

Local Law Filing

(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 Town Village
(Select one.)

of Union

FILED
STATE RECORDS

DEC 14 2016

DEPARTMENT OF STATE

Local Law No. 05 of the year 2016

A local law amending Chapter 141 of the Public Nuisance Law
(Insert Title)

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

County City Town Village
(Select one.)

of Union as follows:

See Attached

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

(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. 05 of 20 16 of the ~~(County)(City)(Town)(Village)~~ of Union was duly passed by the Town Board on December 7, 2016, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

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 _____ 20____, 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 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* 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.

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

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ 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 _____ 20____, 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 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, 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 a 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 _____ above.

Gail L. Springer
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: December 8, 2016

(Seal)

Chapter 141. NUISANCES

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 the interest of the public in the quality of life and total community environment, commerce in the Town, property values and the public health, safety and welfare. The Board further finds that the continued occurrence of such activities and violations is 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 the Board to authorize and empower the Town Board to impose sanctions and penalties for such public nuisances, and such power of the Town Board 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 other laws. The 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:

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 or near the property by law enforcement agencies or their agents; arrests for violations of controlled substance law and or possession of weapons; loitering for the purposes of engaging in illegal activity; an increase in the volume of traffic associated with property; complaints made to law enforcement officials of illegal activity associated with the property, 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 or near property by law enforcement officials and their agents.

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 conviction for an offense in a court of competent jurisdiction or an administrative bureau shall not be required. Instead, the Town shall prove 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.

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 -- For the purposes of Article III, a public nuisance shall be deemed to exist whenever, through violations of any of the following provisions resulting from separate incidents at a building, erection or place or immediately adjacent to the building, erection or place as a result of the operation of the business, 12 or more points are accumulated within a period of six (6) months or 18 or more points within a period of twelve (12) months in accordance with the following point system. 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 shall mean the statute or code as enacted at the time this Law is adopted and any amendment affecting such statute or code.

- (1) The following violations shall be assigned a point value of two (2) points:
 - (a) Section 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) Chapter 300, Article 50 of the Code of Ordinances of the Town of Union—Noise.
 - (d) Chapter 130 of the Code of the Town of Union—Littering.
 - (e) Chapter 71, Article 1, of the Code of the Town of Union regarding howling dogs, and/or repetitive barking, number of dogs, unlicensed dogs and dangerous or nuisance dogs.
- (2) The following violations shall be assigned a point value of four (4) points:

- (a) Disorderly conduct by individual or individuals.
- (b) Any violation of Chapter 155 of the Code of the Town of Union—Housing and Property Maintenance, including any garbage collection violation. Each repeat offense is an additional four (4) points.
- (c) General disturbances 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.
The following violations 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.
 - (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) Any commercial violations of Chapter 300, Zoning, of the Town of Union Code.
 - (i) Allowing persons on the premises in excess of occupancy limits.
 - (j) Section 3383 of the Public Health Law—Imitation controlled substances.
 - (k) Operating a premises without the requisite certificate of use in violation of Chapter 300, Zoning of the Code of the Town of Union.
The following violations shall be assigned a point value of ten (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.
The following violation shall have a point value of twelve (12) points violations, including but not limited to murder, attempted murder, assault, attempted assault, sex offenses, etc.

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 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 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. Evidence and presumptions.

- A. Evidence. In any action under this chapter, evidence of the common fame and general reputation of the building, structure or place, of the inhabitants or occupants thereof, or of those resorting thereto, shall be competent evidence to prove the existence of a property or building nuisance.
- B. Scienter. If evidence of the general reputation of the building, structure or place, or of the inhabitants or occupants thereof, is sufficient to establish the existence of the nuisance, it shall be prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance, on the part of the owners, lessors, lessees, and all those in possession of or having charge of, as agent 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.
- C. Presumptions for the purposes of this section.
 - (1) Any building, accessory building, 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 § 141-3 on the part of the lessees, owners, operators, or occupants, of the provisions of this chapter as defined in § 141-3 of this article shall be prima facie evidence that a public nuisance exists at said location.
 - (2) Any building, accessory building, 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 violations on the part of the lessees, owners, operators, or occupants, of the provisions of this chapter as defined in § 141-3 of this article, shall be prima facie evidence that a public nuisance exists at said location.
 - (3) Any building, accessory building, business office, lot, or yard wherein, within the period of one year prior to the commencement of an action under this chapter, there has been presented a preponderance of evidence of repeated criminal activity which has an adverse impact, as defined in § 141-3 of this article, on such property or neighborhood, shall be prima facie evidence that a public nuisance exists at said location.

ARTICLE II, Civil Remedies for Property and Building Nuisances

§ 141-5. Applicability.

This article shall be applicable to the public nuisances defined 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. The 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. The 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, § 141-3 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, 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 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 of his or her agent 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 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 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. 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. The complaint or affidavit shall describe the adverse impact associated with the property on the surrounding neighborhood.

- 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 two 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 Attorney 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 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 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 Department of Public Works and the office of 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 Public Works 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 Town of Union Public Works 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 Town.
- B. A judgment awarding a permanent injunction pursuant to this chapter may authorize agents of the Town to forthwith remove and correct construction and structural alterations in violation of the Town 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.
- 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 Public Works Department, to the extent necessary to abate the nuisance, and shall direct the Town of Union Public Works Department to post a copy of the judgment and a printed notice of such closing conforming to the requirements of § 141-8H of this chapter. Mutilation or removal of such a posted judgment 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 \$500 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 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 Public Works Department pursuant to this section shall not constitute an act of possession, ownership or control by the Town of Union Public Works Department 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 or by imprisonment not exceeding six months, or by both.

- H. Upon the request of the Town Attorney or the Town Board, the New York State Police 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 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.
- 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.

§ 141-8. Preliminary injunction.

A. Generally.

- (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 the preliminary injunction shall direct a trial of the issues at the earliest possible time. Where 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.
- (2) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the Town Attorney and the New York State Police.
- (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 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 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.
- (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 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.

- G. 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 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. Mutilation or removal of such a posted order or such a posted 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 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 and permanent injunction. Intentional disobedience of, or resistance to, a temporary restraining order 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 months or by both.
- J. 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.

§ 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 the Town 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 Town, in the event a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements in investigating, bringing and maintaining the action.
- (2) An order vacating a temporary closing order, or a temporary restraining order, shall include a provision authorizing agencies of the Town 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, no conviction, by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both. The New York State Police shall, upon the request of the Town Attorney or the Town Board, assist in the enforcement of an inspection provision of an order vacating a temporary restraining order.

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 Town 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.

§ 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, 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 a temporary restraining order shall be made pursuant to §141-9 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 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.