Revised Regulations of Anguilla: P125-7

PUBLIC HEALTH ACT (R.S.A. c. P125)

NUISANCE REGULATIONS

Note: These Regulations are enabled under section 8 of the Public Health Act, R.S.A. c. P125.

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Interpretation

1. In these Regulations—

"Act" means the Public Health Act;

"Director of Health Services" means the public officer holding such post and includes any person duly appointed in writing by the Director of Health Services to perform the functions specified to be performed by the Director of Health Services under these Regulations;

"Form" means a Form set out in the Schedule.

Nuisances enumerated

2. (1) In addition to the nuisances specifically enumerated in subsection (2), any act not warranted by law, or any omission to discharge a legal duty, which affects or is liable to affect prejudicially the public health or safety shall, for the purposes of these Regulations, be deemed to be a nuisance.

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(2) For the purposes of these Regulations, the following shall be nuisances—

(a) any place, matter or thing or deposit or accumulation of liquid or solid matter that—

(i) is injurious or dangerous to health or life or likely to become so, or

(ii) harbours or acts as a shelter or serves as a breeding place for insects or vermin that are reputed or known to convey infectious disease, or which contains or harbours or shelters such insects or vermin in any stage of their development or which is likely to do so;

(b) any—

(i) pool, ditch, pond, gully, gutter, watercourse, cistern, tank, well or other receptacle for collection of or means of storing water or water supply,

(ii) watercloset, earth-closet, privy, urinal, trench, cesspool, cesspit, drain or manure heap, or

(iii) receptacle for or collection of, dung, dust, ashes, rubbish, stable litter, or other waste matter,

so foul or in such a state or so placed or made or left as to be insanitary, or a nuisance, or injurious or dangerous to health or likely to become so;

(c) any yard or enclosure or other place which by reason of the growth of vegetable matter and by reason of its not being kept properly bushed, dry and clean is insanitary or a nuisance or dangerous to health or likely to become so;

(d) any part of a house or building so overcrowded by day or by night as to be insanitary or injurious or dangerous to the health of the inmates, whether or not members of the same family, or, where the number of persons is greater than the cubic or square area of the building allows for, in accordance with any other written law;

(e) any tree, or bush, or any erection built after 1st May, 1981 which interferes with the free ventilation of any neighbouring premises or buildings, or is in such a position as to be hazardous to health or safety;

(f) the exposure of empty bottles (broken or otherwise), empty tins, coconut shells, uncovered barrels, boxes and anything that will serve as a receptacle for water or as a breeding place for mosquitoes or other insects known or reputed to convey disease;

(g) any eaves gutter or down pipe so constructed that the water cannot drain freely and quickly away or which allows the collection of water at any spot;

(h) any absence from any premises of—

(i) a sufficient and properly constructed and protected water supply, water fittings, means of storing water, or

(ii) sufficient and properly constructed and protected catchment area and appurtenances or means of collecting water;

(i) any waterworks, or water supply, or means of storing, conducting, collecting, pumping, or hauling water which is not maintained in a sanitary condition;

(j) any watertap, pipe or pump or other means of obtaining water under which water is allowed to accumulate or become stagnant;

(k) any house not sufficiently supplied with fresh water, regard being had in every case to the nature thereof, the number of persons usually occupying, inhabiting or using the same and the means of supply thereto;

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(l) any tank, cistern, reservoir for water or other water supply, whether public or private, used for domestic purposes, the water wherein shall be a nuisance, or the use whereof for domestic purposes would be injurious to health;

(m) any collecting area, filter, gutter or pipe, whether public or private, for the collecting, purifying, or conveying of water for domestic purposes, which is in such a state or condition that the water collected thereby or passing over or through it would be a nuisance or the use where for domestic purposes would be injurious to health;

(n) any sanitary convenience, or any part, connection or appurtenance thereof—

(i) not so constructed, placed or kept in repair so as to be in accordance with any regulations made under the Act,

(ii) which is a nuisance either from its proximity to or position with regard to any neighbouring house or for any other reason, or

(iii) which is insanitary or injurious to health or likely to become so;

(o) any gutter or ditch not kept free from bush, grass and weeds and collections of water;

(p) any collection of water on any premises or any trench, ditch or gutter or any animal kept in such a place or manner as to be prejudicial to health or a nuisance or injurious or dangerous to health and which is not rendered incapable of being insanitary or a nuisance or injurious to life or health by being—

(i) properly covered or screened or both, as the case may be, in the manner ordered,

(ii) sufficiently and continuously stocked with such stock of such fish as are prescribed by any order, regulation, or by-law,

(iii) covered with a continuous film of oil,

(iv) drained,

(v) filled in, or

(vi) otherwise rendered innocuous so as to be incapable of being or causing a nuisance or of allowing the breeding of mosquitoes or other insects as may be ordered in accordance with the provisions of any regulation made under the Act;

(q) any animal so kept as to be injurious to health;

(r) the discharge of any slop or sullage water, or any rain water from roofs, or any waste water whatsoever on to any public place, alley or lane, which inconveniences the normal passage of pedestrians;

(s) any pollution, save in accordance with a valid permit granted by the Director of Health Services, of any stream, watercourse, or any dunder, industrial waste, or other noxious matter, whether or not a prescriptive right has been acquired to any such pollution;

(t) the production of smoke from any combustion or refuse, or any emission from any chimney of a bakery or other place of business or factory, which is excessive or noisome;

(u) any dust or ashes noticeably airborne, resulting from any process of combustion;

(v) any failure to comply with an order made or direction issued by the Director of Health Services or the Magistrate under the Act for the abatement of a nuisance.

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(3) Notwithstanding subsections (1) and (2), any accumulation or deposit necessary for the effectual carrying on of any business or manufacture shall not be punishable as a nuisance under these Regulations if it is proved to the satisfaction of the Court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury to health thereby.

Information of a nuisance and persons liable to conviction

3. (1) Information of a nuisance liable to be dealt with summarily under these Regulations may be given to the Director of Health Services by any person, or complaint may be made at any police station.

(2) The following persons are liable to conviction for an offence against these Regulations—

(a) any person who commits a nuisance;

(b) any person who aids another person in committing a nuisance;

(c) any person who procures another person to commit a nuisance;

(d) the owner or occupier of any premises who knowingly permits a nuisance to continue thereon which it is within his power to prevent or abate.

Notice requiring abatement of nuisance

4. (1) Subject to subsection (3), on the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under these Regulations, the Director of Health Services shall, if satisfied of the existence of a nuisance, serve a notice in Form 1 on the person by whose act, default or sufferance the nuisance arises or continues, or, if such person cannot be found, on the occupier or owner of the premises on which the nuisance arises, requiring him to abate the same within the time specified in the notice, and to execute such works and do such things as may be necessary for that purpose, and specifying any works to be executed.

(2) Subject to subsection (3), the Director of Health Services may also, by the same or another notice served on such occupier, owner or person, require him to do what is necessary for preventing the recurrence of the nuisance and, if he thinks it desirable, specify any works to be executed for that purpose, and may serve that notice notwithstanding that the nuisance may for the time have been abated, if the Director of Health Services considers that it is likely to recur on the same premises.

(3) Where—

(a) the nuisance arises from any want or defect of a structural character, or where the premises are unoccupied, the notice shall be served on the owner;

(b) the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue from the act, default, or sufferance of the occupier or owner of the premises, the Director of Health Services may abate the same and may do what is necessary to prevent the recurrence thereof; and

(c) a medical practitioner registered under the Medical Act certifies to the Director of Health Services that any house or part of a house is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, the Director of Health Services shall take proceedings under this section for the abatement of such nuisance.

(4) Where a notice has been served on a person under this section and either—

(a) the nuisance arose from the wilful act or default of that person; or

(b) such person makes default in complying with any of the requisitions of the notice within the time specified;

he is guilty of an offence and is liable to a fine of $2,500 for each offence.

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On non-compliance with notice, order to be made

5. (1) If either—

(a) the person on whom a notice to abate a nuisance has been served as aforesaid makes default in complying with any of the requisitions thereof within the time specified; or

(b) the nuisance, although abated since the service of the notice, is, in the opinion of the Director of Health Services, likely to recur on the same premises;

the Director of Health Services may make a complaint before the Magistrate who may make against such person a summary order (in these Regulations referred to as a "nuisance order") in Form 2.

(2) A nuisance order may be an abatement order, a prohibition order or a closing order or a combination of such orders.

(3) An abatement order may require a person to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance, within a time specified in the order.

(4) A prohibition order may prohibit the recurrence of a nuisance.

(5) An abatement order or prohibition order shall, if the person against whom the order is made so requires or the Magistrate considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of the nuisance.

(6) A closing order may prohibit a dwelling house from being used for human habitation.

(7) A closing order shall only be made where it is proved to the satisfaction of the Magistrate that by reason of a nuisance a dwelling house is unfit for human habitation and, if such proof is given, the Magistrate shall make a closing order.

(8) The Magistrate when satisfied that the dwelling house has been rendered fit for human habitation may declare that he is so satisfied and cancel the closing order.

(9) If a person fails to comply with the provisions of a nuisance order with respect to the abatement of a nuisance, he is, unless he satisfies the Magistrate that he has used all due diligence to carry out such order, guilty of an offence and is liable to a fine of $250 a day during his default; and, if a person knowingly and wilfully acts contrary to a prohibition or closing order, he is guilty of an offence and is liable to a fine of $500 a day during such contrary action.

(10) The Director of Health Services may enter the premises to which a nuisance order relates, and abate or remove the nuisance, and do whatever may be necessary in execution of such order.

Appeal against nuisance order

6. (1) Where a person appeals to a Judge of the High Court against a nuisance order, no liability to a penalty shall arise nor, save as mentioned in this section, shall any proceedings be taken nor work done under such order until after the determination or abandonment of such appeal.

(2) Where a nuisance order is made and a person does not comply with it and appeals against it, and such appeal is dismissed or is abandoned, the appellant is liable to a fine of $100 a day during the non-compliance with the order, unless he satisfies the Court before which proceedings are taken for imposing a penalty that there was substantial ground for the appeal and that the appeal was not brought merely for the purpose of delay; and where the appeal is heard, the Judge may, on dismissing the appeal, impose the penalty as if the Court were that of the Magistrate.

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(3) Where a nuisance order is made against any person and appealed against and the Court which made the order is of the opinion that the continuance of the nuisance will be injurious to health, and that the immediate abatement thereof will not cause any injury which cannot be compensated by damages, the Court may authorise the Director of Health Services immediately to abate the nuisance; but the Director of Health Services, if he does so, and the appeal is successful, shall pay the cost of such abatement, and the damages (if any) sustained by the person by reason of such abatement; but if the appeal is dismissed or abandoned, the Director of Health Services may recover summarily as a civil debt the cost of the abatement from the person.

When order may be addressed to Director of Health Services

7. Where it appears to the satisfaction of the Magistrate that the person by whose act, default or sufferance a nuisance liable to be dealt with summarily under these Regulations arises or the owner or occupier of the premises is not known or cannot be found, then the nuisance order may be addressed to, and if so addressed shall be executed by, the Director of Health Services.

Sale of matter or thing removed in abatement of nuisance

8. Any matter or thing removed by the Director of Health Services in abating or doing what is necessary to prevent the recurrence of a nuisance liable to be dealt with summarily under these Regulations may be sold by public auction, or if the Director of Health Services thinks the circumstances of the case require it, may be sold otherwise, or be disposed of without sale; and the money arising from the sale shall be paid into the Consolidated Fund after payment by the Director of Health Services of the expenses incurred by him with reference to such nuisance, and the surplus (if any) shall be paid on demand out of the Consolidated Fund to the owner of such matter or thing.

Power of entry

9. The Director of Health Services shall have the right to enter any premises—

(a) for the purpose of examining them as to the existence thereon of any nuisance liable to be dealt with summarily under these Regulations, at any time between 7:00 a.m. and 6:00 p.m. or in the case of a nuisance arising in respect of any business, at any time when the business is in progress or is usually carried on;

(b) where under these Regulations a nuisance has been ascertained to exist or a nuisance order has been made, then at any such hour as aforesaid until the nuisance is abated, or the works ordered to be done are completed or the closing order is cancelled, as the case may be; and

(c) where a nuisance order has not been complied with or has been infringed, at all reasonable hours including all hours during which business therein is in progress or is usually carried on, for the purpose of executing the order.

Recovery of costs and expenses

10. All costs and expenses incurred in serving notice, making a complaint or obtaining a nuisance order, or in carrying the order into effect or in abating or suppressing any nuisance, shall be deemed to be money paid to the use and at the request of the person on whom the order is made, or if no order is made but the nuisance is proved to have existed when the notice was served or the complaint made, then of the person by whose act, default or sufferance the nuisance was caused, and in the case of nuisances caused by the act or default of the owner of the premises, such costs and expenses may be recovered in any court of competent jurisdiction from any person who is for the time being owner of such premises.

Penalty for causing privy, drain or dustbin to be a nuisance

11. If a person causes any drain, privy or dustbin to be a nuisance or injurious to health by wilfully destroying or damaging it, or any water supply, apparatus, pipe or work connected therewith, or by otherwise wilfully stopping up or wilfully interfering with or improperly using it or any such pipe or work, he is guilty of an offence and is liable to a fine of $1,000.

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Power of individual to complain to Magistrate of nuisance

12. (1) Complaint of the existence of a nuisance liable to be dealt with summarily under these Regulations on any premises may be made by any person and thereupon the like proceedings shall be had, with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal and otherwise, as in the case of a like complaint by the Director of Health Services, but the Magistrate may, if he thinks fit—

(a) adjourn the hearing or further hearing of the complaint for the purpose of having an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any police officer, or other person for that purpose; and

(b) authorise any police officer or other person to do all necessary acts for executing an order made on a complaint under this section, and to recover the expenses from the person against whom the order is made in a summary manner.

(2) Any police officer or other person authorised under this section shall have the like powers and be subject to the like restriction as if he were Director of Health Services authorised under the foregoing provisions of these Regulations to enter any premises and do any acts therein.

Citation

13. These Regulations may be cited as the Nuisance Regulations, Revised Regulations of Anguilla, P125-7.

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SCHEDULE

FORMS

FORM 1

NUISANCE REGULATIONS

(Section 4)

NOTICE REQUIRING ABATEMENT OF NUISANCE

To (persons causing the nuisance, or owner or occupier of the premises at which it exists, as the case may be).

Take notice that under the provisions of the Public Health Act the Director of Health Services being satisfied of the existence at *(describe premises where the nuisance exists)* of a nuisance being *(describe the nuisance)* do hereby require you within *(specify time)* from the service of this notice to abate the same and to execute such works and do such things as may be necessary* (for that purpose) (*or* for that purpose to *(specify any works to be executed)*) and the said Director of Health Services does hereby require you within the said period to do what is necessary for preventing the recurrence of this nuisance, and for that purpose to etc., *(where the nuisance has been abated, but is likely to recur, say:)* being satisfied that at etc., there existed recently, to wit, on or about the ..... day of ..... that although the said nuisance has since the last-mentioned day been abated, the same is likely to recur at the said premises, do hereby require you within *(specify time)* to do what is necessary for preventing the recurrence of the nuisance, and for that purpose to etc.

If you make default in complying with the requisitions of this notice, or, if the said nuisance though abated is likely to recur, a summons will be issued requiring your attendance before the Magistrate to answer a complaint which will be made for the purpose of enforcing the abatement of the nuisance, or prohibiting the recurrence thereof, or both, and for recovering the costs and penalties that may be incurred thereby.

Dated this ..... day of .....……..... , 20..... .

** Delete as inapplicable*

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FORM 2

NUISANCE REGULATIONS

(Section 5(1))

NUISANCE ORDER

To A. B. .....of ..... *(or to the owner thereof) (describe premises)* situated *(insert such description of the situation as may be sufficient to identify the premises)*.

Whereas the said A. B. ..... *(or owner or occupier of the said premises within the meaning of the Public Health Act)* has this day appeared before me to answer the matter of a complaint made etc. that at, etc. *(follow the words of the complaint in the summons) (or in the case the party charged does not appear, say;)* whereas it has now been proved to my satisfaction that a summons has been duly served according to the Public Health Act requiring the said A. B. ..... *(or the owner or occupier of said premises)* to appear this day before me to answer the matter of a complaint made by etc. that etc.

(Any of the following orders may be made or a combination of any of them as the case requires).

It having been proved before me that the nuisance so complained of does exist at the said premises *(and where the order is made on the person causing the nuisance:)* and that the same is caused by the act, default or sufferance of A. B. ....., in pursuance of the Public Health Act, I do order the said A. B. .....*(or the said owner or occupier)* within *(specify the time from the service of this order according to the said Act) (here specify the nuisance to be abated and state any works to be executed)*.

Prohibition Order No. 1

And I, being satisfied that notwithstanding the said nuisance may be temporarily abated under this Order, the same is likely to recur, do therefore prohibit the said A. B. ..... *(or the said owner or occupier)* from allowing the recurrence of the said or a like nuisance and for that purpose I direct the said A. B. ..... *(or the said owner or occupier) (here specify any works to be executed)*.

Prohibition Order No. 2

It having been proved before me that at or recently before the time of making the said complaint, that the nuisance so complained of did exist at the said premises but that the same has since been abated *(add where the nuisance order is made on the person causing the nuisance)* and that the nuisance was caused by the act, default or sufferance of A. B. .....……..... yet not withstanding such abatement, I being satisfied that it is likely that the same or the like nuisance will recur at the said premises do therefore prohibit ..... *(continue as in Prohibition Order No. 1)*.

Closing Order

It having been proved before me that the nuisance is such as to render the dwelling house *(describe the house)* situated at *(insert such a description of the situation as may be sufficient to identify the dwelling house)* unfit in my judgment for human habitation, I in pursuance of the Public Health Act, do hereby prohibit the use of the said dwelling house for human habitation.

Dated this ..... day of .....……....., 20..... .

Magistrate

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