

TOWN OF MIDDLEBURY  
AN ORDINANCE  
FOR THE  
CONTROL OF PUBLIC NUISANCES

**Article I – Purpose**

Pursuant to Title 24 VSA Appendix, Chapter 3-127 S.104 (10) and Title 24, Chapter 59, S.1971 The Selectboard of the Town of Middlebury adopts an ordinance for the prevention of nuisances, disturbances, and disorderly assemblies, and provide for the enforcement of penalties for violation. There is a need to protect the safety, health, and welfare of residents of the Town of Middlebury by eliminating the proliferation of properties that harbor occupants who disrupt the peace and tranquility of the surrounding community. Other laws and ordinances do not adequately control chronic unlawful or nuisance activity or its detrimental effect on the community where such chronic activity occurs.

**Article II – Definitions**

As used in this ordinance, the following terms have the meaning indicated, unless the context clearly requires otherwise:

1. ABATE – means to bring a halt, eliminate, put a stop to.
2. PROPERTY – Any parcel of land, building, dwelling unit, social house, rooming house, rooming unit, tent, trailer, recreational vehicle, camping site or other structure or place within the Town of Middlebury occupied either temporarily or permanently by a human being. For purposes of this Ordinance, each parcel shown on the Middlebury tax maps shall constitute a separate property. Any buildings located on a property shall be considered part of that property unless they are under separate ownership, in which case the building and the underlying land shall be considered separate properties.
3. NOISE VIOLATION – A violation of the Town of Middlebury Ordinance for the Regulation of Noise, as confirmed by a Town Police Officer and documented in the Police Department records. For purposes of this Ordinance, multiple violations of the Ordinance for the Regulation of Noise occurring on the same property within an eight (8) hour period are considered a single Noise Violation.
4. PUBLIC NUISANCE – An occurrence of four (4) or more separate Noise Violations occurring on the same Property within a one hundred eighty (180) day period. A Public Nuisance will be deemed to continue until a period of 180 days has elapsed with no further Noise Violations, as provided in Section 301.

5. OWNER – The person, persons, corporation, partnership, association, trustees, or other entity having the legal title or the beneficial interest in a property, as their interest is recorded in the land records of the Town of Middlebury.
6. NOTICE AND ORDER – A notice given pursuant to Section 401 of a violation of this Ordinance for the Control of Public Nuisances with an order to abate and otherwise comply with the ordinance issued in accordance with this chapter.

### **Article III – Regulation**

#### Section 301 - Violations

1. No owner of a property shall commit, conduct, promote, facilitate, permit, fail to prevent, or otherwise let happen, a public nuisance on that owner’s property.
2. The initial occurrence of a public nuisance on a property (i.e., the fourth Noise Violation within a 180-day period) shall constitute a violation of this Ordinance (a “Nuisance Violation”). Such a violation shall be punishable as a first offense under Section 501.
3. Once a public nuisance has occurred on a property, each subsequent Noise Violation occurring on that property within 180 days of the last Noise Violation on the property shall constitute an additional Nuisance Violation. Each such violation shall be punishable as a second, third, or subsequent offense under Section 501.
4. Once a public nuisance has occurred on a property, if 180 days elapse with no further Noise Violations occurring on a property, then the public nuisance shall be deemed to have abated, and a new public nuisance will not be deemed to have occurred unless three new Noise Violations occur within any 180-day period.
5. Violations shall be evaluated separately for each property. For example, if an owner owns two properties, and two Noise Violations occur on each property within a 180-day period, a public nuisance shall not be deemed to have occurred because there were not four Noise Violations on a single property.

### **Article IV – Notices and Orders**

#### Section 400 – Notice and Warning

Within five (5) working days of the a Noise Violation occurring on a property, the Police Department or the Town Manager will cause to be served, in accordance with Section 402, a notice of warning to the owner, containing the following information:

- a. the date and times of each Noise Violation;

- b. the person or persons against whom action was taken to abate the Noise Violation;
- c. the nature and extent of the Noise Violation;
- d. a notice to the owner that four separate Noise Violations occurring on the property within a 180-day period will constitute a Public Nuisance and a violation of this Ordinance;
- e. a request to the owner to take all necessary steps to avoid future Noise Violations;
- f. a copy of the Ordinance for the Regulation of Noise and the Ordinance for Control of Public Nuisances.

#### Section 401 – Notice of Violation and Abatement Order

1. Within ten (10) working days of any Nuisance Violation, as defined in Section 301, the Town Manager shall cause to be served on the owner, in accordance with Section 402, a Notice of Violation and Order to Abate the Public Nuisance. The Notice and Order shall include:
  - a. copies of the notices previously sent pursuant to Section 400 for all Noise Violations occurring within the last 180 days;
  - b. a new notice pursuant to Section 400 for the latest Noise Violation that has given rise to a Nuisance Violation;
  - c. a notice to the owner that the building is a Public Nuisance and that a Nuisance Violation has occurred;
  - e. an order to other owner to abate the nuisance immediately; and
  - f. a copy of the Ordinance for the Control of Public Nuisances.

#### Section 403 - Delivery of Notices

Any notice required to be made to an Owner under this Ordinance shall be deemed effective if hand-delivered, mailed by certified mail, return receipt requested, or sent by overnight delivery with proof of delivery, to the owner at the address listed in the current Town of Middlebury Grand List. Notice need not be made separately to multiple owners unless there is more than one address listed in the Grand List. Any notice mailed or delivered to any owner as provided herein shall be effective as to the owner identified in the notice notwithstanding such owner's refusal to accept delivery of the notice and notwithstanding any failure of any other owner to actually receive notice.

Section 403 - Affirmative Defenses; Suspension of Enforcement.

1. The Town shall suspend enforcement of any Nuisance Violation if the Owner (a) confers with the Chief of Police as required in Paragraph 2 below, and (b) demonstrates that the owner has made diligent efforts to abate the Public Nuisance on its property, as defined in Paragraph 3 below.
2. The Owner or Owner's representative shall meet with the Chief of Police or his or her designee, in person or by telephone, within ten (10) days of receipt of the Notice and Order to Abate or at a time mutually agreed to be the Chief of Police and the Owner or owner's representative, to identify ways to eliminate the public nuisance.
3. For purposes of this Section, the requirement to make "diligent efforts" will be satisfied by either of the following:
  - a. The owner initiates formal eviction proceedings or other similar legal means, beginning prior to the issuance of the Nuisance Violation and continuing until all of the occupants whose conduct gave rise to the Violation have vacated the premises; or
  - b. Beginning prior to the issuance of the Nuisance Violation, the owner undertakes and pursues with due diligence, considering the nature and extent of the separate violations, reasonable means to avoid a recurrence of similar violations on the parcel by the present and future tenants or occupants of the parcel.

The owner will be responsible for submitting monthly progress reports to the Police Department as evidence of its diligent efforts. If the owner ceases to make diligent efforts (for example, by discontinuing or failing to actively pursue legal proceedings), then enforcement shall resume and the Town may pursue any enforcement actions allowed by this Ordinance;

5. Steps taken by an owner to abate a public nuisance after receiving a Notice of Violation and Abatement Order may be taken into account by the Town in imposing fines and other abatement actions, but shall not entitle the owner to automatic suspension of enforcement in accordance with Paragraph 1 above.

**Article V – Civil Penalties**

Section 500 – Designation as civil penalties.

Violations of the provisions of Article III are civil violations Per Title 24, VSA 1974a and other applicable laws.

Section 501 – Schedule of Penalties

Violation	Fine	Waiver
First Offense	\$250-\$1,000	\$250
Second Offense	\$500-\$1000	\$500
Third and Subsequent Offenses	\$750-\$1,000	\$750

Section 502 – Civil Enforcement Remedies

1. The town may enforce any order or decision issued in accordance with this chapter that is not complied with by the person to whom the order or decision is issued by any method available in law, including but not limited to lien, foreclosure, sale of real and personal property or a civil action. In addition to seeking enforcement of an order or decision, a civil action may be instituted for injunctive and compensatory relief.

Section 503 - Cost Recovery

1. In addition to and independent of any fines provided for under Article 501, the Town may collect from the Owner any expense related to efforts by the Town to abate a public nuisance. This includes the cost of responding to any noise complaints at the building, costs related to the prosecution of the offenders, administrative costs, court fees, and legal fees.
2. A cost-recovery fee schedule, approved by the Board of Selectmen, is an attachment to this ordinance.

**Article VI – Injunctions**

Section 601 – Injunctive Remedies

In addition to and independent of the other remedies provided for by this Ordinance, the Town may, pursuant to Title 24 Chapter 61, S. 2121, seek injunctive relief against the property and the owner to abate the nuisance, which may include, to the extent authorized by law, eviction of any occupants and the closure of the building to occupation for a period not to exceed one (1) year.

## **Article VII – Interpretation and Separability**

### Section 701 - Conflict with Other Standards

In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rule, regulation, or ordinance, the most restrictive or the imposing the higher standard shall govern.

### Section 702 - Severability

Should any court of competent jurisdiction determine any provision of this ordinance to be invalid, such jurisdiction shall not affect the validity of the ordinance as a whole or any part other than the part to declared to be valid.

### Section 703 - Effective Date

This ordinance or amendments thereto, shall become effective 40 days after adoption consistent with Section 107 A-D of the Town Charter.

Adopted: 10/27/2015; Effective: 12/6/2015