

NOTICE OF ADOPTION OF RESOLUTION

NOTICE IS HEREBY GIVEN that the Town Board of the Town of Babylon, County of Suffolk, State of New York, at a regular meeting thereof held on the 20th day of January 2021 duly adopted a resolution adopting Local Law No. 1 of 2021, an abstract of which is as follows:

**RESOLUTION NO. 68 JANUARY 20, 2021
ADOPTING LOCAL LAW NO. 1 OF 2020
ADDING CHAPTER 165 TO THE BABYLON TOWN CODE**

WHEREAS, the Town Board of the Town of Babylon having duly called and held a Public Hearing upon the question of enactment of Local Law No. 1 of 2021 of the Town of Babylon, Suffolk County, New York, being a Local Law adding the Code of the Town of Babylon, Chapter 165 (Peace and Good Order);

WHEREAS; In accordance with Part 617.5 (c.) (26), State Environmental Quality Review (SEQR), the adoption of this Local Law is classified a Type II Action and not subject to environmental review under SEQR; and

NOW, THEREFORE, be it

RESOLVED AND ORDAINED, by the Town Board of the Town of Babylon that Local Law No. 1 of 2021, of the Town of Babylon, Suffolk County, New York, is hereby enacted as follows and effective upon its filing with the New York State Department of State:

LOCAL LAW NO. 1 of 2021

AMENDING THE CODE OF THE TOWN OF BABYLON, CHAPTER 165

Section 1. **AMEND** as follows:

CHAPTER 165 PEACE AND GOOD ORDER

§ 165-5 Legislative intent; purpose.

A.

The Town Board of the Town of Babylon hereby finds that buildings and places that are used for the sale of controlled substances and buildings and places being used for the consumption of controlled substances as well as other illegal activities exist within the Town of Babylon and that the recent proliferation of such places has brought to the Town's attention the devastating effect of real estate being used for improper purposes on the surrounding community and that these public nuisances exist in occupied and vacant buildings and on occupied and vacant developed and undeveloped real estate and that these public nuisances present a substantial risk to the health and safety of the surrounding community while interfering with the community's interest in the quality of life as well as their interest in the value of its property.

B.

Therefore, the purpose of this article is to create a standardized procedure for securing legal and equitable remedies and to strengthen existing laws so as to effectively deal with the problem of crack houses in the Town of Babylon by preventing buildings, residences, premises and real estate within the Town of Babylon from being used in such a way as to constitute a public nuisance.

§ 165-6Definitions.

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

PROHIBITED CONDUCT

A. Any conduct or occurrence that is in violation of the following articles or sections of the New York Penal Law:

[Amended 3-19-2014 by L.L. No. 2-2014]

- (1)** Article 220, Controlled Substances Offenses.
- (2)** Article 230, Prostitution Offenses.
- (3)** Article 120, Gang assault in the first degree.
- (4)** Article 120, Gang assault in the second degree.
- (5)** Article 120, Reckless endangerment in the first degree.
- (6)** Article 120, Reckless endangerment in the second degree.
- (7)** Article 265, Firearms and Other Dangerous Weapons.
- (8)** Article 130, Sex Offenses.

B. Any conduct either unlawful in itself or unreasonable under all the circumstances that create or result in the maintaining of a condition which endangers the safety or health of a considerable number of persons or that create or result in the maintenance of any premises or place where persons gather for the purpose of engaging in unlawful conduct, including but not limited to prostitution, drugs and gang assault.

C. Any intentional conduct or occurrence that is in violation of §§ 65, 65-a, 65-b, 82, 123 and 126 of the New York Alcoholic Beverage Control Law and § 260.20 of the New York Penal Law, Prohibited Sales, Prohibited Participant, Unlawful Purchase, Sale or Consumption of Wine, Liquor or Beer, and any violation of §§ 792-3 and 792-9 of the Suffolk County Code, relating to sale restrictions of tobacco products and e-cigarettes.

D. Any violation of Chapters **133**, **153** and/or **213** of the Babylon Town Code.

PUBLIC NUISANCE

For purposes of §**165-9** of this article, any building, residence, premises, structure or place where an owner or person in charge thereof has been given written notice that an arrest or summons for prohibited conduct as defined herein has taken place at said location and within twenty-four months of that first arrest or summons there is an additional arrest or summons at that location for prohibited conduct as defined herein which the owner or person in charge thereof is again notified of in writing.

§ 165-7 **Notice.**

A. Notice that an arrest or arrests for prohibited conduct have occurred at a location shall be served by personal service upon the owner or person in charge of the affected building or structure or, if no such person can be reasonably found, by mailing said owner such notice by means of certified mail, return receipt requested, to the last known address as shown by the

records of the Town Assessor and by securely affixing a copy of such notice upon the door of the affected building or structure. A copy of the notice shall also be mailed by certified mail to any mortgagee of record of the property to such address on file in the office of the Receiver of Taxes or, if no such address exists, to the address indicated on the recorded mortgage. A copy of the notice shall also be served by personal service upon all known adult occupants of the property and by mailing said occupants such notice by means of certified mail, return receipt requested and by securely affixing a copy of such notice upon the door of the affected building or structure.

B. The notice must contain a statement of the date or dates upon which prohibited conduct took place on the property, the nature of the prohibited conduct, a copy of this article and a warning that if a second arrest is made for prohibited conduct as defined in § **165-6** of this article within twenty-four months of the first arrest, the Town will seek action pursuant to § **165-9** of this article.

§ 165-8 **Enforcement.**

A. Upon a first or second offense for prohibited conduct, the Department of Planning and Development and/or the Suffolk County Police Department may issue a summons to the owner or person in charge of said premises for a violation of § **165-10** of this article.

B. Upon a first offense for prohibited conduct, the Department of Planning and Development shall send the property owner a notice pursuant to the requirements of § **165-7** of this article. Upon a second offense for prohibited conduct occurring within twenty-four months of the first offense, a second notice as described in § **165-7** will be sent to the property owner which will also include a notification of the public hearing to be held pursuant to § **165-9** of this article.

C. The Town Attorney's Office will then issue a report in writing to the Town Board which shall include but not be limited to:

- (1)** Dates, times and general nature of the arrests and offenses which occurred at the property.
- (2)** Copies of the first and second notices sent to the property owner as defined in this article.
- (3)** Any relevant information as to the history of this property pertaining to the sale and/or consumption of narcotics, etc.

§ 165-9 **Order for action.**

A. The Town Board at said public hearing or an emergency public hearing as authorized by § 62 of the Town Law shall consider such report of prohibited conduct as well as any other information it deems relevant in determining if the location is to be deemed a public nuisance as defined in § **165-6** of this article. The Town Board must also consider whether or not the complainant or person reporting the prohibited conduct is a victim of domestic abuse.

B. If the Town Board decides said location is in fact a public nuisance, it may immediately authorize the Commissioner of the Department of Public Works, the Deputy Commissioner of the Department of Public Works, the Commissioner of the Department of Planning and Development or the Deputy Commissioner of the Department of Planning and Development to board up said location, for said location to remain boarded up until such time as the Town Board deems the location safe and no longer a public nuisance and assess such costs as a special

assessment to the property owner and authorize the Town Attorney to bring and maintain a civil action or special proceeding in the name of the Town in a court of competent jurisdiction for equitable and legal relief, including but not limited to a temporary restraining order, a preliminary injunction, a permanent injunction and other equitable remedies as well as civil penalties (fines), including the recovery of the costs of the action, litigation expenses, board-up, site cleanup and reasonable attorneys' fees. If the Town Board determines that the complainant or person reporting the prohibited conduct is a victim of domestic abuse, then the Town Board shall, in lieu of boarding up the property, authorize the Town Attorney to bring and maintain a civil action or special proceeding in the name of the Town in a court of competent jurisdiction to remove the offender of the prohibited conduct from the property, and seek a temporary restraining order, a preliminary injunction, a permanent injunction and other equitable remedies as well as civil penalties (fines), including the recovery of the costs of the action, litigation expenses, and reasonable attorneys' fees solely against the offending party.

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C. Any person who enters or remains in any structure, building or premises, which has been boarded up pursuant to Subsection **B** of this section during the period prescribed by Subsection **B**, shall be guilty of a misdemeanor, and upon conviction thereof, a fine of not less than \$2,500 nor more than \$7,500 must be imposed and a term of imprisonment for a period not to exceed one year may be imposed, or both. Knowledge that the structure, building or premises, had been boarded up pursuant to Subsection **B** of this section is not an element of this violation, and said violation shall be one of strict liability.

§ 165-10 Penalties for offenses.

A. The Town Board finds that the proliferation of violations of the provisions of the Town Code of the Town of Babylon has caused a serious threat to the safety and welfare of the residents of the Town and has eroded the quality of life of all who live and work in the Town. The Town Board therefore finds it necessary and proper to increase the fines and related penalties for violations of the Town Code. It is further the intent of the Town Board to exercise its authority as provided by law with particular reference to its authority pursuant to Municipal Home Rule Law § 10(4)(b) and Town Law § 135, and the Town Board hereby supersedes any inconsistent provisions of state law.

B. It shall be unlawful for anyone to own or lease any building, residence, premises, structure or place which is being used as a public nuisance as defined in this article.

C. Upon conviction of any violation of this section shall be a Class A misdemeanor and upon conviction thereof, a fine of not less than \$2,500 nor more than \$5,000 for each day of said offense must be imposed by the court and/or up to one-year imprisonment may be imposed.

§ 165-11 Severability.

A. The provisions of this chapter are severable. If any clause, sentence, paragraph, section, word 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, word or part thereof directly involved in the controversy in which such judgment shall have been rendered. The invalidity of any word, clause, sentence, paragraph, section or part of this article shall not affect the validity of any other part of this article which can be given effect without such invalid part or parts.

B. If any portion of this article is found to be in contrast with any other provision of any other local law or ordinance of the Code of the Town of Babylon, the provision which establishes the higher standard shall prevail

Section 2. Severability.

If any clause, sentence, paragraph, subdivision, section, or other part of this local law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgement shall not affect, impair or invalidate the remainder of this local law, and it shall be construed to have been the legislative intent to enact this local law without such unconstitutional or invalid parts therein.

Section 3. Effective Date.

This local law shall take effect immediately upon filing in the Office of the Secretary of the State of New York.

Dated: January 20, 2021, Town of Babylon

BY ORDER OF THE TOWN BOARD, TOWN OF BABYLON
GERALDINE COMPITELLO, TOWN CLERK