

## PUBLIC HEARING

February 13, 2019

At 8:02 p.m. Supervisor Schiliro stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on February 13, 2019, at 7:30 PM, or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY 10504, to consider a local law establishing regulations pertaining to the sale of E-cigarettes in the Town of North Castle.

The proposed local law is available in the Town Clerk's office during regular business hours and on the Town website. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board  
Alison Simon, Town Clerk

Dated: January 31, 2019  
Armonk, NY

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit "C" for the record.

Short Environmental Assessment Form (EAF), Parts 1 and 2.

The Town Clerk noted there was a Negative Declaration for consideration.

The Town Clerk noted there was a proposed Local Law for consideration.

The following is a summary of points, by Section of the proposed local law, discussed at the public hearing by the Town Board, Director of Planning Adam Kaufman, and Town Attorney Roland Baroni.

### Section 140-37. Definitions.

It was agreed to revise the definition of Nicotine Delivery Product to exclude cigarettes, cigars, pipe tobacco and chewing tobacco from the definition.

### Section 140.38. Permit Required

It was confirmed that if the local law is adopted that a business in Town that is currently selling a nicotine delivery product would be grandfathered; and a business not currently selling a nicotine delivery product and wanting to do so would be required to apply for a permit. It was agreed that the Town should establish a baseline list of the businesses currently selling nicotine delivery products.

### Section 140-38. Permit Required – Subsections C., D., E.

Mr. Kaufman noted that this Section of the draft law was updated based upon comments discussed at the last Town Board meeting, and subsequent comments from various Town Board members and his office. Mr. Kaufman reviewed the recommended changes to Subsections C., D. and E.:

- Increase the distance from which a business can sell a nicotine delivery product from five hundred (500) feet to one thousand (1,000) feet from any lot line of:
  - any other business selling a nicotine delivery product
  - any zoning district that permits residential use
  - any church, community center, funeral home, school, day-care center, hospital, alcoholism center or drug treatment center, counseling or psychiatric treatment facility or public park

- Clarify the required distance from a business selling nicotine delivery products from another property by adding the language “on a parcel of land which is” immediately preceding “closer than one thousand (1,000) feet from any lot line”.

Section 140-38. Permit Required – Subsection G.

The criteria regarding conduct in a business selling nicotine delivery products remained in the law.

The Board determined it would not regulate the maximum square feet of the selling area where the nicotine delivery products could be sold, nor the specific location of the products within the business.

Section 140-39. Security and oversight requirements. – Subsection C.

It was confirmed that any business receiving a permit to sell a nicotine delivery product may not be open to the public between the hours of 7:00 p.m. and 9:00 a.m.

After all persons were heard who desired to be heard, Councilman D’Angelo moved, seconded by Councilman Reiter, that the Public Hearing be closed at 8:24 p.m.

The roll call vote was as follows:

Ayes: Councilmen D’Angelo, DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Councilman D’Angelo moved, seconded by Councilman DiGiacinto that based upon review of the Environmental Assessment Form and all other materials, it has been determined that there will be no significant adverse environmental impacts and the Town Board hereby adopts a Negative Declaration.

The roll call vote was as follows:

Ayes: Councilmen D’Angelo, DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Councilman D’Angelo moved, seconded by Councilman DiGiacinto, the adoption of Local Law 1 of 2019, as amended, to establish regulations pertaining to the sale of E-cigarettes in the Town of North Castle; to rename Chapter 140 of the North Castle Town Code as “Cabarets, Adult Entertainment and E-Cigarette Sales; and to create a new Article III, E-Cigarette Sales. The Local Law follows at the end of these minutes.

The roll call vote was as follows:

Ayes: Councilmen D’Angelo, DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

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Alison Simon, Town Clerk

Dated: February 22, 2019

**TOWN OF NORTH CASTLE**

**Local Law No. 1 of the year 2019  
Adopted February 13, 2019**

A local law establishing regulations pertaining to the sale of E-cigarettes in the Town of North Castle.

**Section 1. Chapter 140 of the Town of North Castle Town Code shall be renamed as “Cabarets, Adult Entertainment and E-cigarette Sales”**

**Section 2. Create the following new Article in Chapter 140 of the Town of North Castle Town Code as follows:**

Article III. E-Cigarette Sales.

§ 140-36. Legislative findings and declarations.

The Town Board finds that the Town has a substantial interest in responding to the increased use of electronic cigarettes and nicotine delivery products among adolescents. E-cigarettes are now the most commonly used tobacco product among youth, having surpassed conventional cigarettes in 2014. Public health authorities and agencies, including the Centers for Disease Control and Prevention and U.S. Surgeon General, have advised that the use of e-cigarettes and nicotine delivery products poses significant and avoidable health risks to young people. In addition, the Town Board hereby finds that certain e-cigarette sales activities, by their nature, have serious objectionable operation characteristics which can lead to a significant impact on the surrounding community. The Town Board further finds that the unrestrained proliferation of such businesses is inconsistent with existing development and future plans for the Town of North Castle in that they often result in influences on the community which increase the crime rate and undermine the economic, moral and social welfare of the community. The deleterious effects of e-cigarette sales change the economic, social and moral character of the existing community and adversely affect existing businesses and community and family life. As business activity drops off and the quality of life deteriorates, merchants and families move away from the area leaving it in a vacant and depressed state. The purpose of this article is to prevent the unrestricted proliferation of such businesses and to ensure that the effects of such businesses will not adversely affect the health, safety and economic well-being of the community by enacting criteria for the placement, construction and/or permitting of vaping sales uses in the Town.

§ 140-37. Definitions.

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

**NICOTINE DELIVERY PRODUCT**

Any article or product, not including cigarettes, cigars, pipe tobacco, and chewing tobacco, made wholly or in part of a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes, vapes, vaporizers, vape pens, lozenges or other candy, drinks, and inhalers.

§ 140-38. Permit Required

No business or person shall construct, establish or be issued a certificate of occupancy for any use which involves the sale of a nicotine delivery product within the Town of North Castle unless they have applied for and obtained a permit from the Town Board. To receive such a permit, the applicant must satisfy the following criteria:

A. No business selling a nicotine delivery product shall be established or permitted in any building of which any part is used for residential purposes.

B. No residential use shall be established or permitted in a building of which any part is used as a business selling a nicotine delivery product.

C. No business selling a nicotine delivery product shall be established or permitted on a parcel of land which is closer than one thousand (1,000) feet from any lot line of any other business selling a nicotine delivery product.

D. No business selling a nicotine delivery product shall be established or permitted on a parcel of land which is closer than one thousand (1,000) feet from the lot line of any zoning district that permits residential use.

E. No business selling a nicotine delivery product shall be established or permitted on a parcel of land which is closer than one thousand (1,000) feet from the lot line of any church, community center, funeral home, school, day-care center, hospital, alcoholism center or drug treatment center, counseling or psychiatric treatment facility or public park.

F. The applicant must meet all other regulations of the Town of North Castle, including but not limited to district lot and bulk regulations, parking regulations and signage requirements.

G. It shall be unlawful for the licensee, owner, proprietor, manager or person in charge of any business selling nicotine delivery products to permit any disorderly, noisy, riotous or tumultuous conduct or loitering on the premises so permitted.

H. Consumption or sampling of any nicotine delivery product shall be prohibited within any business selling a nicotine delivery product.

#### § 140-39. Security and oversight requirements.

A. Alarm systems. All businesses selling a nicotine delivery product shall have door and window intrusion alarms with audible and police notification components.

B. Video surveillance. All businesses selling a nicotine delivery product shall have recorded video surveillance covering the entire exterior. The recorded video surveillance shall be operating 24 hours a day, seven days a week. Records of surveillance shall be kept for a minimum of 30 days.

C. A business selling a nicotine delivery product may not be open to the public between the hours of 7:00 p.m. and 9:00 a.m.

#### § 140-40. Violations and penalties.

Whoever violates the provisions of this chapter shall be punished by a fine of not less than \$500 nor more than \$1000 for each offense. Each day a violation exists shall constitute a separate offense.

### **Section 3. Conflicting Standards.**

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York or other applicable rules or regulations, the requirements of this Local Law shall prevail.

### **Section 4. Severability.**

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

### **Section 5. Effective Date.**

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