

Chapter 141. PROPERTY AND BUILDING NUISANCE REFORM LAW

ARTICLE I, General Provisions

§ 141-1. Findings.

The Town Board of the Town of Union finds that public nuisances exist in the Town of Union in the operation of certain establishments and the use of property in flagrant violation of certain Penal Law and Municipal Code provisions, which nuisances substantially and seriously interfere with public health, safety, welfare, quality of life and total community environment, commerce in the Town and property values. The Board further finds that the continued occurrence of such activities and violations are detrimental to the health, safety and welfare of the people of the Town of Union and of the businesses thereof and the visitors thereto. It is the purpose of this Local Law to authorize and empower the Town Board to impose sanctions and penalties for such public nuisances, which power may be exercised either in conjunction with or apart from, and without prejudice to, any and all additional powers and remedies conferred upon the Town Board by local, state and federal laws and regulations. The Town Board further finds that the sanctions and penalties imposed by the Town Board pursuant to this Chapter constitute an additional and appropriate method of law enforcement in response to the proliferation of the above-described public nuisances. The sanctions and penalties are reasonable and necessary in order to protect the health and safety of the people of the Town and to promote the general welfare.

§ 141-2. Title.

This Chapter shall be known as the "Property and Building Nuisance Reform Law."

§ 141-3. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

BUILDING – A structure where space is covered or enclosed for the use, shelter, storage or protection of persons, animals, chattel or property of any kind, and which is permanently affixed to the land.

BUILDING, ACCESSORY – A building subordinate to the principal building on the lot and used for purposes which are clearly related but incidental to that of said principal building.

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 – A building or portion thereof utilized to accommodate the activities of a business.

CONVICTION –

- (A) A conviction for an offense in a court of competent jurisdiction or in or by an administrative agency or bureau shall not be required to prove a violation under this Chapter. Instead, the Town's burden of proof shall be by a preponderance of the evidence that the violations have occurred. However, a conviction, as defined and applied in accordance with the provisions of § 1.20 of the Criminal Procedure Law, in any court of competent jurisdiction, or a plea of guilty 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.

- (B) Notwithstanding the provisions of Section (A) above, under no circumstances shall a conviction or a plea of guilty constitute a violation under this Chapter where said conviction or plea stemmed from a crime committed at the building, property or place in issue, and the crime was first reported by an owner or tenant of the property, place, building or, in the case of a multi-unit building, the specific building unit where the crime occurred. Nor shall a conviction or a plea of guilty constitute a violation under this Chapter where said conviction or plea stemmed from a domestic violence-related incident that occurred at the building unit, building, property or place in issue, which domestic violence-incident was first reported by the victim thereof.

DISTURBANCE – Actions, behavior, or conduct by person or persons at a particular location that disturbs the peace.

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 detailing a Public Nuisance to the property owner of record shall be evidence of knowledge of the Public Nuisance.

LOT – A parcel of land with or without buildings or structures delineated by lot line and having access to a street as defined in this Chapter.

PENAL LAW – New York State Penal Law.

PUBLIC NUISANCE –

- (A) For the purposes of Article II of this Chapter, a Public Nuisance shall be deemed to exist whenever, through violations of any of the laws or regulations, or commission of any of the offenses listed in Section (C) below, the building, property or place in issue, or immediately adjacent to the building, property or place in issue accumulates 12 or more points within a period of six (6) months or 18 or more points within a period of twelve (12) months in accordance with the point system described in the said Section (C). 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. All references to statutes and codes in Section (C) below shall mean the statute or code provision in effect at the time this Local Law is adopted and as may be amended from time-to-time.
- (B) Notwithstanding any contrary provisions of this Chapter, under no circumstances shall points accumulate toward a Public Nuisance determination where violations are discovered during the course of an investigation by law enforcement or code enforcement personnel in response to a request for assistance by an owner or tenant of the property, place, building or, in the case of a multi-unit building, the specific building unit where the violation occurred. Nor shall points accumulate toward a Public Nuisance determination where violations are discovered during the course of such an investigation in connection with a report of a domestic violence-related incident at the building unit, building, property or place in issue, where the victim of said domestic-violence related incident made the request for assistance. Notwithstanding the above, an owner, manager or tenant who participates in or persistently condones or allows such Public Nuisance to occur shall not be entitled to the protection of this paragraph (B).
- (C) Violations are assigned point values as follows:

- (1) Violations of the following laws and regulations and commission of the following offenses shall be assigned a point value of two (2) points:
 - (a) Sections 240.36 and 240.37 of the Penal Law – Loitering in the First Degree
 - (b) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
 - (c) Article 50 of Chapter 300 of the Code of the Town of Union – Noise Limits.
 - (d) Chapter 130 of the Code of the Town of Union – Garbage, Rubbish, Refuse and Recyclables.
 - (e) Article 1 of Chapter 71 of the Code of the Town of Union regarding the licensing and regulation of dogs.

- (2) Violations of the following laws and regulations and commission of the following offenses shall be assigned a point value of four (4) points:
 - (a) Disorderly conduct by an individual or individuals.
 - (b) Chapter 155 of the Code of the Town of Union – Property Maintenance, or the New York State Property Maintenance Code. Each repeat offense constitutes an additional violation, and warrants the assessment of an additional four (4) points.
 - (c) Disturbances of the peace at a particular location.
 - (d) Article 225 of the Penal Law – Gambling Offenses.
 - (e) The Alcoholic Beverage Control Law.
 - (f) Section 415-a of the Vehicle and Traffic Law – Vehicle Dismantlers.
 - (g) Sections 170.65 and 170.70 of the Penal Law – Forgery or Illegal Possession of a Vehicle Identification Number.
 - (h) 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.
 - (i) The Agriculture and Markets Law.

- (3) Violations of the following laws and regulations and commission of the following offenses shall be assigned a point value of six (6) points:
 - (a) Article 178 of the Penal Law – Criminal Diversion of Prescription Medications and Prescriptions.
 - (b) Article 220 of the Penal Law – Controlled Substances Offenses, including sale or distribution of the same.
 - (c) Article 221 of the Penal Law – Offenses Involving Marijuana.
 - (d) Sections 165.15, (6), (7), and (8), 165.40, 165.45, 165.50, 165.50, 165.52, 165.54, 165.71, 165.72 and 165.73 of the Penal Law – Criminal Possession of Stolen Property.
 - (e) Article 158 of the Penal Law – Welfare Fraud.
 - (f) Section 147 of the Social Services Law – Food Stamp Program Fraud.
 - (g) Section 2024 of Title 7 of the United States Code – Illegal Use of Food Stamps.
 - (h) Allowing persons in/on the building, property or place in issue in excess of occupancy limits established by the New York State Uniform Building and Fire Prevention Code.
 - (i) Section 3383 of the Public Health Law – Imitation Controlled Substances.

- (j) All violations of Chapter 300 of the Code of the Town of Union – Zoning, except for those listed in Subsection (1) of this Section (C).
- (4) Violations of the following laws and regulations and commission of the following offenses shall be assigned a point value of 10 points:
 - (a) Article 230 of the Penal Law – Prostitution Offenses.
 - (b) Article 265 of the Penal Law – Firearms and other Dangerous Weapons.
 - (c) Sections 260.20 and 260.21 of the Penal Law – Unlawfully Dealing with a Child.
 - (d) Article 263 of the Penal Law – Sexual Performance by a Child.
 - (e) Loitering for the purpose of engaging in a prostitution offense.
- (5) Violations of the following laws and regulations and commission of the following offenses shall be assigned a point value of 12 points:

Penal Law violations considered to be more serious than those enumerated in Subsection (4) of this Section (C), including but not limited to murder, attempted murder, felony assault, felony attempted assault, felony arson, felony attempted arson, felony sex offenses, felony attempted sex offenses and felony crimes related to the unlawful manufacture of methamphetamine or other illegal drugs.

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 this Chapter. 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, results of police surveillance, arrest and/or conviction based on 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 business activities at the property. Notwithstanding the foregoing, evidence obtained during the course of responding to a request for assistance made by an owner or tenant of the at issue property, place, building or, in the case of a multi-unit building, the specific building unit where the violation occurred, shall not constitute evidence of prohibited conduct under this Chapter, except an owner, manager or tenant who participates in or persistently condones or allows such Public Nuisance to occur shall not be entitled to the protection of this paragraph.

YARD – An open area on a lot which is open to the sky and that is unoccupied by any land use or activity except as may otherwise be provided in Chapter 300, Zoning, of the Code of the Town of Union.

§ 141-4. Evidentiary Presumptions.

- A. Evidence. In any action under this Chapter, evidence in admissible form of the common fame and general reputation of the building, structure or place, or of the inhabitants or occupants thereof, or of those residing thereto, shall be competent evidence to prove the existence of a property or building nuisance.
- B. Scienter. Admissible evidence of the general reputation of the building, structure or

place, or of the inhabitants or occupants thereof shall be prima facie evidence of knowledge the nuisance and acquiescence and participation therein and responsibility therefor, on the part of the owners, lessors, lessees, and all those in possession of or having charge of, as agent or manager or otherwise, or having any interest in any form in the property, real or personal, used in conducting or maintaining the property or building nuisance.

ARTICLE II, Civil Remedies for Property and Building Nuisances

§ 141-5. Applicability.

This Article shall be applicable to all Public Nuisances as determined in accordance with the definitions contained in Article I of this Chapter.

§ 141-6. Civil remedies.

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

- B. Summons. The Town Attorney shall name as defendants the building, structure or place wherein the 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 interest in the property.

- C. Complaint.
 - (1) The Town Attorney shall bring and maintain a civil proceeding in the name of the Town of Union in the Supreme Court of Broome County or any other court of competent jurisdiction to permanently enjoin the Public Nuisance and the persons conducting, maintaining or permitting the Public Nuisance as defined in Article I of this Chapter from further conducting, maintaining, or permitting the Public Nuisance in the manner provided in Article II of this Chapter. The owner, operator, manager 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.
 - (2) The venue of such action shall be in the county where the Public Nuisance is being conducted, maintained or permitted.
 - (3) The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this Chapter.
 - (4) The civil action shall be commenced by the filing of a summons and complaint alleging the facts constituting the Public Nuisance.
 - (5) 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 possesses some part of or an interest in the property.

- (6) Any complaint filed under this Chapter shall be verified or accompanied by an affidavit(s) for purposes of showing that the owner or his or her agent or manager has notice of the nuisance and has had an opportunity to abate the nuisance. The Town Attorney will give the owner and any designated property agent or manager written notice of the nuisance and ten (10) business days to personally meet with and provide to Town Attorney a written plan to abate the nuisance within thirty (30) days. If part of the plan to abate the nuisance is to evict a tenant, then the owner will commence the eviction proceeding within ten (10) business days from the meeting with Town Attorney, or on the earliest possible date allowed by law, if such date is longer than ten (10) business days from the date of said meeting. The complaint or affidavit shall contain a description of the attempts by the Town Attorney to notify and locate the owner of the property and/or the owner's agent. The complaint or affidavit shall describe the factual circumstances giving rise to the determination that the property constitutes a Public Nuisance.
- D. In rem jurisdiction over building, structure, or place. In rem jurisdiction shall be complete over the building, structure or place wherein the 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 five (5) days thereafter with the Clerk of the court designated in the summons. Service shall be complete upon such filing.
 - E. 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.
 - F. Notice of pendency. With respect to any action commenced or to be commenced pursuant to this Chapter, the Town may file a notice of pendency pursuant to the provisions of Article 65 of the Civil Practice Law and Rules.
 - G. 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 Town of Union Assessor and/or the office of the Clerk of the County of Broome.
 - H. 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.
 - I. 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, condoned or permitted a Public Nuisance defined in Article I of this Chapter, a penalty may be awarded in an amount not to exceed \$1,000.00 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 Town. Upon recovery, such penalty shall be

paid into the general fund of the Town.

- J. Enforcement. A judgment pursuant to this Chapter shall be enforced by the Town of Union and the office of the Town Attorney.

§ 141-7. Judgment awarding permanent injunction.

- A. A judgment awarding a permanent injunction, pursuant to this Chapter, may direct the Town of Union through its departments or by third party contractors to seize and remove from the building, structure and/or place all material, equipment and instrumentalities used in the creation and maintenance of the Public Nuisance and shall direct the sale by the Town of Union 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 Town.
- B. A judgment awarding a permanent injunction pursuant to this Chapter may authorize agents of the Town to remove and/or correct violations of the Town Code. Any and all costs associated with said removal or repairs shall become a lien against the property and shall have priority over any prior mortgage or other lien that exists on said property, except tax and assessment liens and any nuisance abatement lien.
- C. A judgment awarding a permanent injunction, pursuant to this Chapter, may direct the closing of the building, structure or place by the Town of Union, to the extent necessary to abate the nuisance, and shall direct the Town of Union to post a copy of the judgment and a printed notice of such closing conforming to the requirements of § 141-8 (H) of this Chapter. Any person who defaces, destroys or removes such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be guilty of a violation punishable by a fine of not more than \$250.00 or by imprisonment not exceeding 15 days, or by both, provided such judgment contains therein a notice of such penalty.
- D. 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 section.
- E. 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, condoned 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 direct the closing of the building, structure or place.
- F. A closing by the Town of Union pursuant to a judgment providing for the closing of a building shall not constitute an act of possession, ownership or control by the Town of Union of the closed premises.
- G. Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this Chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$5,000, imprisonment not exceeding six (6) months, or both.

- H. Upon the request of the Town Attorney or the Town Board, the New York State Police or the Broome County Sherriff's Department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this Chapter.
- I. 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 Broome County Clerk being the county wherein the building, structure or place is located. Every such nuisance abatement lien shall have priority over any mortgage or other lien that exists prior to such filing except tax and assessment liens.
- J. 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 Town in investigating, bringing and maintaining the action, including reasonable attorney's fees and court costs.

§ 141-8. Temporary and Preliminary Injunctive Relief.

A. Preliminary injunction.

- (1) 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 a 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.
- (2) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the Town Attorney and/or the New York State Police or the Broome County Sherriff's Department.
- (3) Preliminary injunctions, inventory, closing of premises, posting of order and notices, offenses. If the court grants a preliminary injunction, the provisions of this Article shall be applicable.

B. Motion papers for preliminary injunction. The Town Attorney shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a permanent injunction abating a nuisance within the scope of this Chapter.

C. Temporary closing order.

- (1) If, on a motion for a preliminary injunction pursuant to this section the Town Attorney shall show by clear and convincing evidence that a Public Nuisance within the scope of this Chapter is being conducted, maintained, condoned or permitted and that the public health, safety or welfare requires an immediate, temporary closing order, the court may issue without notice a temporary order closing only so much of the building, structure or place as is necessary to temporarily abate the nuisance that is being conducted, maintained or permitted, pending a subsequent order of the court granting or denying the preliminary

injunction. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time; a decision on the motion for a preliminary injunction shall be rendered by the court at the earliest possible time thereafter.

- (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.

D. 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.

E. Temporary closing order; temporary restraining order.

- (1) If, on motion for a preliminary injunction, the Town 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 Town Attorney and the New York State Police.

F. 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 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.

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

property or place that is subject to the order to vacate the premises forthwith. Upon the vacation of the relevant portion of the building, property or place, the portion of said building, property or place 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 Broome County.

- H. 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. Any person who defaces, destroys or removes such a posted order or notice while it remains in force, 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 90 days, or by both, provided such order or notice contains therein a notice of such penalty. The New York State Police or Broome County Sheriff's Department shall, upon the request of the Town Attorney or the Town Board, assist in the enforcement of this subsection.
- I. Intentional disobedience of or resistance to temporary restraining order or injunction. Intentional disobedience of, or resistance to, a temporary restraining order, preliminary or permanent injunction shall, in addition to any other punishment prescribed by law, be punishable, on conviction by a fine of not more than \$5,000 or by imprisonment not exceeding six (6) months or by both.
- J. Temporary restraining order or preliminary injunction bond may be 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 \$1,000.00, 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.

§ 141-9. Temporary restraining order; defendant's remedies.

- A. Temporary restraining order to be vacated; inspection provision.
 - (1) A temporary restraining order may be vacated by the court upon notice to and right to object by the Town Attorney when a 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. In the event the court should issue a permanent injunction against defendant(s), he/she/they shall pay to the Town its actual costs, expenses and disbursements in investigating, bringing and maintaining the action, including reasonable attorney's fees and court costs.

- (2) An order vacating a temporary closing order or a temporary restraining order shall include a provision authorizing the Town or its authorized officers, agents or representatives to periodically inspect, without notice, the subject building, structure or place, during the pendency of the action, for the purpose of ascertaining whether or not the Public Nuisance has been resumed.
 - (3) Willful failure to cooperate with an inspection provision of an order vacating a temporary restraining order or temporary closing order, in addition to any other punishment prescribed by law, shall be punishable on conviction by a fine of not more than \$5,000.00, imprisonment not exceeding six months, or both. The New York State Police or Broome County Sheriff's Department shall, upon the request of the Town, assist in the enforcement of an inspection provision of an order vacating a temporary restraining order or temporary closing order.
- B. Vacating a preliminary 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, as determined by the court, upon a motion on notice to the Town Attorney, a temporary injunction or a temporary restraining order may be vacated by the court. The provisions of the Civil Practice Law and Rules governing undertakings shall be applicable to this Chapter.

§ 141-10. Preliminary injunction of bulk transfer.

- A. Generally, pending an action pursuant to this Chapter, the court may grant a preliminary injunction enjoining a defendant from making a bulk transfer as defined in this section.
- B. If, on a motion for a preliminary injunction of a bulk transfer, the Town Attorney shall show by clear and convincing evidence that a Public Nuisance within the scope of this Chapter is being conducted, maintained, condoned or permitted, a temporary restraining order may be granted without notice restraining the defendants and all persons from making or permitting a "bulk transfer" as defined in this Article pending order of the court granting or refusing the preliminary injunction and until further order of the court. Application for such a temporary restraining order shall be made pursuant to §141-8 of this article.
- C. "Bulk transfer" defined. A "bulk transfer" is any transfer of a major part of the materials, supplies, merchandise or other inventory or equipment of the transferor in the building, structure or place where the Public Nuisance is being conducted, maintained or permitted that is not in the ordinary course of the transferor's business.
- D. Enforcement of preliminary injunction. A preliminary injunction shall be enforced by

the Town Attorney and the New York State Police.

E. Preliminary injunction; inventory. If the court grants a preliminary injunction, the provisions of the §141-8 of this article shall be applicable.

§ 141-11. Temporary receiver.

- A. Appointment, duration and removal. In any action wherein the complaint alleges that the Public 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.

§ 141-12. Chapter not exclusive remedy.

This Chapter shall not be construed to exclude any other remedy provided by law for the protection of the health, safety and welfare of the people of the Town of Union.