

**INCORPORATED VILLAGE OF OLD WESTBURY
BOARD OF TRUSTEES**

LOCAL LAW NO. 4 OF 2020

**AMENDING CHAPTER 216 “ZONING” OF THE CODE
OF THE
VILLAGE OF OLD WESTBURY**

WHEREAS, the Board of Trustees has recommended the enactment of a local law amending Chapter 216, “Zoning”, requiring a rental permit for all residential properties being rented within the Village; and

WHEREAS, this Local Law was introduced by the Board of Trustees on June 15, 2020; and

WHEREAS, the Board finds that this Local Law is a Type II Action pursuant to the New York State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, this Local Law was the subject of a duly noticed public hearing in accordance with New York State Village Law and the Village Code before the Board on July 20, 2020;

BE IT ENACTED by the Board of Trustees of the Incorporated Village of Old Westbury as follows:

Section 1. Chapter 216, “Zoning”, of the Village Code of the Village of Old Westbury be and is hereby amended to read as follows:

Rental Dwelling Units

§ 216-89.1. Legislative intent.

The Village Board of Trustees has determined that there exist in the Village of Old Westbury serious conditions arising from rental of dwelling units that are substandard or in violation of the Village Code and that tend to overburden municipal services and to promote or encourage deterioration of the housing stock of the Village. The Board finds that new Code provisions will serve to halt the proliferation of such conditions and that the public health, safety, welfare and good order and governance of the Village will be enhanced by enactment of the regulations set forth in this article.

§ 216-89.2. Definitions.

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

CODE ENFORCEMENT OFFICER - The Code Enforcement Officer

appointed pursuant to § 74-3B of Chapter 74 of the Village Code.

DWELLING UNIT - A single family residence, occupied or to be occupied by one or more persons living as a family. as a home or residence.

OWNER:

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

(1) 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

(2) 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.

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, whether or not a legal relationship of landlord and tenant exists between the owner and the occupant or occupants thereof.

RENTAL DWELLING UNIT - A dwelling unit established, occupied, used or maintained for rental occupancy.

RENTAL OCCUPANCY - The occupancy or use of a dwelling unit by one or more persons as a home or residence under an arrangement whereby the occupant or occupants thereof pay rent for such occupancy and use. There is a rebuttable presumption that any occupancy or use of a dwelling unit is a "rental occupancy" if the owner of the building containing the dwelling unit does not reside in the same building.

§ 216-89.3. Applicability; more restrictive provisions to prevail.

A. Scope. This article shall apply to all rental dwelling units located within the incorporated area of the Village, whether or not the use and occupancy thereof shall be permitted under the applicable use regulations for the zoning district in which such rental dwelling unit is located, as in this article provided.

B. Applicability. The provisions of this article shall be deemed to

supplement applicable state and local laws, ordinances, codes and regulations; and nothing in this article shall be deemed to abolish, impair, supersede or replace existing remedies of the Village, county or state or existing requirements of any other applicable state or local laws, ordinances, codes or regulations. In case of conflict between any provision of this article and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail. The issuance of any permit or the filing of any form under this article does not make legal any action or statement of facts that is otherwise illegal under any other applicable legislation.

§ 216-89.4. Rental occupancy permit required.

- A. It shall be unlawful and a violation of the Village Code for any person or entity who owns a dwelling unit in the Village to rent that dwelling unit for less than one year.

- B. It shall be unlawful and a violation of the Village Code for any person or entity who owns a dwelling unit in the Village to establish, maintain, use, let, lease, rent or suffer or permit the occupancy and use thereof as a rental occupancy without having a valid permit for such rental occupancy, as herein provided.

§ 216-89.5. Application for rental occupancy permit.

- A. Application for a rental occupancy permit for a rental dwelling unit shall be made in writing to the Building Department on a form provided by the Building Department for that purpose.

- B. Such application shall be filed in duplicate and shall contain:
 - (1) The name, address and telephone number, if any, of the owner of the dwelling unit intended for rental occupancy.

 - (2) The street address and Tax Map description (section, block and lot or lots) of the premises intended for rental occupancy or the premises in which the rental dwelling unit intended for occupancy is located.

 - (3) The number of persons under and over the age of 18 and the dates of birth of each person presently residing in or occupying such premises intended for rental occupancy.

 - (4) A description of the structure, including:
 - (a) The number of persons intended to be accommodated by and to reside in the rental dwelling unit; and
 - (b) The number of rooms and the dimensions and use of each room in the structure but outside of the rental dwelling unit.

 - (5) For each rental dwelling unit, a description of the unit, including:

- (a) The number of rooms in the rental dwelling unit; and
 - (b) The dimensions and use of each such room.
- (6) The name, address and telephone number, if any, of the managing agent or operator of each such intended rental dwelling unit.
- C. Such application shall be signed by the owner of the premises, and the statements of such owner therein contained shall be verified under oath. If an owner is a natural person permanently residing outside of Nassau, Suffolk, Queens, Kings, New York, Richmond, Bronx and Westchester Counties, the application may be signed on behalf of the owner and may be verified by a managing agent having personal knowledge of the facts.
- D. Such application shall be accompanied by the following:
 - (1) A property survey of the premises drawn to a scale not greater than 40 feet to one inch; or if not shown on the survey, a site plan, drawn to scale, showing all buildings, structures, walks, drives and other physical features of the premises and the number, location and access of existing and proposed on-site vehicle parking facilities.
 - (2) A building permit application, properly prepared, for all proposed buildings, improvements and alterations to existing buildings on the premises, if any.
 - (3) A copy of the certificate of occupancy. No application will be accepted without the submission of a valid certificate of occupancy.

§ 216-89.6. Fees.

A. Permit application fee. A nonrefundable permit application fee of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) shall be paid, upon filing an application for a rental occupancy permit.

B. Permit renewal fee. A nonrefundable permit renewal application fee of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) shall be paid upon filing a renewal application for a rental occupancy permit.

§ 216-89.7. Review of application.

The Code Enforcement Officer shall review each application for completeness and accuracy and shall make an on-site inspection of the proposed rental dwelling unit. If satisfied that the proposed rental dwelling unit, as well as the premises in which the same are located, comply fully with all applicable state and local laws, ordinances, rules and regulations of the county and Village and that such rental dwelling unit would not create an unsafe or dangerous condition or create an unsafe and substandard structure as defined in Chapter 74 of the Village

Code or create a nuisance to adjoining nearby property, the Code Enforcement Officer shall issue the permit.

§ 216-89.8. Term of permits.

All permits issued pursuant to this article shall be valid for a period of one year from date of issuance.

§ 216-89.9. Register of permits.

It shall be the duty of the Code Enforcement Officer to maintain a register of permits issued pursuant to this article. Such register shall be kept by street address, showing the name and address of the permittee, the number of rental dwelling unit at such street address, the number of rooms in each such rental dwelling unit and the date of expiration of permit for such unit.

§ 216-89.10. Smoke detector device and carbon monoxide alarm.

No permit shall be issued or renewed until the Code Enforcement officer inspects the rental dwelling unit and determines that it is equipped with a functioning smoke detector device and carbon monoxide alarm, in compliance with New York State Uniform Fire Prevention and Building Code.

§ 216-89.11. Inspections.

- A. The Code Enforcement Officer is authorized to make or cause to be made inspections to determine the condition of a rental dwelling unit prior to the issuance of a rental permit.
- B. All rental dwelling units shall be subject to an annual inspection by the Code Enforcement Officer. An owner's failure to schedule or pass an annual inspection will result in revocation of the rental permit pursuant to Section 216-89.13 of this Article.
- C. The Code Enforcement Officer is authorized to enter, upon consent of the owner if the unit is unoccupied or upon consent of the occupant if the unit is occupied, any rental dwelling unit and the premises in which the same is located, at the reasonable time or at such other time as may be necessary in an emergency for the purpose of performing duties under this article.

§ 216-89.12. 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 rental dwelling 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 Village Code has occurred. The application for a search warrant shall, in all respects, comply with applicable laws of the State of New York.

§ 216-89.13. Revocation of permit.

- A. The Code Enforcement Officer shall revoke a rental occupancy permit where he or she finds that the permit holder has caused, permitted, suffered or allowed to exist and remain upon the premises for which such permit has been issued, for a period of 5 days or more after written notice has been given to the permit holder or the managing agent of such rental dwelling unit, a violation of the Multiple Residence Law, New York State Uniform Fire Prevention and Building Code, the Nassau County Fire Prevention Ordinance or a violation of this article or other chapter of the Village Code. Revocation of a permit under this subsection cannot be done by a delegate or assistant of the Code Enforcement Officer.
- B. An appeal from such revocation may be taken by the permit holder to the Village Board of Trustees, by written request, made within 30 days from the date of such revocation. The Village Board of Trustees shall hold a public hearing on such appeal within 30 days after receipt of written notice of such appeal and, after such hearing, shall make written findings, a conclusion and a decision either sustaining such permit revocation or reinstating such permit within 30 days after close of such public hearing. Unless the Village Board of Trustees directs otherwise in circumstances constituting serious threats to health and safety, the filing of an appeal shall stay the effectiveness of a permit revocation until the Village Board of Trustees has considered and ruled upon the issue.

§ 216-89.14. Rental registration required.

It shall be unlawful and a violation of the Village Code for any owner to permit any tenant or other person to take up residence by a rental occupancy in any dwelling unit without the owner's first having completed and filed with the Code Enforcement Officer a rental registration form approved by the Village's Building Department.

§ 216-89.15. Confidentiality of rental registration.

Under Public Officers Law § 872(b), rental registration forms and that portion of the rental occupancy permit application required under § 216-89.5(B)(3) shall be exempt from disclosure under the Freedom of Information Law,¹ on the grounds that such disclosure would constitute an unwarranted invasion of personal privacy. The Code Enforcement Officer will institute strict policies to ensure that such information is available only to Village personnel who are engaged in the enforcement of

¹ Editor's Note: See Article 6 of the Public Officers Law.

the provisions of this article.

§ 216-89.16. Collection of rent.

The following shall be conditions precedent to the collection of rent for the use and occupancy of any dwelling unit:

- A. The issuance of a rental occupancy permit for the premises, as required by § 216-89.4;
- B. The filing of a valid rental registration form for the tenancy as required by § 216-89.14; and
- C. The tendering of a written receipt in exchange for any rent payment offered in cash.

§ 216-89.17. Broker's responsibility prior to listing.

It shall be unlawful and a violation of the Village Code for any broker or agent to list, show or otherwise offer for lease or rent on behalf of the owner any dwelling unit for which a current rental occupancy permit has not been issued by the Code Enforcement Officer. It shall be the broker or agent's duty to verify the existence of a valid permit before acting on behalf of the owner.

§ 216-89.18. Broker's responsibility after renting.

Any broker or agent who has earned a commission or other compensation for renting or leasing a dwelling unit must, within five (5) business days of earning said commission or other compensation, file with the Code Enforcement Officer a rental registration form, unless the owner has already filed such a form in the meantime. Failure to file shall be unlawful and a violation of the Village Code

§ 216-89.19. Offers to rent.

No owner, broker or agent shall publish a written offer or solicitation of offers to rent or lease a rental dwelling unit, unless that offer or solicitation refers by number to a valid rental occupancy permit for the rental dwelling unit in question. For purposes of this section, "publish" means to promulgate to the general public or to selected segments of the general public, in a newspaper, magazine, flyer, handbill, mailed circular, bulletin board, sign or electronic media. Violation of this section shall be unlawful and a violation of the Village Code.

§ 216-89.20. Presumptions applicable to rental registration enforcement and prosecutions

- A. Within the context of rental registration enforcement and prosecutions, the presence or existence of any of the following shall create a rebuttable presumption that a premises is being used as a rental:

- (1) The property occupancy 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 real 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 record 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 rental registration enforcement and prosecutions, the presence or existence of any two of the following shall create a rebuttable presumption that a premises is being used as a rental 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 (3) or more motor vehicles registered to the

dwelling and each vehicle owner has a different surname;

(6) There are more than three (3) 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

C. The presumptions set forth in Subsections A and B above, subject to the limitations contained therein, shall also be applicable to enforcement and prosecution of residential illegal use and occupancy violations.

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

§ 216-89.21. Penalties for offenses.

A. Any person, association, firm or corporation which 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 \$1,000 and not exceeding \$10,000, for conviction of a first offense.

(2) By a fine of not less than \$10,000 nor more than \$15,000, for conviction of the second offense.

(3) By a fine of not less than \$15,000 nor more than \$25,000, for conviction of the third or subsequent offence of a series of offences, all of which were committed within a period of five years.

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

§ 216-89.22. 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.

§ 216-89.23. Implementation.

This article shall be effective upon filing with the Secretary of State.

Section 2. Chapter 216, "Zoning" of the Village Code of the Village of Old Westbury shall otherwise remain in full force and effect.

Section 3. Severability. If a court determines that any clause, sentence, paragraph

subdivision, or part of this local law or the application thereof to any person, firm or corporation or circumstance is invalid or unconstitutional, the Court's order or judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 4. Effective Date. This Local Law shall take effect immediately upon filing with the Secretary of State.

On motion made by Trustee Brown, seconded by Trustee Baker, the foregoing Local Law was enacted upon the following vote:

Edward Novick, Mayor	-	Aye
Marina Chimerine, Deputy Mayor	-	Aye
Cory Baker, Trustee	-	Aye
Jeffrey Brown, Trustee	-	Aye
Andrew Weinberg, Trustee	-	Aye

Dated: Old Westbury, New York
September 21, 2020

Filed: Old Westbury, New York
September 22, 2020