

Local Law Filing

MAR 17 2023

Town of OYSTER BAY

DEPARTMENT OF STATE

Local Law No. 2 of the year 2023

A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF OYSTER BAY BY ADDING CHAPTER 14 - CIVIL ENFORCEMENT AND ADMINISTRATIVE ADJUDICATION, TO PROVIDE THE TOWN AN ADDITIONAL TOOL FOR THE ENFORCEMENT OF VIOLATIONS OF THE CODE OF THE TOWN OF OYSTER BAY.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF OYSTER BAY AS FOLLOWS:

SECTION 1. Amendment

The Code of the Town of Oyster Bay is amended by adding Chapter 14, Civil Enforcement and Administrative Adjudication, as follows:

CHAPTER 14: CIVIL ENFORCEMENT AND ADMINISTRATIVE ADJUDICATION

§ 14-1. Legislative Intent.

It is the intention of the Town Board of the Town of Oyster Bay to enable the Town Attorney to pursue any necessary relief in a court of competent jurisdiction for violations of the Code of the Town of Oyster Bay ("Town Code"). Civil actions may be necessary to compensate and preserve the rights of the public where criminal sanctions are inadequate. In addition, it is the intention of the Town Board to establish an administrative adjudication hearing procedure for violations of the Town Code under the provisions of Section 380 of the New York State General Municipal Law, and to authorize the Town Attorney to redress applicable code violations utilizing such procedure as deemed appropriate. The establishment of this administrative adjudicative procedure shall in no way limit the authority of the Town Attorney to seek criminal penalties and/or to seek civil relief in the name of the Town in a court of competent jurisdiction as authorized by law.

§ 14-2. Civil Relief.

The Town Attorney is authorized to pursue, in addition, to any criminal penalties set forth in the Town Code or other applicable law, civil relief in a court of competent jurisdiction, including but not limited to compensatory actions, actions in equity, civil monetary penalties or any other civil remedy which in the opinion of the Town Attorney may be deemed necessary under the circumstances. Such civil relief may be sought in a court of

competent jurisdiction or before the Bureau of Administrative Adjudication as set forth below whenever permitted by law. Any civil monetary penalty assessed may be added to the tax bill liability of the subject property where the violation occurred.

§ 14-3. Bureau of Administrative Adjudication.

There shall be a Bureau of Administrative Adjudication ("the Bureau") which shall conduct adjudicatory proceedings for all violations of the Town Code relating to conditions which constitute a threat or danger to the public health, safety or welfare. The Bureau is authorized to render decisions and orders and to impose monetary penalties as provided by law for such violations. Such monetary penalties shall be civil in nature. The Bureau shall not have the power to impose criminal penalties or to sentence a person found to have violated the Town Code to a term of imprisonment. In addition, the Bureau shall not have the power to rule on the constitutionality of any provision of the Town Code, any administrative or adjudicatory procedure, or any action taken by an official or employee of the Town of Oyster Bay.

§ 14-4. Definitions.

VIOLATION

For purposes of this Chapter and throughout the Town Code, the term "violation" refers to any conduct which fails to comply with the requirements of the Town Code or any other applicable provision of law. The term "notice of violation" refers to the written instrument commencing an adjudicatory proceeding before the Bureau of Administrative Adjudication pursuant to this chapter, as well as to any other document so designated in any other chapter of the Town Code for purposes of providing notice of a code violation.

OFFENSE

As used throughout the Town Code, the term "offense" refers to any conduct in violation of the Town Code for which a sentence to a criminal fine and/or term of imprisonment may be imposed by a judge in a criminal proceeding upon conviction. Notwithstanding the use of the terms "violation" and "notice of violation" in the Town Code, any offense set forth in the Town Code shall be classified as a felony, misdemeanor or violation based on the sentence provided therefor, as set forth in New York State Penal Law §55.10.

SUMMONS or APPEARANCE TICKET

As used throughout the Town Code, the terms "summons" and "appearance ticket" refer to the manner in which a criminal defendant may be given notice as to the commencement of a criminal proceeding charging an offense against the Town Code, as set forth in New York State Criminal Procedure Law §1.20(26) and (27).

§14-5. Director.

- A. The head of the Bureau shall be the Director who shall be the chief administrative law judge of the Bureau and shall have all the powers of an administrative law judge pursuant to New York State General Municipal Law §381.

- B. The Director shall be appointed by the Town Supervisor for a term of five (5) years, with the advice and consent of the Town Board. The Director shall be removable only for neglect of duty or misfeasance in office after notice and an opportunity for a hearing. Once appointed and confirmed the Director shall serve until his or her term expires and until his or her successor has been appointed and confirmed. The Director shall devote his or her entire work time to the duties of the office.
- C. The Director shall be an attorney in good standing, admitted to practice for at least five years in the State of New York, and shall be knowledgeable on the subject of administrative law and procedure.
- D. The Director shall have the power to adopt, and shall adopt, rules for the conduct of adjudicatory proceedings by the Bureau consistent with this Chapter. Such rules shall include, but not be limited to, uniform rules of practice, standards for expedited and uncontested proceedings, standards for the assignment of administrative law judges and their removal from cases, and standards for the maintenance of records.
- E. To the extent permitted by law, the Director shall publish and make available to the public all significant decisions rendered by administrative law judges and all decisions rendered by the administrative appeals panel.
- F. The Director shall develop and implement a program of evaluation to aid in the performance of his or her duties and to assist in the making of promotions, demotions or removals, as set forth in New York State General Municipal Law §381(d).
- G. The Director shall develop and maintain a program for the continuing training and education of administrative law judges and ancillary personnel.
- H. The Director shall collect, compile, and publish statistics and other data with respect to the operation and duties of the Bureau and submit annually to the Town Supervisor, the Town Board, and make available to the public a report on such operations, as set forth in New York State General Municipal Law §381(f).
- I. The Director shall study the subject of administrative adjudication in all aspects, and shall develop programs including alternate dispute resolution and preliminary or prehearing conferences or mediation which would promote the goals of fairness, uniformity and cost-effectiveness.

§ 14-6. Administrative Law Judges.

- A. The Director shall appoint at least three (3) and no more than seven (7) administrative law judges who shall be attorneys in good standing admitted to practice in the State of New York for at least three years, and who shall have such other qualifications and serve terms as prescribed by the Director.
- B. Except as otherwise provided by law, in the conduct of an adjudication an administrative law judge may:

- (1) Hold conferences for the settlement or simplification of the issues, provided that the settlement and dismissal of proceedings shall be in accordance with the rules of the Director;
 - (2) Administer oaths and affirmations, examine witnesses, rule upon offers of proof, receive evidence, and oversee, regulate, order and enforce such discovery as is appropriate under the circumstances;
 - (3) Upon motion of any party including an agency, or upon the administrative law judge's own motion with consent of the respondent, subpoena the attendance of witnesses and the production of books, records, or other information;
 - (4) Regulate the course of the hearing in accordance with the rules of the Director or other applicable law;
 - (5) Rule on procedural requests or similar matters;
 - (6) Make final findings of fact and final decisions, determinations or orders;
 - (7) Impose monetary penalties as provided by law for each violation; and
 - (8) Take any other action authorized by law.
- C. An administrative law judge may not order the arrest or detention of any person, nor may an administrative law judge deprive any person of a right to counsel.
- D. An administrative law judge shall not participate in any proceeding to which he or she is a party, in which he or she has been attorney, counsel or representative, if he or she is related by consanguinity or affinity to any party to the controversy within the sixth degree, or where such participation is otherwise prohibited by law. Administrative law judges shall insure that all hearings are conducted in a fair and impartial manner. Administrative law judges shall maintain the dignity appropriate to their office and act in a manner consistent with fairness, integrity, and impartiality.
- E. An administrative law judge may consult on questions of law and ministerial matters with other administrative law judges and the support staff of the Bureau, provided that such Bureau personnel have not been engaged in functions in connection with the adjudicatory proceeding under consideration or a factually related proceeding. In all other respects, unless otherwise authorized by law, an administrative law judge shall not communicate in connection with any issue that relates in any way to the merits of a proceeding pending before the administrative law judge with any person, except upon notice and opportunity for all parties to participate.
- F. An administrative law judge, including the Director, shall not hold an office or executive position or act as a committee member in any political party or organization; shall not manage or work for any political campaign, whether as a paid employee or volunteer; shall not endorse or in any other way advertise his or her support for or opposition to any political party or organization or candidate for

public office; and shall not make any financial contribution, attend any fundraiser, or otherwise solicit funds for or against any political organization or party or any candidate for public office. Notwithstanding the foregoing, an administrative law judge who is a candidate for public election or appointment to judicial office may participate in his or her own campaign for judicial office to the same extent as provided in 22 NYCRR §100.5(A)(2) and may contribute to his or her own campaign as permitted under the New York State Election Law.

- G. In addition to the foregoing, administrative law judges are subject to the ethics requirements set forth in Chapter 30 of this Code including the Code of Conduct and the financial disclosure requirements set forth therein.

§ 14-7. Commencement of Proceedings.

- A. Adjudicatory proceedings shall be commenced by the service of a notice of violation. Every notice of violation shall identify the provision of law charged and shall set forth the factual basis for the violation. Where the notice of violation does not contain this information, it shall be dismissed at the request of the respondent, or the administrative law judge may dismiss the notice of violation upon his or her own motion.
- B. The notice of violation shall contain information advising the person charged of the manner and the time in which such person may either admit or deny the violation charged, the procedure for which shall be set forth in the rules of the Director. Every notice of violation shall also contain a warning to advise the person charged that failure to respond in the manner and time stated in the notice may result in a default decision and order being entered against such person.
- C. The notice of violation shall be served in the same manner as is prescribed for service of process by Article III of the New York State Civil Practice Law and Rules or Article III of the New York State Business Corporation Law, except that:
- (1) Service of a notice of violation may be made by delivering such notice to a person employed by the respondent (a) to work on the premises the occupancy of which caused such violation, or (b) at the premises at which the respondent actually conducts the business the operation of which gave rise to the violation, or (c) at the site of the work with respect to which the violation occurred; or (d) at the place at which the violation occurred;
 - (2) Service of a notice of violation may be made by certified mail, return receipt requested;
 - (3) A notice of violation of any code or ordinance relating to the prevention of noise pollution caused by an audible motor vehicle burglar alarm or related to the parking, stopping or standing of a motor vehicle may be served upon the owner of such motor vehicle by affixing such notice to such vehicle in a conspicuous place.
- D. Proof of service made pursuant to this chapter shall be filed with the Bureau and, where service is made by certified mail, shall include the return receipt evidencing

receipt of the notice served by mail. Service shall be complete ten (10) days after such filing.

- E. Where service of a notice of violation is not made in a manner authorized by law for the violation charged, it shall be dismissed at the request of the respondent, or the administrative law judge may dismiss the notice of violation upon his or her own motion.
- F. The original or a copy of the notice of violation shall be filed and retained by the Bureau and shall be deemed a record kept in the ordinary course of business.

§14-8. Adjudicatory Hearings.

- A. All hearings shall be held in the Town of Oyster Bay during regular business hours at such place as the Director shall designate from time to time. The adjudication of a charge of a violation shall be by way of a hearing before an administrative law judge or the Director, as Chief Administrative Law Judge. However, in accordance with the rules of the Director, in certain circumstances where the respondent has admitted the violation charged and paid the applicable monetary penalty and surcharge for administrative costs, the respondent need not appear for a hearing before an administrative law judge.
- B. The Town Attorney has the burden of proving any charge of a violation by a preponderance of the evidence. In that regard, the notice of violation, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. The notice of violation shall constitute the testimony of the signator and, when filed with the Bureau, shall be admitted into evidence as such testimony at any hearing on the violation charged. Every such notice of violation shall state whether the facts set forth therein are known personally to the signator, and if the facts are not so known the notice of violation shall specifically identify the source of knowledge of such facts. If the respondent disputes the facts stated in the notice of violation, the administrative law judge, where appropriate, may reject the signator's facts, accept facts the respondent offers, or direct the signator's appearance.
- C. The respondent may be represented by legal counsel. The respondent shall be given an opportunity to present written argument on issues of law and to present evidence and argument on issues of fact. All testimony shall be given under oath or affirmation.
- D. The administrative law judge may, in his or her discretion or at the request of the respondent, on a showing of good cause, subpoena the attendance of witnesses and/or the production of relevant books, records or other information.
- E. A record shall be made of every hearing either by stenographic recording or by mechanical or electronic method as the Director shall determine. A transcript of such record shall be supplied to the respondent upon application and the payment of a transcription fee.

§ 14-9. Final Decisions and Judgments.

- A. After the conclusion of the hearing, the administrative law judge shall make final findings of fact, and a final decision or order with respect to the charge of a

violation. All such findings of fact, decisions and orders shall be written, and shall be rendered in an expeditious manner.

- B. Where the charge of a violation has been sustained, the administrative law judge shall impose a monetary penalty within the range of monetary penalties authorized by the applicable provision of the Town Code. However, the administrative law judge shall have the discretion, which shall rarely be exercised, to waive the imposition of a monetary penalty in extraordinary circumstances upon good cause shown.
- C. Where the charge of a violation has been sustained, there shall be levied, in addition to the monetary penalty, a mandatory surcharge for administrative costs in an amount to be determined by the Director; provided that the surcharge may be waived in the event that a judgment is to be entered, or litigation is to be commenced, in the Nassau County District Court pursuant to subdivisions (D) and (E) below, and the imposition of the surcharge would cause the judgment or claim amount to exceed the District Court's jurisdictional limit.
- D. A final decision and order of an administrative law judge imposing a monetary penalty and assessing a surcharge for administrative costs, whether the adjudication was held by hearing or upon default or otherwise, shall constitute a judgment rendered by the Bureau against the respondent which may be entered in the Nassau County District Court, or any other place for the entry of judgments within the State of New York, and may be enforced against the respondent and his, her or its property without court proceedings in the same manner as the enforcement of money judgments entered in civil actions; provided however that no such judgment shall be entered in the Nassau County District Court which exceeds its jurisdictional limit.
- E. In addition to the enforcement procedure set forth in subdivision (D) above, any decision or order rendered by the Bureau may be enforced by the commencement of an action or proceeding for the recovery of monies due and owing in a court of competent jurisdiction by or on behalf of the Town Attorney in the name of the Town of Oyster Bay.
- F. Any unpaid judgment related to a violation on a property in the Town of Oyster Bay shall become a lien on said property subject to the collection as a tax thereon.

§14-10. Default Judgments.

- A. Where a respondent has failed to plead within the time allowed by the rules adopted by the Director regarding the conduct of adjudicatory proceedings before the Bureau, or has failed to appear on the designated hearing date or subsequent date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing as a monetary penalty the maximum amount prescribed under law for the violation charged. The default decision and order may be enforced pursuant to §14-9(D) or (E).

- B. In addition to imposing the maximum monetary penalty prescribed by law, a default decision and order shall impose a mandatory surcharge for administrative costs in an amount to be determined by the Director, provided that the surcharge may be waived in the event that a judgment is to be entered, or litigation is to be commenced, in the Nassau County District Court pursuant to subdivisions (D) and (E), and the imposition of the surcharge would cause the judgment or claim amount to exceed the District Court's jurisdictional limit.
- C. A default decision and order may be opened within one year of its issuance, upon written application showing excusable default and a defense to the charge; a default decision and order may thereafter be opened in the discretion of the Director only upon written application showing excusable default, a defense to the charge, and good cause for the delay.
- D. Notwithstanding the foregoing, before a default decision and order may be enforced pursuant to §14-9(D) or (E), the Bureau must have notified the respondent by first class mail in such form as the Director may require: (1) of the default decision and order and the penalty and surcharge imposed; (2) that the default decision and order may be entered as a judgment in the Nassau County District Court or otherwise enforced as authorized by law; and (3) that any such enforcement may be avoided by requesting a stay of default for good cause shown and by either scheduling an appearance or entering a plea in the manner set forth in the notice of violation within thirty days of the mailing of such notice.

§ 14-11. Administrative Appeal.

- A. There shall be one or more administrative appeals panels within the Bureau. Each panel shall consist of three administrative law judges. In no event shall the administrative law judge from whom such appeal of a decision, determination or order is taken be included in the panel determining such appeal. Administrative law judges serving on the administrative appeals panel shall not regularly conduct administrative hearings, but shall serve primarily as administrative appeals panel members.
- B. A respondent may appeal, on the facts and/or the law, a final decision, final determination or final order. An agency of the Town of Oyster Bay aggrieved by a final decision, final determination or final order may appeal on the law, but only after notice to the respondent and a finding by the appeals panel that the issue upon which the agency seeks to appeal is significant and affects the agency's legitimate enforcement functions.
- C. Upon rendering a final decision, making a final determination or issuing a final order adverse to the respondent, the administrative law judge shall provide the respondent with a form notice of appeal and shall explain to the respondent in writing (1) the method of filing the notice and the applicable time limits; (2) the requirements set forth below concerning the payment of the applicable penalty and surcharge or the posting of a bond pending appeal, including the right to request exemption therefrom; and (3) that no further court challenge is permitted by law unless an administrative appeal is taken.

- D. A notice of appeal shall be filed with the appeals panel within thirty (30) days of the entry of such decision, determination or order.
- E. For good cause shown, the administrative appeals panel may permit the filing of a notice of appeal after the thirty-day period.
- F. The appeals panel shall have the power to review the record and the findings of the administrative law judge and may reverse, modify or remand any such decision, determination or order appealed therefrom.
- G. Except as otherwise provided in this subdivision, no appeal of a decision, determination or order of an administrative law judge imposing a monetary penalty shall be decided unless such penalty and the applicable surcharge for administrative costs are paid or a cash or recognized surety company bond is posted in the full amount of such monetary penalty and administrative surcharge. However, no such payment or posting of such bond is required where the respondent is the holder of a current license or permit for the operation of a business issued by the Town of Oyster Bay. Upon a showing of undue hardship or where justice may require, the administrative law judge who decided the case or the appellate panel to which the appeal is assigned may order that the appeal shall be decided without requiring such payment or posting of such bond.
- H. The determination of the appeals panel shall be rendered within ninety days after the submission of all relevant papers to the panel.
- I. The determination of the appeals panel shall be the final determination of the Bureau for the purposes of review pursuant to Article 78 of the New York State Civil Practice Law and Rules.
- J. Where the respondent prevails on administrative appeal or after judicial review pursuant to Article 78 of the New York State Civil Practice Law and Rules, any monetary penalty and surcharge paid to the Town of Oyster Bay shall be returned with interest at the rate set by the New York State Supreme Court of Nassau County.

§ 14-12. Judicial Enforcement.

Any order or subpoena or any final decision or determination rendered by an administrative law judge or the appeals panel shall be subject to enforcement in an action or proceeding commenced in a court of competent jurisdiction by the prevailing party including the Town of Oyster Bay.

§ 14-13. Restriction on Collateral Use.

Decisions, determination and orders issued by an administrative law judge or the appeals panel shall not be cited, and shall not be considered precedent nor be given any force or effect in any criminal proceeding.

SECTION 2. Authority

The proposed local law is enacted pursuant to General Municipal Law §380(4) and Town Law §261.

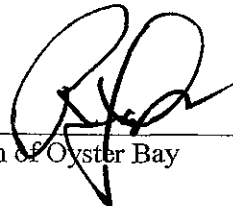
SECTION 3. SEQRA Determination. It is hereby determined pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. Section 101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., that the adoption of this local law is a "Type II" Action within the meaning of Section 617.5 (c)(26) of 6 N.Y.C.R.R., pertaining to "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment" and, accordingly, is of a class of actions which do not have a significant effect on the environment and no further review is required.

SECTION 4. Severability. If any section, subdivision or provision of this local law or the application thereof to any person or circumstance be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subdivision or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law, or the application thereof to other persons or circumstances.

SECTION 5. Effective Date. This local law shall take effect immediately upon its adoption and filing with the Office of the Secretary of State.

Certification:

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2023 of the Town of Oyster Bay was duly passed by the Town Board on March 7, 2023 in accordance with the applicable provisions of law.



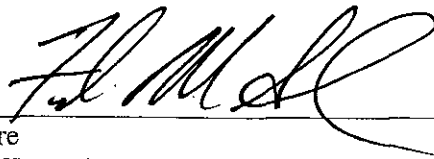
Clerk of the Town of Oyster Bay

(Seal)

Date: March 7, 2023

STATE OF NEW YORK
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



Signature

Town Attorney

Title

Town of Oyster Bay

Date: March 7 2023