

LOCAL LAW # 3 OF 2016

E-CIGARETTE AND VAPOR SALES MORATORIUM LOCAL LAW

Section 1. Title

This Local Law shall be known as the E-Cigarette and Vapor Sales Moratorium Local Law of the Town of Brighton.

Section 2. Purpose and Intent

The purpose of this local law is to promote and protect the public health, safety and welfare of the Town of Brighton by enacting a local law which establishes a moratorium on certain uses in the Town of Brighton. Pursuant to Town Code and without the adoption of this moratorium, these uses may have been included or construed to be permitted uses.

The Town Board has requested the moratorium be enacted so that it might have sufficient opportunity to evaluate the permitted uses in the Town and to determine whether the permitted uses should be statutorily amended, altered, modified, expanded or repealed. This moratorium will provide an opportunity for the Town Board to evaluate the changes needed without the possibility of new businesses opening that might conflict with the legislation being

developed. The Town Board has determined a moratorium be established prohibiting certain permitted uses. In establishing this moratorium the Town Board has also considered:

The protection of community health particularly for children.

The need for conserving the value of buildings and land and the need to encourage the most appropriate use of land.

The need to attract retail business of such a character as to encourage, foster and promote the revitalization of commercial districts.

New regulations issued by the Food and Drug Administration related to the use and sale of e-cigarettes and similar products and accessories.

### Section 3. Moratorium

During the term of the moratorium adopted pursuant to this Local Law and any amendment or extension thereof, no building permit, certificate of compliance, or certificate of occupancy shall be issued within the Town of Brighton, pursuant to Chapter 225, Article I of the Town Code, no conditional use permit, pursuant to Chapter 217, Article II of the Town Code, no zoning variance shall be issued pursuant to Section 219-2 of the Town Code, no temporary and revocable permit shall be issued pursuant to Section 219-4 of the Town Code, and no person shall commence

construction or renovation of or for any building or property whose business operation includes, whether as its primary use or as an ancillary use, the smoking of or selling of electronic cigarettes or any vapors, liquids or other substances that are smoked through the use of an electronic cigarette or used in connection with the smoking of electronic cigarettes, including but not limited to establishments known variously as vape stores, vape bars or vape lounges; or includes, whether as its primary use or as an ancillary use, the smoking of tobacco or other substances through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha or narghile) or the sale of any such hookah pipes, including but not limited to establishments known variously as hookah bars, hookah lounges or hookah cafes.

Section 4. Supersession of Provisions of State Law

This Local Law supersedes the provisions of Section 267, 267-a and 267-b of the Town Law relating to the issuance of zoning variances, Article 18 of the Executive Law, directing the formulation of a Uniform Fire Prevention and Building Code (Uniform Code), and the provisions of the Uniform Code, as they may relate to the issuance of building permits, certificates of compliance and/or certificates of occupancy.

Section 5. Term of Moratorium

This Local Law and the Moratorium established hereunder shall expire six months from their effective date, unless sooner extended by action of the Brighton Town Board.

Section 6. Hardship

- (a) The Town Board shall have the power to grant exceptions to the Moratorium created under this Local Law.
- (b) Waivers may be granted by the Town Board upon a showing by the applicant that the Moratorium has caused the applicant unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Town Board that it has suffered specific hardship due to the application of the Moratorium, including specifically that:
  - (i) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible or, in the case of a property owned by an entity certified under Section 501(c)(3) of the Internal Revenue Code, whether the Moratorium would unreasonably interfere with the applicant's charitable purpose;
  - (ii) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
  - (iii) The alleged hardship has not been created by the applicant.
- (c) No such waiver shall be granted by the Town Board without first holding a public hearing, notice of which hearing, including the substance of the application for waiver under this Local Law, shall be given by publication in the official newspaper of the Town and posting upon the Town Clerk's bulletin board, and by mailing to the owners of all properties within 1000 feet of the property in question, in each case, at least ten (10) days prior to such hearing.

Section 7 Effective Date

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

Section 8. Severability

If any clause, sentence, phrase, paragraph or any part of this Local Law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Local Law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this Local Law would have been adopted had any such provision been excluded.