

# LOCAL LAW NO. 1 OF 2025\*

## VILLAGE OF WOLCOTT NUISANCE ABATEMENT LAW

\*For Introduction Purposes Only

A Local Law Amending the Code of the Village of Wolcott by Establishing a New Article II – Nuisance Abatement, of Chapter 115 – Property Maintenance

[HISTORY: Adopted by the Board of Trustees of the Village of Wolcott on October 8, 2019, effective November 4, 2019, as Local Law No. 2 of the year 2019. Hereby amended in its entirety by Local No. 1 of the year 2025, as adopted by the Board of Trustees of the Village of Wolcott on April 22 2025, effective immediately upon filing with the Secretary of State.]

GENERAL REFERENCES Property Maintenance — See Ch. 115. Alcoholic Beverages – See Ch. 30. Buildings, Unsafe – See Ch. 45. Flood Damage Prevention — See Ch. 71. Junkyards — See Ch. 80. Littering – See Ch. 87. Mobile Homes — See Ch. 95. Noise – See Ch. 98. Zoning – See Ch. 160.

§ 115-11 Title.

§ 115-12 Legislative findings and purpose.

§ 115-13 Definitions.

§ 115-14 Evidence and presumptions.

§ 115-15 Administrative remedies for property and building nuisances.

§ 115-16 Service of notice.

§ 115-17 Posting of orders.

§ 115-18 Civil remedies for property and building nuisances.

§ 115-19 Temporary restraining order; defendant's remedies.

§ 115-20 Temporary receiver.

§ 115-21 Additional notice; release of information; proceeding to remove tenant.

§ 115-22 Penalties for offenses.

§ 115-23 Regulations; quarterly report.

§ 115-24 Chapter not exclusive remedy.

§ 115-25 When effective.

**§ 115-11 Title.** This article shall be known and cited as Local Law No. 1 of 2025, the "Village of Wolcott Nuisance Abatement Law."

**§ 115-12 Legislative findings and purpose.**

A. The Board of Trustees finds that public nuisances exist in the Village of Wolcott in the operation of certain establishments in the use of property in flagrant violation of state and local laws pertaining to possession, sale and use of controlled substances and dangerous drugs, illegal use or possession of weapons, possession of stolen property and laws relating to the sale and consumption of alcoholic beverages, all of which substantially and seriously interfere with the interest of the public and the quality of life and total community environment, commerce in the Village, property values and the public health, safety and welfare, particularly as it affects our children and young adults.

B. 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 Wolcott and of the businesses thereof and the visitors thereto and that the public nuisances frequently exist in properties where the owner is not in residence.

C. It is the purpose of the Board of Trustees to create and to empower a Nuisance Abatement Committee to impose appropriate sanctions and proportional penalties as may serve to eliminate such public nuisances, and it is further intended that the exercise of such powers as are given to the Nuisance Abatement Committee pursuant to this chapter 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 such laws. The Board of Trustees further finds the sanctions and penalties which may be imposed by the Nuisance Abatement Committee pursuant to this chapter constitute an additional and appropriate method of law enforcement in response to the proliferation of the above-described public nuisances within the Village of Wolcott. The sanctions and penalties which may be imposed are reasonable and necessary in order to promote the health and safety of the people of the Village of Wolcott and to promote the general welfare.

**§ 115-13 Definitions.** As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY STRUCTURE.** A structure used or occupied as an adjunct of, or in conjunction with, the use or occupancy of premises, or a building or buildings thereon, and which is located on the premises or adjacent thereto.

**ADVERSE IMPACT.** Includes, but is not limited to, the following: any search warrants served on the property where controlled substances and/or weapons were seized; investigative purchases of controlled substances on the property by law enforcement agencies or their agents; arrests at the property for violations of controlled substance law and/or possession of weapons; loitering for the purposes of engaging in illegal activity;

finding of illegal weapons, as defined in § 265 of the Penal Law, or controlled substances, as defined in Articles 220 and 221 of the Penal Law, on the property by law enforcement officials and their agents.

**BUILDING.** A structure wholly or partially enclosed within exterior walls, or within exterior and party walls and a roof. The term "building" shall be construed as if followed by the phrase "or part thereof" unless otherwise indicated by the text.

**BUSINESS.** An activity, occupation, employment, or enterprise which requires time, attention, labor and material and wherein merchandise is exhibited or sold, or services offered.

**BUSINESS OFFICE.** Any office use not satisfying the definition of "professional office" or "medical office" shall be considered a business office for purposes of this chapter.

**CONVICTION.** Any conviction, or a plea of guilty, entered in a court of competent jurisdiction in accordance with the provisions of § 1.20 of the Criminal Procedure Law.

**KNOWLEDGE OF PUBLIC NUISANCE.** The presumption of knowledge provided by Subdivision 1 of § 235.10 of the Penal Law shall be applicable to this chapter. Notice, by mail or personal service, of activities relating to a public nuisance, to the property owner of record shall be evidence of knowledge of the public nuisance.

**LOT.** A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as are required by this chapter and having frontage on a public street.

**PENAL LAW.** New York State Penal Law.

**PUBLIC NUISANCE.** For purposes of this chapter, the following are declared to be public nuisances: any building, structure, lot, site or separately identifiable portion thereof where violations of any of the following provisions of law are occurring and where either (1) two or more violations of such provisions result in two or more criminal convictions, within a twelve-month time period prior to the commencement of a proceeding pursuant to this chapter, or (2) four or more separate violations of such provisions result in at least one criminal conviction, within a twelve-month time period prior to the commencement of a proceeding pursuant to this chapter:

A. Penal Law articles: (1) Article 220 (offenses dealing with possession and sale of controlled substances). (2) Article 221 (offenses dealing with sale and possession of marijuana). (3) Article 225 (offenses dealing with promoting gambling and possession of gambling records). (4) Article 230 (offenses dealing with prostitution). (5) Article 265 (offenses dealing with firearms and possession of other dangerous weapons). (6) Article 158 (offenses dealing with welfare fraud). (7) Article 263 (offenses dealing with sexual performance by a child). (8) Article 178 (offenses dealing with criminal diversion of prescription medications and prescriptions).

B. Penal Law sections: (1) Sections 165.15(4), (6), (7) and (8), 165.40, 165.45, 165.50, 165.52, 165.54, 165.71, 165.72 and 165.73 (criminal possession of stolen property). (2) Sections 260.20 and 260.21 (unlawfully dealing with a child). (3) Sections 240.36 and 240.37 (loitering in the first degree and loitering for the purpose of engaging in a prostitution offense). (4) Section 170.65 (forgery of vehicle identification numbers). (5) Section 170.70 (possession of vehicle identification numbers). (6) Section 175.10 (falsifying business records).

C. Other sections: (1) Vehicle and Traffic Law § 415-a, illegal dismantling of junk and/or salvaged vehicles. (2) Alcoholic Beverage Control Law § 123, illegal manufacture, sale or distribution of liquor, wine or beer. (3) Tax Law Article 18, possession, use, sale or offer for sale of any alcoholic beverage. (4) Tax Law Article 20, possession, use, sale or offer for sale of any cigarette or tobacco products. (5) Public Health Law § 3383, imitation controlled substances. (6) Agriculture and Markets Law.

D. Miscellaneous: (1) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness. (2) Operating a business at the premises in a manner which causes it to be a source of disruption for the neighborhood and/or a focal point of police attention. (3) Activities which result in numerous police investigations within a six-month period of time. (4) Permitting situations or conditions which allow rodents, insects and other vermin to live on or in real property and/or failing to take reasonable actions to abate, eliminate and/or exterminate rodents, insects, and other vermin when the landowner, occupant or user of such real property becomes aware or should have known of the existence of such rodents, insects and vermin infestation. It is the intention of this section to declare rodent, insect, and vermin infestation as a public nuisance and to take whatever actions are permitted to declare those persons responsible for the infestation, including but not limited to occupants, owners, or any other entity occupying said real property.

E. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of such provisions has been made within 30 days prior to the issuance of notice pursuant to this chapter.

F. Any contradictory language in this chapter notwithstanding, any person who has been the victim or target of the alleged violation shall not be liable for violations of this chapter. Moreover, any attempts, including successful attempts, to gain the assistance of police, fire, or medical personnel at the property shall not serve as the basis for a violation of this chapter.

**SITE.** A place, location, or piece of property set aside for a specific use.

**STRUCTURE.** An assembly of materials forming a construction framed of component structural parts for occupancy or use, including buildings.

**TESTIMONY.** Oral, written or other documented evidence tending to show or prove the truth of the matter asserted.

**VIOLATION.** Conduct, or evidence of conduct, prohibited under the Village of Wolcott Nuisance Abatement Law. A violation does not require criminal prosecution and conviction, but only a preponderance of evidence that the prohibited conduct is occurring or has occurred. Evidence of prohibited conduct may include, but is not limited to, police reports, investigative reports, execution of search warrants, research of search warrants, results of police surveillance, arrest and/or conviction of local and state and federal laws, activities associated with trafficking of controlled substances, finding of weapons and/or controlled substances on or near the property, increased volume of traffic associated with the property.

**YARD.** An open space, as may be required by this chapter, on the same lot with a building or a group of buildings, which open space lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as specified elsewhere in this chapter.

**§ 115-14 Evidence and presumptions.**

For the purposes of this section, the following presumptions shall apply.

(1) Any building, building accessory, business office, lot, or yard, wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more convictions, as defined in § 115-13 of the chapter, on the part

of the lessees, owners, operators, or occupants shall be prima facie evidence that a public nuisance exists at said location.

(2) Any building, building accessory, business office, lot, or yard, wherein, within a one-year period prior to the commencement of an action under this chapter, there have occurred four or more separate violations as defined in § 115-13 of this chapter, on the part of the lessees, owners, operators, or occupants, with at least one of those violations having resulted in a conviction by a court of competent jurisdiction, shall be prima facie evidence that a public nuisance exists at said location.

(3) Any contradictory language in this section notwithstanding, this section shall not serve as the basis for a nuisance proceeding against any person who has been the victim or target of the alleged violation, or against anyone who has attempted or successfully availed themselves of the assistance of police, fire, or medical personnel at the property in connection with the alleged violation.

### **§ 115-15 Administrative remedies for property and building nuisances.**

A. There is hereby established, for the purpose of administratively implementing and enforcing the provisions of this chapter, a Nuisance Abatement Committee (hereinafter referred to as "Committee") which shall consist of the following five members: the Chief of Police, Village Attorney and Director of Code Enforcement, and two residents of the Village of Wolcott provided no resident-member of the Committee shall hold a rental permit issued by the Village of Wolcott.

B. In addition to enforcement procedures established elsewhere, the Committee, after notice and opportunity for a hearing, shall be authorized: (1) To order the discontinuance of such activity at the building, structure, lot, site and/or separately identifiable portion thereof where such public nuisance exists; and/or (2) To order the closing of the building, structure, lot and/or separately identifiable portion thereof necessary to abate the nuisance; and/or (3) 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 owner from obtaining a new certificate of occupancy for another location for the period of suspension or revocation; and/or (4) 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; and/or (5) To suspend for a period not to exceed six months or revoke for a period of one-year eligibility to secure grants or loans from the Village of Wolcott; and/or (6) Any combination of the above.

C. The Committee shall not have the authority to order the closing of a residential building under subsection (2), suspend a certificate of occupancy under subsection (3), or take other action that will have the effect of temporarily or permanently preventing the residents of the property from using the property as a residential dwelling, without giving

notice and opportunity for a hearing, and without a finding that there is a public nuisance at the property, as defined in Section §115-3.

**§ 115-16 Service of notice.**

A. Prior to the issuance of orders by the Committee, the Committee shall give notice and opportunity for a hearing to the owner, lessor, lessee, occupants, and the mortgagee of a building, structure, lot, site and/or separately identifiable portion thereof 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, lessee, or occupant 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 delivering, 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 order of the Committee is recorded in the office of the County Clerk shall be presumed to be the owner thereof.

B. The lack of knowledge, 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 charge 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, lessees, mortgagees and other persons.

C. At the duly noticed hearing, the owners, lessors, lessees, and occupants shall have a right to explain the events or any mitigating circumstances surrounding the alleged violations, and if necessary, to call witnesses, and submit any documents or additional evidence for the Committee's consideration. Within 30 days of the hearing, the Committee shall issue a written decision determining whether a public nuisance as defined in Section §115-13 has occurred.

**§ 115-17 Posting of orders.**

A. Orders of the Committee issued pursuant to this section shall be posted at the building, structure, lot, site and/or separately identifiable portion thereof where a public nuisance exists or is occurring in violation of law and shall be mailed to the owner of record thereof, along with any lessors, lessees, and occupants, within one business day of the posting.

B. Five business days after the posting of an order issued pursuant to this section, upon the written direction of the Committee, the Police Department of the Village of Wolcott is hereby authorized to act upon and enforce such order. Where the Committee closes a building, structure, lot, site and/or separately identifiable portion thereof pursuant to this section, such closing shall be for such period as the Committee shall 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 section. If the owner, lessor, lessee or mortgagee shall file a bond in an amount determined by the Committee, but which may not exceed the value of the property ordered to be closed, and submits proof satisfactory to the Committee that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, structure, lot, site and/or separately identifiable portion thereof has been directed to be closed by the order of the Committee, then the Committee may vacate the provisions of the order that directed the closing thereof.

C. A closing directed by the Committee pursuant to this section shall not constitute an act of possession, ownership or control by the Village of the closed premises.

D. The Committee may promulgate rules and regulations to carry out and give full effect to the provisions of this section.

E. If any provision of this section or the application thereof to any person or circumstances is held invalid, the remainder of this section and the applications of such provisions to other persons and circumstances shall not be rendered invalid thereby.

#### **§ 115-18 Civil remedies for property and building nuisances.**

A. The Village Attorney may bring and maintain a civil proceeding in the name of the Village of Wolcott for the following types of relief: (1) Permanent injunction. (2) Temporary closing order. (3) Temporary restraining order. (4) Temporary injunction. (5) Civil penalties.

B. Procedure.

(1) The summons. The Village Attorney shall name as defendants the building, structure or place wherein the alleged public nuisance is being conducted, maintained or permitted, by describing it by Tax Map number and/or street address and at least one of the owners of some part of or an interest in the property.

(2) The complaint. (a) The Village Attorney shall bring and maintain a civil proceeding in the name of the Village of Wolcott in any court of competent jurisdiction to permanently enjoin the public nuisance and the persons conducting, maintaining or permitting the public nuisance, as defined in § 115-13 of this chapter, from further conducting, maintaining, or permitting the public nuisance in the manner provided within. The owner, operator, and/or lessee of a building, structure or place wherein the public nuisance is being conducted, maintained or permitted may be made defendants in the action. (b) The venue of such action shall be in the county where the public nuisance is being conducted, maintained or permitted. (c) The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter. (d) The civil action shall be commenced by the filing of a summons and complaint alleging the facts constituting the nuisance. (e) The complaint shall name as defendants the building, structure or place wherein the nuisance is being conducted, maintained

or permitted, by describing it by Tax Map number and/or street address and at least one of the owners who possess some part of or an interest in the property. (f) Any complaint filed under this chapter shall be verified or accompanied by affidavit(s) for purposes of showing that the owner or his/her agent has notice of the nuisance and has had an opportunity to abate the nuisance. (g) The complaint or affidavit shall contain a description of the attempts by the applicant to notify and locate the owner of the property and/or the owner's agent. (h) The complaint or affidavit shall describe the adverse impact associated with the property on the surrounding neighborhood.

(3) In rem jurisdiction over building, structure, or place. In rem jurisdiction shall be complete over the building, structure or place wherein the alleged public nuisance is being conducted, maintained or permitted by affixing the summons to the door of the building, structure or place and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners who possesses some part of or an interest in the property. Proof of service shall be filed within two days thereafter with the Clerk of the court designated in the summons. Service shall be complete upon such filing. All occupants of the building shall also be given notice of the summons and complaint by certified or registered mail, return receipt requested.

(4) Service of summons on other defendants. Defendant(s), other than the building, structure or place wherein the public nuisance is being conducted, maintained or permitted, shall be served with the summons as provided in the Civil Practice Law and Rules.

(5) Notice of pendency. With respect to any action commenced or to be commenced pursuant to this chapter, the Village Attorney may file a notice of pendency pursuant to the provisions of Article 65 of the Civil Practice Law and Rules.

(6) Presumption of ownership. The owner of the real estate affected by the action shall be presumed to be the person in whose name the real estate is recorded in the office of the Village of Wolcott Assessor and/or the office of the Clerk of the County of Wayne.

(7) Presumption of employment or agency. Whenever there is testimony that a person was the manager, operator, supervisor, or in any other way in charge of the premises at the time a public nuisance was being conducted, maintained or permitted, such evidence shall be presumptive that he or she was an agent or employee of the owner or lessee of the building, structure or place considered to be a nuisance.

(8) Penalty. If, upon the trial of an action under this chapter, or upon a motion for summary judgment in an action under this chapter, a finding is made that the defendant has conducted, maintained or permitted a public nuisance

defined in this chapter, a penalty may be awarded in an amount not to exceed \$1,000 for each day it is found that the defendant conducted, maintained or permitted the public nuisance after notice to abate has been given by the Village. Upon recovery, such penalty shall be paid into the general fund of the Village.

(9) Enforcement. A judgment pursuant to this chapter shall be enforced by the Village of Wolcott Police Department and the Office of Village Attorney.

C. Judgment awarding permanent injunction.

(1) A judgment awarding a permanent injunction, pursuant to this chapter, may direct the Village of Wolcott Police Department to seize and remove from the building, structure or place all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and shall direct the sale by the Village of Wolcott Police Department of such property in the manner provided for the sale of personal property under execution pursuant to the provisions of the Civil Practice Law and Rules. The net proceeds of any such sale, after deduction of the lawful expenses involved, shall be paid into the general fund of the Village.

(2) A judgment awarding a permanent injunction pursuant to this chapter may authorize agents of the Village to forthwith remove and correct construction and structural alterations in violation of the Village housing code. Any and all costs associated with these repairs or alterations shall become a lien against said property and shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens and any nuisance abatement lien.

(3) A judgment awarding a permanent injunction, pursuant to this chapter, may direct the closing of the building, structure or place by the Village of Wolcott Police Department, to the extent necessary to abate the nuisance, and shall direct the Village of Wolcott Police Department to post a copy of the judgment and a printed notice of such closing conforming to the requirements of § 115-18J of this chapter.

(4) 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 year from the posting of the judgment provided for in this subsection.

(5) If the owner shall file a bond in the value of the property ordered to be closed and submits proof to the court 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 in the judgment, the court may vacate the provisions of the judgment that directed the closing of the building, structure or place.

(6) A closing by the Village of Wolcott Police Department pursuant to this subsection shall not constitute an act of possession, ownership or control by the Village of Wolcott Police Department of the closed premises.

(7) Upon the request of the Mayor, or the Village Attorney, the Village of Wolcott Police Department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this chapter.

(8) A judgment rendered awarding a permanent injunction pursuant to this chapter shall be and become a lien upon the building, structure or place named in the complaint in such action, such lien to date from the time of filing a notice of liens pending in the office of the Clerk of the county wherein the building, structure or place is located. Every such nuisance abatement lien shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens.

(9) A judgment awarding a permanent injunction pursuant to this chapter shall provide, in addition to the costs and disbursements allowed by the Civil Practice Law and Rules, upon satisfactory proof by affidavit or such other evidence as may be submitted, the actual costs, expenses and disbursements of the Village in investigating, bringing and maintaining the action.

D. Preliminary injunction. (1) Generally. (a) Pending an action for a permanent injunction as provided for in this article, the Court may grant a preliminary injunction enjoining a public nuisance within the scope of this chapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. An order granting the preliminary injunction shall direct a trial of the issues at the earliest possible time. Where a preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction at its earliest convenience after the conclusion of the trial. A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted. (b) Motion papers for preliminary injunction. The Village Attorney shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for an injunction abating a nuisance within the scope of this chapter. (c) A preliminary injunction shall be enforced by the Village Attorney and the Village of Wolcott Police Department. If the court grants a preliminary injunction, the provisions of this article shall be applicable.

E. Temporary closing order. (1) If, on a motion for a preliminary injunction pursuant to this section, the Village Attorney shall show by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing order, a temporary order closing such part of the building, structure or place wherein the

nuisance is being conducted, maintained or permitted may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary closing order, the court shall hold a hearing for the preliminary injunction. (2) Service of temporary closing order. Unless the court orders otherwise, a temporary closing order together with the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served, in the same manner as a summons as provided in the Civil Practice Law and Rules.

F. Temporary restraining order. (1) A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, or permitted and that the public health, safety, or welfare immediately requires the granting of a temporary restraining order. This order shall restrain the defendants and all persons from removing or transferring off the property or in any manner interfering with the fixtures and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance. A temporary restraining order may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court, upon granting a temporary restraining order, the court shall direct the holding of a hearing for the preliminary injunction. (2) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served in the same manner as a summons as provided in the Civil Practice Law and Rules.

G. Temporary closing order; enforcement of temporary restraining order. (1) If, on motion for a preliminary injunction, the Village Attorney submits evidence warranting both a temporary closing order and a temporary restraining order, the court shall grant both orders. (2) Enforcement of temporary closing orders and temporary restraining orders. Temporary closing orders and temporary restraining orders shall be enforced by the Village Attorney and the Village of Wolcott Police Department.

H. Inventory upon service of temporary closing orders and temporary restraining orders. The officers serving a temporary restraining order shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a public nuisance within the scope of this chapter and shall enter upon the building, structure or place for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory, including, but not limited to, photographing such personal property.

I. Closing of premises pursuant to temporary closing orders and temporary restraining orders. The officers serving a temporary restraining order shall, upon service of the order, command all persons present in the building, structure or place to vacate the

premises forthwith. Upon the building, structure or place being vacated, the premises shall be securely locked and all keys delivered to the officers serving the order, who thereafter shall deliver the keys to the fee owner, lessor or lessee of the building, structure or place involved. If the fee owner, lessor or lessee is not at the building, structure or place when the order is being executed, the officers shall securely padlock the premises and retain the keys until the fee owner, lessor or lessee of the building is ascertained, at which time the officers shall deliver the keys to such owner, lessor or lessee, if such individual resides within Wayne County.

J. Posting of temporary closing orders and temporary restraining orders. Upon service of a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the public nuisance is being conducted, maintained or permitted. In addition, where a temporary restraining order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. If the temporary restraining order directs that the premises are to be closed by court order, the notice shall contain the legend "Closed by Court Order" in block lettering of sufficient size to be observed by anyone intending or likely to enter the premises, the date of the order, the court from which issued and the name of the office or agency posting the notice.

K. Temporary restraining order or preliminary injunction bond required. A temporary restraining order or preliminary injunction shall not issue under this chapter, except upon the giving of a bond or security by the applicant, in the amount of \$1,000, for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully restrained or enjoined. A bond or security shall not be required of the State of New York, municipal corporations, or political subdivisions of the State of New York.

L. Notwithstanding any contradictory language, the Village Attorney shall not have the authority to request the closing of a residential building, the suspension of a certificate of occupancy, or any other action that will have the effect of temporarily or permanently preventing the residents of a residential property from using the property as a residential dwelling, without giving notice and opportunity for a hearing, and without a finding by the court that there is a public nuisance at the property, as defined in Section §115-13. Non-owner occupants of the premises shall be given notice and the opportunity to appear in such action. This limitation shall apply to any activity by the Village Attorney, including but not limited to a request contained in a summons and complaint, an application for temporary closure, and an application for a temporary restraining order, and any other application for temporary or permanent injunctive relief. No occupant shall be forcibly removed other than through judicial process.

### **§ 115-19 Temporary restraining order; defendant's remedies.**

A. Temporary restraining order to be vacated; inspection provision. (1) A temporary restraining order shall be vacated, upon notice to the Village Attorney, if the defendant shows by affidavit and such other proof as may be submitted that the public nuisance within the scope of this chapter has been abated. An order vacating a temporary closing order or a temporary restraining order shall include a provision authorizing agencies of the Village to inspect the building, structure or place, which is the subject of an action pursuant to this chapter, periodically without notice, during the pendency of the action, for the purpose of ascertaining whether or not the public nuisance has been resumed. Intentional disobedience of, or resistance to, an inspection provision of an order vacating a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$1,000 or by imprisonment not exceeding six months, or by both. The Police Department shall, upon the request of the Village Attorney, or upon the direction of the Mayor, assist in the enforcement of an inspection provision of an order vacating a temporary restraining order. (2) A temporary restraining order may be vacated by the court, upon notice to the Village Attorney, when the defendant gives an undertaking and the court is satisfied that the public health, safety or welfare will be protected adequately during the pendency of the action. The undertaking shall be in an amount equal to the assessed valuation of the building, structure or place where the public nuisance is being conducted, maintained or permitted or in such other amount as may be fixed by the court. The defendant shall pay to the Village, in the event a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements in investigating, bringing and maintaining the action.

B. Vacating a temporary injunction or a temporary restraining order. When the defendant gives an undertaking in the amount of the civil penalty demanded in the complaint together with costs, disbursements and the projected annual costs of the prosecution of the action to be determined by the court, upon a motion on notice to the Village Attorney, a temporary injunction or a temporary restraining order shall be vacated by the court. The provisions of the Civil Practice Law and Rules governing undertakings shall be applicable to this chapter.

### **§ 115-20 Temporary receiver.**

A. Appointment, duration and removal. In any action wherein the complaint alleges that the nuisance is being conducted or maintained in the residential portions of any building or structure or portion thereof, which are occupied in whole, or in part, as the home, residence or sleeping place of one or more human beings, the court may, upon motion on notice by the plaintiff, appoint a temporary receiver to manage and operate the property during the pendency of the action, in lieu of a temporary closing order. A temporary receivership shall not continue after final judgment unless otherwise directed

by the court. Upon the motion of any party, including the temporary receiver, or on its own initiative, the appointing court may remove a temporary receiver at any time.

B. Powers and duties. The temporary receiver shall have such powers and duties as the court shall direct, including, but not limited to, collecting and holding all rents due from all tenants, leasing or renting portions of the building or structure, making or authorizing other persons to make necessary repairs or to maintain the property, hiring security or other personnel necessary for the safe and proper operation of a dwelling, prosecuting or defending suits flowing from his or her management of the property and retaining counsel therefor, and expending funds from the collected rents in furtherance of the foregoing powers.

C. Oath. A temporary receiver, before entering upon his or her duties, shall be sworn or shall affirm faithfully and fairly to discharge the trust committed to such receiver. The oath or affirmation may be waived upon consent of all parties.

D. Undertaking. A temporary receiver shall give an undertaking, in an amount to be fixed by the court making the appointment, that such receiver will faithfully discharge his or her duties.

E. Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property. Upon motion of the temporary receiver, or of any person having an apparent interest in the property, the court may require the keeping of particular records, or direct or limit inspection, or require presentation of a temporary receiver's accounts. Notice of motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on the temporary receiver's undertaking as well as upon each party.

#### **§ 115-21 Additional notice; release of information; proceeding to remove tenant.**

A. Upon the arrest and/or conviction of an individual for any of the above-enumerated offenses, the Police Department of the Village of Wolcott shall notify the legal owner of record of the arrest and/or conviction by regular mail to the address on file with the Assessor of the Village of Wolcott.

B. In the event that the owner of any building, structure, lot, site and/or separately identifiable portion thereof commences a summary proceeding pursuant to Real Property Actions and Proceedings Law § 711, Subdivision 5, to remove a tenant arrested and/or convicted of any of the above-enumerated offenses, the Village of Wolcott shall, if requested by the owner of record in writing, provide to the court having jurisdiction any and all releasable information in its possession which may support the owner's summary proceeding to evict the offending tenant.

C. In the event that the owner of any building, structure, lot, site and/or separately identifiable portion thereof, upon notice from the Village of Wolcott of an arrest and/or conviction, commences and concludes a summary proceeding to remove the tenant so

arrested and/or convicted, whether the proceeding is successful or not, the arrest and/or conviction shall not be deemed a conviction pursuant to § 115-13.

**§ 115-22 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, lot, site and/or separately identifiable portion thereof ordered closed by the Committee, Village Attorney or a court of competent jurisdiction. Mutilation or removal of a posted order of the Committee, Village Attorney or a court of competent jurisdiction while it remains in effect, 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 exceeding 90 days, or both, provided that such order contains therein a notice of such penalty. The Village of Wolcott Police Department shall, upon the request of the Village Attorney, or upon the direction of the Mayor, assist in the enforcement of this subsection.

B. Any intentional disobedience or resistance to any provision of the orders and/or injunctions issued by the Committee, Village Attorney or a court of competent jurisdiction 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.

C. It shall be a violation of this chapter for any person who receives notice of commencement of a summary proceeding pursuant to the Real Property Actions and Proceeding Law issued by an owner of a building, structure, lot, site or separately identifiable portion thereof in response to notification from the Village of Wolcott of an arrest or conviction of any of the enumerated offenses herein thereafter intentionally to cause damage or intentionally allow others to damage any property, real or personal, of the owner. Such conduct shall be punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both.

D. Violations of this chapter may also be referred to the Code Enforcement Office or any other appropriate municipal department and be prosecuted pursuant to the Code of the Village of Wolcott.