

BUREAU OF ADMINSTRATIVE ADJUDICATION: PROPOSED REGULATIONS

NOTICE OF AN OPPORTUNITY TO COMMENT UPON REGULATIONS UNDER CONSIDERATION BY THE DIRECTOR OF THE TOWN OF HUNTINGTON BUREAU OF ADMINISTRATIVE ADJUDICATION TO SET FORTH RULES OF PROCEDURE AND OTHER RELEVANT OPERATIONAL CONSIDERATIONS PURSUANT TO LOCAL LAW 56 OF 2019 AND NEW YORK STATE GENERAL MUNICIPAL LAW § 381

Pursuant to Section 617.5(26) and (33) of SEQRA, the promulgation of regulations implementing Local Law 56 of 2019 is “routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment,” and the “promulgation of regulations, policies, procedures and legislative decisions in connection with any Type II action” and therefore, this proposed action, a Type II action, requires no further action pursuant to SEQRA.

Please submit any comments to the Director of the Bureau of Administrative Adjudication, Town Hall, 100 Main Street, Huntington, NY 11743 in writing by May 7, 2020.

TEXT OF THE PROPOSED REGULATIONS:

§ 1 Jurisdiction of the Bureau.

- A. Pursuant to New York State General Municipal Law § 380 and Town Code § 93-3, the Bureau of Administrative Adjudication (“Bureau”) has jurisdiction to hear and determine notices of violation issued for any violation 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 87 of the Town Code, which sets forth the requirements for building construction.
- B. In that regard, the Bureau has jurisdiction to hear and determine notices of violation issued by enforcement personnel employed by the Department of Public Safety Division of Code Enforcement, the Department of Public Safety Division of Animal Control, the Department of Environmental Waste Management, the Department of Maritime Services, the Department of Engineering Services Bureau of Fire Prevention, and any other enforcement personnel authorized to enforce applicable provisions of the Town Code.

§ 2 General Powers and Duties.

The Bureau, by way of its administrative law judges, has the following general powers and duties with respect to the administrative adjudication of code violations:

- 1) To conduct fair and impartial hearings;
- 2) To take all necessary action to avoid delay in the disposition of proceedings;

- 3) To maintain order in the functioning of the Bureau, including the conduct of hearings;
- 4) To decide cases and impose fines, surcharges and other penalties in accordance with applicable law; and
- 5) To compile and maintain complete and accurate records relating to the proceedings of the Bureau.

§ 3 Definitions.

As used in these regulations:

“Adjournment” means a postponement of a hearing on a notice of violation to a later date.

“Administrative Law Judge (“ALJ”) means a person designated by the Director of the Bureau to carry out the adjudicatory powers, duties and responsibilities of the Bureau, or the Director him or herself who is the chief administrative law judge.

“Agency” means the Department, Division, Bureau or other entity of the Town of Huntington that issued the notice of violation commencing the adjudicatory proceeding before the Bureau.

“Agency employee” means the officer, inspector or other employee who issued the notice of violation on behalf of the agency.

“Appeals Panel” means the panel of three administrative law judges assigned to hear an administrative appeal from a decision, determination or order of an administrative law judge.

“Appearance” means the attendance at a hearing before the Bureau by a party or the representative of a party in connection with a notice of violation that is pending before the Bureau.

“Bureau” means the Bureau of Administrative Adjudication.

“Chief administrative law judge” means the Director of the Bureau of Administrative Adjudication.

“Director” means the person appointed by the Town Supervisor pursuant to Town Code § 93-5 to act as chief executive officer and chief administrative law judge of the Bureau.

“Notice of Violation” means the document issued to the respondent which specifies the charges forming the basis of an adjudicatory proceeding before the Bureau.

“Party” means the agency commencing the adjudicatory proceeding or the person named as respondent in a proceeding before the Bureau.

“Person” means any individual, partnership, unincorporated association, corporation, company, or other business entity.

“Respondent” means the person or entity against whom the charges alleged in a notice of violation have been filed.

§ 4 Administrative Law Judges

- A. **Powers and Authority.** Administrative law judges may:
- 1) Administer oaths and affirmations, examine witnesses, rule upon motions, offers of proof and other requests, admit or exclude evidence, grant adjournments, and oversee and regulate all other matters relating to the conduct of a hearing;
 - 2) Upon request of a party, issue subpoenas or adjourn a hearing for the appearance of individuals or the production of documents or other types of information when the administrative law judge determines that necessary and material evidence will result;
 - 3) Bar from participation in a hearing any person, including a party, attorney, witness or observer, who engages in disorderly, disruptive or obstructionist conduct that disrupts or interrupts the proceedings of the Bureau, and continue the hearing without the person's presence;
 - 4) Hold conferences for the settlement or simplification of issues;
 - 5) Make final findings of fact and final decisions, determinations and orders pursuant to applicable law;
 - 6) Impose monetary penalties in an amount within the range of penalties provided by law for each violation;
 - 7) Impose a surcharge for administrative costs as provided by Town Code § 93-9(C) in the amount set forth in the applicable provisions of these regulations.
 - 8) Take any other action that is authorized by applicable law, rule or regulation or that is delegated by the chief administrative law judge.
- B. **Recusal.** 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 an attorney, if he or she is related by consanguinity or affinity to any party or attorney within the sixth degree, or where he or she cannot insure that the hearing will be conducted in a fair and impartial manner. When an administrative law judge deems himself or herself disqualified to preside over a hearing, the administrative law judge will recuse from the proceeding by notice on the record and will notify the chief administrative law judge of such recusal so that another administrative law judge can be designated to preside over the hearing. In the event that it is the chief administrative law judge who recuses from a proceeding, then the proceeding shall be assigned to another administrative law judge.
- C. **Motion to Disqualify.** A party may, for good cause shown, request that the administrative law judge recuse himself or herself. The administrative law judge in the proceeding will rule on such motion. If the administrative law judge grants the motion, then he or she will recuse himself or

herself as set forth above. If motion is denied, the party may raise the issue again on administrative appeal.

- D. **Assignment.** The Director will preside over all hearings as chief administrative law judge unless he or she is recused from participation or is not otherwise available. In that event, the Director will designate another administrative law judge to preside over such hearing.

§ 5 Computation of Time.

- A. In computing any period of time prescribed or allowed by these regulations, the day of the act or default from which the designated period of time begins to run will not be included, but the last day of the period will be included unless it is a Saturday, Sunday or legal holiday, in which case the period will be extended to the next day which is not a Saturday, Sunday or legal holiday. Unless otherwise specified in these regulations, "days" means calendar days.
- B. Unless otherwise specified in these regulations, whenever a party has the right or is required to do some act within a prescribed period of time after the date of a decision of the Bureau, five days will be added to such prescribed period of time if the decision is mailed to the party.

§ 6 Notice of Violation.

- A. **Form.** Adjudicatory proceedings before the Bureau shall be commenced by the service of a notice of violation. The notice of violation shall be issued by way of a pre-printed form prescribed by the Director which specifies:
 - 1) The name and address, when known, of the respondent;
 - 2) A clear and concise statement sufficient to inform the respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation charged, including the date, time where applicable, and place when and where such facts were observed;
 - 3) A statement to be signed by the agency employee who issued the violation affirming the facts stated therein under penalty of perjury, which need not be notarized;
 - 4) Information adequate to provide specific notification of the code provision alleged to have been violated;
 - 5) Notification of the date, time and place when and where a hearing will be held by the Bureau at which the respondent may contest or otherwise respond to the charges, which date must be at least 20 calendar days after the notice of violation was served;
 - 6) Notification that the respondent may, in certain situations, request that the hearing be rescheduled on one occasion prior to appearing at the hearing, and the manner in which respondent may do so. The Director may exclude from this subsection any category of

violation that the director thinks is so serious that such an automatic rescheduling not be available;

- 7) Where applicable, notification that the respondent may admit the charges and pay a specified penalty and surcharge for administrative costs in lieu of appearing for a hearing, and the manner in which the respondent may do so; and
- 8) Notification that any failure to appear or otherwise respond to the notice of violation as set forth above will be deemed a waiver of the right to a hearing and will result in the issuance of a default decision and the imposition of the specified maximum monetary penalty and surcharge for administrative costs against the respondent.

B. **Service.** Service of the notice of violation in the following manner will be considered sufficient:

- 1) The notice of violation may be served in person upon:
 - a. The person alleged to have committed the violation or;
 - b. An officer of the corporation alleged to have committed the violation or;
 - c. A member of the partnership or company alleged to have committed the violation or;
 - d. A person employed by the respondent to work on the premises the occupancy of which caused such a violation or;
 - e. A person employed by the respondent at the premises at which the respondent actually conducts the business the operation of which gave rise to the violation or;
 - f. A person employed by the respondent at the site of the work with respect to which the violation occurred.
- 2) Service of the notice of violation may be made by certified mail, return receipt requested, addressed to the respondent at his or her home address or at any address where he, she or it does business.
- 3) Where service of the notice of violation is not made in a manner authorized above, it shall be dismissed at the request of the respondent, or the administrative law judge may dismiss the notice of violation on his or her own motion.

C. **Filing.** The issuing agency must file an original or a copy of the notice of violation, together with proof of service, with the Bureau prior to the first hearing date. These documents shall be deemed records kept in the ordinary course of business. If the notice of violation was served by certified mail, then proof of service shall include the return receipt evidencing receipt of the notice of violation served by mail. Service will be complete 10 days after such filing. Failure to timely file all proofs of service will not divest the Bureau of jurisdiction to proceed with a hearing or to issue a default order.

- D. **Withdrawal.** An agency may withdraw a notice of violation at any time before, during or after adjudicatory proceedings before the Bureau. Where a notice of violation has been withdrawn, the agency must promptly notify the Bureau and the respondent in writing. Thereafter, the Bureau will issue a decision indicating that the notice of violation has been withdrawn.
- E. **Consolidation.** Multiple notices of violation issued as a result of the same inspection shall be heard at the same time under one index number, with separate numerical designations for each notice of violation.

§ 7 Admitting the Charges

- A. Except with respect to the code violations enumerated in Subdivision E below and as set forth in Subdivision B below, the respondent may admit the charges set forth in the notice of violation and pay a monetary penalty and surcharge for administrative costs prior to the specified hearing date and in lieu of appearing before the Bureau.
- B. In cases where multiple notices of violation are consolidated under one index number, the pre-hearing admission procedure is not applicable unless 1) the pre-hearing admission procedure is applicable to all of the notices of violation issued under that index number, and 2) the respondent admits the charges set forth in each and every notice of violation issued under that index number.
- C. For each such violation of the Town Code admitted by the respondent, the applicable monetary penalty is the minimum penalty authorized by the Town Code for the violation alleged. The surcharge for administrative costs is \$25.00 for a single notice of violation and \$50.00 in the event that multiple violations are consolidated under one index number. To pay the applicable admission penalty and surcharge, the respondent may submit a check payable to the Town of Huntington BAA by mail addressed to the Bureau of Administrative Adjudication, Town Hall, 100 Main Street, Huntington, New York 11743, pay on line at www.HuntingtonNY.gov/Bureau, or visit the Bureau at Town Hall in person. The failure to pay the surcharge and/or monetary penalty by the respondent shall entitle the issuing agency to restore the proceeding to the Bureau's calendar for the imposition of a higher penalty on 13 days' notice to the respondent by certified mail return receipt requested.
- D. In such cases, by admitting the charges and paying the applicable monetary penalty and surcharge, the respondent waives his, her or its right to administratively appeal the determination as well as the right to seek judicial review of the adverse determination and/or the monetary penalty by way of a proceeding pursuant to Article 78 of the New York State Civil Practice Law and Rules ("CPLR").
- E. This streamlined pre-hearing admission procedure is not applicable to notices of violation charging violations of any of the following provisions of the Town Code: Article II of Chapter 50; Article IV of Chapter 73; Chapter 74; Article V of Chapter 78; Chapter 104; Chapter 109; Chapter 111, except that violations of § 111-92(B) may be admitted pursuant to the above pre-hearing

admission procedure; Chapter 117; § 120-3 of Article I of Chapter 120; Article II of Chapter 120; Chapter 124, except that violations of § 124-70 may be admitted pursuant to the above pre-hearing admission procedure; § 133-1(B) of Chapter 133; Chapter 137; Chapter 153; Articles I, II and III of Chapter 156; Article III of Chapter 160; Chapter 164; Chapter 168; Chapter 169; Chapter 170; Chapter 171; Article I of Chapter 173; Chapter 188; Chapter 191; Chapter 193; Chapter 195; and Chapter 198.

- F. In cases where the pre-hearing admission procedure is not applicable pursuant to Subdivisions B and/or E above, the respondent must appear before the Bureau even in the event that the respondent has chosen not to contest the charges set forth in the notice of violation.

§ 8 Appearances

- A. **Individual respondents.** Unless the respondent has admitted the charges in the notice of violation pursuant to the pre-hearing admission procedure set forth in § 7 of these regulations, the respondent shall appear before the Bureau at the place, date and time designated in the notice of violation (or the date and time to which the hearing has been rescheduled) either in person or by sending an attorney admitted to practice in New York State as his, her or its representative. Individual respondents who appear in person and are not represented by counsel may be accompanied by a family member or friend who may speak on his or her behalf to the extent authorized by the administrative law judge. In addition, individual respondents who are unable to attend may, at the discretion of the ALJ, be represented by a family member under such circumstances as the ALJ may approve.
- B. **Corporations.** Where the respondent is a corporation, the corporation may appear before the Bureau by an attorney or by any authorized officer, director or employee of the corporation, provided that a non-lawyer appearing on behalf of a corporation shall be deemed to have the requisite authority to represent the corporation and the corporation may not later claim that such representation was unauthorized.
- C. **Town Attorney.** An attorney from the office of the Town Attorney shall appear before the Bureau on behalf of the agency that issued the notice of violation commencing the proceeding against the respondent before the Bureau.

§ 9 Adjournments

- A. **Requests to Reschedule an Appearance.** On one occasion prior to the date and time of the scheduled appearance, a respondent may request that the appearance be rescheduled to a date later than the scheduled appearance date without a showing of good cause for the request.
- B. **Requests for Testimony of Agency Employee:** At the time of the first appearance or upon motion, an administrative law judge may adjourn the hearing for the testimony of an agency employee or complaining witness if the administrative law judge concludes that such testimony is reasonably likely to be necessary to the fair hearing of the violation charged or a defense to

that charge. If the agency employee or complaining witness fails to appear on the adjourned date of the hearing as directed, the administrative law judge may grant a further request to adjourn the hearing to a later date in his or her discretion. Hearings and trials will be scheduled in consultation with the issuing agency and the respondent. All parties should be mindful of the fact that the initial appearance will be to conference and attempt to settle the case.

C. Other Requests: An administrative law judge may grant a request to adjourn an appearance or hearing to a later date only after a showing of good cause as determined by the ALJ in his or her discretion. In deciding whether there is good cause for an adjournment, the administrative law judge may consider the following criteria (which shall not be an exhaustive list):

- 1) Whether granting the adjournment is necessary for the party requesting the adjournment to effectively present the case;
- 2) Whether granting the adjournment is unfair to the other party;
- 3) Whether granting the adjournment will cause inconvenience to any witness;
- 4) The age of the case and the number of adjournments previously granted;
- 5) Whether the party requesting the adjournment had the opportunity to prepare for the scheduled hearing;
- 6) Whether the need for the adjournment is due to facts that are beyond the requesting party's control;
- 7) The balance of the need for efficient and expeditious adjudication of the case and the need for full and fair consideration of the relevant issues; and
- 8) Any other fact that the administrative law judge considers to be relevant to the request for an adjournment.

D. Review: The denial or granting of an adjournment request is not subject to separate or interim review or appeal and shall be in the sound discretion of the presiding administrative law judge.

§ 10 Appearance and Hearing Procedures

A. Location. All conferences and hearing shall be held in the Town of Huntington during regular business hours at such place as the Director shall designate from time to time.

B. Administrative Law Judge. Every hearing will be presided over by an administrative law judge and will proceed with reasonable expedition and order.

C. Calendar. On any given appearance day, the administrative law judge has the discretion to determine the order in which matters on the calendar will be heard. When a respondent or an attorney appears on more than one matter on a single day, the administrative law judge has the discretion to hear those matters in sequence.

D. Language Assistance Services.

- 1) In determining whether language assistance services are necessary to assist the respondent in communicating meaningfully with the administrative law judge and others, the administrative law judge will consider the following: 1) any request by the respondent for language assistance services; 2) any assessment by Bureau personnel as to whether the respondent requires language assistance services; and/or 3) the administrative law judge's own assessment as to whether language assistance services are necessary for meaningful communication with the respondent.
- 2) When required, language assistance services shall be provided by a professional interpretation service that is made available by the Bureau. If a professional interpretation service is not available for that language, the respondent may request the use of another interpreter, in which case the administrative law judge in his or her discretion may use the respondent's requested interpreter. In exercising that discretion, the administrative law judge will take into account all relevant factors including but not limited to the apparent skills of the requested interpreter, whether the requested interpreter is a child under 18 years of age, the maintenance of a clear and usable hearing record, and whether the requested interpreter is a potential witness who may testify at the hearing.

E. Oaths. All persons giving testimony as witnesses at a hearing must be placed under oath or affirmation. The presiding administrative law judge shall administer the oath.

F. Nature of Proceedings. At every hearing, each party has the right to present evidence, to examine and cross-examine witnesses, to make factual or legal arguments, and to have other rights essential for due process and a fair and impartial hearing. At the discretion of the administrative law judge, witnesses may be excluded from the hearing room, except when they are actually testifying.

G. Recording of Proceedings. Hearings will be mechanically, electronically or otherwise recorded by the Bureau under the supervision of the chief administrative law judge, and the original recording will be part of the record and will constitute the sole official record of the hearing. No other recording or photograph of the hearing may be made without prior written permission of the administrative law judge presiding over the hearing. A copy of the recording will be provided upon request to the Bureau. The Bureau may charge a reasonable fee in accordance with New York State Public Officers Law § 87.

H. Expedited Hearings. Either party may submit an application for an expedited hearing to the chief administrative law judge. Such application may be granted by the chief administrative law judge upon a showing that the moving party would be unduly prejudiced if the hearing were held in the ordinary course of business.

- I. **Motions.** Motions to dismiss a notice of violation for improper service or facial insufficiency shall, in the first instance, be made orally and conferenced before the administrative law judge. Where the agency does not accede to the motion after the matter has been conferenced, the administrative law judge shall give the parties the opportunity to submit written briefs in support of or in opposition to the motion, in the manner and on the schedule prescribed by the administrative law judge. Motions to preclude or exclude evidence shall be made orally during the hearing and shall be resolved by the administrative law judge without written submissions. Motions addressed to the sufficiency of the evidence presented at a hearing shall be made and opposed orally and resolved as part of the final decision on the matter.

§ 11 Evidence

- A. **Burden of Proof.** The Town Attorney, on behalf of the agency that issued the notice of violation, has the burden of proving any charge of a violation by a preponderance of the evidence. The respondent has the burden of proving any affirmative defense by a preponderance of the evidence.
- B. **Notice of Violation Admissible.** The notice of violation, if sworn to under oath or affirmed under the penalty of perjury, shall be admitted into evidence as the testimony of the agency employee who issued and signed the notice of violation, and shall constitute prima facie evidence of the facts contained therein.
- C. **Agency Appearance.** The agency employee who issued the violation need not appear at the hearing in the first instance but may be directed by the administrative law judge to appear on an adjourned hearing date. In the event that the officer, inspector or agency employee does not appear at the hearing as directed, the administrative law judge may adjourn the hearing again pursuant to § 9(B) of these regulations, or may proceed with the hearing without the inspector and sustain or dismiss all or part of the notice of violation, as the administrative law judge may deem appropriate.
- D. **Types of Evidence.** Evidence at a hearing may include, but is not limited to, witness testimony, documents and objects. Documents may include, but are not limited to business records or government records, photographs, and any other written or graphic record.
- E. **Admissibility of Evidence.** Relevant and reliable evidence may be admitted without regard to technical or formal rules or laws of evidence applicable in courts of the State of New York. Irrelevant, immaterial, unreliable or unduly repetitious evidence will be excluded. Immaterial or irrelevant parts of an admissible document must be segregated and excluded to the extent practicable.
- F. **Official Notice.** Official notice may be taken of all facts of which judicial notice may be taken. Opportunity to disprove such noticed fact will be granted to any party making a timely motion.

- G. **Objections.** Either party may timely object to the admissibility of evidence. Such objections must be timely. Rulings on all objections must appear on the record.

§ 12 Settlement

- A. At any time prior to the conclusion of the hearing, the parties may discuss settlement and agree upon an appropriate penalty within the range of penalties authorized in the Town Code, subject to the approval of the administrative law judge.
- B. If the matter is settled, the respondent will pay the specified penalty as well as the applicable surcharge for administrative costs. The surcharge for administrative costs is \$25.00 for a single notice of violation and \$50.00 in the event that multiple violations are consolidated under one index number.
- C. By admitting the charges and paying the penalty and surcharge, the respondent waives his, her or its right to administratively appeal the determination as well as the right to seek judicial review of the adverse determination and/or the monetary penalty by way of a proceeding pursuant to Article 78 of the CPLR.
- D. Failure to pay the agreed upon penalty and surcharge will result in the issuance of a default decision and the imposition of the maximum monetary penalty authorized by law pursuant to § 14(B) of these regulations.

§ 13 Decision and Judgment

- A. After a hearing, the administrative law judge who presided over the hearing will promptly write a decision sustaining or dismissing the charge set forth in the notice of violation. Each decision will include findings of fact and a final determination with respect to the charge of a violation. The presiding administrative law judge may take the matter on submission and need not rule from the bench.
- B. Where the charge of a violation is sustained, the decision will set forth the monetary penalty imposed by the administrative law judge, which penalty will be within the range of penalties authorized by the Town Code for such violation. The administrative law judge shall have the discretion, which shall be rarely exercised, to waive the imposition of the penalty in extraordinary circumstances.
- C. The decision will likewise set forth the amount of the applicable surcharge for administrative costs. The surcharge for administrative costs is \$25.00 where the charge of a single violation has been sustained, and \$50.00 where the charges have been sustained in connection with two or more violations consolidated under one index number.
- D. Where the decision imposes a monetary penalty and surcharge for administrative costs, the decision shall include instructions for payment whether by check or otherwise. It shall also include a notification that if the monetary penalty and surcharge are not paid within thirty (30)

days, the decision shall be docketed and enforced as a money judgment in the Suffolk County District Court and, where the judgment relates to a violation on a property in the Town of Huntington, that the assessed penalty shall be collected as tax thereon.

- E. Where the charge of violation is sustained, the decision must provide the respondent with a form notice of appeal and instructions for filing an appeal including the method and time limit for filing the notice of appeal. The decision must also inform the respondent that the payment of penalties or posting of a bond is required in order to file an appeal, but that the respondent has the right to request exemption from such requirement. Finally, the decision must inform the respondent that the decision may not be challenged in a court proceeding pursuant to Article 78 of the CPLR unless an administrative appeal is first taken.
- F. A copy of the decision issued by the administrative law judge will be expeditiously provided either personally or by mail to the respondent, or if the respondent is represented by an attorney, to the attorney, as well as to the Town Attorney's office and any party who has intervened in the proceeding.

§ 14 Default Decisions, Orders and Judgments

- A. A respondent who fails to admit to the charges, appear before the Bureau or make a request to reschedule the appearance or hearing as provided in these rules will be deemed to have defaulted.
- B. Upon such default, without further notice to the respondent and without a hearing having been held, all facts alleged in the notice of violation will be deemed admitted, the respondent will be found in violation and the maximum penalty authorized by the Town Code for the violation alleged will be applied.
- C. The surcharge for administrative costs where a respondent has defaulted is \$50.00 per index number, whether for a single notice of violation or multiple notices of violations consolidated under one index number.
- D. The Bureau will notify the respondent of the issuance of a default by mailing a copy of a Notice of Decision on Default. The notice will include a description of the nature of the violation, the fact that the respondent failed to appear as directed, and the amount of the monetary penalty and surcharge for administrative costs assessed on default. The notice will include instructions for the payment of the monetary penalty and surcharge for administrative costs, as well as notification that, if not paid within 30 days, the default decision may be docketed and enforced as a money judgment in the Suffolk County District Court and where the judgment relates to a violation on a property in the Town of Huntington, that the assessed penalty and surcharge may be collected as a tax thereon.
- E. The Notice of Decision on Default must be signed by an administrative law judge and will also include notification that the respondent may move to stay or vacate the default.

§ 15 Motions to Stay or Vacate a Default

- A. After the issuance of the Notice of Decision on Default, the respondent or his, her or its attorney may move to vacate the default. The application to vacate the default must demonstrate a reasonable excuse for failing to respond or appear. Such a motion may be made using the form promulgated by the Chief Administrative Law Judge or by any suitable written motion submitted to the Bureau. The administrative law judge shall have the right to schedule a hearing in response to the application.
- B. In the event that the administrative law judge chooses to vacate the default, the proceeding shall be placed on the calendar on a date specified by the administrative law judge.
- C. If a year or more has elapsed since the issuance of the Notice of Decision on Default, then, in addition to showing a reasonable excuse for the failure to appear in the first instance, and a meritorious defense to the violation charged, the respondent must show good cause for the delay of a year or more in moving to reopen the default.
- D. A motion to stay or vacate a default will be considered by the chief administrative law judge or an administrative law judge designated by the chief administrative law judge, who shall issue a decision in writing in accordance with the foregoing.
- E. In determining whether a respondent has shown a reasonable excuse for failing to appear for a hearing or otherwise respond to the notice of violation, the following factors (which shall not be an exhaustive list) are to be considered:
 - 1) Whether the notice of violation was properly served on the respondent;
 - 2) Whether the respondent had a condition requiring immediate medical attention, another type of emergency, or whether other circumstances that could not have been reasonably foreseen or that were beyond the respondent's control prevented the respondent from attending the hearing;
 - 3) Whether the matter had previously been adjourned by the respondent;
 - 4) Whether the respondent had previously failed to appear in connection with the same notice of violation;
 - 5) Any other factor considered to be relevant to the motion.
- F. A denial of a motion to stay or reopen a default is a final determination and is not subject to administrative appeal. A denial of a motion to stay or reopen a default is subject to judicial review pursuant to Article 78 of the CPLR.

§ 16 Administrative Appeals

- A. The Director shall designate an appeals panel consisting of three administrative law judges who do not regularly conduct administrative hearings. If a member of the appeals panel is disqualified or not otherwise available, the Director shall designate another administrative law judge to participate in the appeals panel. The administrative law judge whose decision is the subject of the appeal cannot be included in the appeals panel.
- B. Where the charge of violation has been sustained, the respondent may appeal, on the facts and/or the law, an adverse decision of an administrative law judge in whole or in part. The appeal must contain a concise statement of the issues presented and written arguments presenting clearly the points of law and facts relied on in support of the position taken on each issue. The respondent may not appeal a decision rendered on default, the denial of a motion to stay or reopen a default, or an adverse determination after admission of the violation charged.
- C. An agency aggrieved by a final decision 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. The decision by an appeals panel that the issue upon which the agency seeks to appeal is not significant and/or does not affect the agency's legitimate enforcement functions is reviewable in court by way of a proceeding pursuant to Article 78 of the CPLR.
- D. The notice of appeal must be filed with the Bureau within 30 days of the entry of the final decision or within 35 days if the decision was mailed. However, for good cause shown, the chief administrative law judge may permit the filing of an appeal after the 30-day period has expired.
- E. Except as provided herein, filing an appeal will not delay the collection of any monetary penalty or surcharge for administrative costs imposed by the decision from which the appeal is taken. An appeal by or on behalf of a respondent will not be permitted unless 1) the monetary penalty and surcharge for administrative costs imposed have been paid in full, or 2) a cash or recognized surety company bond is posted in the full amount of such penalty and surcharge, prior to or at the time of the filing of the appeal, or 3) the Bureau grants a waiver of prior payment due to financial hardship, or 4) the respondent is the holder of a current license or permit for the operation of a business issued by the Town of Huntington and thus exempt from the requirement that the penalty and surcharge be paid, or a bond posted, pending appeal.
- F. An application to the Bureau for a waiver of prior payment due to financial hardship must be made before or at the time of the filing of the appeal and must be supported by evidence of financial hardship. The chief administrative law judge has the sole discretion to grant or deny a waiver due to financial hardship. An application for a waiver does not extend the time to appeal.
- G. A party seeking review of a decision must file a notice of appeal on the form provided by the Bureau together with a supporting memorandum, proof of service of the notice and memorandum on the non-appealing party, and if the respondent is appealing, proof of payment

in full of any monetary penalties imposed, as well as the surcharge for administrative costs, except as provided in subdivision E above.

- H. Appeals decisions are made upon the record of the hearing. The record of the hearing includes the transcript or electronic record of the hearing, all documentary and physical evidence presented, as well as the administrative law judge's written decision.
- I. When an appeal is filed, the appeals panel will determine whether the facts contained in the findings of the administrative law judge are supported by a preponderance of the evidence in the record, and whether the determination of the administrative law judge, including the penalty imposed, is supported by law. The appeals panel has the power to affirm, reverse, remand or modify the decision appealed from.
- J. The determination of the appeals panel shall be rendered within 90 days after the submission of all relevant papers to the panel, or if oral argument is permitted, within 90 days after such oral argument.
- K. The determination of the appeals panel will be the final determination of the Bureau for the purposes of review pursuant to Article 78 of the CPLR.
- L. Where the respondent prevails on administrative appeal or after judicial review pursuant to Article 78 of the CPLR, any monetary penalties paid to the Town of Huntington shall be returned with interest at the rate set by the Commissioner of Finance of the City of New York for the refund of overpayments of business taxes pursuant to Section 11-537 of the Administrative Code of the City of New York.

§ 17 Forms and Records.

- A. The Chief Administrative Law Judge shall have the authority to promulgate forms to assist litigants in cases before the Bureau. Such forms will be made available on the Bureau's website and at the Bureau.
- B. The Bureau will compile and maintain complete and accurate records relating to all adjudicatory proceedings before it, including copies of all notices of violation served, all documents submitted or issued with respect to each notice of violation, a record of any hearing held before an administrative law judge, and any administrative appeals. These records will be maintained in an orderly filing system, whether physical or electronic, searchable using the name of the respondent as well as case number. Such records will be kept in the regular course of business and maintained for a reasonable period of time in accordance with applicable state and local law.

§ 18 Misconduct.

- C. **Prohibited Conduct.** A party, witness or attorney who appears before the Bureau must not:

- 1) Engage in abusive, disorderly or delaying behavior, a breach of the peace or any other disturbance which directly or indirectly tends to disrupt, obstruct or interrupt the proceedings;
- 2) Engage in any disruptive verbal conduct, action or gesture that a reasonable person would believe to be intimidating;
- 3) Willfully disregard the authority of the administrative law judge by refusing to comply with his or her directions;
- 4) Leave a hearing in progress without the permission of the administrative law judge;
- 5) Attempt to influence or offer or agree to attempt to influence any administrative law judge or employee of the Bureau by using threats, accusations, duress or coercion, a promise of advantage, or the bestowing or offer of any gift, favor or thing of value;
- 6) Request any clerical staff to perform tasks that are illegal, unreasonable or outside the scope of the employee's job duties;
- 7) Submit a document, or present testimony or other evidence to the Bureau which he or she knows, or reasonably should know to be false, fraudulent or misleading;
- 8) Make or cause to be made a stenographic, electronic, audio, audio-visual or other verbatim or photographic reproduction of any hearing or other proceeding, except upon application to the administrative law judge, who may deny the application or grant it in full, in part, or upon such conditions as deemed necessary to preserve the decorum of the proceedings and protect the interests of the parties. This does not include making copies of documents submitted to the Bureau during a hearing as evidence or for purposes of legal argument.

D. Prohibited Communication

- 1) Except for purposes of scheduling or case processing, all parties must be present when communications are made with the administrative law judge or any other Bureau staff regarding a pending case. However, it shall be the aim of all administrative law judges and all Bureau staff to be as customer friendly to all litigants as possible. There shall be no prohibition on answering questions and assisting with non-substantive procedures.
- 2) All persons are prohibited from initiating communication with an administrative law judge or other Bureau employee before or after a hearing or before or after a decision on a motion in order to attempt to influence the outcome of a hearing or decision on a motion.

E. Penalties for Misconduct.

- 1) Failure to abide by the rules set forth above constitutes misconduct. The chief administrative law judge may for good cause, suspend or bar from appearing before the Bureau an attorney who fails to abide by these rules. The suspension may be either for a specified period of time or indefinitely until the attorney demonstrates to the satisfaction of the chief administrative law judge that the basis of the suspension no longer exists.
- 2) However, the chief administrative law judge may not act to suspend an attorney from appearing before the Bureau until after the attorney is given notice and a reasonable opportunity to be heard, either in person or in writing, to rebut the claims against him or her.
- 3) The decision of the chief administrative law judge to suspend an attorney from practicing before the Bureau is not subject to administrative appeal but is reviewable in a proceeding pursuant to Article 78 of the CPLR.