

**MUSIC ENTERTAINMENT PERMIT DRAFT LAW ; Amendments to Chapter 117
of the Town Code**

November 12, 2019

**DRAFT LAW FOR DISCUSSION INCLUDES POSSIBLE OPTIONS, PROVIDED BY
EH TOWN-APPOINTED BUSINESS COMMITTEE AND BY THE TOWN ATTORNEY'S
OFFICE**

LOCAL LAW amending Chapter 117 (Music Entertainment Permit) to require an application for renewal of a permit, revise information necessary to process an application, revise the criteria serving as a basis for a denial, suspension, revocation, modification or limitation of an application or permit, and revise the manner to appeal of a denial.

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION 1. Legislative Intent.

This legislation is intended to update the Music Entertainment Permit process to allow the Town Clerk to obtain necessary information prior to the granting or renewal of a permit; to provide a broader criteria for denial, suspension, revocation, modification or limitation of an application or permit while requiring convictions rather than summons as a basis; and to create a committee, rather than the Town Board, to review decisions of the Town Clerk with regard to denial, suspension, revocation, modification or limitation of an application or permit.

SECTION 2. Amendment

Chapter 117 (Music Entertainment Permit) Article 10 (Permit required; application) of the East Hampton Town Code is hereby amended to add the underlined words and remove all words crossed out as follows:

No person shall have, maintain or conduct, as owner, tenant, licensee or employee of any commercial establishment where live music is played and/or where a person plays existing recorded music for a live audience, indoors or outdoors, in the Town of East Hampton outside of an incorporated village without having first applied for and received a music entertainment permit pursuant to this Chapter or a special event permit pursuant to Chapter 151, issued by the Town of East Hampton. When recorded music is otherwise played without a permit at a commercial establishment, such music shall be played not as the primary attraction or purpose for patrons to frequent such establishment, but rather shall provide background to enhance the other commercial use of such business.

No person shall have, maintain or conduct as owner, tenant, licensee or employee of any Only a restaurant or bar/tavern where any type of music is played indoors or outdoors in the Town of East Hampton outside of an incorporated village without having first applied for and

received is eligible for a music entertainment permit issued by the Town of East Hampton. Said permit shall be issued by the Town Clerk on receipt of application and shall be valid for one calendar year unless or until suspended or revoked by the Town Board pursuant to § 117-60 herein. The issuance of a music entertainment permit allows a restaurant, bar or tavern to play live music and/or allow a person to play existing recorded music for a live audience, indoors, and outdoors no later than 9:00 PM, but does not confer upon the establishment any additional use or accessory use, or expansion of an existing use or accessory use of the property, including but not limited to the use as a nightclub, dance hall or concert venue.

SECTION 3. Amendment

Chapter 117 (Music Entertainment Permit) Article 20 (Application for permit) of the East Hampton Town Code is hereby amended to add the underlined words and remove all words crossed out as follows:

Applicants for a permit under this chapter must file with the Town Clerk a sworn application in writing on a form to be furnished by the Town Clerk, which application shall give the following information:

- A. Name, address, Suffolk County Tax Map number and telephone number of the establishment owner.
- B. The particular business for which the permit is requested.
- C. Whether the establishment or the owner(s) of the establishment have been convicted of any provision of **Chapter 185 ("Noise") or Chapter 141 ("Fire Prevention")**, within the **last 18 months**.

OR

Whether the establishment or the owner(s) of the establishment have been convicted of any provision of **Chapter 185 ("Noise") or Chapter 141 ("Fire Prevention")**, **specifically for overcrowding (NYS Fire Code §1101.28)**, within the last **18 months**.

OR

Whether the establishment or the owner(s) of the establishment have been convicted of any provision of **Chapter 185 ("Noise")** within the last ~~18 months~~ permit year.

- D. Any additional information the Town Clerk shall deem necessary for the purpose of administering the provisions of this chapter.
- E. Any change in circumstances with regard to the information provided in the application or on the license shall be reported to the Town Clerk within 30 days.
- F. Prior to the expiration of the permit, and no later than October 1, the Town Clerk shall send all permit holders a form to verify that the information provided in the application is still accurate. Once such completed form is returned the Town Clerk, the

Town Clerk may issue a new permit to the applicant if the applicant is still eligible for a permit. Any permit holder who fails to return a completed form before the expiration of the permit will need to make a new application for a permit.

Applicants and permit holders are advised that any changes to the floor and seating plan due to the inclusion of music entertainment at their business must be filed with the Office of Fire Prevention pursuant to §403.2.1 of the New York State Uniform Fire Prevention and Building Code.

SECTION 4. Amendment

Chapter 117 (Music Entertainment Permit) Article 30 (Issuance of permit; duration; maintenance of records) of the East Hampton Town Code is hereby amended to add the underlined words and remove all words crossed out as follows:

- A. ~~There shall be no fee for the issuance of a~~ All music entertainment permits may be subject to a permit fee, and the Town Board, by resolution duly adopted, from time to time shall establish or amend such fee amount.

OR

There shall be no fee for the issuance of a music entertainment permit.

- B. A music entertainment permit shall be valid for one calendar year, and will be administratively renewed by the Town Clerk for additional permit years without application, but with a requirement of verification as provided in § 117-20(F) above, unless the permit is suspended or revoked to pursuant to § 117-60.
- C. The permit year shall run from January 1 to December 31 of each calendar year.
- D. The Town Clerk shall keep a record of all permits issued.
- E. Upon approval of an application, the Town Clerk shall endorse on the application his or her approval and issue a music entertainment permit to the applicant. The permit shall contain the following information:
- (1) The signature of the Town Clerk and the Town Seal;
 - (2) The name and address of the owner and establishment permitted;
 - (3) The date of issuance of the permit; and
 - (4) The permit number.
- F. Any permit issued under the provisions of this chapter shall be the property of the Town of East Hampton and is subject to physical removal by the Town should said permit be suspended or revoked pursuant to § 117-60.

- G. All applicable rules and regulations in the Town Code ~~Chapters 255 and 185~~ as they pertain to a music entertainment permit, restaurants, bars and noise, as the same may from time to time be amended shall now and at all times in the future be adhered to.
- H. The Town Clerk shall have the discretion to deny approval of a music entertainment permit to any establishment or owner thereof based upon two or more convictions of the East Hampton Town Code, Chapters 117 (Music Entertainment Permit); 141 (Fire Prevention); and/or 185 (Noise) within the previous 18 months. The Town Clerk shall notify an applicant of a disapproval of an application, in writing, and shall include a statement that the applicant may request an appeal hearing before the designated review board, by filing a written request with the Town Clerk within 30 days of the denial. An appeal of a denial shall be reviewed pursuant to the provisions in § 117-60.

OR

The Town Clerk shall have the discretion to deny approval of a music entertainment permit to any establishment or owner thereof based upon two or more convictions of the East Hampton Town Code, Chapters 117 (Music Entertainment Permit); 141 (Fire Prevention) specifically for overcrowding (NYS Fire Code §1101.28); and/or 185 (Noise) within the previous 18 months. The Town Clerk shall notify an applicant of a disapproval of an application, in writing, and shall include a statement that the applicant may request an appeal hearing before the designated review board, by filing a written request with the Town Clerk within 30 days of the denial. An appeal of a denial shall be reviewed pursuant to the provisions in § 117-60.

OR

The Town Clerk shall deny approval of a music entertainment permit to any establishment or owner thereof based upon three or more convictions of the East Hampton Town Code, Chapters 117 (Music Entertainment Permit and/or 185 (Noise) within the previous permit year. The Town Clerk shall notify an applicant of a disapproval of an application, in writing, and shall include a statement that the applicant may request an appeal hearing before the designated review board, by filing a written request with the Town Clerk within 30 days of the denial. An appeal of a denial shall be reviewed pursuant to the provisions in § 117-60.

SECTION 5. Amendment

Chapter 117 (Music Entertainment Permit) Article 60 (Suspension, revocation, modification, limitation of permit) of the East Hampton Town Code is hereby amended to rename the Article "Denial, suspension, revocation, modification, limitation of permit" add the underlined words and remove all words crossed out as follows:

- A. If the Town Clerk denies an application and the applicant appeals that denial in writing within 30 days of the denial, or if the Town Clerk determines that any permitted establishment has received two or more convictionsthree summonses for any violation of Chapters 117 (Music Entertainment Permit); 141 (Fire Prevention); and/or 185 ("Noise") of the Town Code in any permit year, the Town Clerk shall refer

the matter for a hearing before the Town Board or its designee. The Town Clerk shall give the appealing party at least five days' written notice of the time and place of such hearing. At the time and place set for the hearing upon the appeal from the determination of the Town Clerk, the designated review board shall give the appealing party and any other interested party a reasonable opportunity to be heard in order to show cause why the determination of the Town Clerk should not be upheld. The decision of the designated review board shall be in writing, shall specify the ground or grounds upon which the decision is based and shall be final and conclusive, subject to review only by a court of competent jurisdiction. ~~schedule a hearing at a regularly scheduled Town Board work session to determine whether or not to deny, suspend, revoke, modify, or limit the music entertainment permit in any way.~~ In lieu of modifying, limiting, suspending or revoking a music entertainment permit as provided above, the Town Board or its designee may require that a permit holder provide soundproofing or other measures to address noise concerns or set any other conditions that the Board or its designee may deem reasonable.

OR

If the Town Clerk denies an application and the applicant appeals that denial in writing within 30 days of the denial, or if the Town Clerk determines that any permitted establishment has received two or more convictionsthree summonses for any violation of Chapters 117 (Music Entertainment Permit); 141 (Fire Prevention) specifically for overcrowding (NYS Fire Code §1101.28); and/or 185 ("Noise") of the Town Code in any permit year, the Town Clerk shall refer the matter for a hearing before the Town Board or its designee. The Town Clerk shall give the appealing party at least five days' written notice of the time and place of such hearing. At the time and place set for the hearing upon the appeal from the determination of the Town Clerk, the designated review board shall give the appealing party and any other interested party a reasonable opportunity to be heard in order to show cause why the determination of the Town Clerk should not be upheld. The decision of the designated review board shall be in writing, shall specify the ground or grounds upon which the decision is based and shall be final and conclusive, subject to review only by a court of competent jurisdiction. ~~schedule a hearing at a regularly scheduled Town Board work session to determine whether or not to deny, suspend, revoke, modify, or limit the music entertainment permit in any way.~~ In lieu of modifying, limiting, suspending or revoking a music entertainment permit as provided above, the Town Board or its designee may require that a permit holder provide soundproofing or other measures to address noise concerns or set any other conditions that the Board or its designee may deem reasonable.

OR

If the Town Clerk denies an application and the applicant appeals that denial in writing within 30 days of the denial, or if the Town Clerk determines that any permitted establishment has received three or more convictionsthree summonses for any violation of Chapters 117 (Music Entertainment Permit) and/or 185 ("Noise") of the Town Code in any permit year, the Town Clerk shall refer the matter for a hearing before the Licensing Review Board. The Town Clerk shall give the appealing party at least five days' written notice of the time and place of such hearing. At the time and place set for the hearing upon the appeal from the determination of the Town Clerk,

the designated review board shall give the appealing party and any other interested party a reasonable opportunity to be heard in order to show cause why the determination of the Town Clerk should not be upheld. The decision of the designated review board shall be in writing, shall specify the ground or grounds upon which the decision is based and shall be final and conclusive, subject to review only by a court of competent jurisdiction. ~~schedule a hearing at a regularly scheduled Town Board work session to determine whether or not to deny, suspend, revoke, modify, or limit the music entertainment permit in any way. In lieu of modifying, limiting, suspending or revoking a music entertainment permit as provided above, the Town Board may require that a permit holder provide soundproofing or other measures to address noise concerns or set any other conditions that the Board may deem reasonable.~~

- B. Such hearing shall be upon ~~a public hearing~~, written notice ~~having been~~ served on the applicant or permit holder personally or by certified mail, return receipt requested, addressed to the place of business of the permit holder as set forth in the most recent permit application, at least 10 days prior to the hearing. For purposes of this chapter, any conviction based upon a summonses issued to any owner, employee, representative or agents, whether paid or unpaid, of an establishment are deemed to have been issued to that establishment.
- C. The permit holder will be notified of the determination of the Town Board or its designee, in writing, within 15 days of the hearing. Such determination will remain on file in the Office of the Town Clerk.

OR

The permit holder will be notified of the determination of the ~~Town~~ Licensing Review Board, in writing, within 15 days of the hearing. Such determination will remain on file in the Office of the Town Clerk.

- D. Should ownership of an establishment change after the issuance of two or more convictionsthree summonses but prior to a final determination of the Town Board or its designee with respect to those convictionsthree summonses, the new owner may only obtain a music entertainment permit after a ~~Town Board~~ hearing pursuant to Subsection B herein. Such hearing shall only be scheduled at the request of the new owner. Similarly, all modifications and limitations of a permit as set forth by the ~~committeeTown Board~~ after a duly noticed ~~public hearing~~ as per this section shall be binding on subsequent owners. However, an owner may seek to remove any limitation or modification of a permit by requesting a ~~Town Board~~ hearing, which shall be subject to the provisions of Subsection above.

OR

Should ownership of an establishment change after the issuance of three or more convictionsthree summonses but prior to a final determination of the Town Board or its designee with respect to those convictionsthree summonses, the new owner may only obtain a music entertainment permit after a ~~Town Board~~ hearing pursuant to

Subsection B herein. Such hearing shall only be scheduled at the request of the new owner. Similarly, all modifications and limitations of a permit as set forth by the ~~committee~~~~Town Board~~ after a duly noticed ~~public~~-hearing as per this section shall be binding on subsequent owners. However, an owner may seek to remove any limitation or modification of a permit by requesting a ~~Town Board~~ hearing, which shall be subject to the provisions of Subsection above.

SECTION 6. Authority.

The proposed local law is enacted pursuant to Municipal Home Rule Law §10(1)(ii)(d)(3) and Town Law §261.

SECTION 7. Severability.

If any section of subsection, paragraph, clause, phrase or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provisions so adjudged to be invalid or unconstitutional.

SECTION 8. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State pursuant to Municipal Home Rule Law.

OR

This local law shall take effect on January 1, 2020 and only convictions after the effective date may be considered with regards to the provisions of Chapter 117.