

VILLAGE OF OWEGO LOCAL LAW NO. 4 OF THE YEAR 2015

PUBLIC NUISANCE ABATEMENT LAW

Be it enacted by the Board of Trustees of the Village of Owego as follows:

Section 1. Findings

The Board of Trustees of the Village of Owego finds that Public Nuisances exist in the Village of Owego in the operation of certain establishments and the use of property in flagrant violation of certain Penal Law and Municipal Code provisions, which nuisances substantially and seriously interfere with the interest of the public in the quality of life and total community environment, commerce in the Village, property values and/or the public health, safety and welfare. The Board of Trustees further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the Village of Owego and of the businesses thereof and the visitors thereto. It is the purpose of the Board of Trustees to authorize and empower the Mayor to impose sanctions and penalties for such Public Nuisances, and such power of the Mayor may be exercised either in conjunction with, or apart from, the powers contained in other laws without prejudice to the use of procedures and remedies available under such other laws. The Board of Trustees further finds that the sanctions and penalties imposed by the Mayor pursuant to this chapter constitute an additional and appropriate method of law enforcement in response to the proliferation of the above-described Public Nuisances. The sanctions and penalties are reasonable and necessary in order to protect the health and safety of the people of the Village and to promote the general welfare.

Section 2. Title

This chapter shall be known as the "Public Nuisance Abatement Law."

Section 3. Definitions

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

IMMEDIATELY ADJACENT: Any property or building abutting or within a one hundred foot radius.

PUBLIC NUISANCE: A Public Nuisance shall be deemed to exist whenever, through Violations of any of the following provisions resulting from separate incidents at a building, erection or place, or Immediately Adjacent to the building, erection or place as a result of the operation of a business, 12 or more points are accumulated within a period of six (6) months, or 18 or more points are accumulated within a period of twelve (12) months, in accordance with the following point system. Where more than one Violation occurs during a single incident, the total points for the incident shall be the highest point value assigned to any single violation.

- (1) The following Violations shall be assigned a point value of two (2) points:

- (a) Section 240.36 of the Penal Law - Loitering in the First Degree.
 - (b) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
 - (c) Chapter 146 of the Code of the Village of Owego - Noise.
 - (d) Chapter 138 of the Code of the Village of Owego - Littering.
 - (e) Chapter 82 of the Code of the Village of Owego - Animal, Fowl and Dog Control.
 - (f) Chapter 101 of the Code of the Village of Owego - Curfew.
- (2) The following Violations shall be assigned a point value of four (4) points:
- (a) Section 240.20 of the Penal Law - Disorderly Conduct.
 - (b) Chapter 159 of the Code of the Village of Owego - Property Maintenance, including any garbage collection violation. Each repeat offense is an additional four (4) points.
 - (c) Chapter 76 of the Code of the Village of Owego - Open Container.
 - (d) Article 225 of the Penal Law - Gambling Offenses.
 - (e) The Alcoholic Beverage Control Law.
 - (f) Section 415-a of the Vehicle and Traffic Law - Vehicle Dismantlers.
 - (g) Sections 170.65 and 170.70 of the Penal Law - Forgery or Illegal Possession of a Vehicle Identification Number.
 - (h) Possession, use, sale or offer for sale of any alcoholic beverage in violation of Article 18 of the Tax Law, or of any cigarette or tobacco products in violation of Article 20 of the Tax Law.
 - (i) The Agriculture and Markets Law.
 - (j) Chapter 121 of the Code of the Village of Owego - Games of Chance.
 - (k) Chapter 162 of the Code of the Village of Owego - rental registration and rental inspection.
 - (l) Section 240.10 of the Penal Law – Unlawful Assembly.
 - (m) Section 240.40 of the Penal Law – Appearance in Public Under the Influence of Narcotics or a Drug Other Than Alcohol.
 - (n) Section 240.45 of the Penal Law – Criminal Nuisance in the Second Degree.
 - (o) Peace and Good Order – Chapter 153 of the Code of the Village of Owego.
 - (p) Article 221 of the Penal Law - Offenses Involving Marijuana, including Sections 221.05 through 221.15.
- (3) The following Violations shall be assigned a point value of six (6) points:
- (a) Article 178 of the Penal Law - Criminal Diversion of Prescription Medications and Prescriptions.
 - (b) Article 220 of the Penal Law - Controlled Substances Offenses.
 - (c) Article 221 of the Penal Law - Offenses Involving Marijuana, including Sections 221.20 through 221.55.
 - (d) Sections 165.40 through 165.54 of the Penal Law – Criminal Possession of Stolen Property.
 - (e) Article 158 of the Penal Law - Welfare Fraud.

- (f) Section 147 of the Social Services Law - Food stamp program fraud.
 - (g) Section 2024 of Title 7 of the United States Code - Illegal Use of Food Stamps.
 - (h) Any use of commercial and/or business property contrary to Chapter 195 of the Zoning Code of the Village of Owego, or contrary to any special use permit or site plan approval issued thereunder.
 - (i) Allowing persons on the premises in excess of occupancy limits.
 - (j) Section 3383 of the Public Health Law - Imitation controlled substances.
 - (k) Operating a premises without the requisite certificate of occupancy or compliance, operating permit, or fire safety and property maintenance inspection in violation of Chapter 92 of the Code of the Village of Owego.
 - (l) Operating a premises without the requisite electrical certificate of compliance in violation of Chapter 109 of the Code of the Village of Owego.
 - (m) Section 240.46 of the Penal Law – Criminal Nuisance in the First Degree.
- (4) The following Violations shall be assigned a point value of ten (10) points:
- (a) Article 230 of the Penal Law - Prostitution Offenses.
 - (b) Article 265 of the Penal Law - Firearms and other Dangerous Weapons.
 - (c) Sections 260.20 and 260.21 of the Penal Law - Unlawfully Dealing with a Child.
 - (d) Article 263 of the Penal Law - Sexual Performance by a Child.
 - (e) Penal Law Section 240.37 - Loitering for the purpose of engaging in a prostitution offense.
 - (f) Section 260.10 of the Penal Law – Endangering the Welfare of a Child.
 - (g) Penal Law offenses, including but not limited to murder, attempted murder, assault, attempted assault and sex offenses.

(5) All criminal offenses not listed herein shall be assigned a value as follows: criminal violations shall be two (2) points, misdemeanors shall be four (4) points, and felonies shall be six (6) points.

VIOLATION: Conduct, or evidence of conduct, prohibited under this chapter. A violation does not require criminal prosecution and conviction but only a preponderance of evidence that the prohibited conduct is occurring or has occurred. Evidence of prohibited conduct may include, but is not limited to, police reports, investigative reports, execution of search warrants, results of police surveillance, arrest and/or conviction of local and state and federal laws, activities associated with trafficking of controlled substances, finding of weapons and/or controlled substances on or near the property, increased volume of traffic associated with the property.

Section 4. Remedies, Enforcement and Penalties

A. General.

The Village Attorney may bring and maintain a civil proceeding in the name of the Village of Owego in the Supreme Court of Tioga County, or any other court of competent

jurisdiction, to abate a Public Nuisance and seek the following types of relief: (1) Permanent Injunction; (2) Preliminary Injunction; (3) Temporary Closing Order; (4) Temporary Restraining Order; (5) Civil Penalties.

B. Notice.

Upon the accumulation of at least nine (9) points within a period of six months, the Mayor shall provide the owner, operator and lessee of the building, structure or place notice of the Violations constituting such points and a statement that “Your accumulation of points pursuant to the Nuisance Abatement Law may result in penalties, including, but not limited to, a permanent injunction, preliminary injunction, temporary restraining order, temporary closing order, and civil penalties of not less than \$1,000 for each day or part thereof during which a violation continues.” The notice shall provide the owner, operator and/or lessee ten (10) business days to provide the Mayor a written plan to abate or prevent the Public Nuisance. If part of the plan to abate or prevent the Public Nuisance is to evict a tenant, then the owner shall commence the eviction proceeding within twenty (20) business days from the date of the notice. The notice shall inform the owner, operator and lessee that in no case shall the plan to abate or prevent a Public Nuisance include the eviction and/or any other penalty against a victim of domestic violence related to any incident generating the accumulation of points. Providing a plan to the Village shall not constitute a defense to any subsequent legal action to enforce this law, whether grounded upon any Violation prior to or after the creation of the plan.

C. Permanent Injunction.

(1) The Village Attorney shall bring and maintain a civil proceeding in the name of the Village of Owego to permanently enjoin a Public Nuisance and the persons conducting, maintaining or permitting the Public Nuisance from further conducting, maintaining, or permitting the Public Nuisance. The owner, operator, and/or lessee of a building, structure or place wherein the Public Nuisance is being conducted, maintained or permitted may be named as defendants in the action. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter. The complaint shall identify the building, structure or place wherein the nuisance is being conducted, maintained or permitted, by describing it by Tax Map number and/or street address, and shall name as defendants the building, structure or place wherein the Public Nuisance is being conducted, maintained or permitted, and the owners of the property.

(2) In rem jurisdiction shall be complete over the building, structure or place wherein the Public Nuisance is being conducted, maintained or permitted by affixing the summons to the door of the building, structure or place and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners who possesses some part of or an interest in the property. Proof of service shall be filed within two days thereafter with the Clerk of the court designated in the summons. Service shall be complete upon such filing.

(3) The complaint for permanent injunction shall contain a description of the attempts by the Village to notify and locate the owner, operator and lessee of the property and describe the adverse impact associated with the property on the surrounding neighborhood.

(4) A judgment awarding a permanent injunction, pursuant to this chapter, may direct the Village of Owego Police Department or the Tioga County Sheriff's Office to seize and remove from the building, structure or place all material, equipment and instrumentalities used in the creation and maintenance of the Public Nuisance and shall direct the sale of such property in the manner provided for the sale of personal property under execution pursuant to the provisions of the Civil Practice Law and Rules. The net proceeds of any such sale, after deduction of the lawful expenses involved, shall be paid into the general fund of the Village.

(5) A judgment awarding a permanent injunction pursuant to this chapter may authorize agents of the Village to forthwith remove and correct construction and structural alterations in violation of the New York State Fire Prevention and Building Code or the Code of the Village of Owego. Any and all costs associated with these repairs or alterations shall become a lien against said property and shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens and any nuisance abatement lien.

(6) A judgment awarding a permanent injunction, pursuant to this chapter, may direct the closing of the building, structure or place by the Owego Police Department or the Tioga County Sheriff's Office, to the extent necessary to abate the nuisance, and shall direct the Owego Police Department or the Tioga County Sheriff's Office to post a copy of the judgment and a printed notice of such closing. Mutilation or removal of such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable on conviction by a fine of not more than \$500 or by imprisonment not exceeding 15 days, or by both, provided such judgment contains therein a notice of such penalty. Intentional disobedience of, or resistance to, a permanent injunction, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both.

(7) The closing directed by the judgment shall be for such period as the court may direct, but in no event shall the closing be for a period of more than one year from the posting of the judgment provided for in this section. If the owner shall file a bond in the value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, structure or place has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the building, structure or place.

(8) A closing by the Owego Police Department or the Tioga County Sheriff's Office pursuant to this section shall not constitute an act of possession, ownership or control by the Owego Police Department or the Tioga County Sheriff's Office of the closed premises.

(9) A judgment awarding a permanent injunction pursuant to this chapter shall provide, in addition to the costs and disbursements allowed by the Civil Practice Law and Rules, upon satisfactory proof by affidavit or such other evidence as may be submitted, the actual costs, expenses and disbursements of the Village in investigating, bringing and maintaining the action.

(10) A judgment rendered awarding a permanent injunction pursuant to this chapter shall be and become a lien upon the building, structure or place named in the complaint in such action, such lien to date from the time of filing a notice of liens pending in the office of the Clerk of the county wherein the building, structure or place is located. Every such nuisance abatement lien shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens.

D. Preliminary Injunction; Temporary Closing Order; Temporary Restraining Order

(1) Pending an action for a permanent injunction, the court may grant a preliminary injunction enjoining a Public Nuisance within the scope of this chapter and the person or persons conducting, maintaining or permitting the Public Nuisance from further conducting, maintaining or permitting the Public Nuisance. An order granting the preliminary injunction shall direct a trial of the issues at the earliest possible time. Where preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction at its earliest convenience after the conclusion of the trial. A temporary closing order or temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a Public Nuisance within the scope of this chapter is being conducted, maintained or permitted.

(2) The officers serving a temporary restraining order shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a Public Nuisance within the scope of this chapter and shall enter upon the building, structure or place for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory, including, but not limited to, photographing such personal property.

(3) The officers serving a temporary restraining order shall, upon service of the order, command all persons present in the building, structure or place to vacate the premises forthwith. Upon the building, structure or place being vacated, the premises shall be securely locked and all keys delivered to the officers serving the order who thereafter shall deliver the keys to the fee owner, lessor or lessee of the building, structure or place involved. If the fee owner, lessor or lessee is not at the building, structure or place when the order is being executed, the officers shall securely padlock the premises and retain the keys until the fee owner, lessor or lessee of the building is ascertained, at which time, the officers shall deliver the keys to such owner, lessor or lessee, if such individual resides within Tioga County.

(4) Upon service of a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the Public Nuisance is being conducted, maintained or permitted. In addition, where a temporary restraining order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. If the temporary restraining order directs that the premises are to be closed by court order, the notice shall contain the legend "Closed by Court Order" in block

lettering of sufficient size to be observed by anyone intending or likely to enter the premises, the date of the order, the court from which issued and the name of the office or agency posting the notice. Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$500 or by imprisonment not exceeding 15 days, or by both, provided such order or notice contains therein a notice of such penalty. Intentional disobedience of, or resistance to, a preliminary injunction, temporary restraining order, or temporary closing order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both.

(5) A temporary restraining order or preliminary injunction shall not issue under this chapter, except upon the giving of a bond or security by the applicant, in the amount of \$1,000, for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully restrained or enjoined. A bond or security shall not be required of the State of New York, Municipal Corporations, or political subdivisions of the State of New York.

E. Civil Penalties

In addition to those penalties proscribed above, any person or entity who violates any of the provisions of this chapter by failure to comply with any of its requirements shall be liable to a civil penalty of not less than \$1,000 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the Village of Owego. No civil action pursuant to this chapter shall be commenced without the appropriate authorization from the Village Board of Trustees.

Section 5. Temporary Receiver

A. In any action wherein the complaint alleges that the Public Nuisance is being conducted or maintained in the residential portions of any building or structure or portion thereof, which are occupied in whole, or in part, as the home, residence or sleeping place of one or more human beings, the court may, upon motion on notice by the plaintiff, appoint a temporary receiver to manage and operate the property during the pendency of the action, in lieu of a temporary closing order. A temporary receivership shall not continue after final judgment unless otherwise directed by the court. Upon the motion of any party, including the temporary receiver, or on its own initiative, the appointing court may remove a temporary receiver at any time.

B. The temporary receiver shall have such powers and duties as the court shall direct, including, but not limited to, collecting and holding all rents due from all tenants, leasing or renting portions of the building or structure, making or authorizing other persons to make necessary repairs or to maintain the property, hiring security or other personnel necessary for the safe and proper operation of a dwelling, prosecuting or defending suits flowing from his or her management of the property and retaining counsel therefor, and expending funds from the collected rents in furtherance of the foregoing powers.

C. A temporary receiver, before entering upon his or her duties, shall be sworn or shall affirm faithfully and fairly to discharge the trust committed to such receiver. The oath or affirmation may be waived upon consent of all parties.

D. A temporary receiver shall give an undertaking, in an amount to be fixed by the court making the appointment, that such receiver will faithfully discharge his or her duties.

E. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property. Upon motion of the temporary receiver, or of any person having an apparent interest in the property, the court may require the keeping of particular records, or direct or limit inspection, or require presentation of a temporary receiver's accounts. Notice of motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on the temporary receiver's undertaking as well as upon each party.

Section 6. Chapter Not Exclusive Remedy

This chapter shall not be construed to exclude any other remedy provided by law for the protection of the health, safety and welfare of the people of the Village of Owego.

Section 7. Separability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this local law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this local law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

Section 8. Effective Date

This Local Law shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.