

NOTICE OF ADOPTION OF RESOLUTION

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Babylon, County of Suffolk, State of New York, at a regular meeting thereof held on the 27th day of April, 2022 duly adopted a resolution, an abstract of which is as follows:

RESOLUTION NO. 392 APRIL 27, 2022 ADOPTING LOCAL LAW NO. 9 OF 2022 ADDING CHAPTER 66 TO THE BABYLON TOWN CODE

WHEREAS, the Town Board of the Town of Babylon having duly called and held a Public Hearing at Babylon Town Hall, 200 East Sunrise Highway, Lindenhurst NY 11757 on the 13th day of April, 2022 upon the question of enactment of Local Law 9 of 2022 of the Town of Babylon, Suffolk County, New York, being a Local Law adding the Code of the Town of Babylon, Chapter 66 (Bureau of Administrative Adjudication); and

WHEREAS, in accordance with Part 617.5(c.) (26), State Environmental Quality Review (SEQR), the adoption of this Local Law is classified a Type II Action and not subject to environmental review under SEQR.

NOW, THEREFORE, be it

RESOLVED AND ORDAINED, by the Town Board of the Town of Babylon, that Local Law 9 of 2022 of the Town of Babylon, Suffolk County, New York, is hereby enacted as follows and effective upon its filing with the New York State Department of State:

LOCAL LAW NO. 9 of 2022 ADDING CHAPTER 66 TO THE BABYLON TOWN CODE

Section 1. ADD as follows:

CHAPTER 66 BUREAU OF ADMINISTRATIVE ADJUDICATION

§ 66-1 Legislative Intent.

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 pursuant to §§ 1-15, 1-16 and 1-17 of this Code.

§ 66-2 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, except for violations of Chapter 89 of the Town Code, which sets forth the requirements for building construction. 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 Babylon.

§ 66-3 Definitions.

- A. 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.
- B. 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.
- C. 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).

§ 66-4 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 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.

§66-5 Administrative Law Judges.

- A. The Director shall initially appoint four (4) administrative law judges and may thereafter appoint additional administrative law judges as determined to be necessary to manage the Bureau's caseload. All administrative law judges shall be attorneys in good standing admitted to practice in the State of New York for at least three years, shall have such other qualifications as prescribed by the Director, and shall serve at the pleasure of 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. Administrative law judges are subject to the Code of Ethics for Town officials and employees set forth in Chapter 23 of this Code.

§ 66-6 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; and
 - (2) Service of a notice of violation may be made by certified mail, return receipt requested.
- 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.

§ 66-7 **Adjudicatory Hearings.**

- A.** All hearings shall be held in the Town of Babylon 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.

§ 66-8 **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 and 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 to waive the monetary penalty in extraordinary circumstances upon good cause shown, provided that the Town Attorney consents to the waiver.
- 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.

- 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 Suffolk County District Court, the Suffolk County Clerk's Office 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 District Court which exceeds its jurisdictional limit.
- E. In addition to the enforcement procedure set forth in subdivision (D) above, any decision, and 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 Babylon.

§ 66-9 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 appearance or 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 § 66-8(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.
- 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 § 66-8(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 Suffolk County District Court, the Suffolk County Clerk's Office 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 the default decision and order.

§ 66-10 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 Babylon 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 Babylon. 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.

