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## Town Board rejects new rules for cig ads

BY JOE NIKIC

Sparks flew at the North Hempstead Town Board meeting Tuesday night as council members clashed on whether to approve restrictions on tobacco product advertising or to seek more legal advice about the proposed legislation.

The board voted 5-2 against the proposed law, which would limit the advertising of electronic cigarettes, liquid nicotine and other tobacco products in any outdoor area that is within 500 feet of a park or school to a 5-by-8-inch, black and white advertisement.

Town Supervisor Judi Bosworth, who voted against the proposal, said she favored restricting e-cigarette advertising, but wanted to take Town Attorney Elizabeth Botwin's advice in strengthening the law to surmount possible legal action.

"We're trying to find a way to make this as strong as possible so that it would stand up in a court of law," Bosworth said. "We know our laws have to be constitutional, we're trying to be careful we don't infringe on First Amendment rights, and our town attorney, who I have the greatest regard and respect for, has advised all of us that the law needs more work."

Botwin said that she felt the board should speak with marketing and other legal experts about whether the proposed law would actually have an impact on children and would not obstruct a store from advertising to adults.

"I have suggested that it would be very worthwhile to consult with some of these experts in the field who have reviewed the literature and to see whether we can prove, that these two particular regulations, that there's a scientific basis for determining that they would be effective in making it less likely that children will be drawn into either smoking or e-cigarettes," she said. "And as the Constitution requires, that they would not also be restricting communication to adults who have a First Amendment right to receive commercial information about legal products, which these products still are."

The town could face a lawsuit accusing it of violating First Amendment rights, Botwin said, and she felt there were "continuing constitutional difficulties that needed to be talked through."

Town Councilwoman Dina De Giorgio, who spearheaded the effort to regulate vape shops, said that the purpose of the proposed legislation was to limit teenagers' exposure to tobacco product advertising.

De Giorgio provided the board with a three-ring binder filled with studies completed by the Centers for Disease Control and Prevention, as well as advocacy groups that aim to protect children and teenagers from tobacco products.

She said that hiring more consultants and continuing to amend the proposed law was an effort to "kick the can down the road."

"This whole issue of getting an expert and getting more information was raised to me for the first time Thursday night, so

five days before today was the first time this was brought up," De Giorgio said. "We have been working on this legislation for five months, we've been meeting regularly, we've been talking to experts."

"It wasn't until the very end that the tone changed and all of a sudden I got this sense that we didn't want to go forward with this as a town," she added.

Botwin said a stronger law would help the town prevail in a possible legal battle.

"It was my advice that we needed to do some more work and take the additional time that was necessary to craft a law with the backup to show that it was defensible and so that we could advise that we would be likely to prevail if we were challenged, as it's probably likely we would be in a court, and have the law's constitutionality challenged," she said.

Town Council members Anna Kaplan, Peter Zuckerman, Lee Seeman and Viviana Russell voted against the proposed legislation.

Zuckerman said he was in favor of what the law was attempting to accomplish, but wanted the town to have the "most solid piece of legislation" possible.

"As a lawyer, we have to be concerned about the constitutionality with regards to this. Clearly a challenge is coming," he said. "I'm not afraid of a challenge but we need to put our best foot forward."

Kaplan said she believed that the town should seek input from a constitutional law expert as she did not want to violate the Constitution or waste taxpayer money defending the legislation in court.

"I am extremely concerned that the legislation as it is proposed will not survive a constitutional challenge," she said.

Town Councilman Angelo Ferrara, who voted in favor of the proposal along with De Giorgio, said he supported it because it is the "right thing for our children and that comes first."

"I think that the information that [De Giorgio] provided is detailed enough and covered enough of what [she] thought the challenges might be that would protect this town," Ferrara said.

Bosworth said that although the board voted against the proposed law, it just means that it will go back and rework the proposal and address it again.

"I think it's unfair to say that the concerns that we're expressing is an effort to kick this down the road so that we're not dealing with it because that's not the case," she said.

Also at the meeting, Bosworth submitted the town's 2017 budget, which includes a \$67 million General Fund, a \$35 million Town Outside Village Fund, and \$24 million for the 20 town-operated special districts.

The General Fund covers residents across the town, both within incorporated villages and unincorporated areas. The Town Outside Village Fund accounts for those who live or own property outside the borders of the town's incorporated villages and goes towards departments that handle

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