

*The following is the latest draft of proposed Town legislation to ban any approved Medical Marijuana facilities within Town of North Hempstead from selling recreational marijuana in the event NYS legalizes recreational marijuana. Town Board plans a public hearing at its Nov 20, 2018 meeting, followed by a Town Board vote.*



**TOWN OF NORTH HEMPSTEAD  
OFFICE OF THE TOWN ATTORNEY**

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**PROPOSED LOCAL LAW AMENDING  
CHAPTER 70 OF THE TOWN CODE ENTITLED "ZONING"**

**LOCAL LAW MEMORANDUM**

**Purpose of Law:**

The purpose of the local law is to amend Chapter 70 of the Town Code entitled "Zoning" to prohibit medical marijuana dispensaries from being used as marijuana retail stores.

**Budget Implications:**

The adoption of the proposed local law will not have any direct budgetary implications.

**Explanation:**

Matter in **bold** and underscored is new; matter in brackets with strikethrough [~~---~~] is old law to be omitted.

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. \_\_ OF 2018**

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

**Section 1. Legislative Intent**

The Town Board finds that the factors weighed in siting medical marijuana facilities, such as proximity to homes, schools, parks and medical offices, simply do not apply to recreational marijuana facilities. Accordingly, the Town Board finds it in the best interests of the Town to amend Chapter 70 of the Town Code to prohibit medical marijuana facilities from becoming marijuana retail stores, in the event that New York State legalizes the recreational use of marijuana.

**Section 2.**

Chapter 70 of the Town Code shall be amended to establish Article XXID entitled “Marijuana” 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.**

**Section 3.**

Section 70-231 of the Town Code shall be amended as follows

§ 70-231. Definitions.

[Amended 7-23-1968; 10-15-1968; 12-31-1974 by L.L. No. 22-1974; 2-1-1977 by L.L. No. 2-1977; 3-27-1979 by L.L. No. 3-1979; 8-12-1980 by L.L. No. 11-1980; 8-12-1980 by L.L. No. 12-1980; 8-26-1980 by L.L. No. 13-1980; 9-13-1983 by L.L. No. 6-1983; 2-26-1985 by L.L. No. 4-1985; 12-17-1985 by L.L. No. 13-1985; 12-17-1985 by L.L. No. 18-1985; 3-25-1986 by L.L. No. 3-1986; 4-28-1987 by L.L. No. 10-1987; 2-19-1991 by L.L. No. 5-1991; 7-9-1991 by L.L. No. 10-1991; 5-21-1996 by L.L. No. 8-1996; 1-28-1997 by L.L. No. 2-1997; 3-18-1997 by L.L. No. 6-1997; 5-21-1997 by L.L. No. 9-1997; 12-16-1997 by L.L. No. 25-1997; 6-8-1999 by L.L. No. 7-1999; 12-14-1999 by L.L. No. 14-1999; 10-2-2001 by L.L. No. 8-2001; 3-12-2002 by L.L. No. 2-2002; 6-25-2002 by L.L. No. 9-2002; 3-11-2003 by L.L. No. 1-2003; 9-30-2003 by L.L. No. 12-2003; 11-15-2005 by L.L. No. 13-2005; 1-3-2006 by L.L. No. 1-2006; 1-24-2006 by L.L. No. 2-2006; 8-22-2006 by L.L. No. 13-2006; 10-3-2006 by L.L. No. 14-2006; 12-12-2006 by L.L. No. 16-2006; 5-29-2007 by L.L. No. 4-2007; 5-29-2007 by L.L. No. 5-2007; 12-11-2007 by

L.L. No. 12-2007; 7-29-2008 by L.L. No. 7-2008; 9-22-2008 by L.L. No. 9-2008; 10-2-2008 by L.L. No. 10-2008; 5-19-2009 by L.L. No. 9-2009; 6-23-2009 by L.L. No. 11-2009]

For the purpose of this chapter, the terms used herein are defined as follows:

**ABATTOIR**

A slaughterhouse for the slaughtering of livestock other than poultry.

**ACCESSORY APARTMENT**

A separate space within a one-family dwelling, or a structure on property on which exists a one-family dwelling, which is wholly or partly used or arranged, designed or intended to be occupied or used for living or sleeping by one or more human occupants.

**ACCESSORY BUILDING OR USE**

A subordinate building or use customarily incidental to and located on the same lot occupied by the main building or use.

**AFFORDABLE SENIOR CITIZEN FACILITY**

A residential dwelling unit made available for sale or rent such that the shelter portion of the housing cost is below the market price of such units, to be determined as follows:

- A. Units for rent. Rent shall not exceed 80% of the county median income, as determined by the United States Department of Housing and Urban Development (HUD), times 30%.
- B. Units for sale. Sales price shall not exceed 45% of the average sales price of single-family homes in the county for the prior 12 months, and be for sale to households whose income is 80% of the county median income as determined by HUD.

**AGRICULTURE**

The cultivation of the soil for food products or other useful or valuable growths, crops or products of the field or garden, tillage or husbandry, but shall not include dairying, raising of livestock, fowls or birds where the same is carried on as a gainful operation.

**ALL-SUITE HOTEL**

A commercial building primarily for transient guests and having one or more of the following: lounge, meeting/conference room, dining room and kitchen for the serving of food to be consumed primarily in said dining room. All guest rooms shall contain a sitting room, separate bedroom and the provision of limited kitchen facilities.

**ALTERATION**

As applied to a building or structure, the change or rearrangement of the structural parts or any enlargement, whether by extending on any side or by increasing in height, or the moving from one location to another. It does not include ordinary repairs to buildings or structures.

**AMUSEMENT ARCADE**

Any premises where three or more amusement devices are available for operation.

**AMUSEMENT DEVICE**

Any coin- or token-operated machine, apparatus or contrivance which is used or which may be used as a game of skill or amusement wherein or whereby the player initiates, employs or directs any force or action to, or generated by, the machine, including, but not limited to billiard tables; casino-type games; computerized games; electronic bowling; electronic shuffleboard; pinball machines; shooting galleries; and skill boards.

"Amusement devices," for the purpose of this chapter, shall not include bowling alleys and duckpin bowling alleys.

**ATTIC**

The space between the ceiling joists of the top story and the roof rafters. An attic shall not be used or occupied as living or sleeping quarters. There shall be no fixed stair to any new attic space nor operable windows. Attics shall not have finished floors or heating systems. Attics over one-story extensions shall count as additional gross floor area if the height from the joist to the underside of the ridge is greater than five feet. Horizontal access to attics shall be limited to nine square feet.

**BAR AND GRILL**

Any business use in which the primary service offered is the sale of alcoholic beverages for consumption on the premises, regardless of whether food is also served and entertainment of any type is offered.

**BASEMENT**

That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average established finished grade of the ground adjoining the building.

**BELOW-GRADE PARKING STRUCTURE**

An accessory use in which the final paved surface is located more than 24 inches below the preexisting grade of a building site, and that provides for the parking of vehicles, including drive aisles, and which may include loading areas.

**BILLBOARD or POSTER PANEL**

A sign erected and maintained by an outdoor advertiser.

**BLOCKFRONT**

The street and the space surrounding it, including the buildings and open space fronting on both sides of the streets.

**BOATEL**

A hotel on a waterfront with docks for use by boaters.

**BUILDING**

A combination of materials other than a structure to form a construction that is safe and stable and adapted to permanent or continuous occupancy for public, institutional, residence, business or storage purposes; the term "building" shall be construed as if followed by the words "or part thereof."

**BUILDING DEPARTMENT**

The Building Department of the Town of North Hempstead.

**BUILDING HEIGHT**

The vertical distance measured from the average level of the preexisting grade at the perimeter of the building to the highest point of the roof.

**BUILDING OFFICIAL**

The officer or other person specifically charged by the Town Board with the administration and enforcement of this chapter, or his duly authorized representative.

**CARETAKER UNIT**

An accessory living space within a historic building, structure or dwelling intended as a primary residence for the person or family responsible for the maintenance, upkeep and/or security of the building or site. Caretaker units may comprise up to 50% of the gross floor area of the building, and may have a separate entrance. [Added 9-10-2013 by L.L. No. 4-2013]

**CELLAR**

That portion of a building with half or more of its floor-to-ceiling height below the average level of the adjoining ground. A "cellar" shall not be used or occupied as living or sleeping quarters.

**CHILD-CARE FACILITY**

Any program or facility providing care for children for more than three hours but less than 24 hours per day per child on a regular basis away from the child's residence, in which care is provided by someone other than the parent, step-parent, guardian or other relative within the third degree of consanguinity of the parent or step-parent.

- A. This definition shall apply whether or not care is given for compensation.
- B. This definition shall include any facility that provides child-care services as defined in § 390 of the New York State Social Services Law.
- C. This definition shall not include child-care facilities located in private dwellings and multiple-dwelling units licensed and operated in accordance with the regulations set forth by the New York State Office of Children and Family Services.

- D. Medical care or delinquency correction may not be the principal use of the facility.
- E. Child-care facilities shall be licensed by and operated in accordance with the regulations set forth by the New York State Office of Children and Family Services.

**CODE ENFORCEMENT OFFICER**

The officer or other person specifically charged by the Town Board with the administration and enforcement of this chapter, or his duly authorized representative.  
[Added 11-16-2010 by L.L. No. 15-2010]

**COMMERCIAL PARKING LOT**

Any lot or premises, other than one owned or maintained by the municipality, used for parking automobiles or other motor vehicles by the public upon the payment of a fee, whether or not such use is an accessory use.

**CONCRETE RECYCLING OPERATION**

A facility used for the collection and processing and/or crushing of uncontaminated concrete waste for conversion to recycled concrete aggregate.  
[Added 8-9-2016 by L.L. No. 6-2016]

**CONVENIENCE STORE**

A retail sales area that offers for sale prepackaged food or beverages, and may allow for cooking and preparation of ready-to-serve food, for off-site consumption. A convenience store shall co-locate or coexist only with a gasoline service station or automobile service station, and only as approved by the Town Board.  
[Amended 3-22-2016 by L.L. No. 3-2016]

**CORNER LOT**

A lot situated at the intersection or junction of two or more streets.

**CORRAL**

An outdoor accessory structure for the storage of shopping baskets, carts and wagons that is made available for use by the shopping public and for the secure storage of carts during hours when the business is closed. [Added 3-8-2011 by L.L. No. 4-2011]

**COURT**

A required open and unoccupied space on the same lot and enclosed on at least three sides by walls of a building.

**~~DELICATESSEN~~**

~~[A retail establishment which cooks, prepares and sells ready-to-serve food and may offer for sale prepackaged food or beverages primarily for off-premises consumption.]~~

**DEPARTMENT OF HEALTH**

The Department of Health of the County of Nassau and any other health board or department established pursuant to the laws of the State of New York and entrusted with the regulations, control and/or supervision of matters pertaining to and affecting the public health in the Town of North Hempstead.

**DEPTH OF A LOT**

The mean distance from the street line of the lot to its opposite rear line, measured along the side lines of the lot.

**DISPLAY SURFACE**

The total number of square feet of sign space on one side of a sign, exclusive of moldings.

**DRIVE-THROUGH FACILITY**

A business, establishment, building or other structure intended, in whole or in part, to accommodate in-vehicle customer service. Such facilities shall also include, but not be limited to, establishments such as drive-through oil change and/or car wash operations, which utilize a drive-through lane or lanes, but perform their services while customers wait outside their motor vehicles, and establishments that provide in-vehicle customer service via a freestanding box.

**DWELLING**

A building containing not more than two dwelling units occupied principally for residential uses.

**DWELLING UNIT**

A portion of a row dwelling housing not more than one family.

**EAVE HEIGHT**

The top of the uppermost wall plate, as measured from the average level of the preexisting grade at the perimeter of the building.

**ELEEMOSYNARY**

A not-for-profit organization, public or private, primarily engaged in charitable activities or primarily supported by charitable contributions.

**ELECTRONIC CIGARETTE**

A device containing a liquid or other substance that is vaporized and inhaled for the purpose of simulating the experience of smoking.

[Added 8-9-2016 by L.L. No. 7-2016]

**ELECTRIC VEHICLE CHARGING STATION**

A system for the charging of an electric vehicle. Components typically include a charging kiosk and transformer.

[Added 5-13-2014 by L.L. No. 7-2014]



**ERECTED**

Includes constructed, reconstructed, altered, placed or moved.

**EXISTING BUILDING**

A building erected prior to the effective date of this chapter.

**FAMILY**

One individual or a collective group of individuals either:

- A. Related to each other by blood, marriage or adoption who live together in the same dwelling unit, cook together and function as a single, stable housekeeping unit with common access to all rooms and facilities; or
- B. Not related by blood, marriage or adoption but who together constitute the functional equivalent of a natural family, all living together in the same dwelling unit, cooking together and generally functioning as a single, stable housekeeping unit, all with common access to all rooms and facilities, with no member or members of such group subletting, subleasing or otherwise controlling any part of the dwelling separately from the others.

**FOOD SERVICE**

See definition of "restaurant" contained in this section.

**FRONT OF BUILDING**

On an interior lot, the exterior wall facing the street. The "front of a building" on a corner lot is the exterior wall where the main entrance is established.

**FRONT YARD**

A yard across the full width of the lot extending from the front line of the building to the front line of the lot measured between the side property lines.

**FRONT YARD, PRIMARY**

The front yard with the narrower street frontage. For lots having equal street frontage, the primary front yard shall be the front yard where the main entrance is established.

[Added 7-10-2012 by L.L. No. 11-2012]

**GASOLINE SERVICE STATION or AUTOMOBILE SERVICE STATION (used synonymously in this chapter)**

The use of premises for the dispensing of motor fuels, lubricants and other materials used in the operation of motor or other vehicles and/or where minor repairs to motor or other vehicles are made.

**GASOLINE SERVICE STATION/CONVENIENCE STORE**

The co-location of a gasoline service station and a convenience store, only as approved by the Town Board. No use other than a convenience store may coexist or co-locate with a gasoline service station. A gasoline service station/convenience store contains a



convenience store that offers for sale food or beverages, in conjunction with the sale of automotive fuel. Other prepackaged goods, household items, automotive fluids and wiper blades, automotive cleaning supplies, oils, waxes and windshield fluids, newspapers and magazines may also be sold at a gasoline service station/convenience store.  
[Amended 3-22-2016 by L.L. No. 3-2016]

**GROSS FLOOR AREA (NONRESIDENTIAL)**

The sum of the gross horizontal areas of the several floors of a building, including interior balconies and mezzanines, but excluding exterior balconies. All horizontal dimensions of each floor are to be measured from the exterior faces of the walls of each such floor, including roofed porches having more than one wall. The "gross floor area" of accessory buildings shall include the floor area of accessory buildings on the same lot, measured the same way. In computing the "gross floor area," there shall be excluded any floor area of a story whose ceiling is less than four feet above grade at the nearest building line and attic space having a headroom of less than seven feet, provided that those areas are nonhabitable and are used for storage or mechanical equipment.

**GROSS FLOOR AREA (RESIDENTIAL)**

The sum of the gross horizontal area of all floors or stories of a dwelling as measured to the outside surfaces of structural walls as well as attached garages, enclosed porches and roofed porches having more than 50% of the perimeter enclosed or screened and basement areas with ceiling heights in excess of seven feet or greater. Basement areas with a maximum ceiling height of eight feet shall not be included in the gross floor area in all residential building permit applications or amendments submitted prior to December 21, 2007. Attics and cellars shall be excluded from the gross floor area. The gross floor area of detached garages greater than 300 square feet shall be included in their entirety. Gross floor area in dwellings for areas exceeding 10 feet in height shall be counted at 1.5 times the actual floor area except in garages.

**GROUND OR FIRST STORY**

The lower story entirely above the average level of the ground surrounding a building.

**GROUND SIGN and POLE SIGN**

A "ground sign" is one securely fastened to the ground by means of two or more supporting posts. A "pole sign" is one attached to the upper part of a single pole securely fastened to the ground.

**GROUP GARAGE**

A building, one story in height, divided into separate units or with a common means of access, used for the storage of noncommercial automobiles, but not used for servicing or making repairs to automobiles.

**HABITABLE FLOOR AREA IN A DWELLING**

Rooms occupiable by one or more persons for living, eating and/or sleeping, but not including garages, attics, open porches or terraces, or rooms in cellars. On the first floor, it shall be construed to mean all finished floor area having a clear headroom of 7 1/2 feet

or over, including stairwells; on all floors above the first, it shall include all finished or unfinished floor area having a clear headroom of 7 1/2 feet or over for a minimum horizontal measurement of six feet, including all floor area with a height of 5 1/2 feet or greater.

### **HALF STORY**

A half story is that part of any building above a story and having at least two opposite exterior walls meeting a sloping roof at a level no higher above the floor than 1/2 the floor-to-ceiling height of the story below.

### **HOTEL**

A commercial building primarily for transient guests, consisting of three or more stories and having only one dining room and one kitchen for the serving of food to be consumed primarily in said dining room.

### **INDOOR SMOKING ESTABLISHMENT**

Any facility or location whose business operation, whether as its principal or accessory use, includes the indoor smoking of tobacco in any form, electronic cigarettes, vapors, e-liquids, other legal marijuana derivatives or other substances. Smoking is the inhalation of the smoke of burning tobacco encased in cigarettes, pipes, cigars, and pipes commonly known as "hookah," "waterpipe," "shisha" and "narghile" or any similar device, or the inhalation of vapors produced by an electronic cigarette or other device.

[Added 8-9-2016 by L.L. No. 7-2016]

### **INDUSTRIAL PARK**

A special or exclusive type of planned industrial area designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services in attractive surroundings among compatible neighbors.

### **INDUSTRY**

The manufacturing, fabricating, finishing, assembly, treating or processing of articles to be sold at wholesale or retail on a scale exceeding a maximum of five horsepower and requiring more than five operators.

### **INTERIOR LOT**

A lot other than a corner lot.

### **JUNKYARD**

The use of any space, whether open or enclosed, for the collecting, handling, sale, discarding, wrecking, salvage, storage, keeping or abandonment of worn, salvaged, dismantled, used or discarded wastepaper, junk, rags, scrap, metals, materials, articles, equipment, machinery, vehicles inoperative or not intended to be repaired or any parts thereof.

### **LANDBANKED PARKING AREA**

A designated area or areas on a plot specifically allocated and designed for parking but which is not immediately developed as such. The location of landbanked parking areas shall be in conformance with all restrictions relating to required parking and to any other restrictions specified within this chapter or by any decision of a board or commission having jurisdiction over a specific application.

**LODGE**

A building used by fraternal organizations.

**LOT**

Includes plot, tract, premises or parcel of land, with or without buildings or structures located thereon, as surveyed and apportioned for sale or other purpose.

**LOT AREA**

The area of a lot measured within the boundaries thereof.

**LOT COVERAGE**

The area of the maximum horizontal cross section of the buildings on a lot, excluding cornices, eaves, gutters or chimneys projecting not more than 24 inches, steps, one-story open porches, bay windows extending not more than one story and projecting not more than five feet, balconies and terraces.

**MAIN BUILDING**

The building which houses the principal purpose for the utilization of the lot, as permitted under this chapter.

**MAINTAIN EXISTING**

As used in the Building Department fee schedule established pursuant to § 2-28C, an application for a building permit for construction, changes, alterations, improvements or modifications which had been previously completed without the required permit(s) and inspections.

**MARIJUANA**

**The term “Marijuana” shall have the same definition ascribed to “Marihuana” in § 3302 of the New York Public Health Law.**

**MARIJUANA RETAIL STORE**

**A building, structure or premises engaged in the sale, use or distribution of Marijuana and/or Marijuana Products for non-medical use. A building, structure or premises shall be considered a Marijuana Retail Store regardless of whether products in addition to Marijuana Products are offered for sale, use or distribution at the building, structure or premises and regardless of the amount of Marijuana or Marijuana Products available for sale, use or distribution at the building, structure or premises in comparison to other products offered for sale, use or distribution at the building, structure or premises.**

**MARIJUANA PRODUCT**

**Marijuana and/or any material, substance or other thing derived (in any manner) from Marijuana or which contains Marijuana as a component part in any amount or concentration.**

**MARINA**

A dock or a commercial mooring area, operated for profit or to which public patronage is invited, providing mooring or docking facilities for boats or vessels.

**MARINE**

Of or pertaining to the open water, i.e., a bay, harbor, sound, river or lake.

**MATERIAL CRUSHING**

The crushing of stone, gravel, brick, concrete, slate, granite, sedimentary rock, igneous rock, metamorphic rock, asphalt, tile, adobe, clay, conglomerate rock or other similar material.

[Added 8-9-2016 by L.L. No. 6-2016]

**MEDICAL MARIJUANA**

**The term “Medical Marijuana” shall have the same definition ascribed to Medical Marihuana in § 3360 of the New York Public Health Law.**

**MEDICAL MARIJUANA DISPENSARY**

**A building, structure or premises authorized by the New York State Department of Health to dispense or distribute Medical Marijuana in accordance with Article 33 of the Public Health Law and Part 1004 of Title 10 of the New York Codes, Rules and Regulations.**

**MIXED USE**

The combination of retail or office use, accessible to the public, with residential use in the same structure.

**MOTHER-DAUGHTER RESIDENCE**

A. A one-family home or residence altered to include an apartment for which a conditional use permit shall have been duly approved by the Board of Zoning and Appeals pursuant to § 70-225B(6) and which complies with the following conditions:

- (1) The apartment is no larger than 700 gross square feet;
- (2) The cooking facilities in the apartment do not exceed 60 square feet;
- (3) The fee owner resides within the premises;
- (4) The apartment resident is either the parent or the child of the fee owner;

- (5) The premises do not have a separate entrance for the exclusive use of the apartment;
  - (6) There is no exterior stairway to the second floor of the building;
  - (7) The premises have only one set of stairs leading from any one floor to any other floor;
  - (8) The premises are served by only one meter for each utility supplied; and
  - (9) There is no exterior deck attached to any floor above ground level.
- B. If any of the conditions listed above cease to exist, then the premises shall cease to be a mother-daughter residence, the conditional use permit shall expire immediately and the cooking facilities shall be removed in accordance with § 70-225B(6).

**MOTOR VEHICLE REPAIR SHOP**

A use or building or portion of a building in which mechanical, electrical or other similar power is used in the repair of motor vehicles or in which commercial motor vehicle repair work is done.

**MULTIPLE-FAMILY DWELLING**

A residence building accommodating three or more families living independently of each other and allowed to do their own cooking on the premises.

**NEW CASSEL URBAN RENEWAL AREA**

The area identified by the Town Board of the Town of North Hempstead for the undertaking of urban renewal activities pursuant to the New Cassel Urban Renewal Plan.

**NEW CASSEL URBAN RENEWAL OVERLAY DISTRICT or OVERLAY DISTRICT**

The overlay district established pursuant to and governed by Article XXB of this chapter.

**NEW CASSEL URBAN RENEWAL PLAN**

The urban renewal plan, as same may be amended from time to time, formulated and considered in accordance with Article 15 of the General Municipal Law, and approved by the Town Board of the Town of North Hempstead at its meeting held on August 12, 2003, pursuant to Resolution No. 280-2003.

**NEW CASSEL VISION PLAN**

The document entitled "Seeking a Shared Vision for New Cassel-New Cassel Vision Plan," which was accepted by the Town Board of the Town of North Hempstead pursuant to Resolution No. 98-2003, adopted at its meeting held on March 11, 2003.

**NONCONFORMING BUILDING**

A building which lawfully existed prior to the enactment of this Code, or any amendment thereto, and which is maintained after the effective date thereof although it does not conform to the area and setback regulations of the district in which it is located (i.e., lot area, width or depth; front, side or rear yards; maximum height; lot coverage; etc.).  
[Amended 7-10-2012 by L.L. No. 11-2012]

**NONCONFORMING USE**

A use, whether of a building or tract of land, or both, which lawfully existed prior to the enactment of this Code, or any amendment thereto, and which is maintained after the effective date thereof although it does not conform to the use regulations of the district in which it is located.  
[Added 7-10-2012 by L.L. No. 11-2012]

**NONPERMITTED SUBSTANTIAL AMENDMENT**

As used in the Building Department fee schedule established pursuant to § 2-28C, where substantive changes, modifications, alterations or improvements were made to the work contemplated in the approved building permit and/or plans and specifications which accompanied same, and for which substantive changes, modifications, alterations or improvements were performed without the filing of a new building permit application.

**NURSERY SCHOOL**

A social and educational program, not located in a private residence, that provides care for three- to five-year olds, and often follows a school-year schedule. Care is restricted to a maximum of three hours per day per child.

**NURSING HOME**

A skilled nursing facility licensed by the State of New York to provide full-time convalescent or chronic health care under medical supervision to individuals of any age who are unable to fully care for themselves, but not including facilities for surgical care or institutions dedicated to the care and treatment of mental illness, alcoholism or narcotics addiction. No nursing home shall contain any uses other than those permitted pursuant to applicable regulations of the State of New York and the nursing home's operating certificate issued pursuant thereto.

**OPEN PORCH**

A roofed open structure projecting from the outside wall of a building without a window sash or any other form of enclosure.

**OPEN SPACE**

The area on a lot that is not covered by structures or paving for parking of automobiles and the access to that parking. Open space includes all landscaped area and patios on grade.

**PARKING SPACE**

The off-street paved or surfaced area available and usable for the parking of one motor vehicle, having dimensions of not less than 10 feet by 20 feet, exclusive of aisles,



driveways, passageways and other necessary space appurtenant thereto and having direct usable access to a street. In satisfying the off-street parking requirements as set forth in § 70-103, for nonmedical office use and industrial use, up to but not exceeding 20% of the off-street parking spaces may have dimensions of not less than nine feet by 18 feet and shall be so designated. With respect to all other uses, all off-street parking spaces must have dimensions of not less than 10 feet by 20 feet. Whenever parking requirements are calculated on the basis of floor area or space, all calculations should be made using the gross floor area, as defined in § 70-231.

**PERSON**

Includes individual, firm, corporation, partnership, association or other agency of voluntary action.

**PORTABLE SHED**

A structure of no more than 100 square feet, with a maximum height of 10 feet, not having a firm attachment to the ground, for the storage of garden and recreational equipment.

**PREEXISTING GRADE**

The elevation of the land prior to commencement of any alteration, grading or construction at the premises.

**PREMISES**

Includes the land and all buildings or structures thereon.

**PRIMARY BUILDING**

The building which houses the principal purpose for the utilization of the lot, as permitted under this chapter, excluding any accessory building or permitted encroachments as defined in § 70-101.

[Added 7-10-2012 by L.L. No. 11-2012]

**PRIVATE GARAGE**

A detached accessory building or part of the main building used for the storage of not more than two noncommercial automobiles or one commercial vehicle and one noncommercial automobile, owned and used by the occupant of the plot on which the main building is erected and in which no business or service is conducted. Any such commercial vehicle must be kept within the garage at all times and shall not contain any flammable, combustible, explosive, toxic or offensive-smelling material. Such accessory structure shall not exceed 26 feet in width and 24 feet in depth, with garage doors not to exceed eight feet in height.

**PROFESSIONAL OFFICE**

An office maintained by a doctor, dentist, lawyer, teacher, artist, architect, engineer, accountant, ophthalmic dispenser or musician in the dwelling in which such person resides, provided that such office does not occupy more than 50% of the habitable floor space on the first floor or more than 25% of the habitable floor space of a one-story



dwelling and not more than one assistant or employee is employed by such person, and further provided that there is no alteration or change to the exterior of such dwelling which modifies its residential character or use, or the use thereof has no feature which is offensive, annoying or harmful to public health, safety or general welfare by reason of noise, glare, vibration, odor, radiation, dust, fumes or undue traffic.

**PUBLIC GARAGE**

A use or building, or portion of a building, used for the commercial storage, rental and/or minor repair of motor vehicles.

**PUBLIC HOUSING**

A building, portion of a building or group of buildings that provides dwellings in a residential environment, subject to the regulations set forth in Article IX of this chapter, and which is owned or operated by one of the following: [Added 6-29-2010 by L.L. No. 7-2010]

- A. The North Hempstead Housing Authority; or
- B. An entity that is working under contract with the North Hempstead Housing Authority; or
- C. A limited partnership whose general partner is the North Hempstead Housing Authority or an entity owned, operated and controlled by the North Hempstead Housing Authority.

**REAR YARD**

A yard across the full width of the lot extending from the rear line of the building to the rear line of the lot, measured between the side property lines.

**RESIDENCE UNIT**

A portion of a residence building housing not more than two families and separated from another unit by a party wall. Such unit shall be considered a separate building.

**RESTAURANT**

A business engaged in the preparation and sale of food and beverages for consumption either on or off the premises that is not a retail food use.  
[Amended 3-20-2018 by L.L. No. 2-2018]

**RETAIL FOOD USE**

A retail establishment which cooks, prepares and sells ready-to-serve food and may offer for sale prepackaged food or beverages primarily for off-premises consumption, which may have no more than 12 seats.  
[Amended 3-20-2018 by L.L. No. 2-2018]

**RETAINING WALLS**

All walls and other structures of any construction which are intended to, or which in fact, retain or support adjoining earth or rock.

### **ROW DWELLING**

A building consisting of noncommunicating one-family dwelling units, each having its own front and rear entrance. Where a row dwelling contains more than two dwelling units, the walls separating dwelling units shall be constructed and have fire-resistant ratings as follows: The wall separating the second and third dwelling units shall be constructed of wire lath and cement plaster having a fire-resistant rating of not less than one hour. The wall separating the fourth and fifth dwelling units shall be of eight-inch masonry construction with a fire-resistance rating of not less than four hours. Similar construction of separating walls shall continue throughout the building, so that for a row dwelling containing the maximum of 16 families, there shall be four separating walls of wire lath and cement plaster and three separating walls of eight-inch masonry. The determination of the location of separating walls as required herein may be made from either the left or right exterior sidewalls of the building.

### **SANATORIUM**

An institution other than one required to be licensed under the Mental Hygiene Law of the State of New York.

### **SENIOR ASSISTED-LIVING FACILITY**

A building, portion of a building or group of buildings that provide dwellings in a residential environment where individual cooking facilities are limited to microwave ovens and/or cooktops, with assistance available by way of common meals, housekeeping and personal services. Occupancy is restricted to persons 62 years of age or older or couples, one of whose member is 62 years of age or older who may have difficulties with one or more essential activities of daily living, such as feeding, bathing, dressing or mobility.

### **SENIOR CITIZEN FACILITY**

A facility intended to provide for the specialized living and/or daily caregiving needs of persons 62 years of age or older, including senior independent-living facilities, senior congregate-housing facilities, senior assisted-living facilities and senior day-care facilities, except as described in § 70-95.1C.

[Amended 10-21-2014 by L.L. No. 17-2014]

### **SENIOR CONGREGATE-LIVING FACILITY**

A building, portion of a building or group of buildings containing three or more dwelling units where individual cooking facilities are limited to microwave ovens and/or cooktops, specially designed for use and occupancy by the elderly, including a common dining facility and other common amenities and whose occupancy is restricted to persons 62 years of age or older or couples, one of whose member is 62 years of age or older.

### **SENIOR DAY-CARE FACILITY**

A facility with limited operating hours where specialized caregiving and supervision are provided for three or more adults who may have difficulties with one or more essential activities of daily living, such as feeding or mobility, away from their own homes for less than 24 hours per day.

**SENIOR INDEPENDENT-LIVING FACILITY**

A building, portion of a building or group of buildings containing dwelling units with full kitchens specially designed for use and occupancy by the elderly which may have common amenities but no common dining and whose occupancy is restricted to persons 62 years of age or older or couples, one of whose member is 62 years of age or older, except as described in § 70-95.1C.

[Amended 10-21-2014 by L.L. No. 17-2014]

**SENIOR RESIDENCE DISTRICT (R-S)**

A building or group of buildings that contain any combination of two or more residential senior citizen facilities, nursing homes or senior day-care facilities on the same site restricted to persons 62 years of age or older or couples, one of whose member is 62 years of age or older, not necessarily regulated under Article 46 of the New York State Public Health Law, except as described in § 70-95.1C.

[Amended 10-21-2014 by L.L. No. 17-2014]

**SHOPPING CENTER**

Any two or more contiguous retail stores, restaurants, shops for personal services and other places of business, originally planned and developed as a single unit, with adjoining off-street parking.

**SIDE YARD**

A yard between the side of the building and the corresponding side line of the lot and extending from the front lot line to the rear lot line in the case of a single building on the front portion of the lot. In the case of a rear building on the back portion of a lot, the side yard shall be the yard between the side of said rear building and the corresponding side line of the lot and extending from the front face of said rear building to the rear line of the lot.

**SIGN**

Includes every kind of billboard, signboard and other shape or device or display arranged, intended, designed or used as an advertisement, announcement or direction, including any text, symbol, marks, letters or figures painted on or incorporated in the composition of the exterior surface of a building or structure.

**SINGLE-FAMILY DWELLING**

A building designed for and occupied exclusively as a home or residence for not more than one family.

**SKY EXPOSURE PLANE**

A theoretical inclined plane through which no portion of a building, other than cornices or eaves projecting not more than 18 inches, gutters projecting not more than eight inches and chimneys, may penetrate. It begins at a lot line or other predetermined plane and rises over the zoning lot at a ratio of vertical distance to horizontal distance as set forth in the district regulations.

**STORY**

That part of any building between the surface of one floor, except a cellar or basement floor, and the surface of the next highest floor or, if there is no higher floor, then that part of the building between the surface of the highest floor and the ceiling above, except an attic ceiling.

**STREET**

Any public thoroughfare or space more than 20 feet in width which may or may not have been dedicated or deeded to the public for public use.

**STREET FRONT**

Any property line which abuts a street.  
[Added 7-10-2012 by L.L. No. 11-2012]

**STREET FRONTAGE**

The distance between the boundary lines of a lot when measured along any property line abutting a public street.

**STREET LINE**

The line dividing a lot from a street.

**STRUCTURE**

A combination of materials, other than a building, to form a construction that is safe and stable, including, among others, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, piers, wharves, sheds, commercial coal bins, display signs, fences, retaining walls, outdoor fireplaces, pools and pergolas. The term "structure" shall be construed as if followed by the words "or part thereof."

**TELEPHONE EXCHANGE**

A building erected or used exclusively as a central station where telephone lines meet and where connections are made between them and where no trucks or materials are stored.

**TEMPORARY CARE FACILITY**

A facility providing housing on a temporary basis to a limited population upon individual referral by a state or federal agency. Such facilities are staffed full time and may have full- or part-time medical staff on premises and often provide on-site counseling services. Such facilities are not acute care or nursing facilities. [Added 1-24-2012 by L.L. No. 2-2012]

**TERRACE**

An open porch without a permanent roof.

**TOWN OF NORTH HEMPSTEAD**

Includes all areas of the Town unincorporated as a village on January 1, 1938, and all areas within the Town and within a village incorporated prior to January 1, 1938, which did not have a valid zoning ordinance on January 1, 1938.

**TRAFFIC SEPARATOR**

A structure of sufficient height and width to divide traffic flowing in opposite directions.

**TRAILER or CAMP CAR**

Any vehicle designed or equipped to be used or used for sleeping, living or eating, and designed to move or be moved from place to place on wheels, and to be propelled by its own power or drawn or propelled by another vehicle.

**TRANSFER STATION**

A solid waste management facility, other than a recyclables handling and recovery facility exclusively handling nonputrescible recyclables, that can have a combination of structures, machinery or devices, where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility. For the purposes of this Chapter 70, the definitions of "solid waste" and "solid waste management facility" shall be those which appear at Chapter 46 of this Code.

**TWO-AND-ONE-HALF-STORY BUILDING**

One where the provisions of the definition for "two-story building" are complied with and where the main eaves are below the midheight of the third story.

**TWO-FAMILY ATTACHED RESIDENCE BUILDING**

Residence units, as defined by this chapter, each arranged for two families, separated by an eight-inch masonry fire wall as a party wall.

**TWO-FAMILY DETACHED DWELLING**

A dwelling designed for and occupied exclusively as a home or residence for not more than two families.

**TWO-STORY BUILDING**

Any building where the area of the second floor is equal to at least 75% of the area of the first floor.

**USED**

Includes designed, intended or arranged to be used.

**USES**

The listed uses permitted in various districts. The listing of any uses as being permitted uses in any district shall be deemed to mean that such uses and no other shall be

permitted in such district unless specifically permitted in this chapter. The listing of any use as being permitted in or as being excluded from a particular district shall be deemed to be an exclusion of such use from any more restricted district unless specifically permitted by this chapter. Each of the hereinafter-named districts shall be deemed to be more restricted than the districts which succeed it and less restricted than the districts which precede it: Residence AAA, Residence AA, Residence A, Residence B, Residence C, Residence D, Multiple Residence, Public Housing Residence, Golden Age Residence, Parking, Transportation, Business AA, Business A, Business B, Planned Industrial Park, Industrial A, Modified Planned Industrial Park, Service Commercial and Industrial B Districts.

#### **VALET PARKING**

A service providing for attendants to receive, park and deliver the automobiles of occupants, tenants, customers and visitors.

#### **VEHICULAR STANDING SPACE**

A space located within a drive-through lane, having dimensions set forth in § 70-203S, utilized for the temporary stopping or queuing of a vehicle accessing or waiting to access a drive-through facility.

#### **WATER-DEPENDENT USE**

An activity or use requiring direct access to water which can be conducted only on, in over or adjacent to Town waterways and which involves the use of waterways as an integral part of such activity.

#### **WIDTH OF A LOT**

The mean width measured at right angles to its depth.

#### **YARD**

An open and unoccupied space on the same lot with a building, open and unobstructed from the ground to the sky, except as otherwise provided in this chapter.

#### **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