



East Hampton Town Board
159 Pantigo Road
East Hampton, NY 11937

Meeting: 04/16/15 06:30 PM
Department: Town Attorney
Category: Local Law
Prepared By: Elizabeth Vail
Initiator: Elizabeth Vail
Sponsors: Councilwoman Kathee Burke-Gonzalez
DOC ID: 15229 B

ADOPTED

RESOLUTION 2015-411

Adopt Local Law- Amending Chapter 75 (Airport) of the Town Code Regulating Nighttime Operation of Aircraft at East Hampton Airport

WHEREAS, the Town of East Hampton is an established resort community that is renowned for its peaceful, quiet beaches and outdoor areas; and

WHEREAS, the economy of the Town of East Hampton is tied intrinsically 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; and

WHEREAS, residents and visitors are attracted to the Town and the East End of Long Island to enjoy the area’s unique scenic beauty, its outdoor spaces, and the peaceful and restful atmosphere they provide; and

WHEREAS, peace, quiet, repose, outdoor recreation, sea, air, and a beautiful and unique natural environment are the essential characteristics that make East Hampton and the East End, as a whole, such an attractive and desirable area; and

WHEREAS, the Town and its residents have invested heavily in preserving the rural, quiet pace of life by preserving land and adopting land use policies that are designed to protect the unique quality of life in East Hampton; and

WHEREAS, in the busy season of May - September, residents and visitors spend a significant portion of time outdoors engaged in recreational activities, entertaining, dining with family and friends, and otherwise enjoying the peaceful, restful atmosphere of the area; and

WHEREAS, the unique quality of life in the Town and entire East End means that residents are particularly susceptible to disturbances to their pastoral lifestyle, especially when those disturbances interfere with the qualities which make this Town a highly desirable place to live and visit; and

WHEREAS, the area surrounding the East Hampton Airport is notably quiet because of the lack of industrial noises, relatively low population density and rural roadway network, which, taken together, accentuates the perception of noise, both in terms of peak levels and also in terms of the duration of the noise events themselves; and

WHEREAS, in the past three decades, noise from aircraft overflights has disrupted outdoor activities and diminished the quality of life in the Town and the entire of the East End; and

WHEREAS, the aircraft noise problem has increased dramatically in recent years, as overall operations increased by 23 percent from 2013 to 2014 and helicopter operations alone increased by 47 percent from 2013 to 2014; and

WHEREAS, noise from loud aircraft and helicopters is particularly disruptive because it interrupts conversations and other ordinary activities and makes it very difficult to enjoy

outdoor activities; and

WHEREAS, the sheer frequency of overflights also poses a significant problem because there are extended periods of repeated loud noise events that make it very difficult to enjoy outdoor activities and that destroy the peaceful quiet of this rural area; and

WHEREAS, aircraft noise has been a major source of controversy and community strife for many years, with increasingly strong demands by the public that the Town take action to reduce the disruptive and harmful effects of aircraft noise; and

WHEREAS, the controversy has resulted in a number of lawsuits, and additional threatened lawsuits, aimed at compelling the Town or the federal government to take action to address the problem of aircraft noise; and

WHEREAS, in its capacity as proprietor of the East Hampton Airport, the Town Board has a responsibility to protect residents from the adverse effects of aircraft noise; and

WHEREAS, aircraft noise is not merely annoying and disturbing but threatens the economic vitality of the Town and its brand as a place where people can escape the noise and stresses of urban life in favor of tranquility and rural quiet; and

WHEREAS, that threat could result in lower rates of visitation, reduction in property values, and, more generally, a loss in the attractiveness of the Town; and

WHEREAS, in addition to formal noise complaints, residents and visitors have expressed their anger and frustration about aircraft noise at numerous public meetings, Town Board meetings, in letters to local papers, and in communications with Town officials; and

WHEREAS, the problem of aircraft noise was a major topic of discussion and debate in the recent Town election; and

WHEREAS, the Town has received numerous communications from residents and officials of neighboring and nearby jurisdictions demanding that the Town take action to reduce the effect of noise from aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town of Southampton, the Town Shelter Island, the Town of Southold, the Village of North Haven, the Village of East Hampton, and the Village of Sag Harbor all have adopted resolutions requesting that the Town Board of the Town of East Hampton adopt a comprehensive aircraft noise limitation policy; and

WHEREAS these other towns and villages, and all residents and visitors to the East End, depend upon the Town to address the aircraft noise problem since the Town operates the East Hampton Airport, which is the destination of many of the noisy aircraft flights; and
WHEREAS, for over two decades, the Town has diligently identified and promoted voluntary measures, including helicopter noise abatement procedures and a nighttime curfew, in order to secure relief from the disturbance of aircraft noise; and

WHEREAS, Town officials have met repeatedly with the New York Congressional delegation, to discuss this issue in the hope of finding a federal legislative solution to the problem of aircraft noise; and

WHEREAS, Town officials have met repeatedly with the Federal Aviation Administration (FAA) officials at the local, regional and headquarters level and with the FAA's Air Traffic Organization, to discuss proposed measures and use restrictions, including the use of voluntary measures; and

WHEREAS, the Town worked with the New York Congressional delegation and all levels of the FAA in the implementation of a mandatory North Shore Helicopter Route, which was initially implemented in August 2012 and recently extended through August 2016; and

WHEREAS, the Town has repeatedly tried, unsuccessfully, to convince the FAA to adopt a mandatory helicopter route along the south shore of Long Island or to adopt mandatory transition routes for helicopters transitioning from the mandatory routes to the East Hampton Airport; and

WHEREAS, the Town has spent the last several summer seasons studying various voluntary measures or measures in cooperation with the FAA to address the noise problem but the level of resident concern has actually increased over that time; and

WHEREAS, the Town's past several years of efforts to address the problem of aircraft noise through voluntary measures promoted by the Town combined with mandatory flight tracks for helicopters imposed by FAA have provided some limited relief in certain neighborhoods, but those measures alone have not reduced to an acceptable level the overall intensity of community disturbance from noise associated with aircraft flying to and from East Hampton Airport; and

WHEREAS, the Town's ability to address the problem of aircraft noise has been constrained legally by obligations under certain of its federal grants that the FAA has stated will no longer be enforced after December 31, 2014; and

WHEREAS, the Town first announced its intent to pursue use restrictions on operations at East Hampton Airport to address the problem of aircraft noise by the adoption of Resolution 2012-832 on August 2, 2012; and

WHEREAS, Town officials and staff have met repeatedly with airport stakeholders, including Eastern Region Helicopter Council, Friends of the East Hampton Airport, the National Business Aviation Association, the Aircraft Owners and Pilots Association, the National Air Transportation Association, and other informal local groups of users and service providers to discuss their respective concerns; and

WHEREAS, the Town held a special public meeting on August 27, 2014, provide the public an opportunity to comment on the problem of aircraft noise and to share views on potential solutions and the meeting was attended by almost 400 people, including 22 elected officials, all of whom expressed support for finding a solution to the noise problem; and

WHEREAS, the Town announced its commitment to finding a solution to disturbance resulting from noise associated with Airport operations; announced its intent to adopt lawful measures to ensure the peace, quiet, tranquility and health of communities affected by Airport noise; resolved to consider the most serious disturbances, the causes of the disturbances, and reasonable and practical solutions tailored to address the source of those disturbances before making a decision; and announced its intent to identify and adopt

regulations to address noise and disturbance from Operations at East Hampton Airport before the 2015 season by the adoption of Resolution 2014-1180 on September 18, 2014; and

WHEREAS, FAA's traditional Day/Night Average Sound Level (DNL) noise metric has proved, after considerable study, not to be a useful tool for measuring the impact of noise from operations at East Hampton Airport because it averages noise data over 24 hours, and does not capture the demonstrated community annoyance and disruption from individual aircraft noise events (especially noise events associated with helicopters); and

WHEREAS, beginning in 2014, the Town commissioned a series of comprehensive analyses of the noise and related complaints, including the following:

- Henry Young of Young Environmental Sciences and Les Blomberg of Noise Pollution Clearinghouse: (1) analyzed 2013 operational data collected by the AirScene system, (2) converted that data for use in the Integrated Noise Model (INM), (3) used the INM to develop Day-Night Average Sound Level (DNL) noise contours for 2013 operations (for total annual operations, annual helicopter operations, busiest day total operations, and busiest day helicopter operations), (4) used the INM to calculate the maximum sound level (Lmax) for each modeled flight in 2013 at each property parcel in a 10-mile radius from the airport, (5) applied the Town Code noise standards to determine the number of "exceedances" (i.e., the number of times each parcel experienced a noise impact above the Town's limits) by aircraft type and type of operation; and
- Peter Wadsworth analyzed 2014 complaint data collected by the PlaneNoise system; and
- Ted Baldwin of Harris Miller Miller & Hanson Inc. (HMMH) led HMMH analyses of November 1, 2013 - October 31, 2014 data, including: (1) analysis of PlaneNoise complaint data to identify temporal and geographic complaint patterns for different aircraft types (e.g., jet, turboprop, piston prop, seaplane, and helicopter), (2) analysis of Vector operations data to identify patterns of activity by day of year, day of week, hour of day (for each day of the week and for the average annual day), and season; (3) correlated PlaneNoise complaint data and Vector operations data to identify patterns; (4) used the independent and correlated data analyses to develop a refined problem definition and promising alternatives for addressing that definition; (5) analyzed the effect of those alternatives in terms of the historical operations that each would have affected and of the associated noise complaints; and (6) identified and reviewed technical studies in the literature that have attempted to identify the most effective noise metric for understanding response to helicopter noise, whether the metric should include a special "adjustment" for helicopters, and otherwise provide useful information on the best means of assessing helicopter noise and predicting human response; and

WHEREAS, the Town also commissioned several advisory groups to assist in identifying the

noise problem with specificity and identifying meaningful, practical and carefully tailored measures that the Town could adopt which would help reduce or eliminate the noise problem; and

WHEREAS, these advisory groups have held many, many public meetings, discussions and debates about how best to address the Town's noise problem; and

WHEREAS, the Town held meetings on October 30, 2014; December 2, 2014; and February 4, 2015; to review the findings of each phase of the recent noise analyses; and

WHEREAS, the Town Board announced four proposed use restrictions for East Hampton Airport on February 10, 2015; and

WHEREAS, the Town Board held public hearings on March 12, 2015, to consider the following four local laws amending Chapter 75 (Airport) of the Town Code: (1) a local law to regulate nighttime operation of aircraft; (2) a local law to regulate nighttime and early morning operation of noisy aircraft; (3) a local law to regulate the operation of helicopters; and (4) a local law to regulate the operation of noisy aircraft; and

WHEREAS, the Town has been soliciting public comment through encouraging comments at Town Board meetings, and emailed comments through a dedicated email address; and

WHEREAS, the Town Board has reviewed all of those comments plus written comments and comments appearing in several local newspapers over the course of the last year; and

WHEREAS, there is no single or simple measure which is certain to solve the Town's noise problem; and

WHEREAS, the Town is committed to testing measures for their practical, real-world effectiveness but needs to have at least one summer season to collect adequate data on real world effects; and

WHEREAS, the Town is committed to collecting data during the summer 2015 season and to assessing all noise control measures in October 2015 for their effectiveness; and

WHEREAS, the Town will modify any restrictions to improve their effectiveness based upon the results of these restrictions during the summer 2015 season; and

WHEREAS, the Town encourages residents, visitors, airport stakeholders, users and all other interested parties to provide the Town with input on the effectiveness of particular measures in addressing, mitigating or eliminating the noise problem; and

WHEREAS, after considering the history of noise disturbance caused by operations at the Airport, reviewing the data provided by the Town's consultants and the comments of the public, and after holding public hearings, the Town Board believes that the enactment of a local law to implement a nighttime curfew at the East Hampton Airport is in the best interests of the Town of East Hampton for the following reasons:

- Disturbance by all types of aircraft is most significant in the evening, nighttime, and early morning hours; and

- Professional studies confirm that nighttime aircraft noise is highly disturbing, that it can disrupt normal sleep patterns, and that it has a particularly serious adverse effect on people's lives; and
- The Town's voluntary curfew has not proven to be sufficiently effective at reducing nighttime noise from aircraft and nighttime operations still generate a significant number of complaints; and

WHEREAS, the proposed local law is an Unlisted Action pursuant to the New York State Environmental Quality Review Act (SEQRA) and Chapter 128 of the Town Code; and

WHEREAS, the Town Board has prepared and considered an Environmental Assessment Form which evaluates the potential environmental impacts of the proposed amendment; and

WHEREAS, the Board has determined that the adoption of this Local Law will not have a significant negative impact upon the environment; and now, therefore be it

NOW, THEREFORE, BE IT RESOLVED, that a negative declaration is hereby made pursuant to the State Environmental Quality Review Act (SEQRA); and

RESOLVED, that said local law is hereby adopted to read as follows:

LOCAL LAW NO. 3 OF 2015
INTRODUCTORY NO. 2 OF 2015

A Local Law providing for the amendment of Chapter 75 ("AIRPORT") of the East Hampton Town Code to read as follows:

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. 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 and jets, the noisiest types. Noise 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 jet and helicopter noise in what is otherwise a very quiet, exurban and rural environment.

Specifically, noise from aircraft operating at the East Hampton Airport disturbs many

residents of the East End of Long Island. Disturbance by all types of aircraft is most significant in the evening, nighttime, and early morning hours. Myriad professional studies from airports throughout the world have confirmed what the residents of East Hampton know from personal experience: nighttime aircraft noise is more disturbing, more annoying, can disrupt normal sleep patterns, and, generally, has a particularly seriously adverse effect on people's lives.

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 a set of 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.

To that end, the Town Board recognizes the importance of addressing nighttime noise problems, during sleeping hours when there is a heightened expectation of quiet, by imposing a curfew for nighttime hours. The legislation is intended to restrict aircraft operations during the most sensitive times of the day.

By enacting this legislation, the Town Board seeks to achieve immediate, substantial nighttime 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

The Code of the Town of East Hampton is hereby amended by adding the following new section to Chapter 75 (Airport).

§ 75-38 AIRPORT USE RESTRICTIONS:

A. **Definitions.**

(1) - (2) - *Reserved*

(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) - (5) - *Reserved*

(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.

B. **Nighttime Operations.** Use of the Airport is prohibited between the hours of 11:00 pm and 7:00 am (local time).

C. [*Reserved*]

D. [*Reserved*]

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. In addition, any entity convicted hereunder of not complying with the requirements of Section 75-38 may be subject to a fine of not less than the amount of the actual costs incurred and owed to the Town and not more than an amount equal to twice said actual costs. 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 the violation.

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 and regulations of the Federal Aviation Administration.

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.

Dated: April 16, 2015

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON
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