

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2021**

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

BE IT ENACTED by the Town Board of the Town of North Hempstead, as follows:

Section 1. Legislative Intent.

The Board finds that it is in the best interest of the Town of North Hempstead to amend Chapter 70 of the Town Code entitled "Zoning" to require compliance with certain performance standards for properties and uses within the Industrial B Zoning District.

Section 2.

Chapter 70 of the Town Code is hereby amended as follows:

§ 70-187. Conditional uses.

A building may be erected, altered or used and a lot or premises may be used for any of the purposes set forth in the following sections only when authorized by the Board of Zoning and Appeals pursuant to the provisions of Article XXIV, **and the requirements of §70-189.2.**

- A. Bag-cleaning establishment.
 - B. Brick, pottery, tile, concrete block or terra-cotta manufacture, transit mix hopper or hopper for the storage and/or manufacture of sand, stone, cement or gravel or other materials used for the processing or manufacture of concrete mix.
 - C. Burlap manufacture.
 - D. Carpet-cleaning establishment.
 - E. Dismantling of motor vehicles, storage and sale of used parts, only when carried on within an enclosed building.
 - F. Dry-cleaning establishment conforming to the requirements of § 70-203R.
- [Amended 5-19-1998 by L.L. No. 10-1998]
- G. Paper and pulp manufacture.
 - H. Perfume and extract manufacture.
 - I. Plating works.

J. Sausage manufacture.

K. Storage or baling of scrap paper, iron, bottles, rags or junk, only when carried on within an enclosed building.

L. Tobacco manufacture or treatment.

M. Central station power plant.

N. Gas; illuminating or heating, manufacture or storage, in excess of 10,000 cubic feet.

O. Accessory building on the same lot with and customarily incidental to any of the above permitted uses in accordance with a plot plan approved by the Board of Zoning and Appeals.

[Amended 1-24-2006 by L.L. No. 2-2006; 10-3-2006 by L.L. No. 14-2006]

[1] *Editor's Note: Former Subsection O, listing amusement device regulations, added 9-13-1983 by L.L. No. 6-1983, was repealed 5-29-2012 by L.L. No. 8-2012. This local law also redesignated former Subsections P through R as Subsections O through Q.*

P. Food service.

[Added 12-3-1985 by L.L. No. 12-1985]

Q. Temporary care facility, as defined in § 70-231. Such facilities:

[Added 1-24-2012 by L.L. No. 2-2012]

- (1) May not be located within 500 feet of any residence district;
- (2) Must have qualified staff on premises 24 hours daily;
- (3) Shall provide on-site dining services;
- (4) May not house any individual for more than a twenty-four-month period; and
- (5) May not exceed a density of 72 beds/acre.

R. Indoor smoking establishment, as defined in §70-231, conforming to the following:

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

- (1) No such establishment shall be permitted within a radius of 500 feet of any area zoned for residential use nor within 1,000 feet of the lot line of any premises

used for a school, church or other place of religious worship, park, playground or playing field, library, hospital or similar public or semipublic place of general congregation, or non-degree-granting instruction/programs, including tutoring centers, self-defense, dance, swimming, gymnastics and other sports.

(2) No more than one indoor smoking establishment shall be located on any lot.

Section 3.

Chapter 70 of the Town Code is hereby amended as follows:

§ 70-188. Additional conditional uses.

A building may be erected, altered or used and a lot or premises may be used for any of the purposes set forth in the following section when authorized by the Town Board:

A. Storage or sale of petroleum or other inflammable liquids; bulk storage of inflammable liquids.

[1] *Editor's Note: Former Subsection B, regarding drive-through facilities, added 1-24-2006 by L.L. No. 2-2006, which immediately followed this subsection, was repealed 10-3-2006 by L.L. No. 14-2006.*

B. Concrete recycling operation conforming to **the provisions of §70-189.2** and the following:
[added 8-9-2016 by L.L. No. 6-2016]

(1) The minimum plot area shall be no less than 30,000 square feet.

(2) All crushing operations shall be conducted within an enclosed building [and comply with the following]:

~~(a) Sound attenuation is required to prevent noise levels from exceeding 90 decibels at the property line of the crushing operation;~~

~~(b) Sound attention is required to prevent noise levels from exceeding 65 decibels at the property line of the nearest residential use or district, school, hospital or place of worship].~~

(3) Air quality, street cleaning and dust control measures shall comply with the following:

- (a) Any stockpiled material capable of passing a No. 10 sieve must be in a building or enclosure and may not be stored outdoors;
 - (b) Storage piles and emissions from processing machinery shall be abated by water sprayers daily if contained indoors, twice daily if contained outdoors or more frequently when wind speeds are in excess of 20mph;
 - (c) Outgoing trucks shall be washed prior to leaving the property of a crushing operation;
 - (d) No such facility shall be permitted to emit from any source an emission equal to or greater than 20% opacity as measured by an opacity sensing device;
 - (e) The property shall be swept and cleaned daily or more often if necessary to prevent visible dust from leaving the property;
 - (f) All trucks transporting concrete and recycled concrete to and from the site are to be covered;
 - (g) All visible dirt tracked out of the property onto public roads shall be removed at least once daily employing methods to control fugitive dust. **No material or discharge shall be deposited or caused to be deposited into the municipal separate storm sewer system (MS4) except as authorized under Chapter 47B of the Town Code.**
 - (h) All storm water and water used for abating stockpiles and machine emissions is required to be retained onsite and directed toward drainage infrastructure. Drainage infrastructure must be appropriately sized to handle the retention of 5 inches of rainfall, as well as the anticipated volume of water used for abatement;
 - (i) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes; and
 - (j) In the event diesel generators/equipment are to be used within a building, the facility must be in compliance with the latest version of the New York State Uniform Fire Prevention and Building Code.
- (4) All concrete that is accepted for crushing shall meet the requirements of the NYSDEC definition of "Uncontaminated" which is defined in 6 NYCRR 360 as construction and demolition debris that is not mixed or commingled with other solid waste at the point of generation, processing or disposal, and that is not contaminated with spills of a petroleum product, hazardous waste or industrial waste. Contamination from spills of a petroleum product does not include asphalt or concrete pavement that has come into contact with petroleum products through normal vehicle use of the roadway.

(5) Crushing activities may only commence between the hours of 8:00 a.m. and 6:30 p.m. on weekdays, and 9:00 a.m. to 5:00 p.m. on Saturdays.

(6) No building used for the housing of such use may exceed 50 feet in height.

(7) Parking, truck queuing and on-site circulation shall conform to the following:

(a) Off-street parking shall be provided at one (1) stall per 800 square feet of building area;

(b) Truck queuing areas shall be provided for a minimum of three (3) trucks; and

(c) Truck circulation plans depicting the necessary turning radii and clearances shall be submitted.

(8) In addition to the above, compliance with §70-189.2 shall be required.

C. Yard Waste Acceptance and Processing Facility **conforming to the provisions of §70-189.2 and the following:**

(1) No person or public agency other than the Town of North Hempstead Solid Waste Management Authority may conduct, operate or use any piece or parcel of land within the Town of North Hempstead as a yard waste acceptance and processing facility without having first obtained a permit approved by the Town Board as described in § 70-225 of the Town Code and an authority transfer station license as described in § 46-4, along with any other permit required by law. Only those persons and entities possessing a license pursuant to Chapter 38A of the Town Code are permitted to dispose of yard waste at a yard waste acceptance and processing facility.

(2) A parcel used as a yard waste acceptance and processing facility shall conform to the following:

(a) The minimum plot area shall be no less than 120,000 square feet; and

(b) The property must be no less than 100 feet from a residential district or use; and

(c) The property may not be within ½ mile of any surface water body, man-made or natural, or DEC designated wetland; and

- (d) Opaque fencing of ten (10) feet in height shall surround the perimeter of the yard waste acceptance and processing facility; and
 - (e) The lot and onsite buildings shall be kept free of vectors, including, but not limited to rodents, insects and other pests, and of any condition conducive to vectors. Written confirmation of engagement of a New York State certified exterminator at least quarterly and upon complaint shall be available at all times.
- (3) All activities involving loading or unloading trucks, grinding and/or chipping of wood and/or trees processing, and/or sorting of materials must be within a building enclosed by at least three opaque walls.
- (a) All indoor waste, tipping, sorting, processing, loading, and storage areas shall include fire detection and suppression in accordance with the most recent version of the New York State Uniform Fire Prevention and Building Code.
 - (b) The enclosure shall be thoroughly cleaned, swept, washed and deodorized within three hours at the end of each business day.
 - (c) All waste received at the yard waste acceptance and processing facility must be removed on the same day by 11:59 P.M.
 - (d) Ventilation shall be provided capable of automatically neutralizing odors through the exhaust system as air is ventilated from the enclosed building. Perfuming agents are not permissible.
- (4) Air quality and dust control measures must be undertaken, including:
- (a) Odors shall be controlled by the use of industrial odor-neutralizing spray misters installed at the property boundary of the yard waste acceptance and processing facility. The specific type of odor-neutralizing agent to be used must be identified to the Town Board at the time a permit is applied for pursuant to this section. Perfuming agents are not permissible; and
 - (b) All on-site drainage systems impacted by a yard waste acceptance and processing facility are to be kept clear of debris, and treated every three months with odor-neutralizing and bacteria-inhibiting solutions; and

- (c) All visible dirt tracked out of the yard waste acceptance and processing facility onto public roads shall be fully removed at least once per day, using wet power vacuum street sweepers or power street sweeper. In the event that a power street sweeper is used, without a wet wash technology incorporated into its functionality, then the supplemental use of a power washer shall be required as well, to ensure the proper flushing of the roadway and right of ways; and
 - (d) Stockpiles of materials that create airborne fugitive dust shall be abated by water sprayers.
- (5) Wastes to be received at a yard waste acceptance and processing facility shall be subject to the following:
- (a) A yard waste acceptance and processing facility may only accept yard waste as defined in §70-231.
 - (b) Information regarding the disposal method of materials other than yard wastes found in wastes brought to the yard waste acceptance and processing facility must be provided, including method of transport and identities of receiving facilities.
 - (c) No hazardous wastes may be accepted at a yard waste acceptance and processing facility.
 - (d) No food wastes may be accepted by a yard waste acceptance and processing facility.
- (6) Composting or anaerobic digestion are not permitted at a yard waste acceptance and processing facility.
- (7) Delivery of yard wastes at a yard waste acceptance and processing facility may only occur between the hours of 6:00 a.m. and 7:00 p.m. during weekdays, 8:00 a.m. to 4:00 p.m. on weekends.
- (8) A truck queuing and on-site circulation plan shall be submitted with the special use application conforming to the following:

- (a) Truck queuing areas shall be provided for a minimum of twenty (20) landscaping trucks;
 - (b) The plan must show the ability of the site to handle the largest truck anticipated for the purposes of delivery or pick-up of materials; and
 - (c) The circulation plan must demonstrate the site can accommodate emergency vehicles of any size and must show that the vehicles are able to access all portions of the property.
- (9) Truck routing plans are required to be submitted for the Town Board's consideration conforming to the following:
- (a) A truck routing plan must show legal truck routes to and from a yard waste acceptance and processing facility and the nearest thoroughfare able to accommodate commercial vehicles; and
 - (b) The proposed truck routes must limit traffic through residential neighborhoods to the greatest extent practicable.
 - (c) A yard waste acceptance and processing facility must inform drivers who use the facility about the legal truck routing plan. The Town will not hold a yard waste acceptance and processing facility responsible for the actions of drivers who do not follow the legal truck routing plan unless the driver is employed by that same yard waste acceptance and processing facility.

(10) In addition to the above, compliance with §70-189.2 shall be required.

Section 4.

Chapter 70 of the Town Code is hereby amended as follows:

§ 70-189.2 Performance Standards.

No land, building or use may be used or occupied in any manner so as to create a dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazardous condition; noise or vibration; smoke, dust, odor or other form of air pollution; electrical or other disturbances; glare or heat; liquid or solid refuse or wastes; conditions conducive to the breeding of rodents or insect; or other dangerous or objectionable elements in an amount or manner as to adversely affect the surrounding area. Any use of land permitted under this

article may be undertaken and maintained if it conforms to all district regulations including the regulations of this section referred to herein as performance standards. All uses of land in an Industrial B District shall operate in conformance with the limitations set forth in each subsection below:

- A. Vibration: Uses shall not create continuous or intermittent vibrations, either earthborn or airborne, which become a nuisance or hazard beyond property lines. Such vibration shall be considered a hazard when a person is aware of the vibration by such direct means as, but not limited to, sensation by touch or visual observation of moving objects. This shall not apply to construction activities performed in compliance with all applicable federal, state and local laws and ordinances and which has been approved by the Department of Buildings.
- B. Noise. Except where otherwise specified in this chapter, and not applicable to construction activities performed in compliance with all applicable federal state and local laws and ordinances and which has been approved by the Department of Buildings, all noise shall be muffled so as not to be objectionable, and shall comply with the following:
- (1) Sound attenuation walls are required to prevent noise levels from exceeding 70 decibels beyond property lines.
 - (2) When located within 200 feet of a residential district or use, sound attenuation walls are required to prevent noise levels from exceeding 70 decibels beyond property lines and no more than 60 decibels at the boundary of the nearest residential use or district.
- C. Air pollution, smoke, dust, fumes, particulate matter, threshold values. There shall not be discharged into the atmosphere from any source of emission whatsoever any air contaminant, combustion contaminant or particulate matter (excluding condense steam) in violation of the standards and limitations of the applicable regulations of the State of New York, Nassau County, or Town of North Hempstead. Stockpiles of materials that may create airborne fugitive dust shall be abated by water sprayers and all water is required to remain on site.
- (1) Any stockpiled material capable of passing a No. 10 sieve must be in a building or enclosure and may not be stored outdoors;
 - (2) Storage piles and emissions from machinery shall be abated by water sprayers daily if contained indoors, twice daily if contained outdoors or more frequent when wind speeds are in excess of 20mph;

- (3) No facility shall be permitted to emit from any source an emission equal to or greater than 20% opacity as measured by an opacity sensing device;
- (4) All trucks transporting materials to and from a site are to be covered;
- (5) All properties shall be swept and cleaned daily or more often, if necessary, to prevent visible dust from leaving the property;
- (6) Outgoing trucks shall be washed prior to leaving a property where there is a likelihood the trucks may have picked up dirt and or dust while onsite;
- (7) All visible dirt tracked out of the property onto public roads shall be removed at least once daily employing methods to control fugitive dust. No material or discharge shall be deposited or caused to be deposited into the municipal separate storm sewer system (MS4) except as authorized under Chapter 47B of the Town Code.
- (8) All storm water and water used for abating stockpiles and machine emissions is required to be retained onsite and directed toward drainage infrastructure. Drainage infrastructure must be appropriately sized to handle the retention of 5 inches of rainfall, as well as the anticipated volume of water used for abatement;
- (9) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to five (5) minutes; and
- (10) In the event diesel generators/ equipment are to be used within a building, the facility must be in compliance with the latest version of the New York State Uniform Fire Prevention and Building Code.

D. Odors and Gas. No odor shall be discharged or permitted to escape into the atmosphere that is offensive to the public or which endangers public comfort, repose, health or safety, or violates the standards and limitations of the applicable regulations of the State of New York, Town of North Hempstead and Nassau County. Odors shall be controlled by the use of industrial, non-toxic, odor-neutralizing spray misters installed at the property boundaries. No gas shall be emitted which is deleterious to public health, safety or general welfare, including but not limited to sulfur dioxide, hydrogen sulfide, fluorine, nitrous fumes, and carbon monoxide.

E. Electromagnetic Radiation.

- (1) It shall be unlawful to operate any equipment which as a source of electromagnetic radiation does not comply with the pertinent current rules and regulations of the Federal Communications Commission, or any pertinent laws or ordinances of the State of New York and the County of Nassau.

(2) If, in the opinion of the Building Official of the Town of North Hempstead, any equipment is believed to be a potential hazard or nuisance due to electromagnetic radiation, then such equipment shall not be operated without their approval, unless certification is presented to the Building Commissioner indicating that no hazard or nuisance does, in effect, exist as a result of the operation of said equipment.

(3) All certifications regarding electromagnetic radiation shall indicate the measurements and the interpretation of the field strengths. Certifications shall be made by a professional engineer skilled in this field. The Town shall require such engineer to furnish proof of their qualifications.

F. Fire and explosion. All activities and all storage of flammable and explosive materials shall be provided with adequate safety and fire-fighting devices in accordance with the most recent Uniform Fire Prevention Code, Building Code of the Town of North Hempstead and the Nassau County Fire Marshal's ordinance. Storage of such materials shall require all permits necessary from the State of New York, Nassau County, and Town of North Hempstead.

G. Radioactive Materials. The handling of radioactive materials, the discharge of such materials into air and water, and the disposal of radioactive wastes shall be in conformance with the regulations of the Atomic Energy Commission as set forth in Title 10, Chapter One, Part 20, Standards for Protection Against Radiation, as amended, and all applicable regulations of the State of New York, Nassau County, and Town of North Hempstead.

H. Glare and heat. Any operation producing intense glare or heat shall be performed within an enclosure so as to completely obscure and shield such operation from direct view from any point along the property lines, except during the period of construction of facilities to be used and occupied provided such construction is done in accordance with all applicable federal, state and local laws and ordinances and which has been approved by the Department of Buildings. All lighting on the exterior of buildings and within parking lots or outdoor storage areas shall be shielded so as not to allow light to trespass on to neighboring properties or light from shining upward.

I. Nonradioactive liquid or solid wastes. No industrial sewage or wastes shall be discharged into sewers that will cause a chemical reaction, either directly or indirectly, with the materials of such pipe or other structure to impair the strength and durability of sewer structures; cause mechanical action that will destroy or damage sewer structures; cause restriction of the hydraulic capacity of sewer structures; cause limitation of the effectiveness of the sewage treatment process; cause limitation of the effectiveness of the sewage treatment process; cause danger to public

health and safety or cause obnoxious conditions. Sewage wastes shall conform to the following:

- (1) All sewage disposal shall be in accordance with the applicable regulations of the State of New York, Nassau County, and Town of North Hempstead. In addition, all permits shall be required from the applicable water pollution control district.
- (2) The acidity or alkalinity shall be neutralized within an average pH range between 5 and 7 ½ as a daily average on a volumetric basis.
- (3) Wastes shall contain no cyanides; no chlorinated solvents in excess of 0.1 p.p.m.; no fluorides in excess of 10 p.p.m.; no more than 5
- (4) p.p.m. of hydrogen sulfide; and shall contain no more than 10 p.p.m of chromates.
- (5) Wastes shall not contain any insoluble substance in excess of 10,000 p.p.m.; exceed a daily average of 500 p.p.m.; fail to pass a No. 8 sieve; or have a dimension greater than one-half inch.
- (6) Wastes shall not have a chlorine demand greater than 15 p.p.m.
- (7) Wastes shall not contain phenols in excess of 0.05 p.p.m.

J. All properties and buildings shall be kept free of vectors, including, but not limited to, rodents, insects and other pests, and any condition conducive to vectors.

K. Compliance with performance standards.

- (1) All uses in the Industrial B zoning district, including existing uses, shall comply with the performance standards described in this section.
- (2) An application for a building permit, certificate of completion, certificate of occupancy or certificate of existing use for a use subject to the performance standards in this section shall include a plan of the proposed construction and a description of the proposed machinery, operations and products and specifications for the mechanisms and techniques to be used in restricting the emission of any dangerous and objectionable elements listed under § 70-189.2. The applicant shall also file with such plans and specifications an affidavit acknowledging their understanding of the applicable performance standards and stating their agreement to conform to the same at all times. No applicant will be required to reveal any secret processes. Upon the satisfactory filing of the required plans, specifications and affidavit, and upon demonstrating compliance with all applicable codes, the Building Commissioner shall proceed

to issue a building permit and certificate of occupancy in accordance with the procedures set forth in Chapter 2 of the Town Code.

- (3) The Building Commissioner may require a report by one or more expert consultants retained by the applicant and approved by the Building Commissioner, to advise as to whether the proposed use will conform to the applicable performance standards. The consultant shall report to the Building Department within 20 days of said request and a copy of their report shall be promptly furnished to the applicant. Approval of time extensions may be allowed by mutual agreement between the Building Commissioner and the applicant.
- (4) The standards in this section may be modified by the Board of Zoning and Appeals where: (a) modification is necessary for the commercial viability of the use; or (b) where there is a specific federal or state standard with which the use is in compliance and compliance with the standards in this section is impracticable or otherwise inappropriate under the circumstances. In either instance it must be shown that the variance request will not adversely affect neighboring land uses.

L. Elimination of nonconformities.

- (1) Except as provided for herein, each of the nonconforming features of the uses or activities specified in this section may be continued after the effective date of this section for an amortization period up to and including February 1, 2022, provided that after the expiration of such period of amortization, such nonconforming features shall then be terminated.
- (2) As of February 1, 2022, all existing uses, buildings and other structures shall comply with the applicable performance standards hereinabove set forth; provided, however, that if the Building Commissioner finds that, because of the nature of the corrective action required, compliance by February 1, 2022 is inappropriate, the Building Commissioner may, for good cause shown, grant not more than one extension for a period of not more than six months. An application to the Building Commissioner seeking an extension of time under this subsection shall be made at least three months prior to February 1, 2022.
- (3) Within 60 days after the effective date of this section, the Building Department shall issue a notice to all properties within the Industrial B zoning district. The notice shall indicate that if compliance cannot be achieved by February 1, 2022, then, not later than November 1, 2021, the applicant must either:

 - (a) Submit a request for an extension of time to the Building Commissioner as set forth in this section; or

(b) File a building permit application and request the issuance of a Notice of Disapproval from the Building Department, and file an application with the Board of Zoning and Appeals for a variance from the applicable performance standards in this section.

(4) Notwithstanding the above, nothing in this subsection shall be construed to authorize any use or activity that is otherwise in conflict or violates any applicable code, law or regulation of the State of New York, County of Nassau or Town of North Hempstead

Section 5.

Chapter 70 of the Town Code is hereby amended as follows:

§ 70-203. Public health, safety and general welfare.

[Amended 7-26-1966; 12-3-1985 by L.L. No. 12-1985; 3-25-1986 by L.L. No. 3-1986]

V. Rumble strips are required for uses which typically generate dirt, dust, sand, recycled concrete aggregate (RCA), silt or other similar material that may be tracked onto the public right-of-way.

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

1. Uses requiring rumble strips include but are not limited to the following:
 - (a) Concrete recycling operation;
 - (b) Brick, pottery, tile, concrete block or terra-cotta manufacture;
 - (c) Manufacture of sand, stone, cement or gravel or other materials used for the processing or manufacture of concrete mix;
 - (d) Transfer stations;
 - (e) Facilities used for the storage of construction vehicles [-] ;
 - (f) Other facilities which create dust and or dirt as determined by the Building Commissioner.**

2. The length of the rumble strips shall be no less than [~~25~~] **24** feet and be located at all exits of a facility.

3. Rumble strips must be anchored to the ground.

Section 6.

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