

**(Use this form to file a local law with the Secretary of State.)**

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

**County**

**City**

of Rockville Centre

**Town**

**Village**

**Local Law No. 7 of the year 2007**

A local law to amend the Code of the Village of Rockville Centre,  
(Insert Title)  
in relation to abatement of public nuisances.

Be it enacted by the Board of Trustees (Name of Legislative Body) of the

**County**

**City**

of Rockville Centre as follows:

**Town**

**Village**

Section one. The Code of the Village of Rockville Centre is hereby amended, by adding thereto a new chapter, to be chapter 263, to read as follows:

“Chapter 263. Public Nuisance, Abatement of.

**§ 263-1 PURPOSE AND INTENT.**

The Board of Trustees of the Village of Rockville Centre hereby finds and concludes that it is necessary and appropriate for the Village to enact legislation which would facilitate and encourage the discontinuance of public nuisances. Existing provisions of law are found to be inadequate for this purpose, and this local law is intended to provide the Village with necessary law enforcement tools to accomplish the goal of abating and eliminating the public nuisances described in this legislation.

**§263-2. DEFINITIONS**

**(If additional space is needed, attach pages the same size as this sheet, and number each.)**

As used in this chapter, unless the context clearly indicates otherwise, the term “Public nuisance” shall mean and include, but shall not be limited to:

- A. Any building, structure or real property used for the purpose of illegal use, possession or distribution of a controlled substance or marihuana [marijuana] as defined by the New York State Penal Law;
- B. Any building, structure or real property used for the purposes of prostitution as defined by the New York State Penal Law;
- C. Any building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene material as defined by the New York State Penal Law and/or this Code;
- D. Any building, structure or real property used for purposes of illegal gambling activity as defined in the New York State Penal Law;
- E. Any building, structure or real property used for the purpose of the commission of illegal possession, use or sale of firearms or weapons as defined by the New York State Penal Law;
- F. Any building, structure or real property used for the purpose of illegal sale, manufacture or consumption of alcohol beverages as defined by the New York State Alcohol Beverage Control Law;
- G. Any building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the New York State Penal Law;
- H. Any building, structure or real property used for purposes of loitering as defined by the New York State Penal Law;
- I. Any building, structure or real property wherein there exists or has occurred within a period of six (6) months three (3) or more violations of this Code or the New York State Uniform Fire Prevention and Building Code, or the Property Maintenance Code of New York State, and any subsequent amendments or superseding provisions thereto, and which violations have not been cured within thirty days after notice thereof; or
- J. Any building, structure or real property wherein an owner, occupant, guest or business invitee commits criminal activities involving assault, gang assault, harassment or disorderly conduct, as said criminal activities are defined by the New York State Penal Law.

### **§263-3. PUBLIC NUISANCE FORBIDDEN.**

No owner, operator, manager, tenant, lessee or other occupier or user of a building, structure or real property shall knowingly conduct, maintain, permit or allow the existence of a public nuisance at the building, structure or real property.

### **§263-4. PRESUMPTION OF KNOWLEDGE.**

Written notice given by first class mail or by personal delivery to the property owner, operator, manager, tenant, lessee or to any other occupier of a building, structure or real property, or any portion thereof, giving notice of activities entailing a

public nuisance at such building, structure or property or portion thereof, shall be prima facie evidence of knowledge of the public nuisance.

**§263-5. CRIMINAL CONVICTIONS AS PRESUMPTION OF THE EXISTENCE OF A PUBLIC NUISANCE.**

The existence of two (2) or more criminal convictions for any of the activities set forth in the definition of a public nuisance in this chapter at any building, structure or real property within a two (2) year period prior to the commencement of a civil action and/or an administrative hearing pursuant to this chapter shall be prima facie evidence of the existence of a public nuisance. For the purposes of this section, a criminal conviction shall be defined as the entry of a plea of guilty to and/or a verdict of guilty with respect to one (1) or more counts set forth in an accusatory instrument.

**§263-6. OTHER EVIDENCE OF PROHIBITED CONDUCT AS PRESUMPTION OF THE EXISTENCE OF A PUBLIC NUISANCE.**

The occurrence of two (2) or more separate incidents of one or more of the following activities at any building, structure or real property within a one (1) year period prior to the commencement of a civil action and/or an administrative hearing also shall be prima facie evidence of the existence of a public nuisance at such building, structure or real property:

A. Conviction for any of the activities set forth in the definition of a public nuisance in this chapter occurring on or within one hundred (100) feet of the property;

B. Arrest for any of the activities set forth in the definition of a public nuisance in this chapter occurring on or within one hundred (100) feet of the property;

C. Issuance or service of an accusatory instrument charging any of the activities set forth in the definition of a public nuisance in this chapter occurring on or within one hundred (100) feet of the property. For the purposes of this subsection, an accusatory instrument shall include, but not be limited to, any criminal information, misdemeanor and/or felony complaint filed in a court of competent jurisdiction, and/or, with regard to unfit, unsafe and/or fire damaged structures on or near the property, a notice of violation or order to abate issued by the Village Building Department, Police Department, or Fire Department and/or other authorized entity with jurisdiction in the Village;

D. Issuance or service of a search warrant for a building, structure or real property where controlled substances, marihuana [marijuana], and/or weapons are seized;

E. Finding of illegal controlled substances or illegal firearms or weapons at the building, structure or real property; or

F. Purchases of illegal controlled substances at the building, structure or real property by law enforcement agencies or their agents.

**§263-7. SUMMONS AND COMPLAINT FOR CIVIL ACTION.**

A. The Mayor may authorize the Village Attorney to bring and maintain a civil action in the name of the Village to abate a public nuisance.

B. The summons and complaint in such action may name as defendants the building, structure or real property by describing it by tax map number and/or street address, and also shall name as defendants at least one of the record owners of some portion of or some interest in the property where the public nuisance is alleged to have occurred.

C. The summons and complaint in such action also may name as defendants any owner, operator, manager, tenant, lessee or other occupier of the building, structure or real property.

D. The complaint in such action shall allege the facts constituting the public nuisance.

E. The complaint in such action shall be accompanied by affidavits for purposes of showing that the owner or the owner's agent had notice of the nuisance and had an opportunity to abate the nuisance.

F. In rem jurisdiction over the building, structure or real property may be obtained and completed by affixing a copy of the summons to the building, structure or real property, and by mailing a copy of the summons and complaint by certified or registered mail, return receipt requested, to the record owner(s) of the real property and to each person or entity listed in the Village records as the person or entity to whom or which tax bills should be sent.

G. Defendants other than the building, structure or real property shall be served with the summons and complaint in the manner required by State law.

H. With respect to any action commenced or to be commenced pursuant to this chapter, the Village Attorney may file a notice of pendency as authorized pursuant to State law.

#### **§263-8. CIVIL PENALTY.**

If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that one or more defendants have conducted, maintained, permitted or allowed a public nuisance, a penalty may be assessed against such defendant in an amount not to exceed \$1,000.00 for each day it is found that such defendant conducted, maintained, permitted or allowed the public nuisance after notice to abate had been given. Upon recovery, such penalty shall be paid into the Village general fund.

#### **§263-9. PERMANENT INJUNCTION.**

A. If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that one or more defendants have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted against such defendants;

B. Any such permanent injunction may prohibit such defendants from conducting, maintaining, permitting or allowing the public nuisance, or may include such other relief as the issuing court may deem appropriate under the circumstances;

C. Any such permanent injunction also may authorize agents of the Village to remove and correct any conditions in violation of this Code, and direct that the costs of removing and correcting the violations, plus an additional charge not to exceed fifty (50%) percent as compensation to the Village for administering, supervising and handling such work, shall be charged against such property and defendants and awarded to the Village. The amount so awarded shall constitute a lien against the real property and shall be collected in the same manner provided by law for the collection of real property taxes with respect to real property within the Village;

D. A judgment ordering a permanent injunction also may direct the closing of the building, structure or real property by the Village Police Department, to the extent necessary to abate the nuisance;

E. A judgment awarding a permanent injunction also may provide for all costs and disbursements allowed by State law, and for the actual costs, expenses and disbursements of the Village in investigating, bringing and maintaining the action.

#### **§263-10. CLOSING OF THE BUILDING, STRUCTURE OR REAL PROPERTY.**

A. If the judgment in any such action directs the closing of the building, structure or real property, notice of entry of the judgment shall be given to defendants in the manner required by State law, and a copy of such judgment shall be posted at one or more of the entrances to the building, structure or real property or in another conspicuous place on the building, structure or real property.

B. In addition, a printed notice shall be affixed to one or more of the doors at entrances of the building, structure or real property or in another conspicuous place on the building, structure or real property, stating "CLOSED BY COURT ORDER" in block lettering of sufficient size to be observed by anyone intending to enter the premises.

C. Mutilation or removal of such posted judgment or notice while it remains in force will be considered a separate violation of this Code, and shall be punishable pursuant to § 1-2 of the Village Code;

D. On or after the posting of such judgment and/or notice, the Village Police Department may command any and all persons present in the building, structure or real property, or any portion thereof, which has been determined to be a public nuisance to vacate such property or portion thereof forthwith, and may secure the said premises after it is vacated;

E. The closing of a building, structure or property, or portion thereof, as 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;

F. A closing of a building, structure or premises, or any part thereof, pursuant to any such judgment shall not constitute an act of possession, ownership or control by the Village.

#### **§ 263-11. PRELIMINARY INJUNCTION.**

A preliminary injunction enjoining the public nuisance may be granted in such action pursuant to State law.

#### **§ 263-12. TEMPORARY RESTRAINING ORDER.**

A temporary restraining order may be granted in such action, without notice to defendants, pursuant to State law.

#### **§ 263-13. ADMINISTRATIVE HEARING.**

Whenever there is prima facie evidence of a public nuisance at any building, structure or real property within the Village, the Village Attorney may initiate an administrative hearing pursuant to this section.

A. Notice of such hearing shall be served on all record owners of the building, structure or real property, and may also be served on any known tenants or lessees or other occupiers of the building, in any manner authorized for the service of a summons in a civil action.

B. The notice of hearing shall allege facts constituting a public nuisance, and shall identify the time and place when and where a hearing will be held before a hearing panel appointed pursuant to this section.

C. The hearing panel shall consist of one member appointed by the Superintendent of the Building Department, one member appointed by the Police Commissioner and one member appointed by the Village Administrator. No person appointed as a member of the hearing panel may be an elected official of the Village.

D. The hearing shall commence at the time and place designated in the notice. The Village Attorney or his/her designee shall present relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the building, structure or real property, and as to appropriate remedies. The owners of the building, structure or real property, or their representatives, shall have the right to examine such evidence and cross-examine any witnesses presented by the Village Attorney or his/her designee. The owners of the building, structure or real property, or their representatives, may present any relevant evidence and/or witnesses in their defense, and the Village Attorney, or his/her designee, shall have the right to examine such evidence and cross-examine any witnesses presented by the owners of the building, structure or real property, or their representatives.

E. Within five (5) business days after the conclusion of the hearing, the hearing panel shall provide findings of fact to the Board of Trustees. The findings of fact shall state whether there is a prima facie evidence of the existence of a public nuisance at the building, structure or real property. In the event there is a finding of such prima facie evidence, the hearing panel also shall provide a written recommendation of remedies to abate the public nuisance.

## **§ 263-14. ADMINISTRATIVE REMEDIES.**

A. Upon receipt of a finding from the hearing panel concluding that there is prima facie evidence that a public nuisance exists, and a recommendation of remedies, the Board of Trustees shall consider the same at a public meeting, at which the owners of the building, structure or real property, or their representatives shall have the right to be heard, but not to present additional evidence. Upon the conclusion of such consideration, the Board of Trustees may:

(1) issue a Decision and Order suspending or revoking the certificate of occupancy for a building, structure or property, or portion thereof, for a period of time not to exceed one (1) year;

(2) issue a Decision and Order directing the closing of the building, structure or real property to the extent necessary to abate the nuisance, pursuant to the procedures set forth in this chapter; and/or

(3) issue a Decision and Order that various measures be taken by the owner, tenant and/or lessee of the property to the extent necessary to both abate the existing nuisance and ensure the prevention of future nuisance actions from occurring at or near the property, which shall include, but not be limited to: requiring the owner to modify and improve the usage and features of the premises to deter further and future public nuisance activity; mandating compliance with all applicable building, housing and property maintenance codes and regulations pursuant to this Code and/or State law; and/or directing subsequent purchasers to comply with the provisions of any issued order of revocation or suspension for the certificate of occupancy unless or until the subsequent purchaser appears before the Board of Trustees to provide an appropriate plan for the panel to review and make recommendations, wherein said plan will set forth measures to avoid further incidents of public nuisance.

B. The Decision and Order shall be served upon the owner, tenant and/or lessee of the property in any manner permitted for service of a summons in a civil action, or by certified mail, return receipt requested, or by posting in a conspicuous place on the property which is the subject of the Decision and Order.

C. Nothing in this chapter shall limit the authority of the Board of Trustees to take such other or further actions which it may deem necessary to abate any existing public nuisance to the extent necessary to ensure the protection of the health, safety and welfare of the general public. “

Section three. If any clause, sentence, paragraph, word, section, article or part of this local law shall be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not affect, impair or invalidate any other part of this local law, or the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which said judgment shall have been rendered.

Section four. This local law shall take effect immediately upon adoption and filing pursuant to the Municipal Home Rule Law.

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 7 of 2007 of the ~~(County)~~(City)(Town)(Village) of Rockville Centre was duly passed by the Board of Trustees on October 16, 2007, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 200\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 200\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 200\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 200\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 200\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 200\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 200\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 200\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 200\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 200\_, in accordance with the applicable provisions of law.

**5. (City local law concerning Charter revision proposed by petition.)**

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\*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 200\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_2000\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 200\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_19\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

~~Clerk of the County legislative body, City, Town or Village Clerk~~  
or officer designated by local legislative body.

(Seal)

Date: October 16, 2007

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature

Village Attorney  
Title

County

City

of Rockville Centre

Town

Village

Date: October 16, 2007