

Chapter 130

NUISANCE ABATEMENT

GENERAL REFERENCES

Adult uses — See Ch. 59.

Alcoholic beverages — See 63.

Animals — See Ch. 67.

Building construction and fire prevention — See Ch. 76.

Unsafe buildings — See Ch. 80.

Curfew — See Ch. 84.

Dumping, trespassing and open fires — See Ch. 88.

Electrical inspections — See Ch. 94.

Firearms and air guns — See Ch. 104.

Games of chance — See Ch. 113.

Noise — See Ch. 127.

Peddling and soliciting — See Ch. 139.

Spitting — See Ch. 159.

Streets and sidewalks — See Ch. 163.

Yard and property maintenance — See Ch. 194.

§ 130-1. Title.

This chapter shall be known as the "Nuisance Abatement Law of the Village of Palmyra."

§ 130-2. Findings; purpose.

The Board of Trustees finds that public nuisances exist in the Village of Palmyra in the operation of certain establishments and the use of property, including residential premises, in violation of 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 Palmyra, 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 the public health, safety, peace, comfort, conveniences or 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 Palmyra and the businesses thereof and the visitors thereto. It is the purpose of this chapter to authorize the Village to impose sanctions and penalties for such public nuisances and remediate the same, and 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 other such laws. The Board of Trustees further finds that the sanctions and penalties and remedial measures authorized herein constitute an additional and appropriate method of law enforcement in response to the proliferation of public nuisances. The sanctions, penalties and remedial measures are reasonable and necessary in order to protect the health and safety of the people of the Village and to promote the general welfare.

§ 130-3. 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 Palmyra; or
- 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 220 of the Penal Law – Controlled Substances Offenses.
 - (b) Article 221 of the Penal Law – Offenses Involving Marihuana.
 - (c) Article 225 of the Penal Law – Gambling Offenses.
 - (d) Article 230 of the Penal Law – Prostitution Offenses.
 - (e) Sections 165.40, 165.45, 165.50, 165.52 and 165.54 of the Penal Law – Criminal possession of stolen property.
 - (f) The Alcoholic Beverage Control Law.
 - (g) Article 265 of the Penal Law – Firearms and Other Dangerous Weapons.
 - (h) Sections 260.20 and 260.21 of the Penal Law – Unlawfully dealing with a child.
 - (i) Article 263 of the Penal Law – Sexual Performance by a Child.
 - (j) Section 415-a of the Vehicle and Traffic Law – Vehicle dismantlers.
 - (k) Section 175.10 of the Penal Law – Falsifying business records.
 - (l) Sections 170.65 and 170.70 of the Penal Law – Forgery of and illegal possession of a vehicle identification number.
 - (m) 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.
 - (n) Article 158 of the Penal Law – Welfare Fraud.
- (2) The following violations shall be assigned a point value of three points:
- (a) Chapter 59 of the Village Code – Adult Uses.

- (b) Chapter 63 of the Village Code – Alcoholic Beverages.
 - (c) Chapter 67 of the Village Code – Animals.
 - (d) Chapter 76 of the Village Code – Building Construction and Fire Prevention.
 - (e) Chapter 80 of the Village Code – Buildings, Unsafe.
 - (f) Chapter 88 of the Village Code – Dumping, Trespassing and Open Fires.
 - (g) Chapter 94 of the Village Code – Electrical Inspections.
 - (h) Chapter 104 of the Village Code – Firearms and Air Guns.
 - (i) Chapter 113 of the Village Code – Games of Chance.
 - (j) Chapter 127 of the Village Code – Noise.
 - (k) Chapter 139 of the Village Code – Peddling and Soliciting.
 - (l) Chapter 159 of the Village Code – Spitting.
 - (m) Chapter 163 of the Village Code – Streets and Sidewalks.
 - (n) Chapter 194 of the Village Code – Weeds and Growth, Noxious.¹
 - (o) 9 NYCRR Subtitle S, Chapter I – New York State Uniform Fire Prevention and Building Code.
- (3) For 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. However, a conviction as defined in accordance with the provisions of § 1.20 of the Criminal Procedures 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.

§ 130-4. Powers of Board of Trustees.

In addition to the enforcement procedures established elsewhere, the Board of Trustees or the Board of Trustees' designee, 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 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

1. Editor's Note: See now Ch. 194, Yard and Property Maintenance.

- 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 locations operated by the holder for which the license or permit is required; or
- D. Any combination of the above.

§ 130-5. Service of notice.

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 of the Board of Trustees or the Board of Trustees' designee is recorded in the office of the County Clerk shall be presumed to be the owner thereof. Proceedings shall be commenced by service of the notice and opportunity of a hearing within 60 days after the occurrence of the most recent violation cited in the notice.

§ 130-6. Lack of knowledge no defense.

The lack of knowledge of, 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 of 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.

§ 130-7. Enforcement.

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

§ 130-8. Orders to close premises.

Where the Board of Trustees or the Board of Trustees' designee closed 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.

§ 130-9. Closing not possession by Village.

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.

§ 130-10. 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 portion thereof, ordered closed by the Board of Trustees or the Board of Trustees' designee. Mutilation or removal of a posted order by the Board of Trustees or the Board of Trustees' designee shall be punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both, provided 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.

§ 130-11. 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 provisions of this chapter.

