kept and maintained in such a manner as to not constitute a nuisance.
- E. In any use district, no premises may be used or occupied and no structure may be erected or maintained where the release of airborne asbestos fibers, due to the handling or presence of asbestos in any form, may occur. In those instances where asbestos was in use prior to the enactment of this amendment, it shall be the responsibility of any owner, agent or lessee of any place of employment, public place or place where people assemble which uses asbestos or asbestos-related products, coverings or materials which cause the release of asbestos fibers which may reach the breathing zone of employees and/or other occupants, or which cause the release of asbestos fibers into the environment, to register with and provide the Department of Buildings of the Town of Hempstead with copies of the initial determination and, when indicated, copies of the periodic personal and environmental monitoring reports required to be provided pursuant to Title 29, United States Department of Labor, Chapter XVII, Occupational Safety and Health Administration Section 1910.1001(29 CFR 1910) OSHA 2206, Revised March 11, 1983. This section shall not apply to buildings and structures wherein the use of asbestos is as a component of fireproofing, insulation, soundproofing or other building material installed in or on such building or structure, or is an asbestos-bearing material stored therein, provided that such buildings or structures have been registered with the Department of Buildings of the Town of Hempstead and a certification of compliance with federal and New York State laws related to asbestos has been filed with the Department of Buildings.  
[Effective 12-23-1985]

- F. In any use district, no premises may be used or occupied and no structure may be erected or maintained which may be determined by the Department of Buildings to be noxious or offensive by reason of the emission of odor, dust, fumes, smoke, gas, vibration or noise.  
[Effective 1-6-1992; 8-19-1997]
- G. It shall be prohibited, in dwelling units, hotel units, lodging units and dormitory units, to conduct a home occupation (accessory use) as set forth as follows:  
[Effective 1-6-1992]
- (1) When the utilized floor area is more than 25% of the total floor area of the unit, and in no event more than 500 square feet of floor area.
  - (2) When the home occupation produces offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects.
- H. Placement of commercial vehicles on premises improved with a single- or two-family residence.  
[Effective 7-30-1996]
- (1) No commercial vehicle shall be placed upon the exterior portion of any premises which is improved with a single- or two-family residence, except during active loading or off-loading of merchandise, or except during the active performance of any commercial service or duty undertaken by the operator of such vehicle in connection with said premises.
  - (2) For the purpose of Subsection **H(1)** above, a "commercial vehicle" shall be defined as a vehicle which requires commercial registration under the New York State Vehicle and Traffic Law or the regulations adopted thereunder, or as any other vehicle which, by reason of the attachment of advertising messages and/or storage of service equipment or other commercial merchandise or hardware, presents the outward appearance of a vehicle which is primarily utilized in furtherance of commercial or industrial enterprise.
- I. In any use district, each commercial establishment opened to patrons of all ages shall display adult materials only in the following manner:  
[Effective 1-8-1996]
- (1) Adult materials shall not be displayed in the same casement as materials which are permitted to be sold to patrons of all ages.
  - (2) A casement displaying adult materials shall be enclosed and not displayed in a manner visible to all patrons.
  - (3) The area of a commercial establishment displaying adult materials shall not exceed 5% of the establishment's total floor space utilized for display, except that in no event shall such area exceed 50 square feet.
  - (4) A casement displaying adult materials shall be clearly identified as an adult display which is not to be viewed by minors.
  - (5) For the purpose of the above provisions, the term "adult materials" is defined as any book, magazine, periodical, film, slide, videotape, game, toy or device which is forbidden to be sold to minors.
  - (6) The right of any commercial establishment which is lawfully in existence on the effective date of this section to operate in violation of this section as a legal nonconforming use shall terminate by amortization on July 31, 1996.
- J. Restrictions on tobacco advertising.  
[Effective 6-6-2000]

- (1) The Town Board has found that it is in the public interest to restrict the presence of tobacco advertising in the vicinity of certain identified buildings, structures and open areas which tend to be frequented by impressionable children. As such, the Town Board, by this ordinance, does hereby adopt certain minimum distances from such buildings, structures and open areas within which tobacco advertising shall be restricted.
- (2) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

**TOBACCO ADVERTISEMENT**

Any word(s), logo, or other visual image which has the effect of placing before the public the existence or availability of tobacco products, including, but not limited to, the identification of a brand or trademark of a tobacco product.

- (3) Restrictions. It shall be unlawful for any owner, lessee or person in control of premises to place, cause to be placed, maintain, or cause to be maintained, any tobacco product advertisement at the following locations:
    - (a) In any outdoor area within 1,000 feet, in any direction, of any park, playground, school, or duly licensed child day-care center.
    - (b) Upon the exterior portion of any building or structure within 1,000 feet, in any direction, of any park, playground, school, or duly licensed child day-care center.
    - (c) In the interior of a building or structure within 1,000 feet in any direction of any park, playground, school, or duly licensed child day-care center, when such advertisement is located within five feet of any exterior window or exterior doorway, except that such advertisements may be situated in such interior areas when it is parallel to said windows or doorways, and facing inward, or affixed to a wall panel or similar fixture which is substantially perpendicular to said window or doorway.
  - (4) Exceptions. Nothing in this subsection shall prevent the on-site display of a trade name identifying the principal place of business of a legal entity, which display is not used for the advertisement of tobacco products.
  - (5) Applicability. Nothing contained in this subsection shall relieve any person or other legal entity from compliance with any other regulation contained in this ordinance, or any other applicable local or state laws.
  - (6) Amortization. Any right of any person or any legal entity to maintain any tobacco advertisement in violation of the provisions of this subsection as a legal nonconforming use shall terminate by amortization upon the expiration of 30 days after the effective date of this subsection.
- K. Restrictions on check-cashing establishments.  
[Effective 11-29-2005; 1-10-2006]
- (1) Prohibition. In any use district except Y Industrial and LM Light Manufacturing Districts, check-cashing establishments are hereby expressly prohibited.
  - (2) Definition. A check-cashing establishment is defined as a place where checks are cashed and/or payday or other short-term type loans are offered, but where general banking services, including but not limited to the establishment of savings and checking accounts, provision for deposits and withdrawals therefrom, and payment of accrued interest, are not offered on a regular basis.
  - (3) Amortization. Any check-cashing establishment that is in violation of this subsection but is lawfully in existence in any unincorporated portion of the Town of Hempstead upon the effective date of this subsection shall become a legal nonconforming use and shall terminate

by amortization no later than five years immediately following the effective date of this subsection.

- L. Restrictions on the location of off-track betting parlors. Notwithstanding any provision of this ordinance to the contrary, and notwithstanding any approvals issued by other agencies of government under separate authority of law, an off-track betting parlor shall be prohibited in all use districts of the Town, except that an off-track betting parlor as authorized or established under the New York State Racing, Pari-Mutuel Wagering and Breeding Law, or otherwise by state law, shall be permitted in the Business, Light Manufacturing and Industrial Districts, provided that the building in which the off-track betting parlor is located must be at least 500 feet distant from any property improved with a dwelling, and at least 1,000 feet distant from any property improved with a school or house of worship.  
[Effective 2-18-2008]
- M. Prohibition on cooking facilities in certain zones. Notwithstanding any other provision in this ordinance, cooking facilities shall not be permitted in any individual sleeping accommodation or unit in any motel, hotel, or other lodging facility in an X Business (X), LM Light Manufacturing (LM) or Y Industrial (Y) Districts.  
[Effective 3-9-2004]
- N. Eradication of graffiti.  
[Effective 4-14-2009]
- (1) The Town Board believes that defacement of buildings and structures with graffiti is a serious blight that reflects badly on the commercial and residential neighborhoods where it is found. This problem detracts from area character and property values, and it is imperative that the Town take affirmative steps to encourage abatement in a meaningful way. Apprehension of persons who commit the crime of defacement via graffiti is difficult, because they will immediately abscond from the scene on completion of their act. It is therefore imperative for the good of the communities where it is found to place certain legal burdens on persons or entities in charge of properties which have been defaced. To meaningfully combat the problem of graffiti, this new section of the Town's zoning regulations shall impose a strict liability on owners, lessees and other persons in control of buildings and structures which have been defaced. Specifically, they will have to remove the graffiti within certain time limitations, or the Town will do it for them and recoup the cost via special tax assessment, or prosecute them in court.
  - (2) The term "graffiti" means one or a series of images appearing on privately owned property, including a building thereon, a fixed or mobile structure thereon, or a ground surface thereof, applied by means of painting, drawing, dye, ink, writing, etching, carving, or any similar method or substance, and visible from a public place, if any of the following is true:
    - (a) It was applied without the written consent of the owner, lessee, or other person in control of such private property; or
    - (b) It is not an image or series of images that is customarily found on that type of building, structure or ground surface; or
    - (c) It was applied with intent to damage the building, structure or ground surface.
  - (3) Notice to owners, lessees and persons in control of private property. Whenever the Building Inspector or a person acting on his/her behalf shall verify a complaint that graffiti as defined in this Subsection **N** is present upon any building, structure or ground surface located on private property within the unincorporated part of the Town, the Building Inspector or person acting on his/her behalf shall send written notice to the owner, lessee and any other known person in managerial control of such building, structure or ground surface that such graffiti exists, and shall order that the graffiti be removed. The notice and order shall be sent to these persons or entities at their last known address, and a copy shall be posted conspicuously on the subject

- property. The notice shall state that the person notified must remove the graffiti or consent to its removal by the Town within 10 days from the date the notice was mailed, or such longer time as the Building Inspector may allow under the circumstances. Removal shall include either elimination, painting over, or otherwise obscuring the graffiti from view, in a manner that shall cause the affected area to appear in a finished condition and substantially the way that it did prior to the imposition of the graffiti.
- (4) Removal by Town with consent. Whenever the Building Inspector, or a person acting on his/her behalf, determines that graffiti is being maintained at a location in violation of this Subsection **N**, the Building Inspector, or a person acting on his/her behalf, is authorized to provide for and use Town resources or funds, if necessary and warranted, to remove the graffiti, upon securing the written consent from one or more of the owners, lessees, or other person or entity in managerial control of the property, together with a properly executed release and waiver in favor of the Town of Hempstead approved by the Town Attorney.
  - (5) Removal by Town without consent. The Town may also remove graffiti that violates this Subsection **N** if the notice referenced in Subsection **N(3)** above has been sent; the graffiti has not been removed; no consent for the Town to do so has been provided; the time period in the notice has expired; and any required hearing has been held as provided below.
  - (6) Hearing. Prior to the Town abating graffiti on private property without consent, a hearing before the Building Inspector or his designee shall be held if, prior to removal, it is requested in writing by any recipient of the notice, addressed to the Building Inspector and delivered to him personally at his office or by mailing to his office by certified mail, return receipt requested. After the hearing, the Building Inspector may proceed with removal by the Town or provide the person who requested the hearing a period of not more than 30 days from the date of the hearing to do so. If time is given and the graffiti is not removed by expiration thereof, the Town may proceed with removal.
  - (7) Assessment of cost. Whenever the Town removes any graffiti, either with or without consent as provided herein, upon completion of the abatement, the costs and expenses thereof shall be itemized and collected in the manner fixed by law for the collection of Town taxes, and further, the assessed amount shall be increased by imposition of a delinquent penalty of 6% in the event same is not paid in full on or before the date the tax bill upon which said charge appears becomes delinquent.
  - (8) As an alternative measure to Subsection **N(3)** through **(7)** hereof, whenever the Building Inspector or a person acting on his behalf shall verify a complaint that graffiti as defined in this Subsection **N** is present upon any building, structure or ground surface located on private property within the unincorporated part of the Town, enforcement of this Subsection **N** may be pursued by way of prosecution of the owner, lessee and any other person in control of such building, structure or ground surface in the District Court of Nassau County, Hempstead Part, or application for an injunction in New York State Supreme Court, County of Nassau.
  - (9) It shall be an unclassified misdemeanor for any person to remove, relocate, obscure or alter the posted notice and order referenced in Subsection **N(3)** hereof.
  - (10) This ordinance shall take effect six months after its adoption and publication, and said six-month period shall constitute an amortization period in which all owners, lessees, or other persons with managerial control of places in the Town where graffiti exists on the effective date of this Subsection **N** must remove same or face enforcement procedures as outlined herein.
- O. In any use district, no storefront of any premises adjacent to a public street shall be maintained with a roll-down or retractable-type security gate, unless:  
[Effective 6-8-2012]
- (1) The gate shall be installed on the interior side of the storefront; and

- (2) When the gate is rolled down or unretracted, it shall not fully or substantially block the view of the interior of the premises from the public street.
- P. No parcel of real property improved with a business, dwelling or multiple dwelling may be maintained in such a manner that a light-emitting device or facility, including but not limited to a spotlight or floodlight, shall emit glare (visible light) from any point upon the parcel onto any part of an adjacent or nearby residential dwelling. Any such light shall be deemed in compliance with this section if it is hooded or shielded in such a manner as shall direct the glare downward and away from adjacent or nearby dwellings, or if the light emits 1,500 lumens (one-hundred-watt bulb) or less. The owner or lessee of any property lawfully maintaining a light-emitting device or facility upon the effective date of this subsection may continue to do so as a legal nonconforming use, but such legal nonconforming status shall terminate by amortization on January 1, 2013, at which time such property shall be brought into compliance with this subsection.  
[Effective 7-28-2012]
- Q. No building shall be erected or maintained, the principal use of which is to serve food to patrons for on-site consumption, unless each exterior wall of the building shall have a window or windows, to the extent that windows shall occupy not less than 20% of the surface area of each such wall, and each such window is unobstructed such that persons may directly and substantially view the indoors or outdoors at all times that the use is open for business. Nothing herein shall be construed in a manner which would violate or supersede any applicable fire or building code regulations. This provision shall be applicable to all buildings to be constructed after the effective date hereof, and to any existing building which does not have a certificate of occupancy for restaurant use on the effective date hereof.  
[Effective 3-3-2016]