

***Local Law Filing***

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**Town of Oyster Bay**

**Local Law No. \_\_\_\_\_ of the year 2021**

**A local law entitled**

"A LOCAL LAW TO ADD SECTION 246-5.5.34 - RESTRICTIONS ON SALE OF VAPING AND MARIJUANA PRODUCTS, VAPE SHOPS, HOOKAH LOUNGES, MARIJUANA DISPENSARIES AND MARIJUANA SHOPS, TO CHAPTER 246 - ZONING, OF THE CODE OF TOWN OF OYSTER BAY."  

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**Be it enacted by the Town Board of the Town of Oyster Bay** as follows:

**Section 1.** Add Section 246-5.5.34, Restrictions on Sale of Vaping and Marijuana Products, Vape Shops, Hookah Lounges, Marijuana Dispensaries and Marijuana Shops, to Chapter 246, Zoning, of the Town Code as follows:

**§ 246-5.5.34                    Restrictions on Sale of Vaping and Marijuana Products, Vape Shops, Hookah Lounges, Marijuana Dispensaries and Marijuana Shops.**

**§ 246-5.5.34.1                Legislative Intent.**

The Town Board finds that it is in the best interest of the Town of Oyster Bay and its residents to restrict the sale of vaping products and marijuana products and the location of vape shops, hookah lounges, marijuana dispensaries, and marijuana shops to particular areas. In addition, all establishments that sell vape products, e-cigarettes, hookahs and accessories, and marijuana and marijuana products will be required to display signage that explains the potential dangers in using such products.

**§ 246.-5.5.34.2**      **Definitions.** As used in this local law, unless the context clearly requires otherwise:

### **CBD**

Cannabidiol, a naturally occurring compound found in the resinous flower of cannabis.

### **ELECTRONIC CIGARETTES**

Also known as e-cigarettes, e-vaporizers, or electronic nicotine delivery systems, are battery-operated devices that people use to inhale an aerosol, which typically contains nicotine, flavorings, and other chemicals.

### **HOOKAH LOUNGES AND VAPE LOUNGES**

Any facility or location whose business operation includes the on-site indoor smoking of electronic cigarettes, vape pens, vapors, and pipes, as defined herein, e-liquids, or marijuana derivatives, including only CBD, as defined herein, or other substances, but not including THC, as defined herein. "Smoking" includes the inhalation of the smoke/e-liquid nicotine/vapors water pipe tobacco and other substances encased in electronic cigarettes, vape pens, vapors, and pipes commonly known as "hookah," "waterpipe," "shisha" and "narghile" or any similar device.

### **HOOKAH PIPE**

A single or multi-stemmed instrument used by one or more persons to smoke tobacco or other substance, which hookah pipe is also commonly referred to as a hookah, waterpipe, shisha or narghile.

### **MARIJUANA**

Same definition ascribed to "marihuana" in NY Public Health Law § 3302: all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant, which seed is incapable of germination.

### **MARIJUANA DISPENSARY**

A dispensary is a location (whether business or non-profit) where patients or consumers can access prescribed Marijuana (cannabis) in a legal and safe manner. Users get assistance from experts (bud tenders) who find an optimal dosage and recommend the delivery method to achieve optimal results when using medical cannabis.

## **MARIJUANA SHOP**

Any establishment which offers for sale or consideration, for on premises or off premises consumption, if allowed by law, marijuana or marijuana derivatives, which contain THC, in any form, including cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquid, or any other product. This shall include recreational marijuana products, but shall exclude any non-prescription marijuana product or derivative that only contains CBD but not THC.

## **VAPE SHOP**

Any establishment which offers for sale or consideration, electronic cigarettes, electronic pipes, vape pens, vapors, e-liquid, marijuana derivatives, including CBD or other substances, but not THC, as a substantial or significant portion of its business, merchandise and/or stock-in-trade.

## **SUBSTANTIAL OR SIGNIFICANT PORTION**

- (1) "Substantial or significant portion" shall be determined using the following considerations:
  - a) Amount of floor area and basement space accessible to customers and allotted to the sale or consideration of cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type, generally, or as compared to the total floor area and basement space accessible to customers; and/or
  - b) Amount of cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances stock-in-trade of any type accessible to customers, generally, or as compared to total stock accessible to customers; and/or
  - c) Revenues derived from cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type, general, or compared to total revenues; and/or
  - d) Advertising devoted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type, general, or compared to total advertising; and/or
  - e) Use of the establishment for cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type, general, or compared to total use thereof; and/or
- (2) Notwithstanding the above considerations, the following shall be conclusive in determining substantial or significant portion:
  - a) Twenty-Five percent or more of floor area and basement space accessible to customers allotted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type; and/or

- b) Twenty-Five percent or more of its stock-in-trade in cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type; and/or
- c) Twenty-Five percent or more of its gross income derived from cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type; and/or
- d) Twenty-Five percent or more of its advertising devoted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other marijuana derivatives or like substances of any type.

## THC

Tetrahydrocannabinol, is the main psychoactive compound in cannabis that produces the high sensation.

### § 246.-5.5.34.3      **Restrictions on location of hookah lounges, vape lounges, smoke shops, vape shops, marijuana dispensaries and marijuana shops.**

- (A) Hookah lounges, vape lounges, smoke shop, vape shop, marijuana dispensary or marijuana shop uses shall be allowable only in a Light Industry (LI) zoning district subject to issuance of a Special Use Permit by the Town of Oyster Bay Zoning Board of Appeals, and subject to the regulations set forth in this section.
- (B) The lot line of any property whereupon exists a hookah lounge, vape lounge, smoke shop, vape shop, marijuana dispensary or marijuana shop shall not be located within a thousand (1,000) foot radius of the lot line of any lot zoned for residential use, any school, park, playground, library or church or other place of worship.

### §246-5.5.34.4      **Posting of Signs.**

- (A) No person shall sell or continue to sell or distribute or continue to distribute electronic cigarettes, vape pens, vapors, e-liquids, hookah pipes, marijuana or marijuana products in the Town of Oyster Bay unless a sign is posted at the point of sale in a conspicuous place, that warns of the dangers of e-cigarettes, vape pens, vapors, e-liquids, hookah pipes, marijuana or marijuana products including, at a minimum, the following statement: **WARNING: electronic cigarettes, vape pens, vapors, e-liquids, and marijuana contain nicotine. Nicotine is an addictive chemical.**
- (B) Such sign shall be printed with letters at least one half inch in height. Signs shall be protected from tampering, damage, removal or concealment.

## Section 2.      **SEQR Determination.**

It is hereby determined pursuant to the provisions of the State Environmental Quality Review Act, (SEQR), 8 N.Y.E.C.L. Section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5 (c)(26) of 6 N.Y.C.R.R., pertaining to "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment" and, accordingly, is of a class of actions which do not have a significant effect on the environment and no further review is required.

**Section 3. Severability.**

If any section, subdivision or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subdivision or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law, or the application thereof to other persons or circumstances.

**Section 4. Effective Date.**

This local law shall take effect immediately upon its adoption and filing with the Office of the Secretary of State.

**Certification:**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2019 of the Town of Oyster Bay was duly passed by the Town Board on \_\_\_\_\_ 2021, in accordance with the applicable provisions of law.

\_\_\_\_\_  
Clerk of the Town of Oyster Bay

(Seal) Date: \_\_\_\_\_, 2021

(Certification to be executed by Town Attorney).

STATE OF NEW YORK  
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature  
Town Attorney  
\_\_\_\_\_  
Title

Town of Oyster Bay

Date: \_\_\_\_\_ 2021