

**VILLAGE OF FORT EDWARD
COUNTY OF WASHINGTON, STATE OF NEW YORK
LOCAL LAW No. 1 of 2007**

**A LOCAL LAW ADOPTING A NEW CHAPTER 62
OF THE CODE OF THE VILLAGE OF FORT EDWARD
ENTITLED "NUISANCE PROPERTIES"**

Be it enacted by the Board of Trustees of the Village of Fort Edward, as follows:

§ 62-1. Declaration of legislative findings.

The Board of Trustees finds that public nuisances exist in the Village of Fort Edward in the operation and use of certain property, including residential premises, in violation of such laws as the Penal Law of the State of New York, the New York State Uniform Fire Prevention and Building Code and the Code of the Village of Fort Edward, 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 public health, safety, peace, comfort, conveniences and general welfare.

Specifically, the deterioration of some properties and the activities and patterns of behavior engaged in by certain individuals threaten the quality of life for the residents of the Village. 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 residents of the Village of Fort Edward and of the businesses thereof and the visitors thereto. It is the purpose of this chapter to authorize the Village to create one standardized procedure for securing legal and equitable remedies and reform relating to the subject matter encompassed by this chapter and to strengthen existing laws on the subject. In so doing, this chapter shall authorize the Village to impose sanctions and penalties for such public nuisances and remediate the same. Such powers 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 and remedial measures authorized herein constitute a supplementary and suitable method of law enforcement in response to the rapidly expanding presence of public nuisances. These sanctions, penalties and remedial measures are reasonable and necessary in order to protect the health and safety of the residents of the Village and to promote the general welfare of the community.

§ 62-2. Public nuisance defined.

A. A public nuisance is declared to exist where behavior in the use of or on the premises unreasonably interferes with the health, safety, peace, comfort or convenience of the general community, occurring within a period of six months of such frequency or duration that the

continued occupancy of the premises presumes continuation of such unreasonable interference regardless of whether or not any person has been convicted for violation of any provisions of the Penal Law of the State of New York, the New York State Uniform Fire Prevention and Building Code or the Code of the Village of Fort Edward.

B. A public nuisance is declared to exist whenever, through violations of any of the following, provisions resulting from separate incidents at a building, structure or place, 12 or more points are accumulated within a period of six months or 18 or more points within a period of 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 six points:
 - (a) Article 158 of the Penal Law - Welfare Fraud.
 - (b) Sections 165.40, 165.45, 165.50, 165.52 and 165.54 of the Penal Law - criminal possession of stolen property.
 - (c) Sections 170.65 and 170.70 of the Penal Law - forgery of and illegal possession of a vehicle identification number.
 - (d) Section 175.10 of the Penal Law - falsifying business records.
 - (e) Article 178 of the Penal Law - criminal diversion of prescription medications and prescriptions.
 - (f) Article 220 of the Penal Law - controlled substances offenses.
 - (g) Article 221 of the Penal Law - offenses involving marihuana.
 - (h) Article 225 of the Penal Law - gambling offenses.
 - (i) Article 230 of the Penal Law - prostitution offenses.
 - (j) Section 240.20 of the Penal Law - disorderly conduct.
 - (k) Section 240.36 of the Penal Law - loitering in the first degree.
 - (l) Sections 260.20 and 260.21 of the Penal Law - unlawfully dealing with a child.
 - (m) Article 263 of the Penal Law - sexual performance by a child.
 - (n) Article 265 of the Penal Law - firearms and other dangerous weapons.
 - (o) Section 147 of the Social Services Law - food stamp program fraud.
 - (p) The Alcoholic Beverage Control Law.
 - (q) Possession, Use, Sale and/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.
 - (r) Section 415-a of the Vehicle and Traffic Law - vehicle dismantlers.
- (2) The following violations shall be assigned a point value of three points:
 - (a) Chapter 22 of the Village Code - Alcoholic Beverages.

- (b) Chapter 26 of the Village Code - Brush, Grass and Weeds.
- (c) Chapter 32 of the Village Code - Unsafe Buildings.
- (d) Chapter 36 of the Village Code - Curfew.
- (e) Chapter 39 of the Village Code - Dogs and Other Animals.
- (f) Chapter 45 of the Village Code - Adult Entertainment.
- (g) Chapter 47 of the Village Code - Firearms.
- (h) Chapter 49 of the Village Code - Fire Prevention and Building Code.
- (i) Chapter 52 of the Village Code - Flood Damage Prevention.
- (j) Chapter 59 of the Village Code - Littering.
- (k) Chapter 61 of the Village Code - Noise.
- (l) Chapter 63 of the Village Code - Outside Burning.
- (m) Chapter 65 of the Village Code - Property Maintenance.
- (n) Chapter 71 of the Village Code - Solid Waste Collection and Disposal.
- (o) Chapter 74 of the Village Code - Streets and Sidewalks.
- (p) Chapter 77 of the Village Code - Subdivision of Land.
- (q) Chapter 85 of the Village Code - Vehicles, Abandoned and Junked.
- (r) Chapter 94 of the Village Code - Water.
- (s) Chapter 100 of the Village Code - Zoning.
- (t) 9 NYCRR Subtitle S, Chapter I - New York State Uniform Fire Prevention and Building Code.

(3) For the purpose of this section, where a violation is continuous, each week a violation continues shall be deemed a separate violation. A conviction for a violation shall not be required, and such violation shall be established by a preponderance of the evidence. Evidence of a violation 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, 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, excessive police attention as a result of citizen complaints, as well as notices, citations and orders issued by the Code Enforcement Officer. However, a conviction as defined in accordance with the provisions of § 1.20 of the Criminal Procedure Law shall constitute conclusive proof of a violation. Conviction of an attempt to commit a violation of any of the specified provisions shall be considered a conviction for a violation of the specified provision.

§ 62-3. Powers of Board of Trustees with respect to public nuisances.

In addition to the enforcement procedures established elsewhere, the Board of Trustees or the Board of Trustees' designees, after notice and opportunity for a hearing with respect to a public nuisance, shall be authorized:

A. To order the closing of the building, structure or place to the extent necessary to abate the nuisance; or

B. To suspend for a period not to exceed six months or to revoke for a period of one year a certificate of occupancy issued for such premises, and to prevent the operator from obtaining a new certificate of occupancy for another location for the period of suspension or revocation; or

C. To suspend for a period not to exceed six months or revoke for a period of one year any occupational license or permit issued by the Village related to the conduct of a business or trade at the premises, which suspension or revocation shall also apply to any other location operated by the holder for which the license or permit is required; or

D. The imposition of a fine not to exceed \$1,000 upon the owner, lessor or lessee of the building, structure or place where the nuisance is found to have occurred; or

E. Any action necessary to abate the nuisance, including but not limited to cleaning, painting, repairing or demolishing any building, structure or place. The cost of any such remedy shall constitute a property tax lien against the property upon which such remedy is applied; or

F. Any combination of the above.

§ 62-4. Service of notice.

A. Prior to the issuance of orders by the Board of Trustees or the Board of Trustees' designee pursuant to this section, the Board of Trustees or the Board of Trustees' designee shall give notice and opportunity for a hearing to the owner, lessor, lessee and mortgagee of a building, structure or place wherein the public nuisance is being conducted, maintained or permitted. Such notice shall be served upon an owner pursuant to Article 3 of the Civil Practice Law and Rules, upon a lessor or lessee pursuant to § 735 of the Real Property Actions and Proceedings Law and upon a mortgagee by means of certified mail, return receipt requested, sent to the mortgagee's last known address, provided that any service other than delivery to the person to be served shall be complete immediately upon delivery, mailing or posting without the necessity of filing proof of service with the clerk of any court before the hearing. The person in whose name the real estate affected by the orders by the Board of Trustees or the Board of Trustees' designee is recorded in the office of the County Clerk shall be presumed the owner thereof. Proceedings shall be commenced by service of the notice and opportunity for a hearing within 60 days after the occurrence of the most recent violation cited in the notice.

B. The lack of knowledge, acquiescence or participation in or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charges as agent or otherwise, or having any interest in the property, real or

personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owners, lessors and lessees, mortgagees and such other persons.

C. Orders of the Board of Trustees or the Board of Trustees' designee issued pursuant to this section and upon the written directive of the Board of Trustees or the Board of Trustees' designee. Officers of the Village of Fort Edward Police Department are authorized to act upon and enforce such orders.

D. Five business days after the posting of an order issued pursuant to this section, and upon the written directive of the Board of Trustees or the Board of Trustees' designee, officers of the Village of Fort Edward Police Department are authorized to act upon and enforce such orders.

E. Where the Board of Trustees or the Board of Trustees' designee closes a building, structure or place pursuant to this chapter, such closing shall be for such period as the Board of Trustees or the Board of Trustees' designee may direct, but in no event shall the closing be for a period of more than one year from the posting of the order pursuant to this chapter. If the owner, lessor or lessee shall file a bond in an amount determined by the Board of Trustees or the Board of Trustees' designee, but which may not exceed the value of the property ordered to be closed, and submit proof satisfactory to the Board of Trustees or the Board of Trustees' designee 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 by the order of the Board of Trustees or the Board of Trustees' designee, then the Board of Trustees or the Board of Trustees' designee may vacate the provisions of the order that directs the closing of the building, structure or place.

F. A closing directed by the Board of Trustees or the Board of Trustees' designee pursuant to this chapter shall not constitute an act of possession, ownership or control by the Village of the closed premises.

§ 62-5. Penalties for offenses.

A. It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, structure or place, or a portion thereof, ordered closed by the Board of Trustees or the Board of Trustees' designee. Mutilation or removal of a posted order of the Board of Trustees or the Board of Trustees' designee shall be punishable by a fine not exceeding \$250 or imprisonment for a period not exceeding 15 days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of three years, punishable by a fine of not less than \$250 nor more than \$500 or imprisonment for a period not to exceed 30 days, or both; and upon conviction for a third offense or subsequent offense, all of which were committed within a period of five years, punishable by a fine of not less than \$500 nor more than \$750 or imprisonment for a period not to exceed 60 days, or both, provided that such orders contain therein a notice of such penalty.

B. Intentional disobedience or resistance to any provision of the orders issued by the

Board of Trustees or the Board of Trustees' designee pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$1,000 or by imprisonment not to exceed six months, or both.

§ 62-6. Rules and regulations.

The Board of Trustees or the Board of Trustees' designee may promulgate rules and regulations to carry out and give full effect to the provisions of this chapter.

§ 62-7. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provisions to other persons and circumstances shall not be rendered invalid thereby.

§ 62-8. When effective.

This chapter shall take effect immediately upon filing with the Secretary of State.