

**Proposed  
LOCAL LAW #1-2012**

**UNCONTROLLED WEEDS AND VEGETATION**

Be it proposed by the Board of Trustees of the Village of Cassadaga in County of Chautauqua on May 2, 2012, as follows:

**SECTION 1: Findings and Determination**

- A. The Village Board of the Village of Cassadaga hereby finds that uncontrolled weeds and brush, upon private property threatens the health, safety and welfare of the Village residents. Such items and uncontrolled weeds and vegetation also provides a haven for vermin or rodents, infestation by insects, depreciates property values, and has a deteriorating and blighting effect upon the neighborhood and community.
- B. The Village Board hereby determines that uncontrolled weeds and vegetation upon private property constitutes a public nuisance.

**SECTION 2: Definitions**

- A. As used herein, the following terms shall have the following definitions:

Code Enforcement Officer: The Zoning Enforcement Officer and/or Code Enforcement Officer or their deputies or staff, or any other person designated such authority in the Village of Cassadaga.

Owner: The owner as identified on the current assessment roll, or the managing representative of the owner.

Real Property: Includes all parcels of land within the Village of Cassadaga whether it to be unimproved or improved, occupied or unoccupied.

Village Board: The Village of Cassadaga Board of Trustees.

Weeds or Vegetation: All brush, grass, weeds, or other vegetation, which exceeds six (6) inches on real property.

B. All other terms as used in this Law shall have their common or ordinary meaning.

### **SECTION 3. Uncontrolled Weeds or Vegetation**

A. No person, as owner, occupant, lessee or agent, or in any capacity, of real property shall maintain or grow or cause to be maintained or have grown uncontrolled weeds and vegetation as defined herein upon any private property within the Village.

B. This section shall not apply:

1. Any weeds or vegetation temporarily stored or placed in a container for collection or disposal.
2. The maintenance of a mulch pile used for on real property gardening or landscaping confined to an area to the rear of a residence and not exceeding 50 square feet.
3. Weeds or vegetation on farms of real property in actual use for agricultural purposes.
4. Vegetation consisting of maintained gardens, landscaping including ornamental trees, shrubs, cultivated flowers, plants and agricultural crops that are not in violation of other Laws or Village Zoning where actual care and maintenance is taking place on a regular basis.

C. For purposes of this Law, every owner and occupant shall be strictly liable, and fully responsible, and shall be deemed to have permitted any condition on the real property they own or occupy.

### **SECTION 4. Inspection**

Whenever it shall appear that the provisions of this Law are violated, the Code Enforcement Officer or any such other officer or employee authorized by the Village to have jurisdiction thereof, is authorized to make an inspection of the property involved and prepare a written report of the conditions found, which report shall be filed with the Village Board.

### **SECTION 5. Notice of Violation**

- A. If conditions existing on the inspected real property violate the provisions of this Law, the Code Enforcement Officer or other designated officer or employee is authorized to serve or cause to be served a written notice of such violation, either personally or by certified mail, upon the owner or owner's agent as well as upon the lessee or occupant of said real property. Failure to serve either an owner or an occupant or lessee, shall not prevent enforcement against any party served.
- B. Said notice shall contain substantially the following: the name of the owner, lessee or occupant of the real property; the address or location of the real property; the identification of the real property as the same appears on the current assessment roll; a statement of the conditions on the property deemed upon inspection to be in violation of this Law; demand that the weeds and vegetation in excess of six (6) inches in height, determined to be in violation of this Law be removed from the property on or before seven (7) days after the service or mailing of such notice; a statement that a failure or refusal to comply with the provisions of this Law and the notice given pursuant thereto within the time specified may result in a duly authorized officer, agent or employee of the Village entering upon the property and removing such weeds and vegetation, and causing the same to be disposed of or otherwise destroyed; and that the cost and expense of such removal and disposal shall be determined by the Village Board, shall be assessed against the described property and shall constitute a lien thereon to be collected as provided by Law.
- C. Said notice shall also contain the date, time and location at which the Village Board will conduct a hearing to determine whether the conditions upon the subject property constitute a public nuisance. Said notice shall state that the property owner, his/her agent, lessee or occupant is entitled to be heard at such hearing and present evidence or testimony. The date of such hearing must be at least seven (7) days after service or mailing of the Notice of Violation.
- D. Nothing contained in Section 4, 5, 6, 7 or 8 of this Law shall require any report or notice as a prerequisite to the filing of an information or the issuance of a summons or

appearance ticket for, or any prosecution of, a violation of any of the provisions of this Law.

#### **SECTION 6. Second Inspection and Report**

On or before the date of the hearing and prior to commencement of the hearing, the Code Enforcement Officer or other duly authorized officer or employee shall conduct a second inspection of the property and file a written report of the conditions deemed in violation of this Law found thereon with the Village Board. Such inspection shall be conducted as close to the date of the hearing as practicable.

#### **SECTION 7. Declaration of Public Nuisance and Remediation**

At the close of the hearing, the Village Board may determine that the conditions upon the subject property which violate this Law constitute a public nuisance. Upon a determination by the Village Board that conditions upon the property constitute a public nuisance, the Village Board is empowered to authorize officers, agents or employees of the Village to enter onto the property and remove any weeds or vegetation in violation of this Law and dispose of or otherwise destroy same. Any costs and expenses incurred by the Village when acting pursuant to this Law to abate a public nuisance shall be determined by the Village Board, shall be assessed against the property involved and shall constitute a lien thereon to be collected as provided by Law.

#### **Section 8. Emergency Actions**

Nothing in this Law shall prohibit a municipality from entering onto private property to remove any weeds or vegetation whenever there exists an imminent threat to the life or safety of persons. Municipal authority pursuant to this section may only be exercised where there is a dire necessity to protect life and safety. Any municipal action taken pursuant to this section must be reasonably calculated to alleviate or prevent the crises condition and must be limited to those actions necessary to eliminate the emergency situation.

A property owner shall be given notice and an opportunity to be heard prior to any costs and expenses incurred pursuant to this section being placed on the property's tax bill.

#### **Section 9. Additional Enforcement and Alternative Enforcement Relief**

- A. A violation of Section 3 of this Law is a violation punishable by a fine of up to \$250.00 and/or imprisonment for up to 15 days. Each additional week of continuous violation of the terms of this Law constitutes a separate violation.
- B. The Village may seek injunctive relief in a Court of competent jurisdiction and shall be entitled to a Judgment for any expenses incurred including reasonable attorney fees.
- C. All remedies set forth in this Law are alternative and cumulative, and the Village may enforce this Law utilizing any remedy or combination thereof.

**Section 10. Supremacy**

When the provisions of this Local Law conflict with the provisions of any other Local Law or Ordinance of the Village of Cassadaga, the provisions of this Local Law shall prevail.

**Section 11. Severability**

If any clause, sentence, subdivision, paragraph, section or part of this Law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**Section 12. Effective Date**

This Local Law shall be effective upon filing with the Secretary of State.