

NOTICE OF ADOPTION OF RESOLUTION

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Babylon, County of Suffolk, State of New York, at a regular meeting thereof held on the 25th day of April, 2018 duly adopted a resolution, an abstract of which is as follows:

RESOLUTION NO. 314 APRIL 25, 2018
ADOPTING LOCAL LAW NO. 7 OF 2018 AMENDING CHAPTER 213, ZONING, ARTICLE XII, OF THE
CODE OF THE TOWN OF BABYLON
(E Business District)

WHEREAS, the Town Board of the Town of Babylon having duly called and held a Public Hearing at Babylon Town Hall, 200 East Sunrise Highway, Lindenhurst, New York, on the 25th day of April, 2018 upon the question of enactment of Local Law No. 7 of 2018 of the Town of Babylon, Suffolk County, New York, being a Local Law amending the Code of the Town of Babylon, Chapter 213;

NOW, THEREFORE, be it

RESOLVED AND ORDAINED, by the Town Board of the Town of Babylon that Local Law No. 7 of 2018, of the Town of Babylon, Suffolk County, New York, is hereby enacted as follows and effective upon its filing with the New York State Department of State:

LOCAL LAW NO. 7 of 2018

A Local Law amending the Code of the Town of Babylon, Chapter 213.

EXHIBIT "A"
Article XII E Business District

ADD

§ 213-129.2 Smoke Shops, Vape Shops, Hookah Lounges, Vape Lounges

A. Definitions and word usage. Whenever used in this section, words in the singular include the plural and vice versa. As used in this section, the following terms shall have the meanings indicated:

HOOKAH PIPE

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

HOOKAH LOUNGES AND VAPE LOUNGES: Any facility or location whose business operation, and its principal use, include the on-site indoor smoking of electronic cigarettes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances. Smoking is the inhalation of the smoke/ liquid nicotine/vapors/water pipe tobacco and other substances encased in electronic cigarettes, vape pens, and pipes commonly known as "hookah", "waterpipe", "shisha", and "narghile" or any similar device.

SMOKE SHOP AND VAPE SHOPS: Any establishment which offers for sale or consideration cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances, 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 legal marijuana derivatives or other 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 legal marijuana derivatives or other 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 legal marijuana derivatives or other substances of any type, generally, or as compared to total revenues; and/or
- (d) Advertising devoted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances of any type, generally, or as compared to total advertising; and/or
- (e) Use of the establishment for cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances of any type, generally, or as compared to total use thereof.

- (2) However, notwithstanding the above considerations, the following shall be conclusive in determining substantial or significant portion:
- (a) Forty percent or more of floor area and basement space accessible to customers allotted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances of any type; and/or
 - (b) Forty percent or more of its stock-in-trade in cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances of any type; and/or
 - (c) Forty percent or more of its gross income derived from cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances; and/or
 - (d) Forty percent or more of its advertising devoted to cigarettes, electronic cigarettes, pipes, vape pens, vapors, e-liquids, other legal marijuana derivatives or other substances.

B. In an E Business District, no building or premises shall be used and no building shall be hereafter erected or altered unless otherwise provided in this chapter for use as a hookah lounge and/or vape lounge, whether as its primary use or as an accessory or ancillary use, including the smoking of tobacco or other substances through one or more hookah pipes. This prohibition shall include but not be limited to facilities or establishments commonly known by such various terms as hookah bars, hookah lounges, or hookah cafes. All such facilities or establishments lawfully and actually operating, and open to the public or a segment thereof or a club membership as of the date of adoption of this subsection 213-129.2, shall be permitted to continue as legal nonconforming uses, and all others are hereby declared unlawful and prohibited, effective immediately in accordance with law.

C. In an E Business District, no building or premises shall be used and no building shall be hereafter erected or altered unless otherwise provided in this chapter for use as a smoke shop or vape shop, as substantial or significant portion of its business, merchandise and/or stock-in-trade, as defined in § 213-129.2A above. All such facilities or establishments lawfully and actually operating, and open to the public or a segment thereof as of the date of adoption of this subsection 213-129.2, shall be permitted to continue as legal nonconforming uses, and all others are hereby declared unlawful and prohibited, effective immediately in accordance with law.

Dated: April 25, 2018 Town of Babylon

BY ORDER OF THE TOWN BOARD, TOWN OF BABYLON
GERALDINE COMPITELLO, TOWN CLERK