



East Hampton Town Board

159 Pantigo Road
East Hampton, NY 11937

ADOPTED

RESOLUTION 2015-214

Meeting: 02/10/15 10:00 AM
Department: Town Attorney
Category: Local Law Public Hearing
Prepared By: Elizabeth Vail
Initiator: Elizabeth Vail
Sponsors: Councilwoman Kathee Burke-Gonzalez
DOC ID: 15008

Notice of Public Hearing to Consider a Local Law Amending Chapter 75 (Airport) of the Town Code Regulating Operation of Helicopters at East Hampton Airport

BE IT HEREBY RESOLVED, that the Town Board hereby directs that a public hearing shall be held on March 5, 2015, at 4:30 p.m., or as soon after as can be heard, at LTV Studios, located at 75 Industrial Road, Wainscott, New York, to hear any and all persons either for or against a proposed local law entitled: "A LOCAL LAW amending Chapter 75 (Airport) of the Town Code regulating operation of helicopters at East Hampton Airport" which provides as follows:

LOCAL LAW NO. _____ of 2015

Intro. # 4 of 2015

A LOCAL LAW amending Chapter 75 (Airport) of the Town Code regulating operation of helicopters at East Hampton Airport.

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

SECTION 1. Legislative Intent.

In the past three decades, the residents of the Town of East Hampton have experienced a significant increase in noisy aircraft traffic at the East Hampton Airport, chiefly helicopters, jets, and seaplanes. By its extensive complaints to the Town Board and to other governmental entities, the public has made clear, and this Town Board recognizes, the negative impact that this aircraft noise has made to the health and welfare of its citizenry, to wildlife and their habitat, as well as to the peace, quiet, and repose of the region. Aircraft noise has substantially diminished the quiet enjoyment of homes and properties and compromised the pleasures of the woodlands, beaches, fields, and preserved lands that define our community and sense of place.

East Hampton is an established resort community whose entire economy is intrinsically tied to the use and enjoyment of its natural and scenic environment, including its world renowned ocean beaches, wetlands, shorelines, harbors, bays, woodlands, and historic hamlets. Visitors and residents alike enjoy East Hampton's unique scenic beauty and the Town has made significant efforts to preserve the natural environs of the Town, spending a total of \$229,431,502 of Community Preservation Funds to preserve approximately 1,924 acres since 1998.

The Town's Comprehensive Plan has outlined the vital connection between preserving the natural scenic beauty and enjoyment of its community and the Town's economy, stating in its vision statement the goal to

"[t]ake forceful measures to protect and restore the environment, particularly groundwater. Reduce the impacts of

human habitation on groundwater, surface water, wetlands, dunes biodiversity, ecosystems, scenic resources, air quality, the night sky, noise and energy consumption.”

The 2007 Airport Master Plan Report that then became the basis for the adopted 2010 Airport Master Plan states, at II-73:

“The East Hampton Airport is owned, maintained and operated for the benefit of the Town and its residents. The airport continues to be classified as a General Aviation Airport under federal criteria. Its primary role is the accommodation of light aircraft traffic. Aircraft operating at greater weights will be accommodated on condition [sic] without unjust discrimination. The airport is also managed with the objective of providing emergency access and facilitation of all other public and community responsibilities. The size and operation of the airport takes into consideration the needs of East Hampton and Southampton residents for protection from excessive noise disturbance and adverse environmental impacts.”

“Control of noise and adverse environmental impacts at the airport is consistent with current Town goals for improved quality of life and land and water conservation. These goals recognize that protecting the environment is essential for improving the Town’s seasonal and year round economy. These controls are achieved through reasonable, non arbitrary and non discriminatory management practices. These may limit the maximum size of aircraft to be accommodated, regulate excessive peak demand during the summer season and otherwise adjust use patterns such as for helicopter access to minimize community disturbances.”

In an effort to address the impacts of aircraft noise, the Town Board undertook an extensive analysis of the citizenry’s complaints, and of the aircraft traffic itself, by the Town’s aviation consultants and noise engineers, the results of which have only confirmed the seriousness of the community’s noise disturbance. Of 24,000 airport noise complaints logged last year, the latest noise analysis discloses that they are overwhelmingly attributable to helicopters. Helicopter complaints at East Hampton Airport far exceed the level of complaints at major airports around the country. This is surely due, not least, to the incongruity of helicopter noise in what is otherwise a very quiet, exurban and rural environment.

In its capacity as proprietor of the East Hampton Airport, the Town Board has a public policy responsibility to protect residents from the adverse effects of aircraft noise. It has developed restrictions on the use of East Hampton Airport that are reasonable, non-arbitrary, and non-discriminatory. These restrictions address the problems of aircraft noise that are unique to the Town and neighboring communities while preserving for the community the benefits of aviation.

The Town Board recognizes the value of the East Hampton Airport to the community and does not want to impose any greater restriction than is necessary to achieve the Town's objectives.

As the U.S. Court of Appeals for the Second Circuit recognized in the National Helicopter case -- that residents have a justified, heightened expectation of quiet during non-working hours, evenings, nights, and weekends -- both year-round and seasonal residents of East Hampton and the East End have a justified, heightened expectation of quiet, yet suffer greater exposure to disturbance from aircraft noise, during the very periods when the East End is sought as a destination for repose and relief from urban ills. That is the reason why the huge influx of seasonal residents and visitors come to East Hampton. It is the reason why year-round residents struggle to stay in East Hampton despite the difficulty of earning a living in a limited economy on the end of a long, narrow peninsula on the tip of a long island. Peace, quiet, repose, outdoor recreation, sea, air, a beautiful and unique natural environment, these are the primary social and economic goods that East Hampton and the East End as a whole have to offer.

Helicopters generate far and away the most complaints, and the most complaints per operation. They have specific sound characteristics, beyond sheer decibel level, that exacerbate the disturbance they cause: (a) they have a unique percussive sound that is especially disturbing, felt not just heard; (b) the duration of helicopter noise is longer than with other comparably noisy types because of lower speed and relatively lower and more constant altitude on approach and departure; (c) their aural signature includes a higher proportion of low frequencies that, for reasons of physics, are heard at a much longer distance than other sounds and despite intervening obstacles, thereby aggravating the disturbance by causing significant periods during which those on the ground focus on and anticipate the loud noise to come and afterwards are reminded of the noise they have just endured; (d) as noted by Henry Young in the public presentation of the Phase I Noise Analysis October 30, 2014, helicopter noise, when it occurs, dominates the aural environment drawing the listener's attention even when not extremely loud. In his words, "Helicopters are so distinctive and intrusive that their presence and frequency of occurrence are objectionable [to those of the community affected] regardless of peak noise level or local ambient" noise levels.

Helicopters, uniquely amongst the aircraft using East Hampton Airport, have generated community strife in which each neighborhood attempts to have helicopter traffic directed elsewhere. The creation of voluntary, designated routes for helicopters has somewhat reduced the numbers of homes affected by helicopters at the cost of inflicting an unrelenting din on those under the routes, resulting in rising levels of anger and despair both in East Hampton and in neighboring and nearby communities extending to the North Fork. Beggar thy neighbor is not a solution to this problem. Rather, it is a formula for endless civil discord.

Not least, helicopter noise adversely affects wildlife on land that has been preserved in part for the express purpose of protecting habitat. The drive of neighborhoods to divert helicopter noise elsewhere has resulted in as much of the helicopter noise as possible being directed over preserved natural habitat that represents the core value of our environmentally sensitive community and geography. This is perverse, to say the least, but almost inevitable as neighborhoods vie to get out of the line of fire. Wildlife cannot do so and are thus the victims of last resort.

To that end, the Town Board recognizes that helicopter noise is especially disturbing on summer weekends and holidays and has determined that significantly reducing helicopter noise is the only reasonable, carefully tailored way to restore the peace and quiet that East Hampton residents and visitors have come to expect in this community. The proposed restriction is seasonally based, imposing limits during the period May 1 to September 30 each year when residents and visitors have a heightened expectation that they can enjoy our magnificent outdoor environment in peace. That is not only when outdoor peace and quiet is especially important but it also corresponds to the time when helicopter activity is especially heavy.

By enacting this legislation, the Town Board seeks to achieve immediate, substantial noise relief for residents and visitors, maintain the intended and traditional use of the East Hampton Airport by recreational aircraft, and continue sufficient air traffic to maintain a financially self-sustaining Airport.

The Town Board is committed to balancing the need to address the impact of the aircraft noise on the Town's environment with the equally important need to maintain an economically viable and safe airport for East Hampton.

The proposed legislation expressly excludes from its application aircraft operated by any federal, state or local government, any emergency services, evacuation services, public or private, and any operation by an aircraft in an emergency. The airport will remain open to such operations at all times without restriction or charge.

These restrictions are adopted on an interim basis. The effects of the legislation on the operations at the Airport for the period May 1 to October 31, 2015 shall be evaluated to determine whether the restrictions should be made permanent or modified. The Town Board will seek public comment throughout the Season and immediately following the Season to determine the success and/or failure of the use restrictions and whether they function the way they were intended or need to be adjusted.

SECTION 2. Amendment

Section 75-38, Airport Use Restrictions, of the Code of the Town of East Hampton is hereby amended by adding the following provisions:

§ 75-38 AIRPORT USE RESTRICTIONS:

A. Definitions.

(1) - *Reserved*

(2) "Holidays" shall mean Memorial Day, Independence Day, and Labor Day and the day that immediately precedes and the day that immediately follows such holidays.

(3) "Individual Aircraft" shall mean an aircraft, of whatever type, with a distinct registration number ("N number" if such registration is issued by the United States Government).

(4) - *Reserved*

(5) "Season" shall be the months of May, June, July, August and September.

(6) "Use of the Airport" shall mean either one arrival (landing) at, or one departure (takeoff) from, the Airport, shall not include any repositioning of any aircraft on the Airport or any aborted takeoff or landing, but shall include touch-and-go operations that result in use of an Airport runway.

(7) "Weekend" shall mean the hours beginning at noon on Thursday through and including noon on Monday (local time).

B. [*Reserved*]

C. [*Reserved*]

D. **Helicopter Operations.** Use of the Airport by rotorcraft (helicopters) is prohibited as follows:

(1) During a Weekend, or a portion of a Weekend, that falls in the Season.

(2) During Holidays.

E. **Exemptions.** The restrictions of this section 75-38 shall not apply to any aircraft operational emergency, any medical emergency operation, whether by public or private aircraft, or to any operation by a government-owned aircraft, including, without limitation, police, emergency services, and military operations. In the case of an aircraft emergency or medical emergency operation, the operator shall submit a sworn statement to the Airport Manager within 24 hours of such operation attesting to the nature of the emergency and reason for the operation.

§ 75-39 PENALTIES:

A. Section 75-34 shall not apply to violations of Section 75-38 and this Section 75-39 shall apply for all violations of Section 75-38. For the purpose of conferring jurisdiction upon courts and judicial officers in general, violations of Section 75-38 shall be deemed misdemeanors, and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations.

B. Any Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall be punishable by a fine assessed against any person, organization, corporation, group or other entity which holds an ownership interest in such aircraft, as follows:

(1) For the first violation by an Individual Aircraft, a fine of not more than \$1,000.

- (2) For the second violation by an Individual Aircraft, a fine of not more than \$4,000.
- (3) For the third violation by an Individual Aircraft, a fine of not more than \$10,000.
- (4) For the fourth violation by an Individual Aircraft, a prohibition on any Use of the Airport by the Individual Aircraft involved in such violation for a period of not more than two years.
- C. Each Use of the Airport by an Individual Aircraft in violation of Section 75-38 shall constitute a separate offense.
- D. Should any person, organization, corporation, group or other entity be found in violation of the provisions of Section 75-38 within five years of a previous violation of this chapter, the minimum additional fine shall be not less than \$2000.
- E. In addition to the above penalties, the Town may also maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation Section 75-38 by any person, organization, corporation, group or other entity which holds an ownership interest in the Individual Aircraft.
- (1) If a finding is made by a court of competent jurisdiction that the defendants or any of them has caused, permitted or allowed a violation of Section 75-38, a penalty to be jointly and severally included in the judgment may be awarded at the discretion of the court in an amount not to exceed \$10,000.00 for each violation that the defendants or any one of them individually caused, permitted or allowed.

SECTION 3. Authority

The Town Board is authorized to establish and promulgate rules and regulations regarding use of the East Hampton Airport pursuant to Municipal Home Rule Law §10(1)(ii)(a)(11) and (12) and Town Law §130 and pursuant to its powers as the proprietor of East Hampton Airport under federal statutory and case law.

SECTION 4. Severability.

If any section or subdivision, paragraph, clause or phrase of this law shall be adjudged invalid, unenforceable, or unconstitutional by any order or judgment of a court of competent jurisdiction, or pursuant to any order of any administrative agency having jurisdiction, whether such judgment or order is temporary or permanent, such judgment or order shall not affect the validity of this law as a whole or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

SECTION 5. Effective Date.

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

AND BE IT FURTHER RESOLVED, that the Town Clerk is hereby authorized to publish the following Notice of Public Hearing:

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that a public hearing will be held on March 5, 2015, at 4:30 p.m., or as soon after as can be heard, at LTV Studios, located at 75 Industrial Road, Wainscott, New York, to hear any and all persons either for or against a proposed local law entitled: "A LOCAL LAW amending Chapter 75 (Airport) of the Town Code regulating operation of helicopters at East Hampton Airport"

SUMMARY OF LOCAL LAW

The proposed law would regulate the types of aircraft, times of day and days of the year when helicopters can operate at the East Hampton Airport.

Copies of the proposed local law sponsored by Councilwoman Burke-Gonzalez are on file in the Town Clerk's Office, Monday through Friday, 9:00 a.m. to 4:00 p.m.

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON, NEW YORK
CAROLE BRENNAN, TOWN CLERK

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kathee Burke-Gonzalez, Councilwoman
SECONDER:	Peter Van Scoyoc, Councilman
AYES:	Burke-Gonzalez, Van Scoyoc, Overby, Overton, Cantwell