

**VILLAGE OF CANASTOTA
LOCAL LAW NO. B OF 2022**

**A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF CANASTOTA
TO INCLUDE CHAPTER 156, PUBLIC NUISANCE ABATEMENT**

Be it enacted by the Trustees of the Village of Canastota as follows:

SECTION 1. LEGISLATIVE PURPOSE AND INTENT.

It is hereby declared to be the policy of the Village of Canastota to provide for the proper use of real property to prevent illegal, unhealthful, hazardous or dangerous conditions. By this Local Law, the Village Board of Trustees of the Village of Canastota seeks to establish a procedure for the Village of Canastota to effectively abate those dangers which constitute a nuisance to public safety, health, life and property, and to assess the cost of abatement against those individuals who knowingly conduct, maintain, allow or permit the existence of a public nuisance and the real properties on which such activity occurs.

SECTION 2. AUTHORITY.

This Local Law is enacted pursuant to the New York State Constitution, the New York State Municipal Home Rule Law §10 and New York State Village Law §§ 4-412, 4-414.

SECTION 3. AMENDMENT OF THE VILLAGE OF CANASTOTA CODE TO INCLUDE CHAPTER 156.

The Code the Village of Canastota is hereby amended to include a new Chapter 156, titled “Public Nuisance Abatement,” which shall read as follows:

“CHAPTER 156. PUBLIC NUISANCE ABATEMENT.

§156-1 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:

CRIMINAL CONVICTION. The entry of a plea of guilty or verdict of guilty for one (1) or more counts as set forth in an accusatory instrument.

ILLEGAL DRUG ACTIVITY. The use or possession of a controlled substance or cannabis as defined by the State Penal Law.

OWNER. The owner(s) or landlord(s) of a building, structure or real property, including his or her agent.

PREMISES. Real property or a building or structure, or any part thereof.

PUBLIC NUISANCE. Includes, but shall not be limited to:

- (1) Any building, structure or real property used for the purpose of illegal use, possession or distribution of a controlled substance or cannabis as defined by the State Penal Law.
- (2) Any building, structure or real property used for the purposes of prostitution as defined by the State Penal Law.
- (3) Any building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene material as defined by the State Penal Law and this Code.
- (4) Any building, structure or real property used for purposes of illegal gambling activity as defined in the State Penal Law.
- (5) Any building, structure or real property used for the purpose of the commission of illegal possession, use or sale of firearms or weapons as defined by the State Penal Law.
- (6) Any building, structure or real property used for the purpose of illegal sale, manufacture or consumption of alcohol beverages as defined by the State Alcohol Beverage Control Law.
- (7) Any building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the State Penal Law.
- (8) Any building, structure or real property used for purposes of loitering as defined by the State Penal Law.
- (9) Any building, structure or real property wherein there exists or has occurred any violation pertaining to accumulations and deposits of waste and other materials or vegetation as outlined in Chapter 155, Property Maintenance.
- (10) Any building, structure or real property wherein there exists or has occurred any violation of this Code, including, but not limited to, Chapter 155, Property Maintenance, Chapter 56, Animals, Chapter 230, Zoning, and the New York State Uniform Fire Prevention and Building Code, including the Property Maintenance Code of New York State, and any subsequent amendments or superseding provisions thereto, all of which are incorporated into this Code by reference.
- (11) Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities involving assault, gang assault, harassment or disorderly conduct, as said criminal activities are defined by the State Penal Law.

The above definition of a Public Nuisance is not intended and shall not be interpreted to cover or include requests for police, medical, fire or ambulance services in the face of a threat or a perceived threat to person or property, or any request for the assistance of the police to enforce a court order, including, but not limited to, circumstances in which the request for police, medical, fire or ambulance services or public service intervention arises from an incident relating to intimate partner violence, sexual assault, child abuse or stalking against any person or near the premises.

TENANT. The lessee or occupant of a building, structure or real property. For purposes of this Chapter, the term “Tenant” shall include an occupant of one (1) or more rooms in a rooming house or a residence, not including a transient occupant, of one (1) or more rooms in a hotel for thirty (30) consecutive days or longer.

§156-2 NUISANCE FORBIDDEN.

No Owner, operator, manager, or Tenant of a Premises shall knowingly conduct, maintain, permit or allow the existence of a Public Nuisance at the Premises.

§156-3 PRESUMPTION OF A PUBLIC NUISANCE.

- A. The following shall constitute a presumption of a Public Nuisance:
1. Notice by first class mail or personal service of activities entailing a Public Nuisance to the Owner, operator, manager, or Tenant of a Premises shall be *prima facie* evidence of knowledge of the Public Nuisance.
 2. The existence of two (2) or more Criminal Convictions for any of the activities set forth in the definition of a Public Nuisance in this Chapter at any Premises within a two (2) -year period prior to the commencement of a civil action and/or an administrative hearing shall be *prima facie* evidence of the existence of a Public Nuisance.
 3. The existence of two (2) or more incidents of the following activities at any Premises within a one (1) -year period prior to the commencement of a civil action and/or an administrative hearing shall be *prima facie* evidence of the existence of a Public Nuisance:
 - a. Conviction for any of the activities set forth in the definition of a Public Nuisance in this Chapter occurring on or near the Premises.
 - b. Arrest for any of the activities set forth in the definition of a Public Nuisance in this Chapter occurring on or near the Premises.
 - c. Service of an accusatory instrument charging any of the activities set forth in the definition of a Public Nuisance in this Chapter occurring on or near the Premises. For the purposes of this Chapter, an accusatory instrument shall include, but not be limited to, any criminal information, misdemeanor and/or felony complaint filed in a court of competent jurisdiction, and/or, with regard to unfit, unsafe and/or fire damaged structures on or near the Premises, a notice of violation issued by the Village of Canastota Code Enforcement Office, Police or Fire Departments and/or other authorized entity with jurisdiction in the Village of Canastota and/or an order to abate issued by the administrative panel pursuant to this Chapter.

- d. Service of a search warrant on the Premises where controlled substances, cannabis, and/or weapons are seized.
 - e. Finding of illegal controlled substances or illegal firearms or weapons on the Premises.
 - f. Investigative purchases of illegal controlled substances on the Premises by law enforcement agencies or their agents.
- B. Once there exists the presumption of a Public Nuisance, as set forth in Paragraph A, above, the Village shall serve, by means of first-class mail or personal service, written notice upon the Owner, as set forth in the last filed tax roll, advising of such presumption. Such notice shall set forth the alleged facts constituting the Public Nuisance and shall inform the Owner of the Village's intent to pursue action under either §156-4 or §156-10.
- C. Upon notification from the Village of Canastota of the presumption of a Public Nuisance, as set forth in Paragraph B, above, good faith efforts, commenced by the Owner in a timely manner to eradicate such Public Nuisance, shall preclude further enforcement action by the Village of Canastota, unless and until such good faith efforts cease or activities constituting a Public Nuisance resume. In the event an Owner's good faith efforts cease or the Public Nuisance activity resumes, the Village of Canastota shall notify the Owner, in the manner set forth in Paragraph B, above, of its intent to proceed under either §156-4 or §156-10.

§156-4 SUMMONS AND COMPLAINT FOR CIVIL ACTION.

- A. At the direction of the Village Board of Trustees, the attorney for the Village may bring and maintain a civil action in the name of the Village to abate a Public Nuisance and shall commence the civil action by the filing of a summons and complaint in the manner required by New York State Civil Practice Law and Rules.
- B. The summons and complaint shall name as defendant(s) at least one of the Owners of some portion of or some interest in the Premises, as set forth in the last filed tax roll, and shall describe the Owner's Premises by tax map number and/or street address.
- C. The summons and complaint may also name as defendant(s) any Owner, operator, manager, or Tenant of the Premises.
- D. The complaint shall allege the facts constituting the Public Nuisance.
- E. The complaint shall be accompanied by affidavit(s) for purposes of showing that the Owner or his agent had notice of the nuisance and had an opportunity to abate the nuisance.
- F. The venue of the action shall be in the State Supreme Court in the county where the Public Nuisance is being conducted, maintained, permitted or allowed.

- G. In rem jurisdiction over the Premises shall be completed by affixing the summons to the Premises and by mailing the summons and complaint by certified or registered mail, return receipt requested, to the person in whose name the real property is recorded at the office of the Village Assessor.
- H. Defendant(s), other than the record property Owner of the Premises, shall be served with the summons and complaint in the manner required by the New York State Civil Practice Law and Rules.
- I. With respect to any action commenced or to be commenced, the attorney for the Village may file a Notice of Pendency pursuant to the New York State Civil Practice Law and Rules.

§156-5 CIVIL PENALTY.

If, upon the trial of an action for a Public Nuisance or upon a motion for summary judgment, a finding is made that defendant(s) have conducted, maintained, permitted or allowed a Public Nuisance, a penalty may be awarded in an amount not to exceed \$1,000.00 for each day it is found that defendant(s) conducted, maintained, permitted or allowed the Public Nuisance after notice to abate had been given by the Village. Upon recovery, such penalty shall be paid into the General Village Fund.

§156-6 PERMANENT INJUNCTION.

- A. If, upon the trial of an action for a Public Nuisance or upon a motion for summary judgment, a finding is made that defendant(s) have conducted, maintained, permitted or allowed a Public Nuisance, a permanent injunction may be granted.
- B. A permanent injunction may prohibit defendant(s) from conducting, maintaining, permitting or allowing the Public Nuisance.
- C. A permanent injunction may authorize agents of the Village to remove and correct any condition(s) in violation of this Code. The judgment may further order that the costs of removing and correcting the violation(s), plus a charge of fifteen percent (15%) as compensation to the Village for administering, supervising and handling such work, shall be charged against defendant(s) and awarded to the Village. The judgment may further order that the costs of removing and correcting the violation(s), plus a charge of fifteen percent (15%) as compensation to the Village for administering, supervising and handling such work, shall constitute a lien against the real property and shall be collected in the same manner provided by law for the collection of real property taxes within the Village.
- D. A judgment ordering a permanent injunction may direct the closing of the Premises by the Village Police Department, or other law enforcement agency, to the extent necessary to abate the nuisance.

- E. A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the New York State Civil Practice Law and Rules and for the actual costs, expenses and disbursements of the village in investigating, bringing and maintaining the action.

§156-7 CLOSING OF PREMISES.

- A. If the judgment directs the closing of the Premises, the Village Police Department, or other law enforcement agency, shall serve the judgment upon defendant(s) in the manner required by the New York State Civil Practice Law and Rules and shall post a copy of the judgment upon one (1) or more of the doors at entrances of the Premises or in another conspicuous place on the Premises.
- B. In addition, the Village Police Department, or other law enforcement agency, shall affix upon one (1) or more of the doors at entrances of the Premises or in another conspicuous place on the Premises, a printed notice stating “CLOSED BY COURT ORDER” in block lettering of sufficient size to be observed by anyone intending to enter the Premises.
- C. Mutilation or removal of such posted judgment or notice while it remains in force will be considered a separate violation under the State Penal Law and shall be punishable pursuant to Section 55.10(3)(a) of the State Penal Law.
- D. The Village Police Department, or other law enforcement agency, may then command all persons present in the Premises to vacate the property. After the Premises has been vacated, the Village Police Department, or other law enforcement agency, may secure the premises.
- E. 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 (1) year from the posting of the judgment.
- F. A closing by the Village Police Department, or other law enforcement agency, shall not constitute an act of possession, ownership or control by the Village.

§156-8 PRELIMINARY INJUNCTION.

Upon a motion or order to show cause from the attorney for the Village and pending an action for a permanent injunction, a preliminary injunction enjoining the Public Nuisance may be granted for any of the relief obtainable by a permanent injunction.

§156-9 TEMPORARY RESTRAINING ORDER.

Pending a motion or order to show cause for a preliminary injunction, a temporary restraining order or a temporary closing order may be granted, without notice to defendant(s), for any of the relief obtainable by a permanent injunction.

§156-10 ADMINISTRATIVE HEARING.

As an alternative or in addition to commencing a civil action, whenever there is presumption of a Public Nuisance, as set forth in this Chapter at any Premises within the Village of Canastota, the Village Board of Trustees may initiate an administrative hearing in accordance with the following procedure:

- A. Service of notice: A notice of the hearing shall be served on all Owners of the Premises as determined by the last filed tax roll and may also be served on any known operator, manager, and/or Tenant of the Premises. The notice shall be served in the manner required by New York State Civil Practice Law and Rules.
- B. Content of notice: The notice shall allege the facts constituting the Public Nuisance. The notice shall further contain a time and place for a hearing to be held before a panel, and shall advise the Owner(s), and known operator, manager, and/or Tenant, lessee and/or other occupier, of their right to appear represented by legal counsel.
- C. Hearing panel: The panel shall consist of a member to be appointed by the Code Enforcement Officer, a member to be appointed by the Chief of Police and a member to be appointed by the Fire Chief. Each appointing authority shall be authorized to appoint himself/herself or any member of his/her staff to the hearing panel.
- D. Hearing: At the time and place designated in the notice, a representative of the Village Board of Trustees or his/her designee shall present all relevant evidence and/or witnesses demonstrating the existence of a Public Nuisance at the Premises, and as to appropriate remedies. The Owners, operator(s), manager(s), and/or Tenant(s) of the Premises, or their representatives, shall have the right to examine such evidence and cross-examine any witnesses presented. The Owners, operator(s), manager(s), and/or Tenant(s) of the Premises, or their representatives, may present any relevant evidence and/or witnesses in their defense. The Village Board of Trustees representative, or his/her designee, shall have the right to examine such evidence and cross-examine any witnesses presented by the Owners, operator(s), manager(s), and/or Tenant(s) of the Premises.
- E. Panel's finding and recommendation: Within ten (10) business days of the hearing, the panel shall provide findings of fact to the Mayor or the Mayor's designee. The finding of fact shall state whether there is *prima facie* evidence of the existence of a Public Nuisance at the Premises. The panel shall further provide a written recommendation of remedies to abate the Public Nuisance.

§156-11 ADMINISTRATIVE REMEDIES.

- A. To abate a nuisance, the Mayor, or the mayor's designee, upon receipt of a finding of fact and recommendation from the panel described in §156-10, above, shall have the following powers:

1. To issue a Decision and Order suspending or revoking, for a period not to exceed one (1) year, the Certificate of Occupancy for the Premises;
2. To issue a Decision and Order directing the closing of the Premises by the Canastota Police Department, or other law enforcement agency, to the extent necessary to abate the nuisance, pursuant to the procedures set forth above in §156-7;
3. To issue a Decision and Order that the Village itself will cause the Public Nuisance to be abated. The manner of abatement and costs incurred by the Village to abate the Public Nuisance shall be reported to the Village Board of Trustees by the Code Enforcement Officer immediately following abatement. Costs of abatement by the Village may be recouped pursuant to the following:
 - a. Responsibility for costs: If the Village abates a Public Nuisance pursuant to this Local Law, the cost of abatement including administrative, legal, engineering, professional and other costs may be assessed as a lien against the Premises. Administrative costs shall be not less than fifteen percent (15%) of the actual costs of the abatement of the Public Nuisance.
 - b. Hearing on assessment: To determine if the cost of abatement shall be assessed as a lien against the Premises, a hearing shall be held by the Village Board of Trustees. The assessment hearing shall occur following the Code Enforcement Officer's filing of the report on costs and manner of abating the Public Nuisance. The notice of the assessment hearing shall be served upon the Owners, operator(s), manager(s), and/or Tenant(s) of the Premises in a manner similar to that described in § 156-10(A), above. Owners, operator(s), manager(s), and/or Tenant(s) of the Premises may pay the assessment to the Village Clerk prior to the hearing to avoid a lien being placed against the Premises. The Village Board of Trustees shall consider any objections to the assessment at the hearing. If the Village Board of Trustees determines that the cost of abatement shall be assessed as a lien against the property, a resolution shall be adopted by the Village Board of Trustees stating the amount of the assessment. The Village Clerk shall prepare and file a certified copy of the resolution with the appropriate authority.
 - c. Assessment and collection: The assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected. If payment is delinquent, the assessment shall be subject to the same penalties and procedure and sale as provided for ordinary municipal taxes.

4. In conjunction with, or in lieu of, the foregoing powers, to issue a Decision and Order that various measures be taken by the Owners, operator(s), manager(s), and/or Tenant(s) of the Premises to the extent necessary to both abate the existing nuisance and ensure the prevention of future Public Nuisance actions from occurring at or near the Premises, which shall include, but not be limited to: requiring the Owners, operator(s), manager(s), and/or Tenant(s) of the Premises to modify and improve the usage and features of the Premises to deter further and future Public Nuisance activity; mandating compliance with all applicable building, housing and property maintenance codes and regulations pursuant to this Code and/or State law; and/or directing subsequent purchasers to comply with the provisions of any issued order of revocation or suspension for the Certificate of Occupancy unless or until the subsequent purchaser appears before the hearing panel to provide an appropriate plan for the panel to review and make recommendations, wherein said plan will set forth measures to avoid further incidents of Public Nuisance.
- B. The Decision and Order shall be served upon the Owners, operator(s), manager(s), and/or Tenant(s) of the Premises in a manner similar to that described in §156-10(A), above.
 - C. Nothing within this section shall limit the authority of the Mayor to take such other, and further actions deemed necessary to abate any existing Public Nuisances to the extent necessary to ensure the protection of the health, safety and welfare of the general public.

§156-12 INCORPORATION OF OTHER PROVISIONS AND LAWS.

All relevant Chapters of this Code, including, but not limited to, Chapter 155, Property Maintenance, Chapter 56, Animals, Chapter 230, Zoning, as well as the New York State Uniform Fire Prevention and Building Code, including the Property Maintenance Code of New York State, and any subsequent amendments or superseding provisions thereto, which have been previously adopted and incorporated into this Code by reference, are hereby incorporated into this Chapter by reference.

§156-13 SEVERABILITY.

If any clause, sentence, paragraph, word, section or part of this Chapter 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.”

SECTION 4. EFFECTIVE DATE.

This Local Law shall be effective upon filing with the Office of the Secretary of State.