

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. OF 2023**

**A LOCAL LAW AMENDING CHAPTER 23 OF THE TOWN CODE  
ENTITLED “GOVERNMENTAL DEPARTMENTS”**

**BE IT ENACTED** by the Town Board of the Town of North Hempstead, as follows:

**Section 1. Legislative Intent.**

The Board finds that it is in the best interest of the Town of North Hempstead to amend the grievance procedure in Chapter 23, Article XVII (Anti-Discrimination Provisions) to designate alternative decision makers in the event certain Town officers or officials, including the Town Supervisor or Deputy Supervisor, are named or involved in a complaint related to allegations of wrongdoing, unlawful discrimination, harassment or retaliation, or otherwise have a conflict; to ensure that the hearing officer who conducts a formal hearing on an Article XVII complaint be unbiased and free from conflicts; and to make such additional amendments to the grievance procedure as the Town Board deems necessary.

**Section 2.**

Chapter 23, Section 23-17.12 of the Town Code is hereby amended as follows:

§ 23-17.12 Grievance procedure.

A. Complaints. [Amended 12-18-2018 by L.L. No. 14-2018]

- (1) Complaints of wrongdoing, unlawful discrimination, harassment or retaliation may be directed to the appropriate department head, or to the Commissioner of Human Resources or to the Town Attorney or his/her designee. Complainants are encouraged, but not required, to consult initially with their department head(s) to attempt informal resolution. Complaints made initially to the department head which are not informally resolved to the satisfaction of the complainant shall be referred to the Commissioner of Human Resources or the Town Attorney. Complaints shall be made within one year after occurrence of the alleged prohibited conduct. [Amended 9-25-2019 by L.L. No. 14-2019]
- (2) Anyone who witnesses or becomes aware of potential instances of wrongdoing, harassment, discrimination and/or retaliation may report such behavior to the department head, or the Commissioner of Human Resources or the Town Attorney or his/her designee. Reports of harassment or discrimination may be made orally or in writing. [Amended 9-25-2019 by L.L. No. 14-2019]
- (3) Any supervisor or manager who receives a complaint or information about suspected wrongdoing, discriminatory harassment, observes what may be wrongdoing, discriminatory and/or harassing behavior or for any reason becomes aware of or suspects that wrongdoing or discriminatory harassment is occurring or has occurred shall report that suspected harassment to the department head, or the Commissioner of Human Resources or the Town Attorney or his/her designee. Failure to report suspected wrongdoing, discriminatory harassment or otherwise knowingly allowing the continuation of discriminatory harassment or wrongdoing may result in disciplinary action, subject to any statutory or contractual limitations. [Amended 9-25-2019 by L.L. No. 14-2019]
- (4) All complaints of wrongdoing, unlawful discrimination, harassment or retaliation and information and proceedings relating thereto shall be kept in strict confidence except as otherwise specified herein. [Amended 9-25-2019 by L.L. No. 14-2019]

(5) Nothing herein shall limit a complainant's right to pursue any other legal remedy available to him or her.

B. Investigation.

- (1) The Town Attorney **or his/her designee** shall, in a timely manner, conduct an investigation of the complaint, interviewing appropriate persons, examining relevant records and consulting with and utilizing any appropriate Town staff. **The investigation should determine, with as much detail as possible, the sequence in which the alleged events occurred, the identity of each person involved and their respective roles, and the exact words and/or conduct of each person involved in the reported events. To the extent possible, fact-finding interviews should be conducted by the same person(s).**
- (2) If the Town Attorney **or his/her designee** deems it appropriate, the parties to the complaint may be brought together to attempt an informal resolution of the complaint in a manner satisfactory to both parties.
- (3) Both the complainant and the person against whom the complaint is made shall be permitted to have counsel or other representatives present at any interview or other proceedings.
- (4) Investigations shall be conducted by the Town Attorney or his/her designee in accordance with the following procedures: [Added 12-18-2018 by L.L. No. 14-2018]
  - (a) Upon receipt of a complaint, an immediate review of the allegations will be conducted and any interim action will be taken, as appropriate.
  - (b) Obtain and review relevant documents, e-mails or phone records.
  - (c) Conduct interviews of the parties, including relevant witnesses.
  - (d) Prepare a written summary of the investigation that contains the following:
    - [1] A list of reviewed documents and their contents;
    - [2] A list of interviewed parties and witnesses and detailed summary of their statements;
    - [3] A timeline of events;
    - [4] A summary of prior relevant incidents; and
    - [5] A recommendation in accordance with the procedure outlined under § 23-17.8C.
  - (e) Keep the written documentation and associated documents in the employer's records.
  - (f) Inform the complainant of their right to file a complaint or charge externally.
  - (g) Each person interviewed in connection with such an investigation shall be advised that they are protected by the nonretaliation provision of this article.**

C. Town Attorney's recommendation.

- (1) Upon conclusion of the investigation and within 90 days after the complaint is brought, the Town Attorney shall make a written recommendation to the Supervisor, which shall be one of the following:
  - (a) A recommendation of a finding that no prohibited conduct has occurred;
  - (b) A recommendation that material facts in dispute be resolved by conducting a formal hearing; or

- (c) A recommendation of a finding that no facts are in dispute and that prohibited conduct has occurred.
  - (2) Copies of the Town Attorney's recommendation shall be mailed to the complainant and the party against whom the complaint was made. [Amended 12-18-2018 by L.L. No. 14-2018]
- D. Action by Supervisor. [Amended 12-18-2018 by L.L. No. 14-2018]

**Within 14 days of receiving the Town Attorney's recommendation:**

- (1) The Supervisor may, but need not, adopt the Town Attorney's recommendation. **If the Town Attorney's recommendation is not adopted, the Supervisor shall prepare a written statement detailing the factual and/or legal basis on which the decision not to adopt the recommendation was based.**
  - (2) The Supervisor may also pursue mediation or alternative dispute resolution, including requiring informal appearances by the parties or witnesses. **The Town Board shall, subject to the Town's Payment and Procurement Policy, approve and maintain a list of qualified outside firms or entities from which the Supervisor shall select a mediator or alternative dispute resolution provider. If no such list exists, the Supervisor shall retain a mediator or alternative dispute provider in accordance with the Town's Payment and Procurement Policy. If the charged person is the Supervisor, the Deputy Supervisor or a member of the Supervisor's staff, the Board of Ethics shall select the mediator or alternative dispute resolution provider either from the approved list or in accordance with the Town's Payment and Procurement Policy.**
- E. Hearing.
- (1) Upon adoption of the Town Attorney's recommendation to conduct a formal hearing or upon written request of a party accompanied by a showing of material facts in dispute, the Supervisor or his/her designee shall conduct a formal hearing **in accordance with the provisions of this section.**
  - (2) **The Town Board shall, subject to the Town's Payment and Procurement Policy, approve and maintain a list of qualified outside firms from which the Supervisor shall select a hearing officer. If no such list exists, the Supervisor shall retain a hearing officer in accordance with the Town's Payment and Procurement Policy. If the charged person is the Supervisor, the Deputy Supervisor or a member of the Supervisor's staff, the Board of Ethics shall select the hearing officer either from the approved list or in accordance with the Town's Payment and Procurement Policy.**
  - (3) **The hearing officer shall: (i) be an attorney who is admitted to the practice of law in the State of New York and be in good standing with a minimum of five years practice and/or experience in the area of labor and employment law; (ii) be impartial and free of any personal, professional, or financial interest which would conflict with his or her objectivity in the hearing; and (iii) not have participated in the underlying investigation.**
  - (4) Such hearing shall provide an opportunity for parties and witnesses to be heard, shall be conducted so as to do substantial justice between the parties according to the rules of substantive law and shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence, **except that hearings conducted under this article will follow the provisions of Article 3 of the New York State Administrative Procedures Act. The Town Board is authorized to establish, by resolution, additional rules governing the procedures for hearings under this article. The hearing should be conducted in a timely manner and pursued with sufficient diligence to reach a conclusion without undue delay. The Town may elect to have legal counsel present at the hearing to represent the Town's interest.**
  - (5) **[A+]Within 14 days of** the conclusion of such hearing, the Supervisor or his/her designee shall issue a

written statement of findings of fact, including a determination as to whether or not prohibited conduct has occurred.

**[Amended 12-18-2018 by L.L. No. 14-2018]**

- F. Record. The record maintained with respect to each complaint of **wrongdoing**, discrimination, harassment or retaliation shall contain the written complaint; the Town Attorney's **or his/her designee's** memo summarizing the investigation; the recommendation of the Town Attorney **or his/her designee**; if a formal hearing is conducted, a record thereof in a form determined by the Supervisor **or his/her designee**; the Supervisor's **or his/her designee's** statement of findings of fact; and the Supervisor's **or his/her designee's** written determination. Such record shall be available to either party or the designee thereof. [Amended 12-18-2018 by L.L. No. 14-2018]
- G. Discipline sanction. Conduct which is found to violate this article shall be deemed a serious violation of Town policy and shall be the basis for disciplinary action as set forth herein. The disciplinary action shall be in accordance with a graduated schedule of penalties and disciplinary actions to be assessed and instituted by the Supervisor in accordance with the severity and/or repetitiveness of any finding and determination of discrimination, harassment or retaliation and shall include one or more of the following:
- (1) Verbal reprimand to be noted in the offender's personnel file.
  - (2) Written reprimand to be included in the offender's personnel file.
  - (3) Transfer as a result of a satisfactory informal resolution procedure or as a sanction prior to the completion of a Subsection 75 Civil Service Law hearing or a formal hearing.
  - (4) Demotion in grade and title.
  - (5) Suspension without pay for a period not exceeding two months.
  - (6) Fine not to exceed \$100 to be deducted from the salary or wages of such employee.
  - (7) Dismissal of the offender.
- H. Should the procedures set forth herein be inconsistent with the disciplinary procedures under a collective bargaining agreement in effect for the Town, then covered employees will be disciplined consistent with the collective bargaining agreement. [Amended 12-18-2018 by L.L. No. 14-2018]

**I. Process when Conflict of Interest Exists**

**Notwithstanding any provisions of this article to the contrary:**

- (1) In the event the Town Supervisor, Deputy Supervisor or a member of the Supervisor's staff is named in a complaint alleging wrongdoing, unlawful discrimination, harassment or retaliation, or is involved in the incident, or the Town Supervisor otherwise has a conflict, a hearing officer designated pursuant to this article shall, upon a determination that prohibited conduct has occurred, include in his/her written statement of findings of fact, a recommendation for disciplinary action as described in § 23-17.12(G). If the hearing officer's recommendation is not adopted by the Supervisor, the Supervisor shall prepare a written statement detailing the factual and/or legal basis on which the decision not to adopt the recommendation was based. Such statement shall be made part of the record.**
- (2) No person against whom such a complaint has been made shall take part in any discussion, investigation or decision-making process provided for herein, but this shall not preclude such**

**person from offering his/her version of the matter to the designated investigator or hearing officer.**

**Section 3.**

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