



**TOWN OF NORTH HEMPSTEAD
OFFICE OF THE TOWN ATTORNEY**

**PROPOSED LOCAL LAW AMENDING
CHAPTER 2 OF THE TOWN CODE ENTITLED "ADMINISTRATION AND
ENFORCEMENT"**

LOCAL LAW MEMORANDUM

Purpose of Law:

The purpose of the amendment is to make amendments to Chapter 2 entitled "Administration and Enforcement" in order to improve the Town's ability to eliminate illegal dwelling and rooming units within the Town, prevent them from reoccurring, and to establish penalties for those who profit from illegal housing.

Budget Implications:

The adoption of the proposed local law will not have any direct budgetary implications.

Explanation:

Matter in **bold** and underscored is new; matter in brackets with strikethrough [—] is old law to be omitted.

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2015**

**A LOCAL LAW AMENDING CHAPTER 2 OF THE TOWN CODE, ENTITLED
“ADMINISTRATION AND ENFORCEMENT”**

Section 1. Legislative Intent.

The Board finds that it is necessary to identify illegal housing as a violation of the Town Code to establish harsher penalties and remove the economic incentives driving the creation of illegal housing. Accordingly, this law amends Chapter 2 of the Code of the Town of North Hempstead to improve the Town’s ability to eliminate illegal dwelling and rooming units within the Town, prevent them from reoccurring, and to establish penalties for those who profit from illegal housing.

Section 2.

Chapter 2 of the Town Code is hereby amended by adding a new article, Article VII, entitled “Illegal Use and Occupancy Prohibited”, as follows:

ARTICLE VII. Illegal Use and Occupancy Prohibited

§2-123. through § 2-129. (Reserved)

§2-130. Legislative intent.

- A. The Town Board has determined that the Town of North Hempstead faces serious conditions arising from a proliferation of illegal housing, meaning residential dwelling units that are occupied in violation of the Town’s zoning code. Most typically, these are additional dwelling or rooming units in a building that is approved for one-family or two-family use.**
- B. The Town Board has further determined that illegal housing presents fire, health and safety risks to the occupants and to neighbors, that the additional residents in a neighborhood zoned for one or two family homes has a deleterious effect on the quality of life of the neighbors by increasing traffic and noise. Frequently, the illegal housing and illegal occupancy creates severe parking shortages in neighborhoods. Illegal housing and illegal occupancy increase demand on Town services beyond what is expected for a one or two family residential neighborhood and contribute to the costs of Town taxpayers by increasing the generation of garbage and sewage. Illegal housing and illegal occupancy also contribute to overcrowding in schools, parks and other public services.**

C. By their nature, illegal dwelling units or rooming units generally escape taxation as their existence is normally hidden and the value of the illegal tenancies is not captured for tax assessment purposes.

D. The Town Board declares its purpose in adopting this legislation is to counter a situation which is harmful to the public health, safety and welfare. The Town Board declares its intention that this legislation be liberally construed and, further, declares its belief that every purchaser of real property in the past, present or future was, is and shall be obliged to comply with the legal occupancy level of the residence. No owner can excuse an illegal occupancy or rooming unit because the illegal conversion may have been made by a prior owner or operator.

E. The Town Board finds that the inclusion of rebuttable presumptions, which have been upheld against constitutional challenge, will assist the Town within the context of enforcement and prosecution of illegal use and occupancy.

F. The Town Board further finds that these code provisions will serve to aid in halting the proliferation of such conditions and that the public health, safety, welfare and good order and governance of the Town will be enhanced by enactment of the regulations set forth in this article.

§ 2-131. Applicability; more restrictive provisions to prevail.

The provisions of this article shall supplement local laws, ordinances, codes or regulations. Where a provision of this article is found to be in conflict with any provision of a local law, ordinance, code or regulation, the provision or requirement which is the more restrictive or which establishes the higher standard shall prevail.

§2-132. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CODE ENFORCEMENT OFFICER-- The Commissioner of Buildings or the Commissioner of Public Safety of the Town of North Hempstead or their delegates or assistants.

DWELLING UNIT-- A living unit containing one or more habitable rooms with provisions

for living, cooking, eating, sanitary and sleeping facilities arranged for the use of one family.

ILLEGAL CONVERSION -- A change in the use of any room or rooms or space or spaces, whether or not any construction takes place, to create dwelling units or rooming units, without a permit from the Building Department and for which no certificate of occupancy or certificate of existing use exists.

NONHABITABLE ROOM-- Rooms within a dwelling such as bathrooms, water-closet compartments, laundries, serving and storage pantries, corridors, cellars and similar spaces that are not used frequently or during extended periods.

NONHABITABLE SPACE-- Space used as kitchenettes, pantries, bath, toilet, laundry, dressing, locker, storage, utility, heater and boiler rooms, cellars, garages, closets, and other spaces for service and maintenance of the building and those spaces used for access and vertical travel between stories.

OCCUPYING — Using a room or rooms or space or spaces for a specific purpose, including but not limited to sleeping. There shall be a rebuttable presumption that any room or rooms or space or spaces which have within them an assembled bed or daybed or mattress or convertible sofa or other convertible furniture or other sleeping provisions is occupied and used for sleeping purposes.

OWNER:

A. Owner, lessee, agent or other person in control of a dwelling unit or rooming unit or any other person or persons or entity or entities having the right to possession of a dwelling unit or rooming unit, except:

- (1) A Public Housing Authority organized as such under the laws of the State of New York;
- (2) A cooperative corporation whose offering statement or prospectus has been accepted by the New York State Attorney General for filing under General Business Law § 352-e; and
- (3) A not-for-profit corporation organized to own and operate a low-income or moderate-income senior-citizen housing project in conjunction with the New York State Division of Housing and Community Renewal.

B. Under this definition, a tenant can be an "owner" in relation to a subtenant.

PERMIT THE OCCUPANCY AND USE -- Allowing a person or persons to utilize a room or rooms, space or spaces for a specific purpose, including but not limited to sleeping. An owner of any premises shall be responsible for and chargeable with knowledge of the utilization of any room or rooms or space or spaces within any premises under his/her ownership/control.

RENT -- A return, in money, property or other valuable consideration (including payment in kind or services or other thing of value), for use and occupancy or the right to the use and occupancy of a dwelling unit or rooming unit, whether or not a legal relationship of landlord and tenant exists between the owner and the occupant or occupants thereof.

ROOMING UNIT-- Any room or group of rooms forming a single habitable unit occupied or intended to be occupied by one or more persons as a home or residence for sleeping or living, but not for cooking purposes. There shall be a rebuttable presumption that any room, which shall have a door-locking device commonly called a "Yale lock" or similar device added in the door, is intended as a "rooming unit".

§2-133. Occupancy of units created by illegal conversions prohibited.

It shall be unlawful and a violation of this article and an offense within the meaning of the Penal Law of the State of New York for any owner who owns a dwelling unit in the Town to establish, maintain, use, let, lease, rent or suffer or permit the occupancy and use of any room or space or dwelling unit or rooming unit for which rent is sought or paid and has been created by means of an illegal conversion.

§2-134. Occupancy of non-habitable space prohibited.

It shall be unlawful and a violation of this article and an offense within the meaning of the Penal Law of the State of New York for any owner who owns a dwelling unit in the Town to establish, maintain, use, let, lease, rent or suffer or permit the occupancy and use of any room or space or dwelling unit or rooming unit for which rent is sought or paid and has been created in a nonhabitable room or nonhabitable space.

§2-135. Occupancy of excess units prohibited.

It shall be unlawful and a violation of this article and an offense within the meaning of the Penal Law of the State of New York for any owner who owns a dwelling unit in the Town to establish, maintain, use, let, lease, rent or suffer or permit the occupancy and use of any room or space or dwelling unit or rooming unit for which rent is sought or paid and creates

more dwelling units or rooming units than permitted by the certificate of occupancy or certificate of existing use for said property.

§2-136. Presumptions applicable to enforcement and prosecutions of illegal use and occupancy.

A. Within the context of enforcement and prosecutions of illegal use and occupancy, the presence or existence of any of the following shall create a rebuttable presumption that a premises is being used for an illegal use and occupancy:

- (1) The property is occupied by someone other than the owner, and the owner of the property represents in writing or otherwise, to any person or establishment, business, institution or government agency, that he resides at an address other than the subject property;
- (2) Utilities, cable, phone or other services are in place or requested to be installed or used at the premises in the name of someone other than the owner;
- (3) There are separate entrances for segregated parts of the dwelling;
- (4) There are partitions or internal doors which may serve to bar access between segregated portions of the dwelling, including but not limited to bedrooms;
- (5) There exists a separate written or oral lease or rental arrangement, payment or agreement for portions of the dwelling among its owner(s) and/or occupants and/or persons in possession thereof;
- (6) Any occupant or person in possession thereof does not have unimpeded and/or lawful access to all parts of the dwelling unit;
- (7) Two or more kitchens each containing one or more of the following: a range, oven, hot plate, microwave or other similar device customarily used for cooking or preparation of food and/or a refrigerator;
- (8) A premises has been advertised in any newspaper, magazine, local advertising publication, or posted or billed as being available for rent.

B. Within the context of enforcement and prosecutions of illegal use and occupancy, the presence or existence of any two of the following shall create a rebuttable presumption that a premises is being used as an illegal use and occupancy:

- (1) There is more than one mailbox at the premises;

- (2) There is more than one gas meter at the premises;
- (3) There is more than one electric meter at the premises;
- (4) There is more than one doorbell at the premises;
- (5) There are three or more motor vehicles registered to the dwelling and each vehicle owner has a different surname;
- (6) There are more than three waste receptacles, cans, containers, bags, or boxes containing waste from the premises placed for pickup at least twice during a weekly garbage pickup period; or
- (7) There is no electric meter annexed to the exterior of the premises.

C. Nothing herein shall be construed to prevent persons living together as a family unit, with the owner, as defined by this Code.

§2-137. Application for search warrant authorized.

The Code Enforcement Officer is authorized to make application to the District Court of Nassau County or other court of competent jurisdiction for the issuance of a search warrant, to be executed by a police officer, in order to conduct an inspection of any premises covered by this article where the owner or occupant refuses or fails, after due notice by certified mail, to allow an inspection of the dwelling unit, rooming unit or premises and where there is reasonable cause to believe that a violation of this article or a violation of the Multiple Residence Law, the New York State Uniform Fire Prevention and Building Code, the Nassau County Fire Prevention Ordinance or the Town Code has occurred. The application for a search warrant shall, in all respects, comply with applicable laws of the State of New York.

§2-138. Penalties for offenses.

A. Any person, association, firm or corporation that violates any provision of this article or assists in the violation of any provision of this article shall be guilty of a violation, punishable:

(1) By a fine of not less than \$2,500 and not exceeding \$10,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense.

(2) By a fine of not less than \$10,000 nor more than \$20,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the second offense.

(3) By a fine of not less than \$20,000 nor more than \$30,000 or by imprisonment for a period not to exceed 15 days, or both, for conviction of the third or subsequent offense of a series of offenses, all of which were committed within a period of five years.

B. Each week's continued violation shall constitute a separate additional violation.

§2-139. Referral for Tax Assessment.

Upon any person, association, firm or corporation being charged with a violation of this article, the Town Attorney or his/her designee shall forward a record of such allegation to the Nassau County Department of Assessment for review and assessment.

§2-140. Severability.

If any clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in said judgment.

Section 3.

This Local Law shall take effect immediately upon filing with the Secretary of State.