

LOCAL LAW NO.: __ OF 2019

**A LOCAL LAW ENACTING CHAPTER XXX ENTITLED
“PUBLIC NUISANCE LAW”**

***BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF QUEENSBURY AS
FOLLOWS:***

SECTION 1.0: TITLE, PURPOSE, AUTHORITY AND DEFINITIONS.

Section 1.1 Title. This Local Law shall be known as the "Public Nuisance Law" of the Town of Queensbury.

Section 1.2 Purpose. It is hereby determined by the Queensbury Town Board that the conditions and actions which are enumerated in Sections 2.1, 2.3 and 2.4 of this Local Law constitute a hazard to the health, welfare, peace, comfort, safety and/or property of the citizens and property owners of the Town of Queensbury and constitute a "public nuisance" as defined by law. The purpose of this Local Law is to protect the public health, safety and general welfare by promoting a clean, wholesome and attractive environment for the residents and property owners of the Town of Queensbury. The Local Law is hereby declared to be remedial and essential to the public interest and it is intended that this Law be liberally construed to effectuate the purpose as herein stated and to protect the appearance and value of the Town as a whole.

Section 1.3: Statutory Authority. This Local Law is enacted pursuant to the authority of: (a) Municipal Home Rule Law (MHRL) § 10(l)(i), which authorizes a Town to adopt a local law not inconsistent with the provisions of the Constitution or not inconsistent with any general law relating to its property, affairs or government; (b) MHRL §10(l)(ii)(a)(11) and (12), which authorize a town to adopt a local law relating to the protection and enhancement of its physical and visual environment and the

government, protection, order, conduct, safety, health and well- being of persons or property therein; (c) Town Law§ 60(1), which confers power upon a town board to abate nuisances; (d) Town Law § 130(11), which authorizes a Town to enact local laws and ordinances to protect and preserve public peace, good order and safety (e) Town Law § 130 (15), which authorizes a Town to enact local laws and ordinances protecting the health, safety, morals or general welfare of the inhabitants of the Town, the protection of their property and the preservation of peace and good order; and (f) Town Law§ 64(5-a), which authorizes a Town to direct the removal of fire and health hazards and weeds.

Section 1.4: DEFINITIONS. As used in this Local Law, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Code Enforcement Officer. The Town officials and employees authorized by the Town Board to administer and enforce this Local Law.

Feces. Excrement discharged from the intestines.

Garbage. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Imminent Danger. A condition which could cause serious or life-threatening injury or death at any time.

Industrial Wastes. All liquid and water-borne solid, liquid or gaseous wastes resulting from industrial manufacturing, food processing operation, processing any natural resource or any mixture of such wastes with water or domestic sewage.

Owner. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property,

including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Person. Any person, firm, corporation, association, trust, estate, partnership, limited liability company or other entity.

Premises. A lot, plot or parcel of land including any structures thereon.

Public Nuisance. Unlawfully doing an act or omitting to perform a duty, which act, or omission does any one or more of the following:

- a) Annoys, injures or endangers the safety, health, comfort or repose of others;
- b) Offends public decency; or
- c) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage a lake or basin or any public park, square, alley, highway or street.

Rubbish. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, plastics, resins, mineral matter, glass, crockery and dust and other similar materials; this term shall also include discarded, abandoned or stored refrigerators, stoves, ranges, dishwashers or other household appliances and consistent with Town of Queensbury Town Code Article VI, Deposit of Junk, §96-26, Unlawful Deposit.

Sewage. A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such ground, surface and storm waters as may be present.

Structure. That which is built or constructed or a portion thereof.

Town. The Town of Queensbury.

Yard. An open space on the same lot with a structure.

1.4.1: Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular.

1.4.2: Terms Defined in Other Codes. Where terms are not defined in this Local Law and are defined in the Building Code of New York State, the Fire Code of New York State, the Plumbing Code of New York State, the Property Maintenance Code of New York State and/or the Mechanical Code of New York State, such terms shall have the meanings ascribed to them as in those codes.

1.4.2: Terms Not Defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

1.4.3: Parts. Whenever the words "dwelling unit," "dwelling," "Premises," "building," "rooming house," "rooming unit," "housekeeping unit" or "story" are stated in this Local Law, they shall be construed as though they were followed by the words "or any part thereof."

SECTION 2.0: NUISANCES CLASSIFIED AND PROHIBITED; PENALTY

Section 2.1: NUISANCES AFFECTING HEALTH. The following are hereby declared to be health nuisances affecting public health:

- A. Carcasses of animals, birds or fowl not intended for human consumption or

food which are not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours after death;

- B. Accumulations of animal feces, manure, dung, rubbish, litter, trash, rubble, refuse, debris, paper, combustible materials, or waste, rotting lumber, bedding, packing material, scrap metal or matter of any kind or form which is uncared for, discarded, or abandoned, or improperly stacked building materials which either (a) create potential fire hazards or breeding places for flies, mosquitoes or other vermin; or (b) give off any foul, offensive, noisome, nauseous, noxious or disagreeable odor, effluent or stench which is repulsive or extremely unpleasant to the physical senses of a reasonable person of ordinary sensibilities;
- C. Any solid or industrial waste, including but not limited to garbage, tin cans, bottles, rubbish, refuse, trash, construction waste or demolition waste, tree trimmings, manufacturing waste or industrial waste dumped, thrown, burned, spilled or abandoned, except such waste disposed of lawfully in a land fill or incinerator;
- D. Any animal or animals kept or maintained in unsanitary condition or surroundings;
- E. Any use of any Premises, substance or thing in the Town emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odor, effluent or stench extremely repulsive to the physical senses of a reasonable person of ordinary sensibilities and which annoys, discomforts, injures or inconveniences the health or safety of any appreciable number of people in the Town.

Section 2.2: Reserved for Future Use

Section 2.3: NUISANCES AFFECTING PEACE AND SAFETY. The following are hereby declared to be public nuisances affecting public peace and safety: All loud or unusual noises and annoying vibrations which offend the peace and quiet of reasonable persons of ordinary sensibilities;

Section 2.4: OTHER NUISANCES. The enumeration of specific nuisances in this Local Law shall not be deemed to make lawful any other act or condition declared to be a nuisance by any other Town ordinance or law, State law, Federal law, or court decision.

Section 2.5: REPORTING EMERGENCIES. Any person, firm, corporation, partnership or other legal entity who commits or who permits the creation or continuation of a nuisance as above defined which poses a potential emergency threat to the public health or to the environment shall immediately report the incident to the Code Enforcement Officer of the Town of Queensbury and shall provide any information requested by the Code Enforcement Officer needed to investigate or abate the potential emergency.

Section 2.6: NUISANCES PROHIBITED. No person shall create any nuisance in the Town, and no person shall by inaction permit a nuisance to occur or continue on any property under such person's ownership or control, nor shall any person permit a nuisance to occur involving any personal property under such person's control.

Section 2.7: PENALTIES. A violation of any of the provisions of this Local Law may, at the option of the Town, be prosecuted either as a civil proceeding or a criminal proceeding. The following penalties shall be applicable in such proceedings:

2.7.1: Civil Proceeding. Any Person violating any provision of this Local Law shall, upon a finding of liability therefor in a civil proceeding, will be cited for the first offense; for a finding of liability for a second offense, both of which were committed

within a period of five (5) years, for a civil penalty of not less than \$950.00; and for a finding of liability for a second or subsequent offense all of which were committed within a period of five (5) years, for a civil penalty of not less than \$950.00.

2.7.2: Criminal Proceeding. Any Person violating any provision of this Local Law shall, upon a third conviction therefore, be deemed to have committed a violation, punishable by a fine not exceeding \$950.00 or imprisonment for a period not exceeding fifteen (15) days, or both; and, upon a second conviction therefor for an offense committed within five (5) years of an earlier conviction, be deemed to have committed an unclassified Misdemeanor, punishable by a fine of not less than \$950.00 or imprisonment for a period not exceeding sixty (60) days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

2.7.3: Continuing Violations. Each week's continued violation shall constitute a separate additional violation, for which separate and additional fines and punishment or civil penalties may be imposed and recovered.

2.7.4: Abatement and Injunctive Relief. Any person violating any provision of this Local Law shall, in addition to being liable for prosecution therefor under Section 2.7.1 or Section 2.7.2 of this Local Law, also be subject to the commencement and prosecution of an administrative proceeding for the abatement of the alleged nuisance, pursuant to the provisions of Sections 3.1 *et seq* of this Local Law; or to the commencement, in any court of competent jurisdiction, of a civil proceeding for injunctive relief.

SECTION 3.0: PROCEDURE FOR ABATEMENT

Section 3.1: APPLICATION. The procedure provided in this Local Law for abatement of nuisances shall apply to all nuisances arising under the laws of the Town of

Queensbury, except in those instances where the specific procedure for the abatement of the nuisance is otherwise provided.

Section 3.2: ABATEMENT. In all cases of nuisances, the Town Code Enforcement Officer or his designee shall cause a written notice to be served upon the person or entity that maintains, operates or permits a nuisance, which shall be substantially as follows:

NOTICE TO ABATE NUISANCE

The Town of Queensbury to: _____

You are hereby notified that the nuisance maintained, operated or permitted to exist by you located at (address) _____ consisting of _____ must be abated by the (removal) (a discontinuance) of the same and that if this notice is not complied with, you are directed to appear before the undersigned at Queensbury Town Hall, 742 Bay Road, Queensbury New York 12804 on _____ (date and hour) to show cause why the same shall not be abated. Upon your failure to so appear, the Town of Queensbury will take the necessary steps to abate such nuisance. The costs of abatement incurred by the Town shall be assessed against you, and a lien may be imposed on the property to secure such payment.

Dated this ____ day of _____, 20__.

Name, Signature and Title

A copy of the foregoing Notice was served on the ____ day of _____, 20__.
(manner of service)

(Person Serving)

If such person or entity cannot be found, then a copy of the Notice may be served by delivery to any member of the family or upon an officer or agent of the entity over sixteen (16) years of age and found on the Premises described in the notice or at the residence of the person named therein and, if service cannot be had in such manner, then by posting a copy in some conspicuous place on the Premises described in the Notice and sending a copy by certified mail, return receipt requested, to the person or entity at the last known address.

At the time and place specified in the Notice, the Town Code Enforcement Officer shall hear the matter. The person or entity so complained of shall have the right to appear in person or by counsel. At the conclusion of the hearing, the Town Code Enforcement Officer may vacate the notice or may declare such condition to be a nuisance and order it abated summarily or, if impractical to do so, may abate the same in accordance with the laws and ordinances of the Town of Queensbury and the State of New York then in force.

Section 3.3: EMERGENCIES. If any nuisance exists in such a condition so menacing to the public health, peace or safety that it is necessary that it be summarily abated, the Town of Queensbury, acting upon the determination and order of the Code Enforcement Officer or Supervisor of the Town, may proceed to abate the nuisance without a hearing.

Section 3.4: ORDER OF ABATEMENT. In all cases where the Town Code Enforcement Officer shall have determined, after hearing, or notice of hearing and default, that any nuisance shall be abated, it shall issue an order requiring the abatement of the nuisance within a time named in the order, and shall serve the order of abatement upon the person or entity who maintains, operates, or permits the nuisances. In the event the nuisance is not abated by the party himself within the time provided in the order, which shall be a reasonable time under the circumstances, the Town of Queensbury may cause the nuisance to be abated.

Section 3.5: APPEALS.

3.5.1: Right to Appeal. An appeal to the Town Board may be taken by any person aggrieved where it is alleged there is error in any order, requirement, decision or determination made by the Town Code Enforcement Officer in the enforcement of this Local Law.

3.5.2: Notice of Appeal. An appeal shall be taken within ten (10) days from the determination complained of by filing with the Town Code Enforcement Officer and with the Town Clerk a Notice of Appeal, specifying the grounds thereof. The Town Clerk, upon receipt of notice, shall forthwith transmit to the Supervisor and each Councilperson of the Town of Queensbury true copies of all the papers constituting the record of the matter. Upon receipt of the record, the Supervisor shall set the matter for public hearing before the Town Board. Notice of said public hearing shall be given as required by New York State Open Meeting laws.

3.5.3: Town Board Action. The Town Board shall hold a public hearing and may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as is consistent with this Local Law and all other applicable laws and Local Laws. The concurring vote of a majority of the members of the Town Board shall be necessary to reverse any order of the Town Code Enforcement Officer.

3.5.4: Stay of Proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the Town Code Enforcement Officer from whom the appeal is taken certifies to the Town Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in writing, a stay would in his opinion cause imminent peril to life or property.

Section 3.6: DAMAGES. The fact that the Town has caused a nuisance to be abated after proper procedure and default, failure or refusal of the party to abate the

nuisance shall in no way excuse the party from any damage which may have resulted prior thereto to any person.

Section 3.7: LIABILITY FOR COSTS. Any person or entity who fails to remove and abate any nuisance after proper notice, the opportunity to be heard, and final order shall be liable to the Town of QUEENSBURY for all expenses incurred by the Town for its removal and abatement of the nuisance and such expenses shall be a lien assessed against the real property at issue and shall be levied and collected in the same manner as provided for the levy and collection of special ad valorem assessments.

Section 3.8: OTHER METHODS OF ABATING NUISANCES. Nothing in this Local Law shall be deemed to limit the use of other lawful methods of abating nuisances; including, without limitation, the commencement and prosecution of a criminal proceeding in Town Justice Court and/or the commencement and prosecution of a civil action in County or Supreme Court.

SECTION 4.0 SEVERABILITY. If any term or provision of this Local Law, or the application thereof to any person or circumstance, shall to any extent be declared by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Local Law, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Local Law shall be valid and be enforced to the fullest extent permitted by law.

SECTION 5.0 EFFECTIVE DATE. This Local Law shall take effect immediately upon adoption and filing with the Secretary of State, as provided in Section 27(3) of the Municipal Home Rule Law of the State of New York.