

County of Tioga

Local Law No. 1 of the Year 1984.

A Local Law providing for expeditious administrative proceedings to correct and or to impose penalties for violations of the State Sanitary Code.

Be It Enacted by the Legislature of the County of Tioga as follows:

SECTION 2.1: PURPOSE

To provide for expeditious administrative proceedings to correct and or to impose penalties for violations of the State Sanitary Code, Public Health Law, Tioga County Local Laws, and pertinent provisions of the administrative rules and regulations of this department.

SECTION 2.2: DEFINITIONS

As used in this law, the following words and terms have the indicated meanings:

- A. Commissioner means the County Commissioner of Health or County Public Health Director.
- B. Department means the Tioga County Environmental Health Service, Division of the Tioga County Public Health Service.
- C. Person means any statutory or legal entity recognized in New York State Law.

SECTION 2.3: PUBLIC HEALTH ADMINISTRATIVE TRIBUNAL

Establishment, powers and duties

A. A Public Health Administrative Tribunal consists of the County Health Director or a person designated by the County Board of Health with the power and duty to:

1. Accept pleas to hear and determine allegations of violations of the Public Health Law, State Sanitary Code (Chapter 1 of this Title), provisions of

the administrative rules and regulations of the department and Tioga County Local Laws;

2. Examine witnesses and receive evidence for this purpose;
3. Administer oaths and affirmations;
4. Sign and issue subpoenas in the name of the department at the request of any party, require attendance and testimony by witnesses and production of books, papers, documents and other evidence; such subpoenas shall be regulated by the Civil Practice Law and Rules;
5. May accept testimony by deposition;
6. Regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
7. Determine whether or not to offer a stipulation as provided in Section 2.9 of this law;
8. Impose penalties, (up to \$1,000 per violation for each day it exists), permit revocations, permit suspensions or closure as authorized;
9. Order abatement of violations, and a schedule for such abatement;
10. Order reinspection of the facility to determine compliance with the State Sanitary Code, County Local Laws, and orders for abatement.

B. A Tribunal Appeals Board shall:

1. Serve as the department's review board with respect to appeals made from the decisions, determinations and orders of designated tribunal representatives;
2. Be composed of three members of the Tioga County Board of Health, whom are to be appointed by the Chairman of the Tioga County Board of Health;
3. Maintain records relating to appeals;
4. Adopt administrative procedures and guidelines;
5. Maintain a record of designated tribunal representatives and their decisions.

SECTION 2.4: APPLICABILITY

This law applies to proceedings instituted by the service of findings of violation as described in Section 3.5 of this law.

SECTION 2.5: FINDING OF VIOLATION

A. The regulatory proceedings will begin with service of a signed finding of violation issued by a department inspector. Service of the finding of violation will be made to conform to the requirements of Section 12-a of the Public Health Law for service of a notice of hearing. An inspection report of the departmental inspector may be used in whole or part as the department's description of alleged violations.

B. The finding of violations shall contain:

- 1.** A short and plain statement of facts found which are alleged to constitute a violation, including the dates when such facts were observed;
- 2.** Specific reference to the provisions of the Public Health Law, State Sanitary Code or pertinent provisions of the administrative rules and regulations or Tioga County Local Laws alleged to have been violated;
- 3.** Information adequate for a respondent to calculate the maximum penalty assessable if the facts are found to be as alleged;
- 4.** Notification that a hearing will be held at a place designated by the department not more than 15 days after service of the finding of violation, and further notice that failure to appear at the time and place designated for the hearing will constitute a default in appearance by the respondent and that a decision and order will be rendered and issued on the record established by the hearing;
- 5.** Information adequate to apprise the respondent to the provisions relating to answers set forth in Section 2.6 of this law;
- 6.** A statement that the respondent will be given a reasonable opportunity to be heard by written or oral argument on issues of law and fact;
- 7.** A description of how the proceedings may be resolved by stipulation agreement between the department and the respondent and payment of a specific monetary fine in lieu of a hearing.

C. The tribunal or tribunal representatives may allow amendments by the respondent and the department. These amendments must be reasonably within the scope of the original finding of violation or recognize occurrences subsequent to the date of the original finding of violation and be relevant to the alleged violations.

SECTION 2.6: ANSWER TO FINDING OF VIOLATION

A. A respondent shall have seven days after receipt of service of the finding of violation within which to answer. The answer shall be made on the form and in accordance with instructions furnished to the respondent with the finding of violation.

B. If the respondent elects to contest any of the factual allegations in the finding of violation, the respondent may include with the answer a statement of defense, mitigation, denial or explanation for each contested alleged violation. When the respondent elects a hearing on the allegations, the respondent must indicate in the answer whether witnesses will be called.

C. If the respondent elects not to contest the factual allegations in the finding of violation, the answer shall contain an admission that the allegations are true. Such an answer shall constitute a waiver of a hearing on the existence of the facts alleged in the finding of violation and, unless the respondent indicates that an explanation will be offered, be deemed a waiver of a hearing as to the amount of any penalty.

D. Failure of the respondent to file an answer within seven days after receipt of service of a finding of violation will constitute a waiver of the right to a hearing and authorizes the tribunal or the tribunal representative, without further notice to the respondent, to find the facts to be as alleged in the finding of violation and to render a decision and order sustaining the allegations and imposing a penalty.

E. Allegations in a finding of violation not answered will be deemed admitted.

SECTION 2.7: HEARINGS

A. Hearings are open to the public, presided over by the tribunal or tribunal representative, and are to proceed with reasonable expedition and order and, insofar as practicable, shall be held at a place and time that will minimize postponements and adjournments.

B. Each party to a proceeding has the right to be represented by counsel, to present evidence, to examine and cross-examine witnesses (subject to the requirement contained in subdivision C of this section), and shall have all rights essential to a fair and impartial hearing.

C. If requested by the respondent, the department will ensure the appearance of the departmental employee who has signed the finding of violation. Such employee shall testify and produce for examination and consideration any written evidence deemed relevant to the allegations.

SECTION 2.8: TRIBUNAL REPRESENTATIVES

A. Except as otherwise provided by statute, the tribunal representatives conducting hearings are authorized to:

1. Accept pleas to, and hear and determine, allegations by the department of violations of the provisions of the Public Health Law, the State Sanitary Code (Chapter 1 of this Title), and pertinent provisions of the administrative rules and regulations of the department and Tioga County Local Laws;

2. Examine witnesses and receive evidence;

3. Administer oaths and affirmations;

4. Sign and issue subpoenas in the name of the department at the request of any party, requiring attendance and giving of testimony by witnesses and production of books, papers, documents and other evidence; such subpoenas shall be regulated by the Civil Practice Law and Rules;

5. Provide for taking of testimony by deposition;

6. Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

7. Determine whether or not to offer a stipulation as provided in Section 2.9 of this law;

8. Impose fines, penalties, permit revocations, permit suspensions or closure as authorized;

9. Order abatement of violations, and schedule for such abatement;

10. Order reinspection of the facility to determine compliance with the State Sanitary Code and orders for abatement.

SECTION 2.9: STIPULATIONS

A. Hearings into findings of violations may be waived upon stipulation between the respondent and the department.

B. Stipulations shall comply with terms and conditions prescribed by the department, and may include assessment of a penalty not to exceed the maximum penalty assessable for each violation cited in the find of violation.

C. The department inspector, in serving the finding of violation, shall be authorized to represent the department in explaining the options available to the respondent in answering the finding of violations, including the option for stipulation.

D. The tribunal or tribunal representative shall be authorized to offer a stipulation to the respondent.

E. Information concerning stipulations made under this section is subject to public release.

SECTION 2.10: DISQUALIFICATION OF TRIBUNAL REPRESENTATIVES

Hearing shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a tribunal representative, the tribunal shall determine the matter as a part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the hearing. Whenever a tribunal representative is disqualified or it becomes impractical for the representative to continue a hearing, another representative will be assigned to continue with the case.

SECTION 2.11: DECISIONS, DETERMINATIONS AND ORDERS

A. Unless precluded by statute, disposition of any finding of violation may be made by agreed settlement.

B. Findings of fact shall be based upon the evidence, any matters officially noticed, and any oral or written explanations received.

C. A written decision sustaining or dismissing the finding of violation shall be rendered by the tribunal representative promptly after the conclusion of a hearing. The decision, a copy of which will be served without delay on the respondent personally or by certified or registered mail, shall contain the findings of fact and, as applicable, orders issued and penalty assessed. The respondent shall also be notified in writing of the right to appeal the decision, as provided in Section 2.13 of this law.

SECTION 2.12: RECORD

A. The record of hearing will include:

1. All notices, pleadings, motions, intermediate rulings;
2. Evidence presented;
3. Questions, offers of proof, objections and rulings;
4. Proposed findings and exceptions, if any;
5. Any decision or report rendered.

B. Hearings may be mechanically, electronically, or otherwise recorded under the supervision of the tribunal representative, and the original recording or an official transcript thereof shall be part of the record.

C. Upon request made by any party, the department will prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy to the requester. Except when any statute authorizes otherwise, the department is authorized to charge the cost for preparation and furnishing of such record or transcript or any part thereof.

SECTION 2.13: TRIBUNAL APPEALS

A. The Tribunal Appeals Board as defined in Section 2.3 (B)(2) of this law shall serve as a review board within the department and will have jurisdiction to review all decisions and orders of tribunal representatives with regard to whether the facts found therein are supported by substantial evidence in the record and the law. The Tribunal Appeals Board, whose decisions shall be by a majority of its members, shall have the power to reverse, remand or modify any decision and order appealed from, and may change the amount of any penalty imposed.

B. A respondent who elects to seek review of any final decision order of a tribunal representative shall file a notice of appeal with the department within 15 days of receipt of a copy of the decision and order of the tribunal representative. The notice of appeal is to be accompanied by a brief or memorandum outlining specific reasons why the decision and order should be changed. The filing of a notice of appeal will stay the collection of any fine or imposition of a penalty or order until the tribunal has rendered its decision. However, such notice of appeal shall not stay an order for closure nor public release of information regarding such order for closure. Appeals shall be made upon the record of the hearing and are to be made without physical appearance of the respondent unless requested by the respondent in the notice of appeal. Any appeal in which an appearance is made by the respondent will be open to the public.

C. The Tribunal Appeals Board shall issue its decision in writing within 30 days of receipt of the appeal and furnish a copy to the respondent by certified or registered mail.

D. Final orders or determinations of the Tribunal Appeals Board shall be subject to review as provided in Article 78 of the Civil Practice Law and Rules.

SECTION 2.14: COMPUTATION OF TIME

In computing any period of time prescribed or allowed by this law, the day that the period of time begins 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 event the next business day will be included.

This Local Law shall become effective 30 days after filing of Law pursuant to Section 27 of the Municipal Home Rule Law of the State of New York.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 1984 of the (County) of Tioga was duly passed by the Tioga County Legislature on January 9, 1984 , in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County) (City) (Town) (Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the and was deemed duly adopted on , 19 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 19 . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual)election held on , 19 , in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on , 19 , and was (approved)(not disapproved)(repassed after disapproval) by the on , 19 . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of , 19 , in accordance with the applicable provisions of law.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the City of having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on , 19 , become operative.

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19 _____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____, 19 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date:

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

State of New York

County of Tioga

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

Signature

Title

County of Tioga

City

Town

Village

Date: