

S. 7033--B

A. 9918--B

S E N A T E - A S S E M B L Y

April 24, 2012

IN SENATE -- Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. CONTE, RAIA -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to authorizing the creation of certain local civil administrative enforcement bureaus

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general municipal law is amended by adding a new article 14-BBB to read as follows:

ARTICLE 14-BBB

LOCAL CIVIL ADMINISTRATIVE ENFORCEMENT BUREAU

SECTION 390. CODE AND ORDINANCE VIOLATIONS; ADMINISTRATIVE ENFORCEMENT.

391. DIRECTOR.

392. ADMINISTRATIVE LAW JUDGES.

393. JURISDICTION TO IMPOSE CIVIL PENALTIES.

394. COMMENCEMENT OF PROCEEDINGS; DEFAULT JUDGMENTS.

395. ADMINISTRATIVE APPEALS PANEL.

396. JUDICIAL ENFORCEMENT.

397. RESTRICTION ON COLLATERAL USE.

S 390. CODE AND ORDINANCE VIOLATIONS; ADMINISTRATIVE ENFORCEMENT. THE TOWN OF HUNTINGTON IN THE COUNTY OF SUFFOLK MAY ADOPT A LOCAL LAW ESTABLISHING AN ADMINISTRATIVE ENFORCEMENT HEARING PROCEDURE UNDER THE PROVISIONS OF THIS ARTICLE FOR ALL CODE AND ORDINANCE VIOLATIONS REGARDING CONDITIONS WHICH CONSTITUTE A THREAT OR DANGER TO THE PUBLIC HEALTH,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD04431-04-2

1 SAFETY OR WELFARE. SUCH BUREAUS SHALL BE RESPONSIBLE FOR THE IMPARTIAL
2 ADMINISTRATION AND CONDUCT OF ENFORCEMENT PROCEEDINGS IN SUCH TOWN.

3 S 391. DIRECTOR. A. THE HEAD OF THE BUREAU SHALL BE THE DIRECTOR WHO
4 SHALL BE THE CHIEF ADMINISTRATIVE LAW JUDGE OF THE BUREAU AND SHALL HAVE
5 ALL THE POWERS OF AN ADMINISTRATIVE LAW JUDGE PURSUANT TO THIS SECTION.
6 THE DIRECTOR SHALL BE APPOINTED BY THE GOVERNING BODY OF SUCH TOWN FOR A
7 TERM OF FIVE YEARS. THE DIRECTOR SHALL BE REMOVABLE ONLY FOR NEGLECT OF
8 DUTY OR MISFEASANCE IN OFFICE AFTER NOTICE AND AN OPPORTUNITY FOR A
9 HEARING. ONCE APPOINTED AND CONFIRMED, THE DIRECTOR SHALL SERVE UNTIL
10 HIS OR HER TERM EXPIRES AND UNTIL HIS OR HER SUCCESSOR HAS BEEN
11 APPOINTED AND CONFIRMED. THE DIRECTOR SHALL DEVOTE HIS OR HER ENTIRE
12 WORK TIME TO THE DUTIES OF THE OFFICE.

13 B. THE DIRECTOR SHALL BE AN ATTORNEY ADMITTED TO PRACTICE FOR AT LEAST
14 FIVE YEARS IN THE STATE OF NEW YORK AND SHALL BE KNOWLEDGEABLE ON THE
15 SUBJECT OF ADMINISTRATIVE LAW AND PROCEDURES.

16 C. THE DIRECTOR SHALL HAVE THE POWER TO PROMULGATE RULES CONSISTENT
17 WITH THIS ARTICLE FOR THE PRACTICE AND PROCEDURE OF THE BUREAU, THE
18 CONDUCT OF ENFORCEMENT PROCEEDINGS AND THE DISMISSAL OR SETTLEMENT OF
19 SUCH PROCEEDINGS.

20 D. THE DIRECTOR SHALL DEVELOP AND IMPLEMENT A PROGRAM OF EVALUATION TO
21 AID IN THE PERFORMANCE OF HIS OR HER DUTIES, AND TO ASSIST IN THE MAKING
22 OF PROMOTIONS, DEMOTIONS OR REMOVALS. THIS PROGRAM OF EVALUATION SHALL
23 FOCUS ON THREE AREAS OF PERFORMANCE: COMPETENCE, PRODUCTIVITY AND DEMA-
24 NOR. IT SHALL INCLUDE CONSIDERATION OF: INDUSTRY AND PROMPTNESS IN
25 ADHERING TO SCHEDULES, MAKING RULINGS AND RENDERING DECISIONS; TOLER-
26 ANCE, COURTESY, PATIENCE, ATTENTIVENESS, AND SELF CONTROL IN DEALING
27 WITH LITIGANTS, WITNESSES AND REPRESENTATIVES, AND IN PRESIDING OVER
28 ENFORCEMENT PROCEEDINGS; SKILLS AND KNOWLEDGE OF THE SUBJECT OF ADMINIS-
29 TRATIVE LAW AND PROCEDURES AND NEW DEVELOPMENTS THEREIN; ANALYTICAL
30 TALENTS AND WRITING ABILITIES; SETTLEMENT SKILLS; QUANTITY, NATURE AND
31 QUALITY OF CASE LOAD DISPOSITION; IMPARTIALITY AND CONSCIENTIOUSNESS.
32 THE DIRECTOR SHALL DEVELOP STANDARDS AND PROCEDURES FOR THIS PROGRAM,
33 WHICH SHALL INCLUDE TAKING COMMENTS FROM SELECTED LITIGANTS AND REPRE-
34 SENTATIVES WHO HAVE APPEARED BEFORE AN ADMINISTRATIVE JUDGE. THE METHODS
35 USED BY AN ADMINISTRATIVE JUDGE BUT NOT THE RESULTS ARRIVED AT BY THE
36 ADMINISTRATIVE LAW JUDGE IN ANY CASE MAY BE USED IN EVALUATING AN ADMIN-
37 ISTRATIVE JUDGE. BEFORE IMPLEMENTING ANY ACTION BASED UPON THE FINDING
38 OF THE EVALUATION PROGRAM, THE DIRECTOR SHALL DISCUSS THE FINDINGS AND
39 PROPOSED ACTION WITH THE ADMINISTRATIVE LAW JUDGE; PROVIDED HOWEVER THAT
40 THE DIRECTOR'S AUTHORITY PURSUANT TO THIS SUBDIVISION IS SUBJECT TO THE
41 PROVISIONS OF THE CIVIL SERVICE LAW AND ANY APPLICABLE COLLECTIVE
42 BARGAINING AGREEMENT.

43 E. TO THE EXTENT PERMITTED BY LAW, THE DIRECTOR SHALL PUBLISH AND MAKE
44 AVAILABLE TO THE PUBLIC ALL SIGNIFICANT DECISIONS RENDERED BY ADMINIS-
45 TRATIVE LAW JUDGES AND ALL DECISIONS RENDERED BY THE ADMINISTRATIVE
46 APPEALS PANELS. THE DIRECTOR MAY CHARGE A REASONABLE FEE FOR A COPY OF
47 SUCH DETERMINATION OR DECISION. WHENEVER ANY LAW OF CONFIDENTIALITY
48 PREVENTS THE PUBLICATION OF THE IDENTITY OF ANY OF THE PARTIES, AN EDIT-
49 ED VERSION OF THE DECISION SHALL BE PREPARED WHICH SHALL NOT DISCLOSE
50 THE IDENTITIES OF THE PROTECTED PARTIES.

51 F. THE DIRECTOR SHALL COLLECT, COMPILE, AND PUBLISH STATISTICS AND
52 OTHER DATA WITH RESPECT TO THE OPERATIONS AND DUTIES OF THE BUREAU AND
53 SUBMIT ANNUALLY TO THE MAYOR, THE TOWN BOARD AND THE PUBLIC A REPORT ON
54 SUCH OPERATIONS INCLUDING BUT NOT LIMITED TO, THE NUMBER OF HEARINGS
55 INITIATED, THE NUMBER OF DECISIONS RENDERED, THE NUMBER OF PARTIAL OR
56 TOTAL REVERSALS BY THE APPEALS PANEL, THE NUMBER OF PROCEEDINGS PENDING,

1 AND ON ANY RECOMMENDATIONS OF THE BUREAU OF STATUTORY OR REGULATORY
2 AMENDMENTS.

3 G. THE DIRECTOR SHALL STUDY THE SUBJECTS OF ADMINISTRATIVE ADJUDI-
4 CATION AND ENFORCEMENT IN ALL ASPECTS, AND DEVELOP PROGRAMS INCLUDING
5 ALTERNATE DISPUTE RESOLUTION AND INCLUDING PRELIMINARY OR PREHEARING
6 CONFERENCES OR MEDIATION WHICH WOULD PROMOTE THE GOALS OF FAIRNESS,
7 UNIFORMITY AND COST-EFFECTIVENESS.

8 H. THE DIRECTOR SHALL ADOPT, PROMULGATE, AMEND AND RESCIND RULES AND
9 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS ARTICLE AND THE POLICIES
10 OF THE BUREAU IN CONNECTION THEREWITH. SUCH RULES AND REGULATIONS SHALL
11 SUBSTANTIALLY COMPLY WITH ARTICLE THREE OF THE STATE ADMINISTRATIVE
12 PROCEDURE ACT, SHALL SUPERSEDE ANY INCONSISTENT AGENCY RULES, AND SHALL
13 INCLUDE, BUT NOT BE LIMITED TO, UNIFORM STANDARDS AND PROCEDURES, RULES
14 OF PRACTICE, STANDARDS FOR DETERMINING WHEN AN EXPEDITED HEARING WILL BE
15 CONDUCTED, STANDARDS FOR UNCONTESTED PROCEEDINGS, STANDARDS FOR THE
16 ASSIGNMENT OF ADMINISTRATIVE LAW JUDGES AND THEIR REMOVAL FROM CASES,
17 AND FOR THE MAINTENANCE OF RECORDS.

18 I. THE DIRECTOR SHALL SECURE, COMPILE AND MAINTAIN ALL REPORTS OF
19 ADMINISTRATIVE LAW JUDGES ISSUED PURSUANT TO THIS ARTICLE, AND SUCH
20 REFERENCE MATERIALS AND SUPPORTING INFORMATION AS MAY BE APPROPRIATE AND
21 TO ESTABLISH APPROPRIATE MANAGEMENT INFORMATION SYSTEMS.

22 J. THE DIRECTOR SHALL DEVELOP AND MAINTAIN A PROGRAM FOR THE CONTINU-
23 ING TRAINING AND EDUCATION OF ADMINISTRATIVE LAW JUDGES AND ANCILLARY
24 PERSONNEL.

25 S 392. ADMINISTRATIVE LAW JUDGES. A. THE DIRECTOR SHALL APPOINT ADMIN-
26 ISTRATIVE LAW JUDGES WHO SHALL BE ATTORNEYS ADMITTED TO PRACTICE IN THE
27 STATE OF NEW YORK FOR AT LEAST THREE YEARS AND SHALL HAVE SUCH OTHER
28 QUALIFICATIONS AS MAY BE PRESCRIBED BY THE DIRECTOR. THE DIRECTOR MAY
29 PRESCRIBE QUALIFICATIONS FOR ADMINISTRATIVE LAW JUDGES WHICH MAY VARY
30 BASED ON THE TYPE OR KIND OF ADJUDICATORY HEARING TO WHICH SUCH ADMINIS-
31 TRATIVE LAW JUDGE MAY BE ASSIGNED.

32 B. THE DIRECTOR MAY PURSUANT TO RULE ESTABLISH SUCH SPECIAL UNITS
33 WITHIN THE BUREAU AS ARE APPROPRIATE TO THE MATTERS BEFORE THE BUREAU
34 FOR ADJUDICATION.

35 C. AN ADMINISTRATIVE LAW JUDGE SHALL NOT PARTICIPATE IN ANY PROCEEDING
36 TO WHICH HE OR SHE IS A PARTY, IN WHICH HE OR SHE HAS BEEN ATTORNEY,
37 COUNSEL OR REPRESENTATIVE, IF HE OR SHE IS RELATED BY CONSANGUINITY OR
38 AFFINITY TO ANY PARTY TO THE CONTROVERSY WITHIN THE SIXTH DEGREE OR
39 WHERE SUCH PARTICIPATION IS OTHERWISE PROHIBITED BY LAW. ADMINISTRATIVE
40 LAW JUDGES SHALL ENSURE THAT ALL HEARINGS ARE CONDUCTED IN A FAIR AND
41 IMPARTIAL MANNER.

42 D. EXCEPT AS OTHERWISE PROVIDED BY LAW, IN THE CONDUCT OF AN ENFORCE-
43 MENT, AN ADMINISTRATIVE LAW JUDGE MAY:

44 (1) HOLD CONFERENCES FOR THE SETTLEMENT OR SIMPLIFICATION OF THE
45 ISSUES, PROVIDED THAT THE SETTLEMENT AND DISMISSAL OF PROCEEDINGS SHALL
46 BE IN ACCORDANCE WITH THE RULES OF THE DIRECTOR;

47 (2) ADMINISTER OATHS AND AFFIRMATIONS, EXAMINE WITNESSES, RULE UPON
48 OFFERS OF PROOF, RECEIVE EVIDENCE, AND OVERSEE, REGULATE, ORDER AND
49 ENFORCE SUCH DISCOVERY AS IS APPROPRIATE UNDER THE CIRCUMSTANCES;

50 (3) UPON MOTION OF ANY PARTY INCLUDING AN AGENCY, OR UPON THE ADMINIS-
51 TRATIVE LAW JUDGE'S OWN MOTION WITH CONSENT OF THE RESPONDENT, SUBPOENA
52 THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, RECORDS, OR
53 OTHER INFORMATION;

54 (4) REGULATE THE COURSE OF THE HEARING IN ACCORDANCE WITH THE RULES OF
55 THE BUREAU OR OTHER APPLICABLE LAW;

56 (5) RULE ON PROCEDURAL REQUESTS OR SIMILAR MATTERS;

(6) MAKE FINAL FINDINGS OF FACT AND FINAL DECISIONS, DETERMINATIONS OR ORDERS;

(7) WHERE THE BUREAU IS AUTHORIZED TO RENDER A FINAL DECISION, DETERMINATION OR ORDER IMPOSING CIVIL PENALTIES, IMPOSE SUCH CIVIL PENALTIES. NO SUCH CIVIL PENALTY SHALL EXCEED THE MAXIMUM PROVIDED UNDER LAW FOR THE VIOLATION; AND

(8) TAKE ANY OTHER ACTION AUTHORIZED BY LAW.

E. UNLESS INCONSISTENT WITH THIS ARTICLE, ALL HEARINGS SHALL SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF ARTICLE THREE OF THE STATE ADMINISTRATIVE PROCEDURE ACT.

F. AN ADMINISTRATIVE LAW JUDGE SHALL RENDER ALL FINDINGS OF FACT, DECISIONS, DETERMINATIONS AND ORDERS IN AN EXPEDITIOUS MANNER.

G. UNLESS OTHERWISE AUTHORIZED BY LAW AND EXCEPT AS PROVIDED IN SUBDIVISION H OF THIS SECTION, 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.

H. AN ADMINISTRATIVE LAW JUDGE MAY CONSULT ON QUESTIONS OF LAW AND MINISTERIAL MATTERS WITH HIS OR HER SUPERVISOR, OTHER ADMINISTRATIVE LAW JUDGES, AND SUPPORT STAFF OF THE BUREAU, PROVIDED THAT SUCH SUPERVISORS, ADMINISTRATIVE LAW JUDGES OR SUPPORT STAFF HAVE NOT BEEN ENGAGED IN FUNCTIONS IN CONNECTION WITH THE ENFORCEMENT PROCEEDING UNDER CONSIDERATION OR A FACTUALLY RELATED PROCEEDING.

S 393. JURISDICTION TO IMPOSE CIVIL PENALTIES. A. SUCH LOCAL LAW MAY AUTHORIZE SUCH BUREAU TO (1) CONDUCT PROCEEDINGS FOR THE ENFORCEMENT OF THOSE CODE OR ORDINANCE VIOLATIONS DESCRIBED IN SECTION THREE HUNDRED NINETY OF THIS ARTICLE FOR WHICH CIVIL PENALTIES MAY BE IMPOSED, AND (2) TO RENDER DECISIONS AND ORDERS AND IMPOSE THE CIVIL PENALTIES PROVIDED UNDER LAW FOR SUCH VIOLATIONS.

B. NO PERSON SUBJECT TO ANY CHARGES MAY BE SENTENCED TO A TERM OF IMPRISONMENT UPON BEING FOUND GUILTY THEREOF, NOR MAY AN ADMINISTRATIVE LAW JUDGE ORDER THE ARREST OR DETENTION OF ANY PERSON, NOR MAY AN ADMINISTRATIVE LAW JUDGE DEPRIVE ANY PERSON OF A RIGHT TO COUNSEL.

S 394. COMMENCEMENT OF PROCEEDINGS; DEFAULT JUDGMENTS. A. THE BUREAU SHALL CONDUCT THE PROCEEDINGS AUTHORIZED BY LOCAL LAW IN ACCORDANCE WITH THIS SECTION AND WITH RULES PROMULGATED BY THE DIRECTOR.

B. SUCH PROCEEDINGS SHALL BE COMMENCED BY THE SERVICE OF NOTICE OF VIOLATION. THE NOTICE OF VIOLATION OR COPY THEREOF WHEN FILLED IN AND SERVED SHALL CONSTITUTE NOTICE OF THE VIOLATION CHARGED, AND, IF SWORN TO OR AFFIRMED, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN. THE NOTICE OF VIOLATION WHEN SWORN TO OR AFFIRMED 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. (1) THE FORM AND WORDING OF NOTICES OF VIOLATION SHALL BE PRESCRIBED BY THE DIRECTOR. 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 IN THE NOTICE. SUCH NOTICE OF VIOLATION SHALL ALSO CONTAIN A WARNING TO ADVISE

1 THE PERSON CHARGED THAT FAILURE TO PLEAD IN THE MANNER AND TIME STATED
2 IN THE NOTICE MAY RESULT IN A DEFAULT DECISION AND ORDER BEING ENTERED
3 AGAINST SUCH PERSON. THE ORIGINAL OR A COPY OF THE NOTICE OF VIOLATION
4 SHALL BE FILED AND RETAINED BY THE BUREAU AND SHALL BE DEEMED A RECORD
5 KEPT IN THE ORDINARY COURSE OF BUSINESS.

6 (2) EVERY NOTICE OF VIOLATION SHALL IDENTIFY THE PROVISION OF LAW
7 CHARGED AND SHALL SET FORTH THE FACTUAL BASIS FOR THE VIOLATION. WHERE A
8 NOTICE OF VIOLATION DOES NOT CONTAIN THIS INFORMATION, IT SHALL BE
9 DISMISSED AT THE REQUEST OF THE RESPONDENT OR THE ADMINISTRATIVE LAW
10 JUDGE MAY DISMISS THE NOTICE OF VIOLATION UPON HIS OR HER OWN MOTION.

11 D. WHERE A RESPONDENT HAS FAILED TO PLEAD WITHIN THE TIME ALLOWED BY
12 CONTROLLING LAW OR, IF THERE IS NO SUCH CONTROLLING LAW, BY THE RULES OF
13 THE BUREAU, OR HAS FAILED TO APPEAR ON A DESIGNATED HEARING DATE OR A
14 SUBSEQUENT DATE FOLLOWING AN ADJOURNMENT, SUCH FAILURE TO PLEAD OR
15 APPEAR SHALL BE DEEMED, FOR ALL PURPOSES, TO BE AN ADMISSION OF LIABIL-
16 ITY AND SHALL BE GROUNDS FOR RENDERING A DEFAULT DECISION AND ORDER
17 IMPOSING A PENALTY UP TO THE MAXIMUM AMOUNT PRESCRIBED UNDER LAW FOR THE
18 VIOLATION CHARGED. A DEFAULT DECISION AND ORDER MAY BE OPENED WITHIN ONE
19 YEAR OF ITS ENTRY UPON WRITTEN APPLICATION SHOWING EXCUSABLE DEFAULT AND
20 A DEFENSE TO THE CHARGE; A DEFAULT DECISION AND ORDER MAY THEREAFTER BE
21 OPENED IN THE DISCRETION OF THE DIRECTOR ONLY UPON WRITTEN APPLICATION
22 SHOWING EXCUSABLE DEFAULT, A DEFENSE TO THE CHARGE, AND GOOD CAUSE FOR
23 THE DELAY.

24 E. ANY FINAL ORDER OF THE BUREAU IMPOSING A CIVIL PENALTY, WHETHER THE
25 ADJUDICATION WAS HAD BY HEARING OR UPON DEFAULT OR OTHERWISE, SHALL
26 CONSTITUTE A JUDGMENT RENDERED BY THE BUREAU AGAINST THE RESPONDENT
27 WHICH MAY BE ENTERED IN THE DISTRICT COURT, CITY COURT OR OTHER EQUIV-
28 ALENT COURT OF THE TOWN OR ANY OTHER PLACE PROVIDED FOR THE ENTRY OF
29 CIVIL JUDGMENTS WITHIN THE STATE, AND MAY BE ENFORCED AGAINST THE
30 RESPONDENT AND HIS, HER OR ITS PROPERTY WITHOUT COURT PROCEEDINGS IN THE
31 SAME MANNER AS THE ENFORCEMENT OF MONEY JUDGMENTS ENTERED IN CIVIL
32 ACTIONS; PROVIDED HOWEVER THAT NO SUCH JUDGMENT SHALL BE ENTERED WHICH
33 EXCEEDS THE JURISDICTION OF THE DISTRICT COURT, SUCH CITY COURT OR OTHER
34 COURT.

35 F. NOTWITHSTANDING THE FOREGOING PROVISION, BEFORE A JUDGMENT BASED
36 UPON A DEFAULT MAY BE SO ENTERED THE BUREAU MUST HAVE NOTIFIED THE
37 RESPONDENT BY FIRST CLASS MAIL IN SUCH FORM AS THE DIRECTOR MAY REQUIRE:

38 (1) OF THE DEFAULT DECISION AND ORDER AND THE PENALTY IMPOSED;

39 (2) THAT A JUDGMENT MAY BE ENTERED IN THE DISTRICT COURT, CITY COURT
40 OR OTHER EQUIVALENT COURT OF THE TOWN OR ANY OTHER PLACE PROVIDED FOR
41 THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE OF NEW YORK; AND

42 (3) THAT ENTRY OF SUCH JUDGMENT MAY BE AVOIDED BY REQUESTING A STAY OF
43 DEFAULT FOR GOOD CAUSE SHOWN AND EITHER REQUESTING A HEARING OR ENTERING
44 A PLEA PURSUANT TO THE RULES OF THE BUREAU WITHIN THIRTY DAYS OF THE
45 MAILING OF SUCH NOTICE.

46 G. THE BUREAU SHALL NOT ENTER ANY FINAL DECISION OR ORDER UNLESS THE
47 NOTICE OF VIOLATION SHALL HAVE BEEN SERVED IN THE SAME MANNER AS IS
48 PRESCRIBED FOR SERVICE OF PROCESS BY ARTICLE THREE OF THE CIVIL PRACTICE
49 LAW AND RULES OR ARTICLE THREE OF THE BUSINESS CORPORATION LAW, EXCEPT
50 THAT:

51 (1) SERVICE OF A NOTICE OF VIOLATION MAY BE MADE BY DELIVERING SUCH
52 NOTICE TO A PERSON EMPLOYED BY THE RESPONDENT

53 (A) TO WORK ON THE PREMISES THE OCCUPANCY OF WHICH CAUSED SUCH
54 VIOLATION, OR

55 (B) AT THE PREMISES AT WHICH THE RESPONDENT ACTUALLY CONDUCTS THE
56 BUSINESS THE OPERATION OF WHICH GAVE RISE TO THE VIOLATION, OR

1 (C) AT THE SITE OF THE WORK WITH RESPECT TO WHICH THE VIOLATION
2 OCCURRED, OR

3 (D) AT THE PLACE AT WHICH THE VIOLATION OCCURRED;

4 (2) SERVICE OF A NOTICE OF VIOLATION MAY BE MADE BY CERTIFIED MAIL,
5 RETURN RECEIPT REQUESTED; AND

6 (3) A NOTICE OF VIOLATION OF ANY CODE OR ORDINANCE RELATING TO THE
7 PREVENTION OF NOISE POLLUTION CAUSED BY AN AUDIBLE MOTOR VEHICLE BURGLAR
8 ALARM OR RELATING TO THE PARKING, STOPPING OR STANDING OF A MOTOR VEHI-
9 CLE MAY BE SERVED UPON THE OWNER OF SUCH MOTOR VEHICLE BY AFFIXING SUCH
10 NOTICE TO SUCH VEHICLE IN A CONSPICUOUS PLACE.

11 H. PROOF OF SERVICE MADE PURSUANT TO THIS ARTICLE SHALL BE FILED WITH
12 THE BUREAU AND, WHERE SERVICE IS MADE BY CERTIFIED MAIL PURSUANT TO
13 PARAGRAPH TWO OF SUBDIVISION G OF THIS SECTION, SHALL INCLUDE THE RETURN
14 RECEIPT EVIDENCING RECEIPT OF THE NOTICE SERVED BY MAIL. SERVICE SHALL
15 BE COMPLETE TEN DAYS AFTER SUCH FILING.

16 I. WHERE ANY FINAL DECISION OR ORDER MAY NOT BE ENTERED AND ENFORCED
17 AS A JUDGMENT BECAUSE THE AMOUNT OF CIVIL PENALTY EXCEEDS THE JURISDIC-
18 TIONAL AMOUNT OF THE DISTRICT COURT, CITY COURT OR OTHER EQUIVALENT
19 COURT OF THE TOWN, WITH RESPECT TO ACTIONS AND PROCEEDINGS FOR THE
20 RECOVERY OF MONEY, SUCH DECISION OR ORDER MAY BE ENFORCED BY THE
21 COMMENCEMENT OF AN ACTION OR PROCEEDING FOR THE RECOVERY OF SUCH CIVIL
22 PENALTIES IN A COURT OF COMPETENT JURISDICTION BY THE TOWN.

23 J. WHERE SERVICE OF A NOTICE OF VIOLATION IS NOT MADE IN A MANNER
24 AUTHORIZED BY LAW FOR THE VIOLATION CHARGED, IT SHALL BE DISMISSED AT
25 THE REQUEST OF THE RESPONDENT OR THE ADMINISTRATIVE LAW JUDGE MAY
26 DISMISS THE NOTICE OF VIOLATION UPON HIS OR HER OWN MOTION.

27 S 395. ADMINISTRATIVE APPEALS PANEL. A. THERE SHALL BE ONE OR MORE
28 ADMINISTRATIVE APPEALS PANELS WITHIN THE BUREAU. EACH PANEL SHALL
29 CONSIST OF THREE ADMINISTRATIVE LAW JUDGES. IN NO EVENT SHALL THE ADMIN-
30 ISTRATIVE LAW JUDGE FROM WHOM SUCH APPEAL OF A DECISION, DETERMINATION
31 OR ORDER IS TAKEN BE INCLUDED IN THE PANEL DETERMINING SUCH APPEAL.
32 ADMINISTRATIVE LAW JUDGES SERVING ON THE ADMINISTRATIVE APPEALS PANEL
33 SHALL NOT REGULARLY CONDUCT ADMINISTRATIVE HEARINGS, BUT SHALL SERVE
34 PRIMARILY AS ADMINISTRATIVE APPEALS PANEL MEMBERS.

35 B. A RESPONDENT MAY APPEAL, ON THE FACTS AND/OR THE LAW, A FINAL DECI-
36 SION, FINAL DETERMINATION OR FINAL ORDER. AN AGENCY AGGRIEVED BY A FINAL
37 DECISION, FINAL DETERMINATION OR FINAL ORDER MAY APPEAL ON THE LAW, BUT
38 ONLY AFTER NOTICE TO THE RESPONDENT AND A FINDING BY THE APPEALS PANEL
39 THAT THE ISSUE UPON WHICH THE AGENCY SEEKS TO APPEAL IS SIGNIFICANT AND
40 AFFECTS THE AGENCY'S LEGITIMATE ENFORCEMENT FUNCTIONS.

41 C. UPON RENDERING A DECISION, MAKING A FINAL DETERMINATION OR ISSUING
42 A FINAL ORDER, THE ADMINISTRATIVE LAW JUDGE SHALL PROVIDE THE NON-AGENCY
43 PARTY WITH A FORM NOTICE OF APPEAL AND SHALL EXPLAIN TO SUCH PARTY ON
44 THE RECORD

45 (1) THE METHOD OF FILING THE NOTICE AND THE APPLICABLE TIME LIMITS;

46 (2) THE REQUIREMENTS OF SUBDIVISION F OF THIS SECTION CONCERNING THE
47 PAYMENT OF PENALTIES AND POSTING OF BONDS PENDING APPEAL, INCLUDING THE
48 RIGHT TO REQUEST EXEMPTION THEREFROM; AND

49 (3) THAT NO FURTHER COURT CHALLENGE IS PERMITTED BY LAW UNLESS AN
50 ADMINISTRATIVE APPEAL IS TAKEN.

51 D. NOTICE OF APPEAL SHALL BE FILED WITH THE APPEALS PANEL WITHIN THIR-
52 TY DAYS OF THE ENTRY OF SUCH DECISION, DETERMINATION OR ORDER. IF NO
53 SUCH NOTICE OF APPEAL IS FILED WITHIN SUCH THIRTY DAY PERIOD, SUCH DECI-
54 SION, DETERMINATION OR ORDER SHALL FINALLY AND IRREVOCABLY DETERMINE ALL
55 THE ISSUES IN THE PROCEEDING BEFORE THE ADMINISTRATIVE LAW JUDGE.

1 E. FOR GOOD CAUSE SHOWN, THE ADMINISTRATIVE APPEALS PANEL MAY PERMIT
2 THE FILING OF A NOTICE OF APPEAL AFTER THE THIRTY DAY PERIOD.

3 F. THE APPEALS PANEL SHALL HAVE THE POWER TO REVIEW THE RECORD AND THE
4 FINDINGS OF THE ADMINISTRATIVE LAW JUDGE AND MAY REVERSE, MODIFY OR
5 REMAND ANY SUCH DECISION, DETERMINATION OR ORDER APPEALED THEREFROM.

6 G. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION NO APPEAL OF A
7 DECISION, DETERMINATION OR ORDER OF AN ADMINISTRATIVE LAW JUDGE IMPOSING
8 CIVIL PENALTIES SHALL BE DECIDED UNLESS SUCH CIVIL PENALTIES ARE PAID OR
9 A CASH OR RECOGNIZED SURETY COMPANY BOND SHALL HAVE BEEN POSTED IN THE
10 FULL AMOUNT OF SUCH CIVIL PENALTIES. NO SUCH PAYMENT OR POSTING OF SUCH
11 BOND SHALL BE REQUIRED WHERE THE RESPONDENT IS THE HOLDER OF A CURRENT
12 LICENSE OR PERMIT FOR THE OPERATION OF A BUSINESS ISSUED BY AN AGENCY OR
13 OFFICER OF SUCH CITY. UPON A SHOWING OF UNDUE HARDSHIP OR WHERE JUSTICE
14 MAY REQUIRE, THE ADMINISTRATIVE LAW JUDGE WHO DECIDED THE CASE OR APPEL-
15 LATE PANEL TO WHICH THE APPEAL IS ASSIGNED MAY ORDER THAT THE APPEAL
16 SHALL BE DECIDED WITHOUT REQUIRING SUCH PAYMENT OR POSTING OF SUCH BOND.

17 H. THE DIRECTOR OF THE BUREAU SHALL PROMULGATE RULES GOVERNING THE
18 PRACTICE AND PROCEDURE OF APPEALS TO THE ADMINISTRATIVE APPEALS PANEL
19 PURSUANT TO THIS SECTION.

20 I. THE DETERMINATION OF THE APPEALS PANEL SHALL BE RENDERED WITHIN
21 NINETY DAYS AFTER THE SUBMISSION OF ALL RELEVANT PAPERS TO THE PANEL, OR
22 IF ORAL ARGUMENT IS PERMITTED, WITHIN NINETY DAYS AFTER SUCH ORAL ARGU-
23 MENT.

24 J. THE DETERMINATION OF THE APPEALS PANEL SHALL BE THE FINAL DETERMI-
25 NATION OF THE BUREAU FOR THE PURPOSES OF REVIEW PURSUANT TO ARTICLE
26 SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

27 S 396. JUDICIAL ENFORCEMENT. ANY ORDER OR SUBPOENA OR ANY FINAL DECI-
28 SION OR DETERMINATION RENDERED BY THE BUREAU SHALL BE SUBJECT TO
29 ENFORCEMENT BY THE JUDICIARY IN AN ACTION OR PROCEEDING COMMENCED IN A
30 COURT OF COMPETENT JURISDICTION BY THE PREVAILING PARTY INCLUDING THE
31 TOWN.

32 S 397. RESTRICTION ON COLLATERAL USE. DECISIONS, DETERMINATIONS AND
33 ORDERS ISSUED BY THE BUREAU SHALL NOT BE CITED, AND SHALL NOT BE CONSID-
34 ERED PRECEDENT NOR BE GIVEN ANY FORCE OR EFFECT IN ANY CRIMINAL PROCEED-
35 ING.

36 S 2. Severability. If any provision of this act or the application
37 thereof shall for any reason be adjudged by any court of competent
38 jurisdiction to be invalid, such judgment shall not affect, impair, or
39 invalidate the remainder of this act, but shall be confined in its oper-
40 ation to the provision thereof directly involved in the controversy in
41 which such judgment shall have been rendered.

42 S 3. This act shall take effect immediately.