

Local Law No.1 of the year 2020

SECTION I. Legislative intent.

A. The specific purpose of this local law is to REPEAL and REPLACE Local Law No. 2 of the year 2013, which is entitled "A Local Law to Provide for Enforcement of the Zoning Ordinance of the Town of Rushford"

B. Section 268 of the Town Law imposes the following punishments upon those who violate Article 16 of the Town Law, or a local law adopted pursuant thereto:

(1) Upon the first offense, "a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both";

(2) Upon the second offense in five years' time, "a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both"; and

(3) Upon the third and any further offense in five years' time, "a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both."

C. Section 268 of the Town Law further provides as follows:

(1) That such offenses, for jurisdiction purposes, "shall be deemed misdemeanors";

(2) That, "for such purpose only[,]" such offenses are subject to the procedures applicable to misdemeanors; and

(3) That, "[e]ach week's continued violation shall constitute a separate additional violation."

D. The Town Board of the Town of Rushford adopts this local law pursuant to Section 268 of the Town Law, but, pursuant to Section 10(1)(ii)(d)(3) of the Municipal Home Rule Law, the Town Board specifically intends to supersede, and does hereby SUPERSEDE, the provisions of Section 268 recited in Subsections B and C above and imposes its own, more-graduated and more-flexible penalties and enforcement mechanisms upon those who violate the Town of Rushford Zoning Ordinance.

E. The Town Board of the Town of Rushford further intends by this local law to do the following:

(1) Clarify the Zoning Officer's authority to enforce the Town of Rushford Zoning Ordinance;

(2) Establish the Zoning Officer's authority to issue appearance tickets to those charged with violating the Town of Rushford Zoning Ordinance, said authority being granted pursuant to Section 150.10 of the Criminal Procedure Law and the local law provisions of the Municipal Home Rule Law; and

(3) Authorize violations of the Town of Rushford Zoning Ordinance to be prosecuted in the name of the People of the State of New York.

F. The penalties and enforcement mechanisms set forth in this local law, like the Town of Rushford Zoning Ordinance itself, are adopted to promote the public health, safety, morals, comfort, and general welfare of the citizens of the Town of Rushford, to conserve and protect property values, to secure the most appropriate use of land and to facilitate adequate, but economical, provision of public and private improvements.

SECTION 2. Repealer. Local Law No. 2 of the year 2013, which is entitled " A Local Law to Provide for Enforcement of the Zoning Ordinance of the Town of Rushford," is hereby REPEALED and REPLACED by this local law. Henceforth, this local law shall provide the terms and conditions pursuant to which the Ordinance (as defined below) shall be enforced.

SECTION 3. Definitions.

For purposes of this local law, the "Ordinance" shall refer to the Town of Rushford Zoning Ordinance, as amended from time to time, whether by ordinance or local law. Terms used in this local law but not defined shall be as defined in the Ordinance.

SECTION 4: VIOLATIONS.

A. First offense.

A person who violates any provision of the Ordinance shall be guilty of an offense against this local law and shall be punishable by a fine of at least \$50 but no more than \$500 and/or imprisonment for up to 15 days.

B. Second offense.

A person who violates any provision of the Ordinance a second time within a period of five years shall be guilty of an offense against this local law and shall be punishable by a fine of at least \$150 but no more than \$1,500 and imprisonment for at least three days but no more than 30 days.

C. Third offense.

A person who violates any provision of the Ordinance a third time within a period of five years shall be guilty of an unclassified misdemeanor and shall be punishable by a fine of at least \$500 but no more than \$5,000 and imprisonment for at least 12 days but no more than six months.

D. Additional offenses.

A person who violates any provision of the Ordinance four or more times within a period of five years shall, for each offense, be guilty of an unclassified misdemeanor and punishable by a fine of at least \$1,000 but no more than \$10,000 and imprisonment for at least 30 days but no more than one year.

E. Civil fee.

In the interest of encouraging the amicable and speedy enforcement of the Ordinance, a person who violates the Ordinance may be assessed a civil fee of no less than \$50 but not exceeding \$2,500 in lieu of the applicable penalties set forth in the preceding Subsections A, B, C and D, but only upon the motion of the prosecuting attorney. A violation of the Ordinance for which a civil fee is imposed shall be counted as a predicate offense in determining the penalties applicable to any subsequent violation of the Ordinance but shall not be deemed a conviction for any other purpose. The prosecuting attorney may impose any reasonable condition upon his or her motion, including the defendant's surrender of any or all special use permits issued to such Person pursuant to § 7A.1 of the Ordinance.

F. Calculation of violations.

A violation that continues uninterrupted for seven days or any lesser period of time shall be considered a single offense. A violation that continues uninterrupted for more than seven days shall be deemed a separate and additional offense for each period of seven days, or fraction thereof, that such violation continues. By way of example, a violation that continues for 15 days uninterrupted shall be considered three separate offenses. Five-year periods shall be calculated from the date when the relevant violation or violations occurred.

G. Who may be prosecuted.

(1) Each individual owner or occupant of a building or premises, or portion thereof, where any violation of the Ordinance occurs, and any architect, builder, contractor, agent, employee, or other Person who assists in committing such violation, shall be subject to prosecution under this local law.

(2) The Zoning Officer shall have discretion in determining which, if any, of the potential defendants to prosecute and discretion in determining whether to prosecute some of the potential defendants and not others. The Zoning Officer shall exercise this discretion according to his or her sense of justice and fairness given the circumstances of the alleged violation and the manner in which it occurred.

(3) The term "owner" as used in this Subsection G shall be deemed to include any trustee, administrator(rix), and/or executor(rix) in possession of, or vested with responsibility for, a building or premises where a violation occurs.

(4) No occupant of any building or premises shall be subject to prosecution unless such occupant, if a natural person, is at least 18 years of age.

H. Non-natural persons. If any non-natural Person is sentenced to jail pursuant to this § SECTION 4, the Court may jail the officer, manager, employee, or agent of such Person that the Court deems most responsible for such Person's violation of the Ordinance and/or order such non-natural Person to pay \$250 for each day of the applicable jail sentence.

SECTION 5. Affirmative defense.

The defense of nonconforming use, which may be interposed in a prosecution under the Ordinance, shall be deemed an affirmative defense. The defendant shall have the burden of establishing such defense by a preponderance of the evidence.

SECTION 6. Suspension or revocation of special use permit.

A. Suspension pending prosecution. If a Person is charged with violating Article VII of the Ordinance and such Person has been issued one or more special use permits authorizing such Person to operate an Adult Use, each of such special use permits shall be temporarily suspended ("Temporary Suspension").

B. Period of temporary suspension. A Temporary Suspension shall commence when such Person is served with an information charging him, her, or it with a violation of Article VIIA. A Temporary Suspension shall continue until the earlier of:

- (1) The date six months after the defendant is served with the information; or
- (2) Disposition of the charge(s) contained in the information served upon the defendant.

C. Temporary suspension hearing.

Any Person subject to a Temporary Suspension shall be entitled to demand an evidentiary hearing to determine whether there is sufficient evidence to warrant continuing the Temporary Suspension for the period set forth in the preceding Subsection B. Such hearing shall be conducted within 30 days after the court receives the defendant's written demand. The defendant's right to a hearing shall be deemed waived if the court does not receive the defendant's demand for a hearing within 15 days after the defendant is arraigned. If the court finds after the hearing that there is reasonable cause to believe that the defendant has violated Article VIIA of the Ordinance, the court shall confirm the Temporary Suspension, and, notwithstanding Subsection B above, the Temporary Suspension shall be deemed to commence as of the date the hearing is concluded. If the court finds to the contrary, the court shall void the Temporary Suspension.

D. Requests for adjournment.

The six-month period of any Temporary Suspension shall be extended by any period or periods of time for which the case against the defendant is adjourned at the request or with the consent of the defendant.

E. Suspension or revocation after conviction. If any Person is convicted, whether by plea of guilty or after trial, of violating Article VII of the Ordinance, the court shall suspend or cancel, in its reasonable discretion, all of the special use permits issued to such Person pursuant to Section VIIA(1) of the Ordinance. If the court elects to suspend such Person's permits, no such suspension shall be for less than one year nor more

than five years. A suspension imposed after conviction shall be in addition to any Temporary Suspension to which a Person may have been subject.

SECTION 7. Additional remedies.

Nothing in this local law shall be construed to prohibit the Town of Rushford from exercising any additional means that the Town of Rushford may have in law or equity to enforce the provisions of the Ordinance. The Town of Rushford shall have authority to enforce the Ordinance by any and all lawful means available to the Town, including the right to exercise such means simultaneously or to postpone the exercise of a lawful means of enforcement without waiving the right to use such means of enforcement at a later time.

SECTION 8. Accusatory Instrument; Procedure

Violations of the Ordinance shall be prosecuted upon an accusatory information and in accordance with the procedures contained in the Criminal Procedure Law. Any offense hereunder that is not declared an unclassified misdemeanor shall be considered a "petty offense" for purposes of the Criminal Procedure Law.

SECTION 9. Enforcement authority; appearance tickets.

The Zoning Officer appointed by the Town Board shall be responsible for enforcing the Ordinance and is hereby authorized to issue and serve appearance tickets with respect to violations of the Ordinance. Each appearance ticket shall be served personally. In any prosecution commenced pursuant to this local law, the Town Attorney, his or her associate, and/or any other attorney appointed by the Town Board shall be deemed an assistant district attorney and to prosecute on behalf of the People

SECTION 10. Severability.

If any part of a provision of this ordinance or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this ordinance or the application thereof to other persons or circumstances and the Town Board hereby declares that it would have enacted this ordinance or the remainder thereof had the invalidity of such provision or application thereof been apparent.

SECTION 11. Effective Date

This local law shall take effect immediately upon filing in the office of the Secretary of State.