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January 14, 2019

RECEIVED

JAN 17 2019

VILLAGE OF NUNDA

Village Clerk
4 Massachusetts Street
PO Box 537
Nunda NY 14517-0537

RE: Village of Nunda, Local Law 3 & 4 2018, filed on January 7, 2019

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.ny.gov.

Sincerely,
State Records and Law Bureau
(518) 473-2492



**Department
of State**

**CHRONIC PUBLIC NUISANCE ABATEMENT LAW
VILLAGE OF NUNDA**

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Adopted by the Village Board of the Village of Nunda Local Law #3 of 2018 on December 11, 2018.

GENERAL REFERENCES

1. Legislative Findings.

The Village Board of the Village of Nunda finds that a small percentage of persons who own or control real property in the Village of Nunda have allowed their property to be used for illegal purposes, or have otherwise failed to properly maintain their property in accordance with the Village Code of the Village of Nunda or the New York State Uniform Building and Fire Code. Where the violations are habitual, these properties interfere with the comfort, health, solitude and quality of life of the individuals residing in the neighborhood, create a significant impact upon the living conditions in the Village's neighborhoods, and raise justifiable concerns about public safety. Chronic public nuisance activity has been found to contribute to the general decay of an affected neighborhood, which may result in a lowering of the value of surrounding properties.

As a result of the activities occurring at these properties, and/or the conditions in which they are maintained, these properties tend to receive and require more than the general, acceptable level of Law and Code Enforcement services, and place an undue and inappropriate burden on the Village of Nunda taxpayers. The Village Board of the Village of Nunda has determined that existing laws have not sufficiently encouraged such property owners to take reasonable steps to abate the nuisances that their property is creating, and has determined that enhanced

penalties will give such property owners additional incentives to ameliorate the said problems, and help to compensate the Village for the increase in Code Enforcement services.

This local law is enacted to encourage Property owners to recognize their responsibility to ensure that activities occurring on their Property conform to the law, do not adversely affect their neighborhoods, and do not unduly burden the Village's Code Enforcement resources and to provide a mechanism for the Village to take action against Property owners who fail to ensure Property they own does not require a disproportionate level of Code Enforcement resources to be devoted to such Property. This Chapter is not intended to discourage crime victims or a person in legitimate need of police services from requesting them. This section does not affect a Property owner's duty to comply with all other laws contained in the New York Statutes governing residential tenancies.

2. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

CHRONIC PUBLIC NUISANCE - Any property that meets any of the following criteria:

1. Two or more incidents of public nuisance activities listed below, which occur during any 30-day period; or
2. Three or more incidents of public nuisance activities listed below which occur during any 90-day period; or
3. Five or more incidents of public nuisance activities listed below which occur during any 365-day period.

NOTICE OF VIOLATION - Notice sent by the office of the Code Enforcement Officer that a potential violation of a property under the Nunda Village Code, or the New York State Building and Fire Code has been observed, and which may or may not include a period in which the property owner may correct the violation.

TESTIMONY - Oral, written or other documented evidence tending to show or prove the truth of the matter asserted.

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.

OWNER - Any person having a vested or contingent interest in the property in question, as shown on the most recent deed filed with the County Clerk of the County of Livingston.

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 the business, 12 or more points are accumulated within a period of 30 days or 18 or more points within a period of 60 days or 36 or more points in a 6 month period 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. For any repeat violation of a specific violation listed below within a six-month period, the points for the second and any additional violation will be doubled.

A. The following violations shall be assigned a point value of two points:

- (1) Sections 240.36 and 240.37 of the Penal Law (loitering in the first degree)
- (2) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
- (3) Noise (as defined by the Code of the Village of Nunda.)
- (4) Dogs and Other Animals, as defined under NYS Agriculture and Markets Law or under Local Village Laws regarding howling dogs, and/or repetitive barking, number of dogs, unlicensed dogs and dangerous or nuisance dogs.

B. The following violations shall be assigned a point value of four points:

- (1) Disorderly conduct by individual or individuals.
- (2) Any violation of section 9 of Local Law #1 of the year 2009 of the Village of Nunda, regarding Garbage, Trash, Refuse, Refrigerators and Dumpsters. Each repeat offense is an additional four points.
- (3) General disturbances at a particular location.
- (4) Article 225 of the Penal Law (gambling offenses).
- (5) Any violation of the Alcoholic Beverage Control Law.
- (6) Section 415-a of the Vehicle and Traffic Law (vehicle dismantlers).
- (7) Sections 170.65 and 170.70 of the Penal Law (forgery or illegal possession of a vehicle identification number).
- (8) 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.
- (9) Any violation of the Agriculture and Markets Law.

C. The following violations shall be assigned a point value of six points:

- (1) Article 178 of the Penal Law (criminal diversion of prescription medications and prescriptions).
- (2) Article 220 of the Penal Law (controlled substances offenses).
- (3) Article 221 of the Penal Law (offenses involving marijuana).
- (4) Sections 165.15(6), (7), and (8), 165.40, 165.45, 165.50, 165.52, 165.54, 165.71, 165.72 and 165.73 of the Penal Law (criminal possession of stolen property).

- (5) Article 158 of the Penal Law (welfare fraud).
 - (6) Section 147 of the Social Services Law (food stamp program fraud).
 - (7) Section 2024 of Title 7 of the United States Code (illegal use of food stamps).
 - (8) Any commercial violations of Zoning, of the Code of the Village of Nunda.
 - (9) Allowing persons on the premises in excess of occupancy limits.
 - (10) Section 3383 of the Public Health Law (imitation controlled substances).
 - (11) Operating a premise without the requisite certificate of use in violation of Zoning Code of the Village of Nunda.
 - (12) Any violation of Buildings and Land, Unsafe, of the Code of the Village of Nunda.
- Each repeat offense is an additional six points.

D. The following violations shall be assigned a point value of 10 points:

- (1) Article 230 of the Penal Law (prostitution offenses).
- (2) Article 265 of the Penal Law (firearms and other dangerous weapons).
- (3) Sections 260.20 and 260.21 of the Penal Law (unlawfully dealing with a child).
- (4) Article 263 of the Penal Law (sexual performance by a child).
- (5) Loitering for the purpose of engaging in a prostitution offense.

3. Nuisance forbidden.

No owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall knowingly conduct, maintain, permit or allow the existence of a public nuisance or of a chronic public nuisance at the building, structure or real property. Any person, whether owner, operator, manager, tenant, lessee or other occupier, who permits a chronic nuisance on property under their ownership or control and has obtained a point record, as indicated above, of 12 points in a 30-day period, 18 points in a 60-day period, or 36 points in a six-month period shall be in violation of this chapter and subject to all penalties as outlined in this local law.

4. Presumption of knowledge.

Notice by first class mail or personal service of activities entailing a public nuisance to the property owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall be prima facie evidence of knowledge of the public nuisance.

5. Code Enforcement Officer.

A. It shall be the duty of the Code Enforcement Officer or any local, State or County law enforcement agency to enforce the provisions of this chapter.

B. A copy of every violation or notice of violation issued to any operator, manager, tenant, lessee or other occupier of a building, structure or real property shall also be delivered by first class mail & Certified mail return receipt or personal service to the owner of said property.

C. The Code Enforcement Officer shall maintain a log of all time spent on a

potential violation of a property which may be considered a chronic public nuisance. This subsection shall not apply to any initial violation issued to a property owner.

6. Penalties for offenses.

A. Any person or corporation, whether as owner, lessee, principal, agent, employee or otherwise, which violates the provisions of this chapter or permits any such violation or fails to comply with any of the requirements thereof shall be guilty of a violation, shall be issued an appearance ticket to appear before the Village Court to answer such charges, penalties punishable by a fine not exceeding three hundred fifty dollars or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine of not less than three hundred fifty dollars nor more than seven hundred dollars or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars not more than one thousand dollars or imprisonment for a period not to exceed six months, or both. For the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors. Each week's continued violation shall constitute a separate additional violation.

B. In addition to any penalty for a violation issued pursuant to subsection A, above, the Court may, in its discretion, consider an amount not to exceed Two Hundred and fifty dollars commensurate with the time spent by the Code Enforcement Officer addressing any public nuisance, or chronic public nuisance

C. Complaints of violations. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints filed by an individual must be in writing, signed and dated by the individual, and filed with the Code Enforcement Officer, who shall properly record such complaint and investigate and report thereon to the Village Board.

D. Accountability. For every violation of the provisions of this chapter, the owner, agent, contractor, lessee, ground lessee, tenant, licensee, or any other person who commits, takes part, or assists in such violation or who maintains any structures or premises in which any such violation exists shall also be punishable according to the provisions of this chapter.

7. Law not intended to interfere with constitutionally protected freedom of expression.

This law is not intended to interfere with constitutionally protected freedom of expression.

8. Severability.

If any clause, sentence, paragraph, word, section or part of this local law shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved in the controversy in which said judgment shall have been rendered, it being the legislative intent that this local law would have been adopted even if such unconstitutional or void matter had not been included therein.

9. Repeal of Prior Local Laws and Ordinances.

This law shall supersede all prior local laws, ordinances, rules and regulations relative to Chronic Public Nuisance and Abatement within the Village of Nunda and they shall be, upon the effective date of this law, null and void.