S T A T E O F N E W Y O R K

S. 8341 A. 11556

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

June 24, 2010

IN SENATE -- Introduced by Sens. MARCELLINO, FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Conte, Raia) -- read once and referred to the Committee on Local Governments

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. ANY MUNICIPALITY HAVING A POPULATION OF MORE THAN ONE HUNDRED NINETY THOUSAND BUT LESS THAN TWO HUNDRED THOUSAND, ACCORDING TO THE TWO THOUSAND FEDERAL DECENNIAL CENSUS, 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, SAFETY OR WELFARE. SUCH BUREAUS SHALL BE RESPONSIBLE FOR THE IMPARTIAL ADMINISTRATION AND CONDUCT OF ENFORCEMENT PROCEEDINGS IN SUCH MUNICIPALITY.

S 391. 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

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

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ALL THE POWERS OF AN ADMINISTRATIVE LAW JUDGE PURSUANT TO THIS SECTION. THE DIRECTOR SHALL BE APPOINTED BY THE GOVERNING BODY OF SUCH MUNICIPALITY FOR A TERM OF FIVE YEARS. 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.

B. THE DIRECTOR SHALL BE AN ATTORNEY 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 PROCEDURES.

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

D. 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. THIS PROGRAM OF EVALUATION SHALL FOCUS ON THREE AREAS OF PERFORMANCE: COMPETENCE, PRODUCTIVITY AND DEMEANOR. IT SHALL INCLUDE CONSIDERATION OF: INDUSTRY AND PROMPTNESS IN ADHERING TO SCHEDULES, MAKING RULINGS AND RENDERING DECISIONS; TOLERANCE, COURTESY, PATIENCE, ATTENTIVENESS, AND SELF CONTROL IN DEALING WITH LITIGANTS, WITNESSES AND REPRESENTATIVES, AND IN PRESIDING OVER ENFORCEMENT PROCEEDINGS; SKILLS AND KNOWLEDGE OF THE SUBJECT OF ADMINISTRATIVE LAW AND PROCEDURES AND NEW DEVELOPMENTS THEREIN; ANALYTICAL TALENTS AND WRITING ABILITIES; SETTLEMENT SKILLS; QUANTITY, NATURE AND QUALITY OF CASE LOAD DISPOSITION; IMPARTIALITY AND CONSCIENTIOUSNESS. THE DIRECTOR SHALL DEVELOP STANDARDS AND PROCEDURES FOR THIS PROGRAM, WHICH SHALL INCLUDE TAKING COMMENTS FROM SELECTED LITIGANTS AND REPRESENTATIVES WHO HAVE APPEARED BEFORE AN ADMINISTRATIVE JUDGE. THE METHODS USED BY AN ADMINISTRATIVE JUDGE BUT NOT THE RESULTS ARRIVED AT BY THE ADMINISTRATIVE LAW JUDGE IN ANY CASE MAY BE USED IN EVALUATING AN ADMINISTRATIVE JUDGE. BEFORE IMPLEMENTING ANY ACTION BASED UPON THE FINDING OF THE EVALUATION PROGRAM, THE DIRECTOR SHALL DISCUSS THE FINDINGS AND PROPOSED ACTION WITH THE ADMINISTRATIVE LAW JUDGE; PROVIDED HOWEVER THAT THE DIRECTOR'S AUTHORITY PURSUANT TO THIS SUBDIVISION IS SUBJECT TO THE PROVISIONS OF THE CIVIL SERVICE LAW AND ANY APPLICABLE COLLECTIVE BARGAINING AGREEMENT.

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 PANELS. THE DIRECTOR MAY CHARGE A REASONABLE FEE FOR A COPY OF SUCH DETERMINATION OR DECISION. WHENEVER ANY LAW OF CONFIDENTIALITY PREVENTS THE PUBLICATION OF THE IDENTITY OF ANY OF THE PARTIES, AN EDITED VERSION OF THE DECISION SHALL BE PREPARED WHICH SHALL NOT DISCLOSE THE IDENTITIES OF THE PROTECTED PARTIES.

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

G. THE DIRECTOR SHALL STUDY THE SUBJECTS OF ADMINISTRATIVE ADJUDICATION AND ENFORCEMENT IN ALL ASPECTS, AND DEVELOP PROGRAMS INCLUDING

ALTERNATE DISPUTE RESOLUTION AND INCLUDING PRELIMINARY OR PREHEARING CONFERENCES OR MEDIATION WHICH WOULD PROMOTE THE GOALS OF FAIRNESS, UNIFORMITY AND COST-EFFECTIVENESS.

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

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

J. THE DIRECTOR SHALL DEVELOP AND MAINTAIN A PROGRAM FOR THE CONTINUING TRAINING AND EDUCATION OF ADMINISTRATIVE LAW JUDGES AND ANCILLARY PERSONNEL.

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

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

C. 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 ENSURE THAT ALL HEARINGS ARE CONDUCTED IN A FAIR AND IMPARTIAL MANNER.

D. EXCEPT AS OTHERWISE PROVIDED BY LAW, IN THE CONDUCT OF AN ENFORCEMENT, 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 BUREAU 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) 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 THE PERSON CHARGED THAT FAILURE TO PLEAD IN THE MANNER AND TIME STATED IN THE NOTICE MAY RESULT IN A DEFAULT DECISION AND ORDER BEING ENTERED AGAINST SUCH PERSON. 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.

(2) EVERY NOTICE OF VIOLATION SHALL IDENTIFY THE PROVISION OF LAW CHARGED AND SHALL SET FORTH THE FACTUAL BASIS FOR THE VIOLATION. WHERE A 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.

D. WHERE A RESPONDENT HAS FAILED TO PLEAD WITHIN THE TIME ALLOWED BY CONTROLLING LAW OR, IF THERE IS NO SUCH CONTROLLING LAW, BY THE RULES OF THE BUREAU, OR HAS FAILED TO APPEAR ON A DESIGNATED HEARING DATE OR A 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 A PENALTY UP TO THE MAXIMUM AMOUNT PRESCRIBED UNDER LAW FOR THE VIOLATION CHARGED. A DEFAULT DECISION AND ORDER MAY BE OPENED WITHIN ONE YEAR OF ITS ENTRY 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.

E. ANY FINAL ORDER OF THE BUREAU IMPOSING A CIVIL PENALTY, WHETHER THE ADJUDICATION WAS HAD BY HEARING OR UPON DEFAULT OR OTHERWISE, SHALL CONSTITUTE A JUDGMENT RENDERED BY THE BUREAU AGAINST THE RESPONDENT WHICH MAY BE ENTERED IN THE DISTRICT COURT, CITY COURT OR OTHER EQUIVALENT COURT OF THE MUNICIPALITY OR ANY OTHER PLACE PROVIDED FOR THE ENTRY OF CIVIL JUDGMENTS WITHIN THE STATE, 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 WHICH EXCEEDS THE JURISDICTION OF THE DISTRICT COURT, SUCH CITY COURT OR OTHER COURT.

F. NOTWITHSTANDING THE FOREGOING PROVISION, BEFORE A JUDGMENT BASED UPON A DEFAULT MAY BE SO ENTERED 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 IMPOSED;

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

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

G. THE BUREAU SHALL NOT ENTER ANY FINAL DECISION OR ORDER UNLESS THE NOTICE OF VIOLATION SHALL HAVE BEEN SERVED IN THE SAME MANNER AS IS PRESCRIBED FOR SERVICE OF PROCESS BY ARTICLE THREE OF THE CIVIL PRACTICE LAW AND RULES OR ARTICLE THREE OF THE 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; AND

(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 RELATING 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.

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

I. WHERE ANY FINAL DECISION OR ORDER MAY NOT BE ENTERED AND ENFORCED AS A JUDGMENT BECAUSE THE AMOUNT OF CIVIL PENALTY EXCEEDS THE JURISDICTIONAL AMOUNT OF THE DISTRICT COURT, CITY COURT OR OTHER EQUIVALENT COURT OF THE MUNICIPALITY, WITH RESPECT TO ACTIONS AND PROCEEDINGS FOR THE RECOVERY OF MONEY, SUCH DECISION OR ORDER MAY BE ENFORCED BY THE COMMENCEMENT OF AN ACTION OR PROCEEDING FOR THE RECOVERY OF SUCH CIVIL PENALTIES IN A COURT OF COMPETENT JURISDICTION BY THE MUNICIPALITY.

J. 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.

S 395. ADMINISTRATIVE APPEALS PANEL. 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 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 DECISION, MAKING A FINAL DETERMINATION OR ISSUING A FINAL ORDER, THE ADMINISTRATIVE LAW JUDGE SHALL PROVIDE THE NON-AGENCY PARTY WITH A FORM NOTICE OF APPEAL AND SHALL EXPLAIN TO SUCH PARTY ON THE RECORD

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

(2) THE REQUIREMENTS OF SUBDIVISION F OF THIS SECTION CONCERNING THE PAYMENT OF PENALTIES AND POSTING OF BONDS 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. NOTICE OF APPEAL SHALL BE FILED WITH THE APPEALS PANEL WITHIN THIRTY DAYS OF THE ENTRY OF SUCH DECISION, DETERMINATION OR ORDER. IF NO SUCH NOTICE OF APPEAL IS FILED WITHIN SUCH THIRTY DAY PERIOD, SUCH DECISION, DETERMINATION OR ORDER SHALL FINALLY AND IRREVOCABLY DETERMINE ALL THE ISSUES IN THE PROCEEDING BEFORE THE ADMINISTRATIVE LAW JUDGE.

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 CIVIL PENALTIES SHALL BE DECIDED UNLESS SUCH CIVIL PENALTIES ARE PAID OR A CASH OR RECOGNIZED SURETY COMPANY BOND SHALL HAVE BEEN POSTED IN THE FULL AMOUNT OF SUCH CIVIL PENALTIES. NO SUCH PAYMENT OR POSTING OF SUCH BOND SHALL BE REQUIRED WHERE THE RESPONDENT IS THE HOLDER OF A CURRENT LICENSE OR PERMIT FOR THE OPERATION OF A BUSINESS ISSUED BY AN AGENCY OR OFFICER OF SUCH CITY. UPON A SHOWING OF UNDUE HARDSHIP OR WHERE JUSTICE MAY REQUIRE, THE ADMINISTRATIVE LAW JUDGE WHO DECIDED THE CASE OR 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 DIRECTOR OF THE BUREAU SHALL PROMULGATE RULES GOVERNING THE PRACTICE AND PROCEDURE OF APPEALS TO THE ADMINISTRATIVE APPEALS PANEL PURSUANT TO THIS SECTION.

I. THE DETERMINATION OF THE APPEALS PANEL SHALL BE RENDERED WITHIN NINETY DAYS AFTER THE SUBMISSION OF ALL RELEVANT PAPERS TO THE PANEL, OR IF ORAL ARGUMENT IS PERMITTED, WITHIN NINETY DAYS AFTER SUCH ORAL ARGUMENT.

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

K. WHERE THE RESPONDENT PREVAILS IN ANY PROCEEDING PURSUANT TO THIS SECTION, CIVIL PENALTIES PAID TO THE MUNICIPALITY 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.

S 396. JUDICIAL ENFORCEMENT. ANY ORDER OR SUBPOENA OR ANY FINAL DECISION OR DETERMINATION RENDERED BY THE BUREAU SHALL BE SUBJECT TO ENFORCEMENT BY THE JUDICIARY IN AN ACTION OR PROCEEDING COMMENCED IN A COURT OF COMPETENT JURISDICTION BY THE PREVAILING PARTY INCLUDING THE MUNICIPALITY.

S 397. RESTRICTION ON COLLATERAL USE. DECISIONS, DETERMINATIONS AND ORDERS ISSUED BY THE BUREAU SHALL NOT BE CITED, AND SHALL NOT BE CONSIDERED PRECEDENT NOR BE GIVEN ANY FORCE OR EFFECT IN ANY CRIMINAL PROCEEDING.

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

S 3. This act shall take effect immediately.