

PROPOSED LOCAL LAW N OF 2023

A Proposed Local Law to amend the Code of the Village of Mamaroneck regarding the abatement of public nuisances.

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF MAMARONECK

AS FOLLOWS:

*(Language in strike-through ~~abcedefghijk~~ to be deleted; language in **bold** is to be added)*

Section 1.

The Code of the Village of Mamaroneck is hereby amended by adding Chapter 279, entitled Public Nuisance Abatement, as follows:

Chapter 279 Public Nuisance Abatement

§ 279-1 Findings and purpose.

The Board of Trustees finds that public nuisances interfere with the quality of life, property values and the public health, safety, and welfare and the value of real property in the Village of Mamaroneck and that the continued presence of public nuisances in the Village of Mamaroneck is detrimental to the health, safety, and welfare of the residents of, the businesses in and the visitors to the Village of Mamaroneck. The purpose of this law is to encourage property owners to recognize their responsibility to ensure that activities occurring on their property do not adversely affect their neighborhoods and to authorize and empower the Village Manager to take appropriate action to remedy public nuisances. The Board of Trustees further finds that the sanctions and penalties imposed pursuant to this chapter constitute an additional and appropriate response to the presence of public nuisances and are reasonable and necessary to protect the health and safety of the residents of the Village of Mamaroneck and promote the general welfare.

§ 279-2 Definition of public nuisance.

A. A building, structure or parcel of real property is a public nuisance if it was used three or more times during the prior 365-day period for activities involving any of the following or there have been two or more convictions at the building, structure or parcel of real property within the prior two years involving:

- (1) Distributing a controlled substances as prohibited by Article 220 of the New York State Penal Law;**
- (2) Distributing cannabis as prohibited by Article 222 of the New York State Penal Law;**
- (3) Gambling activity as prohibited by Article 225 of the New York State Penal Law;**

- (4) Engaging in prostitution as prohibited by Article 230 of the New York State Penal Law;**
- (5) Possessing stolen property as prohibited by Article 165 of the New York State Penal Law § 165.40 through § 165.45;**
- (6) Selling or manufacturing alcohol beverages as prohibited by the New York State Alcohol Beverage Control Law;**
- (7) Selling, using, or possessing firearms or other dangerous weapons as prohibited by Article 265 of the New York State Penal Law;**
- (8) Endangering the welfare of a child, a vulnerable elderly person, an incompetent, or a physically disabled person as prohibited by §§260.20, 260.21, 260.24, 260.25, 260.32 or 260.33 of the New York State Penal Law;**
- (9) A sexual performance by a child as prohibited by Article 263 of the New York State Penal Law;**
- (10) A sex offense prohibited by Article 130 of the New York State Penal Law;**
- (11) A criminal nuisance as defined by §§240.45 and §240.46 of the New York State Penal Law;**
- (12) Operating a massage establishment in violation of § 342-42.1 of this Code;
or**
- (13) Practicing massage therapy without a license in violation of the New York State Education Law § 7802.**

B. The lack of knowledge, acquiescence, participation in, or responsibility for a public nuisance on the part of the owner, mortgagee or any other person directly or indirectly in control of the premises or having any interest in the premises or in any property, real or personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owner, mortgagee or other person.

§ 279-3 Abatement of public nuisances.

- A. The Village Manager is authorized to order the discontinuance of any activity at a building, structure or real property where the public nuisance exists and to order the closing of the building, structure or real property to the extent necessary to abate the nuisance.**
- B. The Village Manager may not issue an order under this section unless the owner of the building, structure or real property where the public nuisance exists, as set forth in the records of the assessor of the town in which the building, structure or real property is located, is given not less than 10 days' notice of the proposed order and an opportunity to be heard in opposition to the proposed order. The notice must be served in the manner required by Article 3 of the Civil Practice Law and Rules. The notice must:**
 - (1) specify the activity constituting the public nuisance and contain a sworn statement by a police officer of the conduct allegedly constituting the public nuisance, but must not contain any information identifying any**

victim of that conduct;

- (2) inform the person to whom it is directed, and any other person directly or indirectly in control of the premises, and, if any part of the building, structure or real property is used for residential purposes, any person residing there, that before any order is issued under this section, the person is entitled to a hearing before the Village Manager or the Village Manager's designee.
- C. If the person does not request a hearing within 10 days of service of the notice, the Village Manager may issue an order under this section upon finding that the sworn statement by the police officer establishes that the building, structure, or parcel of real property is a public nuisance.
- D. If the person requests a hearing within 10 days of service of the notice, the Village Manager may, after the hearing, issue an order under this section upon finding that the evidence at the hearing establishes by a preponderance of the evidence that the building, structure or parcel of real property is a public nuisance.
- E. The Village Manager must determine whether to issue an order under this section within 30 days of the service of the notice or, if the person to whom the notice is directed requests a hearing, within 60 days of the conclusion of the hearing, whichever is later.
- F. Any order issued by the Village Manager pursuant to this chapter is effective when it is posted at the building, structure or real property where the public nuisance exists and is mailed to the record owner of the building, structure or real property, but no natural person may be evicted from a residential premises pursuant to this chapter unless the Village Manager finds that the public nuisance cannot be abated in any other way.
- G. An order issued under this section is valid for one year from its effective date, but the owner, tenant, and/or lessee of the property, may, not less than 30 days after the issuance of the order, request that the Village Manager review the order. Upon receiving that request, the Village Manager will inspect the premises within 10 business days and, if the Village Manager determines that the nuisance has been abated, the Village Manager will, within five days of the inspection, vacate the provisions of the order that direct the closing of the building, structure or real property.
- H. An order issued under this section does not constitute an act of possession, ownership, or control of the premises by the Village.

§ 279-4 Judicial review.

An order issued under this chapter is subject to judicial review in the manner provided by Article 78 of the Civil Practice Law and Rules.

§ 279-5 Violation of order.

- A. It is a violation of this chapter, punishable by a fine of not more than \$250 per

day or by imprisonment not exceeding 15 days, or both, to use or occupy or to permit any other person to use or occupy any building, structure or real property in violation of an order issued under this chapter.

- B. It is a violation of this chapter, punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both, to mutilate or remove an order issued under this chapter.
- C. Intentional disobedience or resistance, or resistance to any provision of the orders issued under this chapter, is punishable, in addition to any other punishment prescribed by law, by a fine of not more than \$5,000 or by imprisonment not exceeding six months, or both.

§ 279-6 Administrative Liability.

Neither the Village of Mamaroneck, nor any officer, agent, or employee of the Village of Mamaroneck is personally liable for any damage resulting from any official determination, order or action required or authorized by this chapter.

§ 279-7 Remedy not exclusive.

The powers exercised by the Village Manager under this chapter may be exercised either in conjunction with or apart from other laws without prejudice to the use of procedures and remedies available under such laws. The Village Manager is authorized to promulgate rules and regulations to give full effect to the provisions of this chapter.

Section 2.

If any section, subsection, clause, phrase or other portion of this local law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, the portion of the law declared to be invalid will be deemed a separate, distinct and independent portion and the declaration will not affect the validity of the remaining portions of this local law, which will continue in full force and effect.

Section 3.

This law is adopted pursuant to the authority granted by Municipal Home Rule Law § 10(1)(e)(3) and will supersede any provision of the Village Law that is inconsistent with this local law.

Section 4.

This local law will take effect immediately upon its filing in the office of the Secretary of State in accordance with Municipal Home Rule Law § 27.