

Village of Whitehall Local Law No. 1 of 2016
Abatement-of-Chronic-Nuisance-Properties

ABATEMENT OF CHRONIC NUISANCE PROPERTIES

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§1. Legislative Intent; Purpose.

- A. Chronic nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This local law is enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties by providing a process for abatement. This remedy is not an exclusive remedy. Any available state or local laws and may be used in conjunction with this local law.
- B. Chronic nuisance properties are a financial burden to the village due to the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property. This chapter is a means to ameliorate those conditions and hold accountable those persons responsible for such property.

§2. Definitions.

For purposes of this chapter, the following words or phrases shall have the meaning described below:

- A. "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by using means in such manner and to such an extent as the applicable village department code enforcement officer or designee(s) of the village board determines are necessary in the interest of the general health, safety and welfare of the community;

- B. "Control" means the power or ability to regulate, restrain, dominate, counteract or govern property, property conditions, or conduct or events that occur on a property;
- C. "Chronic nuisance property" means property on which any combination of three (3) or more nuisance activities or conditions occur or exist during any consecutive ninety (90) day period, or, on which any combination of six (6) or more nuisance activities or conditions occur or exist during any consecutive twelve month period;
- D. "Drug-related activity" means any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined in the New York State Penal Law;
- E. "Enforcement officer" means the Village Code Enforcement Officer, the Village Chief of Police, or any other designee of the Village Board of Trustees;
- F. "Nuisance activity and/or condition" means and includes;
 - 1. Any nuisance as defined by State or Federal law or local ordinance occurring on, around or near a property including, but not limited to, violations of the following local laws of the Village of Whitehall:
 - 2. Any criminal conduct as defined by the New York State Penal Law, federal law, or local ordinance occurring on, around or near a property; including, but not limited to, the following activities or behaviors: A drug-related activity, assault, fighting, menacing, stalking, harassment, disorderly conduct, reckless endangerment, offenses related to prostitution, domestic violence, fire arms and/or weapons violations, gambling, loitering, alcoholic beverage law violations, and gang related activity.
- G. "Person responsible for property" or "person responsible" means, unless otherwise defined, any person who has titled ownership of the property or structure which is subject to this chapter, an occupant in control of the property or structure which is subject to this chapter, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this chapter and/or any person who has control over the property and allows a violation of this chapter to continue;
- H. "Person" means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization or other entity, or the manager, lessee, agent, officer or employee of any of them;
- I. "Premises and property" may be used by this chapter interchangeably and means any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property;

- J. "Rental Unit" means any structure or that part of a structure, including but not limited to, a single-family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one (1) or more persons.

§3. Violation.

- A. Any property within the Village of Whitehall which is a chronic nuisance property is in violation of this chapter and subject to its remedies; and
- B. Any person responsible for property who permits property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

§4. Declaration of chronic nuisance property/procedure.

- A. When the Enforcement Officer receives documentation or information reasonably supporting a finding of the occurrence of three (3) or more nuisance activities or conditions within a consecutive ninety (90) day period on any property, said Enforcement Officer shall review such documentation or information to determine whether it describes any of the nuisance activities or conditions enumerated in the definition section herein. Upon such a finding, the Enforcement Officer shall give a warning notice to the persons responsible for such property, in writing, by certified mail or personal service, that the property is declared to be a chronic nuisance property.
- B. The warning notice shall contain:
 - (1) The street address or legal description sufficient for identification of the property;
 - (2) A concise description of the nuisance activities or conditions that exist, or that have occurred on the property;
 - (3) A demand that the person responsible for such property respond to the Enforcement Officer within seven (7) days of service of the warning notice to discuss the nuisance activities and conditions and create a plan or course of conduct to abate the chronic nuisance;
 - (4) An offer to the person responsible of an opportunity to abate the nuisance activities or conditions giving rise to the violation; and
 - (5) A statement that, if the person responsible does not respond to the Enforcement Officer as required in this section, or, if the matter is not voluntarily corrected to the satisfaction of the Enforcement officer, the village may file an action to abate the property as a chronic nuisance property and/or take such other action against the property or person responsible as may be necessary to abate the nuisance activity or condition.
 - (6) A statement describing the remedies, penalties, assessment and costs for which the person responsible may be liable, including the closure of the property and

revocation of any certificate or occupancy thereof, in the event that the nuisance activities or conditions have not been abated in accordance with this chapter.

- C. If the person responsible fails to respond to the warning notice within the time prescribed, the Enforcement Officer shall issue a final notice declaring the property to be a chronic nuisance property and post such notice at the property and issue the person responsible a civil infraction returnable before the Village Court of Whitehall, punishable by a maximum penalty of one hundred (\$100 dollars per day for each day the nuisance activity or condition remains unabated. If the person responsible fails to respond to the issued infraction and/or continues to violate the provisions of this chapter, the matter shall be referred to the Village Board of Trustees who will determine whether to refer the matter to the Office of the Village Attorney for either judicial action or administrative action as hereinafter provided.
- D. If the person responsible responds as required by the warning notice and agrees to abate the nuisance activity or condition, the Enforcement Officer and the person responsible may work out an agreed upon course of action which would abate the nuisance activity and/or condition. If the agreed course of action does not result in the abatement of the nuisance activities or conditions, or if no agreement concerning abatement is reached, the matter shall be referred to the Village Board of Trustees who will determine whether to initiate legal action by a referral to the Office of the Village Attorney for enforcement proceedings, either by judicial action or administrative action. In the event the Enforcement Officer or the Village Board of Trustees determine that the person responsible has taken reasonable steps to abate the nuisance activities or conditions, the Village Board may elect not to commence an enforcement action under this chapter, notwithstanding the continuance of the nuisance activity or condition.

§5. Enforcement – Judicial Action.

- A. Once the matter is referred to the Village Board of Trustees, the Village, in conjunction with advice from the Village Attorney shall immediately review and make a determination whether to initiate legal action authorized under this chapter or State statute, or may seek alternative forms of abatement of the nuisance activity or condition. The Village Attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in Supreme Court for the abatement of the nuisance at the direction of the Village Board of Trustees.
- B. In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the Village shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. Copies of police incident reports and reports of other village departments documenting nuisance activities or conditions shall be admissible in such actions. Additionally, evidence of a property's general reputation and the reputation of persons residing in or frequenting the property shall be admissible in such actions. The failure

to prosecute an individual, or the fact no one has been convicted of a crime, is not a defense to any enforcement action to abate a chronic nuisance.

- C. The Village Attorney may bring and maintain a judicial enforcement action in the name of the Village to abate the nuisance, and, shall commence the action by the filing of a Summons and Complaint in the manner required by the NYS Civil Practice Law and Rules. The initiation of any action hereunder shall be authorized by the Village Board of Trustees.
- D. The Summons and Complaint shall name as defendants the building, structure or real property by describing it by tax map number and/or street address, and, shall name as defendants at least one person responsible for the subject property. The Summons and complaint may also name as defendants any owner, operator, manager, tenant, lessee or other occupier of the building, structure or real property.
- E. The venue of the action shall be in the Supreme Court of the State of New York, County of Washington.

§6. Judicial Action/Remedies.

- A. If, upon the trial of an action to abate a nuisance activity or condition, or upon a motion for a summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a nuisance activity or condition, a penalty may be awarded in an amount not to exceed One Hundred (\$100) Dollars for each day it is found that defendants conducted, maintained, permitted or allowed the nuisance activity or condition after notice to abate had been given by the Enforcement Officer. Upon recovery, such penalty shall be paid into the general village fund.
- B. If, upon the trial of an action for a nuisance activity or condition, or upon a motion for a summary judgment, a finding is made that the defendants conducted, maintained, permitted or allowed a nuisance activity or condition, a permanent injunction may be granted, prohibiting the defendants from conducting, maintaining, permitting or allowing the nuisance activity or condition. Said permanent injunction may authorize agents of the Village to remove and correct any conditions in violation of this chapter. The judgment may further order that the costs of removing and correcting the violations shall be charged against defendants and awarded to the village. The judgment may further order that the costs of removing and correcting the violations 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. A judgment ordering a permanent injunction may further direct the closing of the building, structure, or real property by the village, to the extent necessary to abate the nuisance activity or condition. A judgment awarding a permanent injunction shall further provide for all costs and disbursements allowed by the NYS Civil Practice Laws and Rules and for the actual costs, expenses and disbursements of the village in investigating, bringing and maintaining the action, including attorney's fees.

- C. If the judgment directs the closing of the building, structure or real property, the village shall serve the judgment upon defendants in the manner required by the NYS Civil Practice Laws and Rules and shall post a copy of the judgment upon one or more of the doors at entrances of the building, structure or real property or in another conspicuous place on the building, structure or real property. A judgment may command all persons present in the building, structure or real property to vacate the property forthwith. After the building, structure or real property has been vacated, the village may secure the premises. 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. A closing pursuant to court order shall not constitute an act of possession, ownership or control by the village.
- D. On a motion or order to show cause filed by the Village Attorney in a pending action for a permanent injunction, a preliminary injunction enjoining the nuisance activity or condition may be granted for any of the relief obtainable by a permanent injunction. 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 defendants, for any of the relief obtainable by a permanent injunction.
- E. If the judgment directs the closing of the building, structure or real property and requires all persons present in the building, structure or real property to vacate the property, the court shall be authorized to assess against the person or persons responsible the reasonable costs and expenses of relocation expended by any tenant who must relocate because of the order of abatement, provided that such tenant shall be eligible to recover such relocation costs only if the tenant has not participated in the nuisance activities or conditions which are the subject of the judicial action.
- F. If the court determines the property is a chronic nuisance property pursuant to this chapter, the court may also order any of the following:
 - (1) Order the person responsible to immediately abate the nuisance activity or condition from occurring on the property;
 - (2) Order that the Enforcement Officer shall have the right to inspect the property to determine if the court's orders have been complied with;
 - (3) Impose the afore described civil penalty of up to One Hundred (\$100) Dollars per day against each responsible person, calculated from the date the warning notice was issued by the Enforcement Officer to the date when the Enforcement Officer confirms that the property is no longer a chronic nuisance property;
 - (4) Make any other order that will reasonably abate nuisance activities or conditions from occurring on the property, including authorizing the village to take action to abate nuisance activities or conditions from occurring upon the property if other court orders are not complied with or do not abate any nuisance activity or condition on the property;
 - (5) Closure of the building, structure or real property as aforesaid;

- (6) Suspension or revocation of any certificate of occupancy, business license or other license issued with respect to such property;
- (7) Provide that the costs of any village action taken in accordance with the court order are to be paid for by the persons responsible who shall be jointly and severally liable for same.

§7. Enforcement – Administrative Action.

- A. Whenever there is prima facie evidence of a chronic nuisance property, the village may elect to initiate an administrative hearing rather than taking judicial action. The following procedures shall be observed:
 - (1) Service of Notice: A notice of hearing shall be served on all persons responsible for the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building, structure or real property. The notice shall be served in the manner required by NYS Civil Practice Laws and Rules.
 - (2) Content of Notice: The notice shall allege the facts constituting the nuisance activities and/or conditions which are prima facie evidence of a chronic nuisance property. The notice shall further contain a time and place for a hearing to be held before a panel, such notice to be given no less than twenty (20) days before the hearing date.
 - (3) Hearing Panel: The hearing panel shall consist of the Enforcement Officer and two additional members to be appointed by the Village Board of Trustees.
 - (4) Hearing: At the time and place designated in the notice, the Village Attorney or his or her designee shall present all relevant evidence and/or witnesses demonstrating the existence of nuisance activities or conditions constituting a chronic nuisance property pertaining to the subject building, structure or real property. The persons responsible for the building, structure or real property, or their representatives, shall have the right to examine such evidence and cross examine any witnesses presented by the Village Attorney or his or her designee. Said persons responsible or their representative may present any relevant evidence and/or witnesses in their defense. The Village Attorney or his or her designee shall have the right to examine such evidence and cross examine any witnesses presented by the persons responsible for the building, structure or real property, or their representatives.
 - (5) Panel's findings and recommendations: Within ten (10) business days of the hearing, the panel shall provide findings of fact to the Village Mayor or the Mayor's designee. The findings of fact shall state whether there is prima facie evidence of the existence of nuisance activities or conditions constituting a chronic nuisance property at the building, structure or real property. The panel shall further provide a written recommendation of remedies to abate said nuisance activities or conditions.

- A. Upon receipt of the findings of fact and the recommendations from the hearing panel, the Village Mayor or the Mayor's designee shall have the following powers in furtherance of the abatement of the nuisance activities or conditions:
 - (1) To issue a decision and order suspending or revoking, for a period not to exceed

- one (1) year, the certificate of occupancy or business license for the building, structure or real property.
- (2) To issue a decision and order directing the closing of the building, structure or real property to the extent necessary to abate the nuisance activities or conditions.
 - (3) In conjunction with, or in lieu of, the foregoing powers, to issue a decision and order that various measures be taken by the persons responsible, including tenants and/or lessee of the property, to the extent necessary to both abate the existing nuisance activities or conditions and insure the prevention of future nuisance activities or conditions from occurring at the subject property, which shall include, but not limited to: requiring the persons responsible to modify and improve the usage and features of the premises to deter further and future nuisance activities or conditions; 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 of the certificate of occupancy or business license 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 incidents of nuisance activities or conditions.
 - (4) The decision and order shall be served upon the person responsible, and any tenant or lessee of the property, either by personal service or certified mail.
 - (5) Nothing within this section shall limit the authority of the Mayor or Mayor's designee to take such other and further actions deemed necessary to abate any existing nuisance activities or conditions to the extent necessary to insure the protection of the health, safety and welfare of the general public.

§8. Summary Abatement Power.

Whenever this chapter or any other provision of law authorizes the Village or Enforcement Officer to declare a public nuisance pursuant to this chapter, the nuisance activities or conditions may be summarily abated by any reasonable means and without notice or hearing when immediate action is necessary to preserve or protect the public health or safety because of the existence of a dangerous condition or imminent threat to life or safety on public or private property. Summary abatement action shall not be subject to the notice and hearing requirements of this chapter, and the Village Enforcement Officer shall not be prohibited from summary abatement actions after initiation of proceedings pursuant to this chapter, if immediate action at any time becomes necessary to preserve or protect the public health or safety. Summary abatement is to be limited to those actions which are reasonably necessary to immediately remove the threat. In the event a public nuisance is summarily abated, the Enforcement Officer may nevertheless keep an account of the cost of abatement and bill the person responsible therefor. If the bill is not paid within fifteen (15) days from the date of mailing by certified mail to the person responsible, the Enforcement Officer may proceed to obtain a special assessment and lien against the subject property to be collected in the same

manner as other real property tax assessments. In addition to its rights to impose said special assessment, the village shall retain the alternative right to recover its costs by way of civil action against the persons responsible, jointly and severally.

§9. Severability.

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