

Pendleton currently has a Town Code. Such Code was adopted on June 4, 1996 by Local Law Number 1 for 1996.

To Amend the Town Code it is necessary to follow the Local Law procedure. [See: **Naftal Assocs. v. Town of Brookhaven**, 221 A.D.2d 423, 424–25, 633 N.Y.S.2d 798, 800 (1995)].

To carry out such amendment of the Town Code, the following procedure should be followed:

1. Prepare proposed language for change, modification and/or addition. Submit to the Planning Board for approval and any appropriate SEQURA action.
2. Planning Board should make its recommendation to the Town Board as to its determination of change, modification and/or addition to the Town Code;
3. Town Board shall determine whether to proceed with the Planning Board recommendation. To the extent that the Town Board approves of the recommendation of the Planning Board a Public Hearing should be scheduled and the Notice procedures of N.Y. Mun. Home Rule Law 20 must be followed.
4. Following the Public Hearing, the Town Board by majority vote must determine whether to adopt such Local Law.
5. Following the adoption of such Local Law the Local Law shall be sent to the Secretary of State's Office by the Town Clerk pursuant to N.Y. Mun. Home Rule Law 27. This must be done within 20 days of the passage of the Local Law.

In **Naftal Assocs. v. Town of Brookhaven**, 221 A.D.2d 423, 424–25, 633 N.Y.S.2d 798, 800 (1995), the court gave the following ruling:

1. We agree with the Supreme Court's conclusion that the **resolution** adopted on November 15, 1988, was **ineffective to amend the Zoning Code of the Town of Brookhaven, which was enacted by Local Laws**, 1987, No. 7 of the Town of Brookhaven. **The doctrine of legislative equivalency requires that existing legislation be amended or repealed by the same procedures as were used to enact it** (see, *Matter of Gallagher v. Regan*, 42 N.Y.2d 230, 234, 397 N.Y.S.2d 714, 366 N.E.2d 804; see also, *Matter of Torre v. County of Nassau*, 86 N.Y.2d 421, 633 N.Y.S.2d 465, 657 N.E.2d 486; *Noghrey v. Town of*

Brookhaven, 214 A.D.2d 659, 625 N.Y.S.2d 268; *Matter of Rockland Props. Corp. v. Town of Brookhaven*, 205 A.D.2d 518, 519, 612 N.Y.S.2d 673).

2. We find no merit to the Town of Brookhaven's (hereinafter the Town) contention that the procedure followed for the passage of the resolution in question substantially complied with the requirements for the passage of a local law (see, Municipal Home Rule Law §§ 20, 27; *Noghrey v. Town of Brookhaven*, *supra*; *Rockland Props. Corp. v. Town of Brookhaven*, *supra*, at 519, 612 N.Y.S.2d 673; *cf.*, *Alscot Investing Corp. v. Laibach*, 65 N.Y.2d 1042, 1044, 494 N.Y.S.2d 295, 484 N.E.2d 658; *Matter of Schilling v. Dunne*, 119 A.D.2d 179, 184, 506 N.Y.S.2d 179).
3. The Town's argument that **Local Laws, 1987, No. 7 of the Town of Brookhaven, provided by its terms that it could be amended by ordinance** is improperly raised for the first time on appeal (see, *Matter of Rockland Props. Corp. v. Town of Brookhaven*, *supra*, at 519, 612 N.Y.S.2d 673; *Mastronardi v. Mitchell*, 109 A.D.2d 825, 827, 828, 486 N.Y.S.2d 762). In any event, **the argument is without merit, since such a provision would be inconsistent with the provisions of the Municipal Home Rule Law, and beyond the supersession powers granted to local governments (see, Municipal Home Rule Law § 10[1][ii][d][3]).**
4. In addition, we agree with the Supreme Court's conclusion that the allegations in the complaint in Action No. 3 stated a valid cause of action on the ground, *inter alia*, that the April 3, 1990, enactment of Local Laws, 1990, No. 15 of the Town of Brookhaven, to allegedly remedy the defects of the November 15, 1988, resolution, **did not comply with the notice requirements of Town Law § 264** (see, *Matter of Gardiner v. Lo Grande*, 92 A.D.2d 611, 612, 459 N.Y.S.2d 804, *aff'd*, 60 N.Y.2d 673, 468 N.Y.S.2d 104, 455 N.E.2d 663; *Matter of Rockland Props. Corp. v. Town of Brookhaven*, 205 A.D.2d 518, 520, 612 N.Y.S.2d 673, *supra*).

N.Y. Mun. Home Rule Law 10 (McKinney)

§ 10. General powers of local governments to adopt and amend local laws

Currentness

1. In addition to powers granted in the constitution, the statute of local governments or in any other law,

(i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government and,

(ii) every local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

a. A county, city, town or village:

(3) The transaction of its business.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(11) The protection and enhancement of its physical and visual environment.

(12) The government, protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses provided, however, that:

(b) Except in a case where and to the extent that a county is specifically authorized to regulate or license an occupation or business, the exercise of such power by a county shall not relate to the area thereof in any city, village or area of any town outside the village or villages therein during such time as such city, village or town is regulating or licensing the occupation or business in question.

annexed thereto as an appendix, a detailed explanation of the allocation.

(d.) Where a public hearing on a local law proposed to be adopted under this subparagraph is required, by subdivision five of section twenty of this chapter, to be held only before an elective chief executive officer, the legislative body shall not adopt such proposed local law until after a public hearing shall have been held thereon before it, on notice as provided in such subdivision five, in which event no public hearing thereon before such chief executive officer shall be required.

(14) The powers granted to it in the statute of local governments.

d. A town:

(1) The preparation, making, confirmation and correction of assessments of real property and the review of such assessments subject to further review by the courts as provided by law, consistent with laws enacted by the legislature.

(2) The authorization, making, confirmation and correction of benefit assessments for local improvements, consistent with laws enacted by the legislature.

(3) The amendment or supersession in its application to it, of any provision of the town law relating to the property, affairs or government of the town or to other matters in relation to which and to the extent to which it is authorized to adopt local laws by this section, notwithstanding that such provision is a general law, unless the legislature expressly shall have prohibited the adoption of such a local law. Unless authorized by other state statute this subparagraph shall not be deemed to authorize supersession of a state statute relating to (1) a special or improvement district or an improvement area, (2) creation or alteration of areas of taxation, (3) authorization or abolition of mandatory and permissive referendum or (4) town finances as provided in article eight of the town law; provided, however that nothing set forth herein shall preclude the transfer or assignment of functions, powers and duties from one town officer or employee to another town officer or employee, and provided, however, further that the powers of local legislation and appropriation shall be exercised by the local legislative body.

2. Every local government also shall have power to adopt and amend local laws where and to the extent that its legislative body has power to act by ordinance, resolution, rule or regulation.

3. a. A grant of a specific power by this section to one or more local governments shall not operate to restrict the meaning of a general grant of power by this section to the same or any other local government or to exclude other powers comprehended in such general grant.

b. The enumeration of powers in this section is not intended to imply that any of such powers is not included within the power of a local government to adopt and amend local laws in relation to its property, affairs and government.

4. In the exercise of its powers to adopt and amend local laws, the legislative body of a local government shall have power:

(a) To delegate to any officer or agency of such local government the power to adopt resolutions or to promulgate rules and regulations for carrying into effect or fully administering the provisions of any local law and to authorize issuance of an appearance ticket by a public servant who, by virtue of office, title or position is authorized or required to enforce any statute, local law, ordinance, rule or regulation relating to parking, licensing of occupations or businesses, fire prevention and safety, health and sanitation, and building, zoning and planning; provided however, that a peace officer may be authorized to issue an appearance ticket relating to enforcement of any statute, local law, ordinance, rule or regulation affecting the public health, safety and welfare.

(b) To provide for the enforcement of local laws by legal or equitable proceedings which are or may be provided or authorized by law, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture, community service, where the

defendant has consented to the amount and conditions of such service, provided however, that the performance of any such services shall not result in the displacement of employed workers or in the impairment of existing services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout, or imprisonment, or by two or more of such punishments, provided, however, that a local law adopted pursuant to subdivision two of this section shall provide only for such enforcement or punishment as could be prescribed if the action of the legislative body were taken by ordinance, resolution, rule or regulation, as the case may be.

(c) To enact as local law the provisions of any existing charter, general law or special law, theretofore enacted, conferring a right, power or authority, or imposing a duty or obligation, on such local government, whether or not the same relate to its property, affairs or government. Any such provision of law so re-enacted shall thereafter be subject to be superseded by local law only to the same extent and in the same manner as if the same had not been so re-enacted.

(d) In establishing the office of the head of a department of its government, to provide that such an office shall be in the unclassified service of the civil service and, in establishing the offices of one or more deputies to the head of a department of its government with power to act generally for and in place of their principals, to provide that the positions of such deputies shall be in the exempt class of the civil service.

5. Except in the case of a transfer of functions pursuant to the constitution or under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other public corporation.

6. Whenever the constitutionality of any local law, ordinance, rule or regulation is brought into issue upon a trial or hearing of any civil cause of action or proceeding in any court, and the local government which enacted such local law, ordinance, rule, or regulation is not a party to such action or proceeding, notice shall be served upon such local government in accordance with section one thousand twelve of the civil practice law and rules.

N.Y. Mun. Home Rule Law 20 (McKinney)

§ 20. Procedure for adoption of local laws by legislative body

Currentness

1. No local law shall be passed except by at least the majority affirmative vote of the total voting power of the legislative body. On the final passage of a local law the question shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the record, journal or minutes of proceedings.

2. The style of local law shall be "Be it enacted by the (naming the legislative body) of the (name of local government) as follows:"

3. Every such local law shall embrace only one subject. The title shall briefly refer to the subject matter. For purposes of this chapter, a local law relating to codification or recodification of ordinances or local laws into a municipal code shall be deemed to embrace only one subject. As used herein codification or recodification shall include amendments, deletions, repeals, alterations or new provisions in the municipal code;

provided, however, that the notice of public hearing required by this section shall briefly describe the codification or recodification.

4. A proposed local law may be introduced only by a member of the legislative body at a meeting of such body or as may be otherwise prescribed by the rules of procedure adopted by the legislative body. No such local law shall be passed until it shall have been in its final form and either (a) upon the desks or tables of the members at least seven calendar days, exclusive of Sunday, prior to its final passage, or (b) mailed to each of them in postpaid properly addressed and securely closed envelopes or wrappers in a post box or post office of the United States post office department¹ within the local government at least ten calendar days, exclusive of Sunday, prior to its final passage, or (c) e-mailed to the e-mail in-box of each of them in the Portable Document Format (PDF) at least ten calendar days, exclusive of Sunday, prior to its final passage, provided that (i) the local government has documented that each member of the legislative body has an e-mail address, (ii) the local government has published such e-mail address on the bulletin board of the local government clerk, and (iii) the legislative body has unanimously adopted a resolution authorizing such electronic delivery; unless the elective or appointive chief executive officer, if there be one, or otherwise the chairman of the board of supervisors, in the case of a county, the mayor in the case of a city or village or the supervisor in the case of a town shall have certified as to the necessity for its immediate passage and such local law be passed by the affirmative vote of two-thirds of the total voting power of the legislative body.

For purposes of this subdivision, a proposed local law shall be deemed to be upon the desks or tables of the members if: it is set forth in a legible electronic format by electronic means, and it is available for review in such format at the desks of the members. For purposes of this subdivision "electronic means" means any method of transmission of information between computers or other machines designed for the purpose of sending and receiving such transmissions and which: allows the recipient to reproduce the information transmitted in a tangible medium of expression; and does not permit additions, deletions or other changes to be made without leaving an adequate record thereof.

5. In the case of a local government which does not have an elective chief executive officer as defined by subdivision four of section two of this chapter, no local law shall be passed by the legislative body until a public hearing thereon has been had before such body and in every other local government no such local law shall be approved by the elective chief executive officer until a public hearing thereon has been had before him. Such a public hearing held before the legislative body or before the chief executive officer, as the case may be, pursuant to this subdivision shall be on such public notice of at least three days as has been or hereafter may be prescribed by a local law on which a hearing shall have been held as prescribed by this section upon five days' notice or, in the event such a local law prescribing the length of notice is not adopted, upon five days' notice. Where the public hearing is before such officer, such notice shall be given by him within ten days after the local law shall have been presented to him and the hearing shall be held within twenty days after such presentation.

N.Y. Mun. Home Rule Law 20 (McKinney)

§ 27. Filing and publication of local laws

Currentness

1. **Within twenty days after a local law shall finally have been adopted, the clerk, or other officer designated by the legislative body, shall file one certified copy thereof in the office of such clerk except that in the case of a county it shall also be filed in the office of the county clerk and one certified copy in the office of the secretary of state.** In the case of a local law subject to a referendum, however, such local law shall be filed within twenty days after its approval by the electors, or where the local law was subject to a permissive referendum and no petition was filed requesting the referendum, the local law shall be filed within twenty days after the time for filing of such petition shall have expired.
2. **Each such certified copy shall contain the text only of the local law** without the brackets and without the matter within the brackets, the matter with a line run through it, or the italicizing or underscoring, if any, to indicate the changes made by it, except that each such certified copy of a local law enacted by a city with a population of one million or more shall be printed in the same form as the official copy of the proposed local law which became the local law provided that line numbers, the printed number of the bill and explanatory matter shall be omitted.
3. **Notwithstanding the effective date of any local law, a local law shall not become effective before it is filed in the office of the secretary of state.**
4. **Subject to the provisions of subdivision three hereof, every local law shall take effect on the twentieth day after it shall finally have been adopted unless a different time shall be prescribed therein or required by this chapter or other provision of law.**
5. The secretary of state shall publish annually local laws on the department of state website and in a separate volume as a supplement to the session laws, and shall publish at least annually on the department of state website a complete codification of all local laws in effect that have been adopted by the legislative body of each county. The clerk, or other officer designated by the legislative body of each county, shall provide local laws to the secretary of state in a manner specified by the secretary of state to facilitate the publication requirements of this subdivision.
6. The clerk shall record all local laws filed in his office in a separate book or books, which shall be indexed by him.
7. The secretary of state shall have the authority to provide for the receipt and filing of local laws by electronic transmission.

N.Y. Mun. Home Rule Law 27 (McKinney)