

VILLAGE OF WALDEN
LOCAL LAW NO. 7 OF 2017

A LOCAL LAW to add Chapter 75 to the Code of the Village of Walden entitled “Police Department Discipline”

BE IT ENACTED BY THE VILLAGE BOARD OF THE VILLAGE OF WALDEN, NEW YORK AS FOLLOWS:

Section 1. Legislative Intent and Purpose:

1.1 The purpose of this Chapter is to establish disciplinary procedures for the examination, investigation, hearing, and determination of charges made or preferred against any member or members of the Village of Walden Police Department.

Section 2. Code Addition

2.1 Village of Walden Code Chapter 75, entitled “**Police Department Discipline,**” is hereby added to the Village Code as the follows:

§ 75- 1: Legislative Intent

Pursuant to Article 8 of the New York State Village Law, the Village Board of the Village of Walden has the power and is authorized to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges made or preferred against any member or members of the Village of Walden Police Department. Furthermore, the New York Court of Appeals has consistently held that police discipline may not be a subject of collective bargaining under the Taylor Law when the Legislature has expressly committed disciplinary authority over a police department to local officials. Accordingly, local Village and Town Boards may validly promulgate rules and regulations on police disciplinary procedures relating to the members of the Village police department.

This local law is hereby enacted in order to comply with and conform to the applicable provisions of law including Article 8 of the Village Law, the public policy of the State of New York, and Court of Appeals case law, and provides that the Village Board of Trustees shall make all final determinations concerning the investigation of complaints and imposition of disciplinary penalties with respect to members of the Village of Walden Police Department in connection with any alleged violations of the Walden Police Department Rules and Regulations, general orders issued by the Chief of Police and/or policy directives issued by the Village Manager.

§ 75-2: Due Process; Representation

Any member that is subject to an investigation or served with a notice of discipline may have a representative or legal counsel to represent him or her in connection with any of the proceedings provided for by this article. Any hearing of the charges alleged in a notice of discipline shall be conducted in accordance with the provisions of Village Law § 8-804 and this Chapter, and such

hearing shall be transcribed by a stenographer. A copy of the transcript of the proceeding shall be provided to the member free of charge.

§ 75- 3: **Investigatory Procedure**

A. The Village Board hereby designates the Village Manager to review, examine and investigate complaints concerning allegations or violations of the Police Department Rules and Regulations, general orders issued by the Chief of Police or policy directives issued by the Village Manager. However, no authority to make a final determination in a disciplinary proceeding is hereby delegated to the Village Manager.

B. Disciplinary Interview. As part of the disciplinary investigation, the Village Manager may conduct an interview of the member of the Department that is the subject of the investigation and/or any employees that may be witnesses. Such interview(s) may, at the Village Manager's discretion, be recorded by stenographer or by audio recording. If the member is a target of the investigation, he or she shall be entitled to have a union representative or attorney present for the interview. However, such representative or attorney shall not be permitted to interfere with or otherwise obstruct the interview process. If, upon the initial request for an interview, a member who is the target of an investigation requests the presence of a union representative or legal counsel, an adjournment shall be granted until no later than 10:00 a.m. of the morning following the request for the interview, unless otherwise consented to by the Village Manager. However, where such interview is requested upon at least 24 hours' advanced notice to the member, no such adjournment shall be permitted.

§ 75-4: **Substantiated Complaints**

A. Subsequent to investigatory review, the Village Manager, upon determining that a complaint against a member of the Village of Walden Police Department is substantiated, shall prepare and serve a written notice of discipline advising the member of:

- 1) the substance of the charges alleged; and
- 2) A proposed disciplinary penalty for purposes of a resolution without trial, if such an offer to resolve the disciplinary is being made by the Village Manager; and
- 3) A proposed disciplinary penalty to be sought and recommended by the Village if the matter proceeds to a hearing; and
- 4) A statement advising the member of his or her right to request a public hearing within seven (7) days from the date of service of the notice and the right to be represented by legal counsel at such hearing.

B. Within ten (10) days of the service of a notice of discipline upon a member of the Village of Walden Police Department, the member shall be directed to respond, in writing, indicating whether he or she wishes to accept the proposed penalty(ies) and resolve the disciplinary matter or reject the proposed penalty(ies) and request a public hearing. If the penalty is accepted by the member, the Village Manager shall forward a copy of the notice of discipline and written response to the Village Board requesting an approval constituting a final determination, which the Village Board shall determine in accordance

with New York State Law. Once approved, the Village Manager shall take any and all necessary actions to carry out the provisions of the notice of discipline concerning the imposition of the penalty.

- C. If the member elects to proceed to a hearing, the Village Manager shall thereafter provide a copy of the member's written response to the Village Board as well as a copy of the notice of discipline advising that a hearing has been requested in accordance with the procedures set forth in Section 75-5 with a final determination of charges to be made by the Village Board. The Village Manager shall then cause formal charges and specifications to be prepared and served upon the member.
- D. A failure by the member to indicate, in writing within ten (10) days of service of a notice of discipline, whether he or she wishes to accept the proposed penalty and resolve the disciplinary matter or reject the proposed penalty and proceed to a public hearing shall be deemed a rejection of any proposed settlement and a request for a public hearing and the Village Manager shall proceed under the provisions of Section 74(B). Nothing herein shall preclude the imposition of additional disciplinary charges upon a member for the member's failure to comply with directives of the Village Manager or Chief of Police to comply with the provisions of this local law.

§ 75-5: **Hearing**

Any member of Village Police Department who is served with a notice of discipline shall be entitled, upon request, to a public hearing on the charges and specifications and is entitled to be represented at such hearing by legal counsel and should be prepared to present such witnesses and other persons as the member may have in his or her defense against any such charges. Any and all witnesses shall testify under oath. Compliance with the rules of evidence shall not be required in such hearing.

Within forty-five (45) days following the Village Board's receipt of a member's written request for a hearing, the Village Board shall appoint an independent hearing officer to hold a disciplinary hearing with regard to the charges against the member of the Village Police Department.

Unless otherwise impactable, a hearing shall be scheduled within ninety (90) after appointment of a hearing officer unless otherwise mutually agreed to by the Parties. The hearing officer shall determine the procedures to be followed during such hearing and formal rules of evidence shall not apply to such hearings.

§ 75-6: **Recommended Decision and Final Determination of Charges After a Hearing**

The hearing officer selected to hear and recommend a determination of the charges shall conduct a hearing and shall issue a written report containing recommended findings of fact, a finding of innocence or guilt of the charge(s), and a recommended disciplinary penalty, if applicable, to the Village Board. Said decision shall be reviewed by the Village Board, and, after its review, the Village may accept or reject, in whole or in part, the recommended findings of fact, the finding

of innocence or guilt, and/or the recommended disciplinary penalty. The Village Board shall make a final determination of the charges alleged in the notice of discipline and, where applicable, shall impose any penalty consistent with the provisions of the New York State Village Law. Where a hearing officer recommends a finding of guilt after the hearing on any disciplinary charge against a member, the hearing officer shall review the disciplinary file/history of the member prior to recommendation of a penalty.

§ 75-7: Judicial Review

The final determination of the Village Board shall be subject to review of the Supreme Court of Orange County in the manner provided for the Article 78 of the Civil Practice Law and Rules, provided that the proceeding is commenced within sixty (60) days from the date of the Village Board's determination.

§ 75-8: Implementation

The Village Manager is hereby directed to take all necessary steps to implement the provisions of this Chapter and to provide notice of same to the members of the Village of Walden Police Department.

Section 3. Severability

3.1 If any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance, shall be deemed by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, 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

4.1 This local law shall take effect upon the filing with the Secretary of State.