

Town of Irondequoit, NY  
Friday, August 28, 2015

## Chapter 173. Public Nuisances

[HISTORY: Adopted by the Town Board of the Town of Irondequoit 7-17-2007 by L.L. No. 3-2007.  
Amendments noted where applicable.]

### GENERAL REFERENCES

Animals — See Ch. **79**.  
Building construction and fire prevention — See Ch. **98**.  
Unsafe buildings — See Ch. **104**.  
Noise — See Ch. **160**.  
Rental properties — See Ch. **177**.  
Zoning — See Ch. **235**.

### § 173-1. Definitions.

As used in this chapter, the following words shall have the meanings indicated:

#### OWNER

The person or persons or entity or entities that are the owner or owners of record at the office of the Town Assessor of the property.

#### PUBLIC NUISANCE

Includes, but shall not be limited to, any one or more of the following:

- A. Any building, structure, or real property used for purposes of illegal use, possession, or distribution of a drug, controlled substance or marijuana as defined by the New York State Penal Law.
- B. Any building, structure, or real property used for 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 materials as defined by the New York State Penal Law.
- 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 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 purposes of illegal sale, manufacture, or consumption of alcoholic beverages as defined by the New York State Alcoholic 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 any violation of the Code of the Town of Irondequoit, including but not limited to Chapter **79**, Animals; Chapter **98**, Building Construction and Fire Prevention; Chapter **160**, Noise; Chapter **235**, Zoning; and the New York State Uniform Fire Prevention and Building Code, including the Property Maintenance Code of New York State.
- J. Any building, structure, or real property wherein an occupant, guest, or business invitee commits criminal activities or other offenses involving assault, gang assault, harassment, or disorderly conduct, as said criminal activities are defined by the New York State Penal Law.

## § 173-2. Public nuisances prohibited.

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

## § 173-3. Presumption of knowledge.

Written notice delivered by the Town to the property owner, operator, manager, tenant, lessee, or other occupant of a building, structure, or real property by first-class, certified or registered U.S. Mail, return receipt requested, or by personal service on the owner, of any activity or activities constituting a public nuisance shall be prima facie evidence of knowledge of said public nuisance.

## § 173-4. Criminal convictions as presumption of existence of public nuisance.

The existence of three or more criminal convictions for any of the activities set forth in the definition of "public nuisance" in § **173-1** at any building, structure, or real property within a two-year period prior to the commencement of a civil action and/or an administrative hearing shall be prima facie evidence of the existence of a public nuisance. For the purposes of this chapter, a "criminal conviction" shall be defined as the entry of a guilty plea to, and/or a verdict of guilty for, one or more counts set forth in an accusatory instrument.

## § 173-5. Other evidence of prohibited conduct as presumption of existence of public nuisance.

The existence of three or more incidents of any of the following activities at any building, structure, or real property within a one-year period prior to the commencement of a civil action and/or an administrative hearing shall be prima facie evidence of the existence of a public nuisance:

- A. Conviction for any of the activities set forth in the definition of a "public nuisance" in § **173-1** occurring on or in immediate proximity to the property.
- B. Arrest for any of the activities set forth in the definition of a "public nuisance" in § **173-1** occurring on or in immediate proximity to the property.
- C. Service of an accusatory instrument charging any of the activities set forth in the definition of "public nuisance" in § **173-1** occurring on or in immediate proximity to the property. For purposes of this

chapter, "accusatory instrument" shall include, but is not 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 buildings or structures on or in immediate proximity to the property, a notice of violation issued by the Town of Irondequoit Department of Community Development, the Town of Irondequoit Police Department, the Fire Marshal of the Town of Irondequoit, and/or other authorized entities or officials with jurisdiction in the Town.

- D. Service of a search warrant on the building, structure, or real property where controlled substances, marijuana, and/or illegal firearms or weapons are seized.
- E. The finding of illegal controlled substances or illegal firearms or weapons on the building, structure, or real property.
- F. Investigative purchases of illegal drugs, controlled substances or marijuana on the building, structure, or real property by law enforcement agencies or their agents.

### **§ 173-6. Summons and complaint for civil action.**

- A. The Town Attorney or Attorney to the Town, as the case may be, may bring and maintain a civil action in the name of the Town to abate a public nuisance and shall commence the civil action by the filing of a summons and complaint in the manner required by the New York State Civil Practice Law and Rules.
- B. The summons and complaint shall name as defendants the building, structure, or real property by describing it by Tax Map number and/or street address and shall name as defendants one or more of the owners of the property.
- C. The summons and complaint may also name as defendants any operator, manager, tenant, lessee or other occupant of the building, structure or real property.
- D. The complaint shall allege the facts constituting the public nuisance.
- E. The complaint shall be accompanied by affidavits demonstrating that the owner or his agent had notice from the Town of the existence of the nuisance and had an opportunity to abate the nuisance.
- F. The venue of the action shall be in any court of competent jurisdiction in the county where the public nuisance is being conducted, maintained, permitted or allowed.
- G. In rem jurisdiction over the building, structure, or real property shall be completed by affixing the summons to the building, structure, or real property and by mailing the summons and complaint by certified or registered mail, return receipt requested, to the owner.
- H. Defendants other than the building, structure or real property shall be served with the summons and complaint in the manner required by the New York State Civil Practice Law and Rules.
- I. With respect to any action commenced or to be commenced, the Town may file a notice of pendency pursuant to the New York State Civil Practice Law and Rules.

### **§ 173-7. Civil penalty.**

If, upon the trial of an action for a civil nuisance or upon a motion for summary judgment, a finding is made that any defendant has caused, conducted, maintained, permitted, or allowed a public nuisance, a penalty may be awarded by the court in an amount not to exceed \$1,000 for each day it is found that such defendant caused, conducted, maintained, permitted, or allowed the public nuisance after notice to abate same had been given by the Town. Upon recovery, such penalty shall be paid to the Town general fund.

## § 173-8. 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 the defendants have caused, conducted, maintained, permitted, or allowed a public nuisance, in addition to any other right, remedy, recovery, award or judgment to which the Town may be entitled under this chapter or other applicable law, a permanent injunction against the same may be issued by the court. Any such permanent injunction may include, among other things, one or more of the following:
- (1) A prohibition against defendants from causing, conducting, maintaining, permitting or allowing the public nuisance.
  - (2) An authorization to the Town and its agents to remove and correct any conditions in violation of the Code of the Town of Irondequoit. The judgment may further order that the costs incurred by the Town for removing and correcting the violations, plus an administrative charge of 50% as compensation to the Town for administering, supervising, and/or handling such work, shall be charged against the defendants and awarded to the Town. Such costs of removing and correcting the violations, plus such administrative charge, 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 within the Town.
  - (3) A judgment directing the closing of the building, structure, or real property by the Town of Irondequoit Police Department, to the extent necessary to abate the nuisance.
- B. A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the New York State Civil Practice Law and Rules and for the actual costs, expenses, and disbursements of the Town in investigating, bringing and maintaining the action.

## § 173-9. Closing of building, structure, or real property.

- A. If the judgment of the court directs the closing of the building, structure, or real property, the Town of Irondequoit Police Department shall serve the judgment upon the defendants in the manner required by the New York State Civil Practice Law and Rules and shall post a copy of the judgment upon one or more of the doors at entrances to the building, structure, or real property or in any other conspicuous place on the building, structure, or real property.
- B. In addition, the Town of Irondequoit Police Department shall affix upon one or more of the doors at entrances to the building, structure, or real property a printed notice stating "CLOSED BY COURT ORDER" in block lettering a minimum of four inches high with a minimum of 1/2 inch stroke width so as to be readily 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 under the New York State Penal Law and the Code of the Town of Irondequoit and shall be punishable pursuant to § 1-16.
- D. The Town of Irondequoit Police Department may then command any and all persons present in the building, structure, or real property to vacate the property forthwith. After the building, structure or real property has been vacated, the Town of Irondequoit Police Department may secure the premises.
- E. 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.
- F. A closing by the Town of Irondequoit Police Department shall not constitute an act of possession, ownership, or control by the Town.

## § 173-10. Preliminary injunction.

Upon a motion for a permanent injunction or order to show cause by the Town and pending an action for a permanent injunction, a preliminary injunction enjoining the public nuisance may be granted for any of the relief obtainable by a permanent injunction.

## § 173-11. Temporary restraining order.

Pending a motion or an order to show cause for a preliminary injunction, a temporary restraining order or a temporary closing order may be granted, without notice to defendants, for any of the relief obtainable by a permanent injunction.

## § 173-12. Administrative hearing.

Whenever there is prima facie evidence of a public nuisance at any building, structure, or real property within the Town, the Town Attorney or Attorney to the Town, as the case may be, may initiate an administrative hearing.

- A. Service of notice. A notice of the hearing shall be served on all owners and may also be served on any known tenants or lessees or other occupants of the building. The notice shall be served in the manner required by the New York Civil Practice Law and Rules.
- B. Content of notice. The notice shall allege the facts constituting the public nuisance. The notice shall further contain a time and place for a hearing to be held before a panel.
- C. Hearing panel. The panel shall consist of a member to be appointed by the Director of Community Development, a member to be appointed by the Chief of Police, and a member to be appointed by the Fire Marshal. Each appointing authority shall be authorized to appoint himself or herself or any member of his or her staff to the hearing panel.
- D. Hearing. At the time and place designated in the notice, the Town Attorney or Attorney to the Town, as the case may be, or his or her designee shall present all relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the building, structure, or real property and as to any appropriate remedies. The owners, or their representatives, shall have the right to examine such evidence and to cross-examine any witnesses presented by the Town Attorney or Attorney to the Town, as the case may be, or his or her designee. The owners, or their representatives, shall have the right to present any relevant evidence and/or witnesses in their defense. The Town Attorney or Attorney to the Town, as the case may be, or his or her designee, shall have the right to examine such evidence and to cross-examine any witnesses presented by the owners, or their representatives.
- E. Panel's finding and recommendation: Within five business days of the hearing, the panel shall provide written findings of fact to the Town Board. Such written findings shall state whether there prima facie evidence exists of a public nuisance at the building, structure, or real property and shall further provide a written recommendation of remedies to abate the public nuisance.

## § 173-13. Administrative remedies.

- A. The Town Board, upon receipt of a finding of fact and recommendation from the panel, shall have the following powers in furtherance of the abatement of public nuisances:
  - (1) To issue a decision and order suspending or revoking, for a period not to exceed one year, the

certificate of occupancy and/or certificate of registration of a rental occupancy and/or rental dwelling unit pursuant to Chapter **177** of the Code of the Town of Irondequoit, if applicable, for the building, structure, or real property.

- (2) To issue a decision and order directing the closing of the building, structure, or real property by the Irondequoit Police Department to the extent necessary to abate the nuisance, pursuant to the procedures set forth above in § **173-9**.
  - (3) In conjunction with, or in lieu of, the foregoing powers, to 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 activity 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 nuisance activity; mandating compliance with all applicable building, housing, and property maintenance codes and regulations pursuant to the Code of the Town of Irondequoit and/or the laws of New York State; and/or directing subsequent owners to comply with the provisions of any issued order of revocation or suspension for the certificate of occupancy and/or certificate of registration of a rental occupancy and/or rental dwelling unit unless or until the subsequent owner appears before the hearing panel to provide an appropriate plan for the panel to review and make recommendations thereon, wherein said plan shall set forth measures to avoid further incidents of nuisance activity.
- B. The decision and order shall be served upon the owners and, at the election of the Town, any tenant and/or lessee or the property in a manner similar to that described in § **173-12A** herein.
- C. Nothing in this section shall limit the authority of the Town Board to take such other and further actions and to avail itself and the Town of any right or remedy available to it under this chapter or otherwise under the Town of Irondequoit Code or other applicable law deemed necessary or appropriate to abate any public nuisance so as to ensure the protection of the health, safety and welfare of the public.

City of Rochester, NY  
Thursday, August 27, 2015

## Chapter C. Charter of the City of Rochester

### Article III. MAYOR

#### § 3-15. Abatement of nuisances.

[§ 1, L.L. No. 7-1985; § 1, L.L. No. 1-1993; § 4, L.L. No. 3-1995,<sup>[1]</sup> L.L. No. 1-1996; § 1, L.L. No. 8-2003; § 1, L.L. No. 8-2006; § 1, L.L. No. 6-2009]

- A. Declaration of legislative findings. The Council finds that public nuisances exist in the City of Rochester 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 City, property values and the public health, safety and welfare. The Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the City of Rochester and of the businesses thereof and the visitors thereto. It is the purpose of the Council to authorize and empower the Mayor to impose sanctions and penalties for such public nuisances, and such powers of the Mayor 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 Council further finds that the sanctions and penalties imposed by the Mayor pursuant to this law 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 City and to promote the general welfare.
- B. Public nuisances defined. For purposes of this section, 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 months, or 18 or more points within a period of 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.
- (1) The following violations shall be assigned a point value of six points:
- (a) Article 220 of the Penal Law — Controlled Substances Offenses.
  - (b) Article 221 of the Penal Law — Offenses Involving Marihuana.
  - (c) Article 225 of the Penal Law — Gambling Offenses.
  - (d) Article 230 of the Penal Law — Prostitution Offenses.
  - (e) Sections 165.15(4),(6),(7), and (8), 165.40, 165.45, 165.50, 165.52, 165.54, 165.71, 165.72, and 165.73 of the Penal Law — Criminal Possession of Stolen Property.

- (f) The Alcoholic Beverage Control Law.
  - (g) Article 265 of the Penal Law — Firearms and other Dangerous Weapons.
  - (h) Sections 260.20 and 260.21 of the Penal Law — Unlawfully Dealing with a Child.
  - (i) Article 263 of the Penal Law — Sexual Performance by a Child.
  - (j) Section 415-a of the Vehicle and Traffic Law — Vehicle Dismantlers.
  - (k) Section 175.10 of the Penal Law — Falsifying Business Records.
  - (l) Sections 170.65 and 170.70 of the Penal Law — Forgery of and Illegal Possession of a Vehicle Identification Number.
  - (m) 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.
  - (n) Article 158 of the Penal Law — Welfare Fraud.
  - (o) Article 178 of the Penal Law — Criminal Diversion of Prescription Medications and Prescriptions.
  - (p) Section 147 of the Social Services Law — Food stamp program fraud.
  - (q) Section 3383 of the Public Health Law — Imitation controlled substances.
  - (r) The Agriculture and Markets Law.
  - (s) Operating a premises without the requisite business permit in violation of § **90-33** of the Code of the City of Rochester.
  - (t) Sections 240.36 and 37 of the Penal Law — Loitering in the First Degree and Loitering for the Purpose of Engaging in a Prostitution Offense.
  - (u) Section 2024 of Title 7 of the United States Code.
  - (v) Section 1324a of Title 9 of the United States Code.
  - (w) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
  - (x) Chapter **75** of the Municipal Code — Noise.
- (2) The following violations shall be assigned a point value of four points:
- (a) Chapter **20** of the Code of the City of Rochester — Refuse Collection.
  - (b) Chapter **29** of the Code of the City of Rochester — Amusements.
  - (c) Chapter **47** of the Code of the City of Rochester — Dangerous Articles.
  - (d) Chapter **54** of the Code of the City of Rochester — Fire Prevention Code.
  - (e) Chapter **90** of the Code of the City of Rochester — Property Code.
  - (f) Any commercial violations of Chapter **120** of the Code of the City of Rochester — Zoning.
  - (g) Allowing persons on the premises in excess of occupancy limits.



- (h) Chapter 569, Article 8 (Service Food Establishments) and Article 9 (Food and Food Establishments) of the Laws of the County of Monroe — Sanitary Code.
- (3) The following violations shall be assigned a point value of three points:
- (a) Chapter **69** of the Municipal Code — Littering.
  - (b) Sections **31-5**, 11 and 19 of the Municipal Code — Howling dogs, Number of Dogs, and Nuisances.
  - (c) Operating a business at the premises in a manner which causes it to be a source of disruption for the neighborhood and/or a focal point of police attention.
- (4) For purposes of this section, a conviction for an offense in a court of competent jurisdiction or an administrative bureau shall not be required. Instead, the City 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 Section 1.20 of the Criminal Procedure Law, in any court of competent jurisdiction, or a conviction or plea of guilty in the Municipal Code Violations Bureau, 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.
- C. Powers of the Mayor with respect to public nuisances.
- (1) In addition to the enforcement procedures established elsewhere, the Mayor or the Mayor's designee, after notice and opportunity for a hearing with respect to a public nuisance, shall be authorized:
- (a) To order the closing of the building, erection or place to the extent necessary to abate the nuisance; or
  - (b) To suspend for a period not to exceed six months or revoke for a period of one year a business permit issued for such premises, and to prevent the operator from obtaining a new business permit for another location for the period of suspension or revocation; or
  - (c) To suspend for a period not to exceed six months or revoke for a period of one year any occupational license or permit issued by the City related to the conduct of a business or trade at the premises, which suspension or revocation shall also apply to any other locations operated by the holder for which the license or permit is required; or
  - (d) To suspend for a period not to exceed six months or revoke for a period of one year eligibility to secure grants or loans from the City of Rochester; or
  - (e) Any combination of the above.
- (2) Service of notice.
- (a) Prior to the issuance of orders by the Mayor or the Mayor's designee pursuant to this section, the Mayor or the Mayor's designee shall give notice and opportunity for a hearing to the owner, lessor, lessee and mortgagee of a building, erection or place wherein the public nuisance is being conducted, maintained or permitted. Such notice shall be served upon an owner pursuant to Article 3 of the Civil Practice Law and Rules, upon a lessor or lessee pursuant to § 735 of the Real Property Actions and Proceedings Law, and upon a mortgagee by means of first-class mail with delivery confirmation sent to the mortgagee's last known address, provided that any service other than delivery to the person to be served shall be complete immediately upon delivery, mailing or posting without the necessity of filing proof of service with the clerk of any court before the

hearing. The person in whose name the real estate affected by the orders of the Mayor or the Mayor's designee is recorded in the office of the County Clerk shall be presumed to be the owner thereof. Proceedings shall be commenced by service of the notice and opportunity for a hearing within 90 days after the occurrence of the most recent violation cited in the notice.

- (b) The lack of knowledge of, acquiescence or participation in or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charge of as agent or otherwise, or having any interest in the property, real or personal used in conducting or maintaining the public nuisance, shall not be a defense by such owners, lessors and lessees, mortgagees and such other persons.
- (c) Every Certificate of Occupancy, Certificate of Zoning Compliance and real property tax bill issued by any City Department shall state the number of nuisance points, if any, assessed against the premises as of the date of the record being issued.
- (3) Orders of the Mayor or the Mayor's designee issued pursuant to this section shall be posted at the building, erection or place where a public nuisance exists or is occurring in violation of law and shall be mailed to the owner of record thereof within one business day of the posting.
- (4) Five business days after the posting of an order issued pursuant to this section and upon the written directive of the Mayor or the Mayor's designee, officers of the Rochester Police Department are authorized to act upon and enforce such orders.
- (5) Where the Mayor or the Mayor's designee closes a building, erection or place pursuant to this section, such closing shall be for such period as the Mayor or the Mayor's designee may direct, but in no event shall the closing be for a period of more than one year from the posting of the order pursuant to this section. If the owner, lessor or lessee shall file a bond in an amount determined by the Mayor or the Mayor's designee but which may not exceed the value of the property ordered to be closed and submit proof satisfactory to the Mayor or the Mayor's designee that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, erection or place has been directed to be closed by the order of the Mayor or the Mayor's designee, then the Mayor or the Mayor's designee may vacate the provisions of the order that direct the closing of the building, erection or place.
- (6) A closing directed by the Mayor or the Mayor's designee pursuant to this section shall not constitute an act of possession, ownership or control by the City of the closed premises, nor will it constitute a closure caused by a government for purposes of nonconformity under § 120-199(G)(2) of the Zoning Code of the City of Rochester.
- (7) It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, erection or place, or portion thereof, ordered closed by the Mayor or the Mayor's designee. Mutilation or removal of a posted order of the Mayor or the Mayor's designee shall be punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both, provided such order contains therein a notice of such penalty.
- (8) Intentional disobedience or resistance to any provision of the orders issued by the Mayor or the Mayor's designee pursuant to this section, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$1,000 or by imprisonment not to exceed six months, or both.
- (9) The Mayor or the Mayor's designee may promulgate rules and regulations to carry out and give full effect to the provisions of this section.

(10) If any provision of this section or the application thereof to any person or circumstances is held invalid, the remainder of this section and the application of such provisions to other persons and circumstances shall not be rendered invalid thereby.

(11) The Mayor shall prepare a quarterly report to be submitted to City Council summarizing the actions taken under this section and indicating the results of such actions.

[1] *Editor's Note: This local law provided for this section, which was formerly § 8-5, to be renumbered as § 3-15.*

## Chapter 140, NUISANCE ABATEMENT

[HISTORY: Adopted by the Board of Trustees of the Village of Hudson Falls 7-10-2000 by L.L. No. 7-2000.<sup>iEN</sup> Amendments noted where applicable.]

### § 140-1. Declaration of legislative findings.

The Board of Trustees finds that public nuisances exist in the Village of Hudson Falls in the operation of certain establishments in the use of property, including residential premises, in violation of such laws as the Penal Law of the State of New York, the New York State Uniform Fire Prevention and Building Code and the Code of the Village of Hudson Falls, which nuisances substantially and seriously interfere with the interest of the public in the quality of life and total community environment, commerce in the village, property values and public health, safety, peace, comfort, conveniences or general welfare. Specifically, the deterioration of some properties and the activities and patterns of behavior engaged in by certain individuals threaten the quality of life for the residents of the village. The Board of Trustees further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the residents of the Village of Hudson Falls and of the businesses thereof and the visitors thereto. It is the purpose of this chapter to authorize the village to create one standardized procedure for securing legal and equitable remedies and reform relating to the subject matter encompassed by this chapter and to strengthen existing laws on the subject. In so doing, this chapter shall authorize the village to impose sanctions and penalties for such public nuisances and remediate the same. Such powers 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 of Trustees further finds that the sanctions and penalties and remedial measures authorized herein constitute a supplementary and suitable method of law enforcement in response to the rapidly expanding presence of public nuisances. These sanctions, penalties and remedial measures are reasonable and necessary in order to protect the health and safety of the residents of the village and to promote the general welfare of the community.

### § 140-2. Public nuisance defined.

- A. A public nuisance is declared to exist where behavior in the use of or on the premises unreasonably interferes with the health, safety, peace, comfort or convenience of the general community, occurring within a period of six months of such frequency or duration that the continued occupancy of the premises presumes continuation of such unreasonable interference regardless of whether or not any person has been convicted for violation of any provisions of the Penal Law of the State of New York, the New York State Uniform Fire Prevention and Building Code or the Code of the Village of Hudson Falls.
- B. A public nuisance is declared to exist whenever, through violations of any of the following, provisions resulting from separate incidents at a building, structure or place, 12 or more points are accumulated within a period of six months or 18 or more points within a period of 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.
- (1) The following violations shall be assigned a point value of six points:
    - (a) Article 158 of the Penal Law - Welfare Fraud.
    - (b) Sections 165.40, 165.45, 165.50, 165.52 and 165.54 of the Penal Law - criminal possession of stolen property.
    - (c) Sections 170.65 and 170.70 of the Penal Law - forgery of and illegal possession of a vehicle identification number.
    - (d) Section 175.10 of the Penal Law - falsifying business records.
    - (e) Article 178 of the Penal Law - criminal diversion of prescription medications and prescriptions.
    - (f) Article 220 of the Penal Law - controlled substances offenses.
    - (g) Article 221 of the Penal Law - offenses involving marihuana.

- (h) Article 225 of the Penal Law - gambling offenses.
  - (i) Article 230 of the Penal Law - prostitution offenses.
  - (j) Section 240.20 of the Penal Law - disorderly conduct.
  - (k) Section 240.36 of the Penal Law - loitering in the first degree.
  - (l) Sections 260.20 and 260.21 of the Penal Law - unlawfully dealing with a child.
  - (m) Article 263 of the Penal Law - sexual performance by a child.
  - (n) Article 265 of the Penal Law - firearms and other dangerous weapons.
  - (o) Section 147 of the Social Services Law - food stamp program fraud.
  - (p) The Alcoholic Beverage Control Law.
  - (q) Possession, Use, Sale and/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.
  - (r) Section 415-a of the Vehicle and Traffic Law - vehicle dismantlers.
- (2) The following violations shall be assigned a point value of three points:
- (a) Chapter 58 of the Village Code - Adult Entertainment.
  - (b) Chapter 60 of the Village Code - Alcoholic Beverages.
  - (c) Chapter 70 of the Village Code - Brush, Grass and Weeds.
  - (d) Chapter 72 of the Village Code - Building Construction.
  - (e) Chapter 73 of the Village Code - Building Code Administration.
  - (f) Chapter 76 of the Village Code - Buildings, Unsafe.
  - (g) Chapter 81 of the Village Code - Combustible Materials.
  - (h) Chapter 86 of the Village Code - Animal Control.
  - (i) Chapter 126 of the Village Code - Loitering.
  - (j) Chapter 132 of the Village Code - Mobile Homes.
  - (k) Chapter 138 of the Village Code - Noise.
  - (l) Chapter 162 of the Village Code - Signs and Billboards.
  - (m) Chapter 170 of the Village Code - Solid Waste.
  - (n) Chapter 174 of the Village Code - Streets and Sidewalks.
  - (o) Chapter 198 of the Village Code - Vehicles, Abandoned.
  - (p) Chapter 215 of the Village Code - Zoning.
  - (q) 9 NYCRR Subtitle S, Chapter I - New York State Uniform Fire Prevention and Building Code.
- (3) For the purpose of this section, where a violation is continuous, each week a violation continues shall be deemed a separate violation. A conviction for a violation shall not be required, and such violation shall be established by a preponderance of the evidence. Evidence of a violation 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, 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, excessive police attention as a result of citizen complaints, as well as notices, citations and orders issued by the Code Enforcement Officer. However, a conviction as defined in accordance with the provisions of § 1.20 of the Criminal Procedure Law 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.

**§ 140-3. Powers of Board of Trustees with respect to public nuisances.**

In addition to the enforcement procedures established elsewhere, the Board of Trustees or the Board of Trustees' designees, after notice and opportunity for a hearing with respect to a public nuisance, shall be authorized:

- A. To order the closing of the building, structure or place to the extent necessary to abate the nuisance; or
- B. To suspend for a period not to exceed six months or to revoke for a period of one year a certificate of

occupancy issued for such premises, and to prevent the operator from obtaining a new certificate of occupancy for another location for the period of suspension or revocation; or

- C. To suspend for a period not to exceed six months or revoke for a period of one year any occupational license or permit issued by the village related to the conduct of a business or trade at the premises, which suspension or revocation shall also apply to any other location operated by the holder for which the license or permit is required; or
- D. The imposition of a fine not to exceed \$1,000 upon the owner, lessor or lessee of the building, structure or place where the nuisance is found to have occurred; or
- E. Any action necessary to abate the nuisance, including but not limited to cleaning, painting, repairing or demolishing any building, structure or place. The cost of any such remedy shall constitute a property tax lien against the property upon which such remedy is applied; or
- F. Any combination of the above.

#### **§ 140-4. Service of notice.**

- A. Prior to the issuance of orders by the Board of Trustees or the Board of Trustees' designee pursuant to this section, the Board of Trustees or the Board of Trustees' designee shall give notice and opportunity for a hearing to the owner, lessor, lessee and mortgagee of a building, structure or place wherein the public nuisance is being conducted, maintained or permitted. Such notice shall be served upon an owner pursuant to Article 3 of the Civil Practice Law and Rules, upon a lessor or lessee pursuant to § 735 of the Real Property Actions and Proceedings Law and upon a mortgagee by means of certified mail, return receipt requested, sent to the mortgagee's last known address, provided that any service other than delivery to the person to be served shall be complete immediately upon delivery, mailing or posting without the necessity of filing proof of service with the clerk of any court before the hearing. The person in whose name the real estate affected by the orders by the Board of Trustees or the Board of Trustees' designee is recorded in the office of the County Clerk shall be presumed the owner thereof. Proceedings shall be commenced by service of the notice and opportunity for a hearing within 60 days after the occurrence of the most recent violation cited in the notice.
- B. The lack of knowledge, acquiescence or participation in or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charges as agent or otherwise, or having any interest in the property, real or personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owners, lessors and lessees, mortgagees and such other persons.
- C. Orders of the Board of Trustees or the Board of Trustees' designee issued pursuant to this section and upon the written directive of the Board of Trustees or the Board of Trustees' designee. Officers of the Village of Hudson Falls Police Department are authorized to act upon and enforce such orders.
- D. Five business days after the posting of an order issued pursuant to this section, and upon the written directive of the Board of Trustees or the Board of Trustees' designee, officers of the Village of Hudson Falls Police Department are authorized to act upon and enforce such orders.
- E. Where the Board of Trustees or the Board of Trustees' designee closes a building, structure or place pursuant to this chapter, such closing shall be for such period as the Board of Trustees or the Board of Trustees' designee may direct, but in no event shall the closing be for a period of more than one year from the posting of the order pursuant to this chapter. If the owner, lessor or lessee shall file a bond in an amount determined by the Board of Trustees or the Board of Trustees' designee, but which may not exceed the value of the property ordered to be closed, and submit proof satisfactory to the Board of Trustees or the Board of Trustees' designee 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 by the order of the Board of Trustees or the Board of Trustees' designee, then the Board of Trustees or the Board of Trustees' designee may vacate the provisions of the order that directs the closing of the building, structure or place.
- F. A closing directed by the Board of Trustees or the Board of Trustees' designee pursuant to this chapter shall

not constitute an act of possession, ownership or control by the village of the closed premises.

**§ 140-5. Penalties for offenses.**

- A. It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, structure or place, or a portion thereof, ordered closed by the Board of Trustees or the Board of Trustees' designee. Mutilation or removal of a posted order of the Board of Trustees or the Board of Trustees' designee shall be punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both, provided that such orders contain therein a notice of such penalty.
- B. Intentional disobedience or resistance to any provision of the orders issued by the Board of Trustees or the Board of Trustees' designee pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$1,000 or by imprisonment not to exceed six months, or both.

**§ 140-6. Rules and regulations.**

The Board of Trustees or the Board of Trustees' designee may promulgate rules and regulations to carry out and give full effect to the provisions of this chapter.

**§ 140-7. Severability.**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provisions to other persons and circumstances shall not be rendered invalid thereby.

**§ 140-8. When effective.**

This chapter shall take effect immediately upon filing with the Secretary of State.

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<sup>i</sup>Editor's Note: This local law was adopted as Ch. 171. It was codified as Ch. 140 to maintain the alphabetical organization of the Code.

## **Chapter 70, NUISANCES**

[HISTORY: Adopted by the Town Board of the Town of Pleasant Valley 2-13-2002 by L.L. No. 3-2002. Amendments noted where applicable.]

### **§ 70-1. Intent.**

In order to enhance the health, safety and welfare of the people of the Town, the Town Board hereby finds that it is necessary to regulate activities which may be a nuisance to the people of the Town and which may cause excessive noise or other disturbance to the people of the Town.

### **§ 70-2. Nuisances prohibited; exception.**

No activity shall be carried on, nor shall anything be done, on any property which may be or become a nuisance to the adjoining or surrounding properties by reason of, but not limited to the following: unsightliness or the excessive emission of odors, fumes, dust, smoke or noise. Customary farming practices and customary household maintenance activities are not considered to be a nuisance.

### **§ 70-3. Enforcement.**

- A. Any police agency having jurisdiction in the Town may enforce the provisions of this chapter.
- B. The Zoning Administrator and Deputy Zoning Administrator may, in their discretion, require signed, written complaints from three independent sources about an alleged nuisance before being obligated to investigate a complaint.

### **§ 70-4. Penalties for offenses.**

- A. Any person who shall violate any of the provisions of this chapter shall be punishable, upon conviction, by a fine not to exceed \$250 per violation or imprisonment not to exceed 15 days, or both. Each day a violation continues constitutes a separate violation.
- B. In addition to any penalty provided by law, the Town Board may maintain an action or proceeding in the name of the Town in any court of competent jurisdiction to compel compliance with or to restrain violation of the provisions of this chapter.



## Chapter 213, NUISANCES

[HISTORY: Adopted by the City Council of the City of Auburn 2-27-1997 by Ord. No. 10-1997. Amendments noted where applicable.]

### GENERAL REFERENCES

- Animals -- See Ch. 104.
- Noise -- See Ch. 210.
- Property maintenance -- See Ch. 230.
- Sanitary sewers -- See Ch. 242.
- Solid waste -- See Ch. 254.
- Protection of water -- See Ch. 294.

### § 213-1. Title.

This chapter shall be known and cited as the "City of Auburn Abatement of Nuisances Ordinance."

### § 213-2. Legislative findings and purpose.

- A. The City Council finds that public nuisances exist in the City of Auburn in the operation of certain establishments in the use of property in flagrant violation of state and local laws pertaining to possession, sale and use of controlled substances and dangerous drugs, illegal use or possession of weapons, possession of stolen property and laws relating to the sale and consumption of alcoholic beverages, all of which substantially and seriously interfere with the interest of the public and the quality of life and total community environment, commerce in the City, property values and the public health, safety and welfare, particularly as it affects our children and young adults.
- B. The City Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the City of Auburn and of the businesses thereof and the visitors thereto and that the public nuisances frequently exist in properties where the owner is not in residence.
- C. It is the purpose of the Council to create and to empower a Nuisance Abatement Committee to impose appropriate sanctions and proportional penalties as may serve to eliminate such public nuisances, and it is further intended that the exercise of such powers as are given to the Nuisance Abatement Committee pursuant to this chapter 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 laws. The Council further finds the sanctions and penalties which may be imposed by the Nuisance Abatement Committee pursuant to this chapter constitute an additional and appropriate method of law enforcement in response to the proliferation of the above-described public nuisances within the City of Auburn. The sanctions and penalties which may be imposed are reasonable and necessary in order to promote the health and safety of the people of the City of Auburn and to promote the general welfare.

### § 213-3. Definitions. [Added 5-27-2004 by Ord. No. 7-2004<sup>iEN</sup>]

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY STRUCTURE** -- A structure used or occupied as an adjunct of, or in conjunction with, the use or occupancy of premises, or a building or buildings thereon, and which is located on the premises or adjacent thereto.

**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 the property by law enforcement officials and their agents.

**BUILDING** -- A structure wholly or partially enclosed within exterior walls, or within exterior and party walls and a roof. The term "building" shall be construed as if followed by the phrase "or part thereof" unless otherwise indicated by the text.

**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** -- Any office use not satisfying the definition of "professional office" or "medical office" shall be considered a business office for purposes of this chapter.

**CONVICTION** -- The entry of a plea of guilty to, or a verdict of guilty, upon an accusatory instrument or to one or more counts of such instrument. However, for purposes of this definition, conviction of an attempt to commit a violation of any of these specified provisions shall be considered a conviction for a violation of the specified provision.

**KNOWLEDGE OF PUBLIC NUISANCE** -- The presumption of knowledge provided by Subdivision one of § 235.10 of the Penal Law shall be applicable to this chapter. Notice, by mail or personal service, of activities relating to a public nuisance, to the property owner of record shall be evidence of knowledge of the public nuisance.

**LOT** -- A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as are required by this chapter, and having frontage on a public street.

**PENAL LAW** -- New York State Penal Law.

**SITE** -- A place, location, or piece of property set aside for a specific use.

**STRUCTURE** -- An assembly of materials forming a construction framed of component structural parts for occupancy or use, including buildings.

**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 the City of Auburn Nuisances Law. 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, research 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 space, as may be required by this chapter, on the same lot with a building or a group of buildings, which open space lies between the principal building or group of buildings and the nearest lot line and is unoccupied and unobstructed from the ground upward except as specified elsewhere in this chapter.

#### **§ 213-4. Public nuisances.**

A. For purposes of this chapter, the following are declared to be public nuisances: any building, structure, lot, site or separately identifiable portion thereof where violations of any of the following provisions of law are occurring and where two or more violations of such provisions result in two or more criminal convictions, within a twelve-month time period, prior to the commencement of a proceeding pursuant to this chapter:

(1) Penal Law articles:

(a) Article 220 (offenses dealing with possession and sale of controlled substances).

(b) Article 221 (offenses dealing with sale and possession of marijuana).

(c) Article 225 (offenses dealing with promoting gambling and possession of gambling records).

- (d) Article 230 (offenses dealing with prostitution).
  - (e) Article 265 (offenses dealing with firearms and possession of other dangerous weapons).
  - (f) Article 158 (offenses dealing with welfare fraud). [Added 5-27-2004 by Ord. No. 7-2004]
  - (g) Article 263 (offenses dealing with sexual performance by a child). [Added 5-27-2004 by Ord. No. 7-2004]
  - (h) Article 178 (offenses dealing with criminal diversion of prescription medications and prescriptions). [Added 5-27-2004 by Ord. No. 7-2004]
  - (2) Penal Law sections:
    - (a) Sections 165.15(4), (6), (7) and (8), 165.40, 165.45, 165.50, 165.52, 165.54, 165.71, 165.72 and 165.73 (criminal possession of stolen property). [Amended 5-27-2004 by Ord. No. 7-2004]
    - (b) Sections 260.20 and 260.21 (unlawfully dealing with a child). [Amended 5-27-2004 by Ord. No. 7-2004]
    - (c) Sections 240.36 and 240.37 (loitering in the 1st degree and loitering for the purpose of engaging in a prostitution offense). [Amended 5-27-2004 by Ord. No. 7-2004]
    - (d) Section 170.65 (forgery of vehicle identification numbers).
    - (e) Section 170.70 (possession of vehicle identification numbers).
    - (f) Section 175.10 (falsifying business records).
  - (3) Other sections:
    - (a) Vehicle and Traffic Law § 415-a, illegal dismantling of junk and/or salvaged vehicles.
    - (b) Alcoholic Beverage Control Law § 123, illegal manufacture, sale or distribution of liquor, wine or beer.
    - (c) Tax Law Article 18, possession, use, sale or offer for sale of any alcoholic beverage. [Added 5-27-2004 by Ord. No. 7-2004]
    - (d) Tax Law Article 20, possession, use, sale or offer for sale of any cigarette or tobacco products. [Added 5-27-2004 by Ord. No. 7-2004]
    - (e) Social Services Law § 147, food stamp program fraud. [Added 5-27-2004 by Ord. No. 7-2004]
    - (f) Public Health Law § 3383, imitation controlled substances. [Added 5-27-2004 by Ord. No. 7-2004]
    - (g) Agriculture and Markets Law. [Added 5-27-2004 by Ord. No. 7-2004]
  - (4) Miscellaneous. [Added 5-27-2004 by Ord. No. 7-2004]
    - (a) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
    - (b) Operating a business at the premises in a manner which causes it to be a source of disruption for the neighborhood and/or a focal point of police attention.
- B. It shall be prima facie evidence that violations are occurring where an arrest for a violation of any of such provisions has been made within 30 days prior to the issuance of notice pursuant to this section.
- C. For purposes of this section, the term "conviction" shall be defined and applied in accordance with the provisions of § 1.20 of the Criminal Procedure Law. However, for purposes of this section, conviction of an attempt to commit a violation of any of these specified provisions shall be considered a conviction for a violation of the specified provision.

**§ 213-5. Nuisance Abatement Committee.**

- A. There is hereby established, for the purpose of implementing and enforcing the provisions of this chapter, a Nuisance Abatement Committee (hereinafter referred to as "Committee") which shall consist of the following members: the Chief of Police, Fire Chief and City Manager.
- B. In addition to enforcement procedures established elsewhere, the Committee, after notice and opportunity for a hearing, shall be authorized to order:
  - (1) The discontinuance of such activity at the building, structure, lot, site and/or separately identifiable portion thereof where such public nuisance exists; and/or
  - (2) The closing of the building, structure, lot and/or separately identifiable portion thereof necessary to

abate the nuisance.

**§ 213-6. Service of notice.**

- A. Prior to the issuance of orders by the Committee, the Committee shall give notice and opportunity for a hearing to the owner, lessor, lessee and the mortgagee of a building, structure, lot, site and/or separately identifiable portion thereof wherein the public nuisance is being conducted, maintained or permitted. Such notice shall be served upon an owner pursuant to Article 3 of the Civil Practice Law and Rules, upon a lessor or lessee pursuant to § 735 of the Real Property Actions and Proceedings Law, and upon a mortgagee by means of certified mail, return receipt requested, sent to the mortgagee's last known address, provided that any service other than delivery to the person to be served shall be complete immediately upon delivering, mailing or posting without the necessity of filing proof of service with the clerk of any court before the hearing. The person in whose name the real estate affected by the order of the Committee is recorded in the office of the County Clerk shall be presumed to be the owner thereof.
- B. The lack of knowledge, acquiescence or participation in or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charge of, as agent or otherwise, or having any interest in the property, real or personal, used in conducting or maintaining the public nuisance shall not be a defense by such owners, lessors, lessees, mortgagees and other persons.

**§ 213-7. Posting of orders.**

- A. Orders of the Committee issued pursuant to this section shall be posted at the building, structure, lot, site and/or separately identifiable portion thereof where a public nuisance exists or is occurring in violation of law and shall be mailed to the owner of record thereof within one business day of the posting.
- B. Five business days after the posting of an order issued pursuant to this section, upon the written direction of the Committee, the Police Department of the City of Auburn is hereby authorized to act upon and enforce such order. Where the Committee closes a building, structure, lot, site and/or separately identifiable portion thereof pursuant to this section, such closing shall be for such period as the Committee shall direct, but in no event shall the closing be for a period of more than one year from the posting of the order pursuant to this section. If the owner, lessor, lessee or mortgagee shall file a bond in an amount determined by the Committee, but which may not exceed the value of the property ordered to be closed, and submits proof satisfactory to the Committee that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, structure, lot, site and/or separately identifiable portion thereof has been directed to be closed by the order of the Committee, then the Committee may vacate the provisions of the order that directed the closing thereof.
- C. A closing directed by the Committee pursuant to this section shall not constitute an act of possession, ownership or control by the City of the closed premises.

**§ 213-8. Additional notice; release of information; proceeding to remove tenant.**

- A. Upon the arrest and/or conviction of an individual for any of the above-enumerated offenses, the Police Department of the City of Auburn shall notify the legal owner of record of the arrest and/or conviction by regular mail to the address on file with the Assessor of the City of Auburn.
- B. In the event that the owner of any building, structure, lot, site and/or separately identifiable portion thereof commences a summary proceeding pursuant to Real Property Actions and Proceedings Law § 711, Subdivision 5, to remove a tenant arrested and/or convicted of any of the above-enumerated offenses, the City of Auburn shall, if requested by the owner of record in writing, provide to the court having jurisdiction any and all releasable information in its possession which may support the owner's summary proceeding to evict the offending tenant.
- C. In the event that the owner of any building, structure, lot, site and/or separately identifiable portion thereof,

upon notice from the City of Auburn of an arrest and/or conviction, commences and concludes a summary proceeding to remove the tenant so arrested and/or convicted, whether the proceeding is successful or not, the arrest and/or conviction shall not be deemed a conviction pursuant to § 213-3.

**§ 213-9. Penalties for offenses.**

- A. It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, structure, lot, site and/or separately identifiable portion thereof ordered closed by the Committee. Mutilation or removal of a posted order of the Committee shall be punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both, provided that such order contains therein a notice of such penalty.
- B. Any intentional disobedience or resistance to any provision of the orders issued by the Committee pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$1,000 or by imprisonment not to exceed six months, or both.
- C. It shall be a violation of this chapter for any person who receives notice of commencement of a summary proceeding pursuant to the Real Property Actions and Proceeding Law issued by an owner of a building, structure, lot, site or separately identifiable portion thereof in response to notification from the City of Auburn of an arrest or conviction of any of the enumerated offenses herein thereafter intentionally to cause damage or intentionally allow others to damage any property, real or personal, of the owner. Such conduct shall be punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both.

**§ 213-10. Regulations; quarterly report.**

- A. The Committee may promulgate rules and regulations to carry out and give full effect to the provisions of this chapter.
- B. The Committee shall prepare a quarterly report to be submitted to City Council summarizing the actions taken under this chapter and indicating the results of such actions.
- C. If any provision of this section or the application thereof to any person or circumstances is held invalid, the remainder of this section and the applications of such provisions to other persons and circumstances shall not be rendered invalid thereby. [Added 5-27-2004 by Ord. No. 7-2004]

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**Editor's Note: This ordinance also renumbered former §§ 213-3 through 213-9 as 213-4 through 213-10, respectively.**

## Chapter 294, NUISANCE ABATEMENT

[HISTORY: Adopted by the Common Council the City of Buffalo 10-30-1990, effective 11-8-1990. Amendments noted where applicable.]

### GENERAL REFERENCES

- Aircraft -- See Ch. 63.
- Air pollution -- See Ch. 66.
- Building construction and demolition; fire prevention -- See Ch. 103.
- Unsafe buildings -- See Ch. 113.
- Garbage, rubbish and refuse -- See Ch. 216.
- Hazardous materials and wastes -- See Ch. 235.
- Noise -- See Ch. 293.
- Obscenity -- See Ch. 299.
- Peace and good order -- See Ch. 313.
- Peddling and soliciting -- See Ch. 316.
- Property maintenance -- See Ch. 341.
- Sanitation -- See Ch. 378.
- Vehicles and traffic -- See Ch. 479.

## ARTICLE I, General Provisions

### § 294-1. Legislative declaration.

The Council of the City of Buffalo finds that public nuisances exist in the City of Buffalo in the operation of certain commercial establishments and the use or alteration of property in flagrant violation of the Building Code, Zoning Ordinances, health laws, multiple dwelling law, penal laws regulating obscenity, prostitution and related conduct, licensing laws, environmental laws, laws relating to the sale and consumption of alcoholic beverages, laws relating to gambling, controlled substances and dangerous drugs and penal laws relating to the possession of stolen property, all of which interfere with the interest of the public in the quality of life and total community environment, the tone of commerce in the city, property values and the public health, safety and welfare. The Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the City of Buffalo and of the businesses thereof and visitors thereto. It is the purpose of the Council to create one (1) standardized procedure for securing legal and equitable remedies relating to the subject matter encompassed by this chapter, without prejudice to the use of procedures available under existing and subsequently enacted laws and to strengthen existing laws on the subject.

### § 294-2. Short title.

This chapter shall be known as the "Nuisance Abatement Law."

### § 294-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CONVICTION -- As defined in Subdivision 13 of § 1.20 of the New York Criminal Procedure Law.

VIOLATION:

- A. Illegal conduct with regard to a particular property or person, and that conduct violates what is sought to be protected under the law.
- B. Conduct which is cited by the proper enforcing official regarding a particular property, building, dwelling place or person which is illegal or contrary to law.

- C. An arrest or commencement of criminal action as defined in Subdivision 17 of § 1.20 of the New York Criminal Procedure Law.

**§ 294-4. Public nuisances.**

The following are declared to be public nuisances:

- A. Any building, erection or place, including one- or two-family dwellings, used for the purpose of prostitution, as defined in § 230.00 of the Penal Law. Two (2) or more criminal convictions of persons for acts of prostitution in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance. In any action under this subsection, evidence of the common fame and general reputation of the building, previous violations occurring at said premises, erection or place, including one- or two-family dwellings, of the inmates or occupants thereof or of those resorting thereto shall be competent evidence to prove the existence of the public nuisance. If evidence of the general reputation of the building, erection or place, including one- or two-family dwellings, or of the inmates or occupants thereof is sufficient to establish the existence of the public 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 public nuisance.
- B. Any building, erection or place, including one- or two-family dwellings, used for the purpose of obscene performances. The term "obscene" shall have the same meaning as that term is defined in Subdivision 1 of § 235.00 of the Penal Law. The term "performance" shall have the same meaning as that term is defined in Subdivision 3 of § 235.00 of the Penal Law. Two (2) or more convictions, as defined in Subdivision 13 of § 1.20 of the Criminal Procedure Law, of persons for production, presentation or direction of an obscene performance or for participation in such performance in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance.
- C. Any building, erection or place, including one- or two-family dwellings, used for the purpose of promotion of obscene material. The term "obscene" shall have the same meaning as that term is defined in Subdivision 1 of § 235.00 of the Penal Law. The term "material" shall have the same meaning as that term is defined in Subdivision 2 of § 235.00 of the Penal Law. Two (2) or more convictions, as defined in Subdivision 13 of § 1.20 of the Criminal Procedure Law, of persons for promotion of or possession with intent to promote obscene material in the building, erection or place, including one- or two-family dwellings, within the one-year period preceding the commencement of an action under this chapter shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance.
- D. Any building, erection or place, including one- or two-family dwellings, which has been cited by the appropriate agency as being in violation of any one (1) of the codes contained in Article II of Chapter 281, Article I of Chapter 169, Chapter 66, § 63-3, Chapter 103, Chapter 129, § 235-2, and Chapter 459 of this Code, and said violation is continuing and unabated within a reasonable duration set by said agency and of such a nature as to endanger the health, safety and welfare of the citizens within the period of one (1) year preceding commencement of an action under this chapter shall be presumptive evidence that the building, erection or place, including one- or two-family dwellings, is a public nuisance.
- E. Any building, erection or place, pursuant to Chapter 242 of this Code, which is an unfit dwelling or dwelling unit as defined in Chapter 242 of this code.
- F. Any building, erection or place, including one- or two-family dwellings, used for the purpose of a business, activity or enterprise which is not licensed as required by law.
- G. Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one (1) year prior to the commencement of an action under this chapter, there have occurred five (5) or more

violations of any of the provisions of Article 220, Article 221 or Article 225 of the Penal Law.

- H. Any building, erection or place, including one- or two-family dwellings, used for any of the unlawful activities described in § 123 of the Alcoholic Beverage Control Law.
- I. Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a violation of Chapter 103 or Chapter 242 of this Code.
- J. Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a violation of Chapter 293 of this code.
- K. Any building, erection or place, including one- or two-family dwellings, wherein there exists or is occurring a violation of Chapter 511, the Zoning Ordinance of the City of Buffalo.
- L. Any building, erection or place, including one- or two-family dwellings, wherein there is occurring a criminal nuisance as defined in § 240.45 of the Penal Law.
- M. Any building, erection or place, including one- or two-family dwellings, wherein, within the period of one (1) year prior to the commencement of an action under this chapter, there have occurred two (2) or more violations on the part of the lessees, owners, operators or occupants of the provisions of §§ 165.40, 165.45, 165.50, 170.65, 170.70 and 175.10 of the Penal Law or § 415-a of the Vehicle and Traffic Law.
- N. Any nonaccessory sign wherein there exists or is occurring a violation of Chapter 511, Zoning, of the City of Buffalo. [Added 6-9-1992, effective 6-22-1992]

#### **§ 294-5. Remedies.**

- A. The Corporation Counsel shall bring and maintain a civil proceeding in the name of the city in the Supreme Court of the county in which the building, erection or place is located to permanently enjoin the public nuisances defined in § 294-4A, B, D, E, F, G, H, J, K, L and M in the manner provided in Article II.
- B. The Corporation Counsel shall bring and maintain a civil proceeding in the name of the city in the Supreme Court of the county in which the building, erection or place is located to recover a civil penalty in relation to the public nuisances defined in § 294-4B and C of this chapter in the manner provided in Article III of this chapter.

## **ARTICLE II, General Public Nuisances**

#### **§ 294-6. Applicability.**

This Article shall be applicable to the public nuisances defined in Subsections A, D, E, F, G, H, I, J, K, L and M of § 294-4.

#### **§ 294-7. Action for permanent injunction.**

- A. Generally. Upon the direction of the Mayor or at the request of the head of a department or agency of the city or at the request of a District Attorney of Erie County or upon his or her own initiative, the Corporation Counsel may bring and maintain a civil proceeding in the name of the city in the Supreme Court to permanently enjoin a public nuisance within the scope of this Article and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. The owner, lessor and lessee of a building, erection or place wherein the public nuisance is being conducted, maintained or permitted shall be made defendants in the action. The venue of such action shall be in the county where the public nuisance is being conducted, maintained or permitted. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this Article.
- B. The summons; the caption; naming the building, erection or place as defendant. The Corporation Counsel



may name as defendants the building, erection or place wherein the public nuisance is being conducted, maintained or permitted by describing it by block, lot number or street address and at least one (1) of the owners of some part of or interest in the property.

- C. In rem jurisdiction over building, erection or place. In rem jurisdiction shall be complete over the building, erection or place wherein the public nuisance is being conducted, maintained or permitted by affixing the summons to the door of the building, erection or place and by mailing the summons by certified or registered mail, return receipt requested, to one (1) of the owners of some part of or interest in the property. Proof of service shall be filed within two (2) days thereafter with the Clerk of the Court designated in the summons. Service shall be complete upon such filing.
- D. Service of summons on other defendants. Defendants, other than the building, erection 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.
- E. Notice of pendency. With respect to any action commenced or to be commenced by him or her pursuant to this Article, the Corporation Counsel may file a notice of pendency pursuant to the provisions of Article 65 of the Civil Practice Law and Rules.
- F. Presumption of ownership. The person in whose name the real estate affected by the action is recorded in the office of the City Assessor or the County Clerk, as the case may be, shall be presumed to be the owner thereof.
- G. Presumption of employment or agency. Whenever there is evidence 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, erection or place.
- H. 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 intentionally conducted, maintained or permitted a public nuisance defined in this chapter, a penalty, to be included in the judgment, may be awarded in an amount not to exceed one thousand five hundred dollars (\$1,500.) for each day it is found that the defendant intentionally conducted, maintained or permitted the public nuisance. Upon recovery, such penalty shall be paid into the general fund of the city.

#### **§ 294-8. Preliminary injunction.**

- A. Generally. Pending an action for a permanent injunction as provided for in § 294-7, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this Article and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. An order granting a preliminary injunction shall direct a trial of the issues within three (3) business days after joinder of issue or, if issue has already been joined, within three (3) business days after the entry of the order. Where a preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction within three (3) business days 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 public nuisance within the scope of this Article 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 public nuisance within the scope of this Article is being conducted, maintained or permitted.
- B. Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the city agency at whose request the underlying action is being brought. In the event that the underlying action is being brought at the direction of the Mayor or at the request of several city agencies or by the Corporation Counsel on his or her own initiative, or upon the request of a District Attorney, the order shall be enforced by the agency designated by the Mayor. The Police Department shall, upon the request of the agency involved and upon the direction of the Mayor, assist in the enforcement of the preliminary injunction.

- C. Preliminary injunctions, inventory, closing of premises, posting of orders and notices, offenses. If the court grants a preliminary injunction, the provisions of § 294-11 of this Article shall be applicable.

**§ 294-9. Motion papers for preliminary injunction.**

The Corporation Counsel 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 public nuisance within the scope of this Article.

**§ 294-10. Temporary closing order.**

- A. Generally. If, on a motion for a preliminary injunction pursuant to § 294-8 of this Article, the Corporation Counsel shall show by clear and convincing evidence that a public nuisance within the scope of this Article 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, erection or place wherein the public 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, but in no event later than three (3) business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three (3) business days after the conclusion of the hearing.
- B. 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.

**§ 294-11. Temporary restraining order.**

- A. Generally. If, on a motion for a preliminary injunction pursuant to § 294-8 of this Article, the Corporation Counsel shall show by clear and convincing evidence that a public nuisance within the scope of this Article is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary restraining order, such temporary restraining order may be granted without notice restraining the defendants and all persons from removing or in any manner interfering with the furniture, fixtures and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance, 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 at the earliest possible time, but in no event later than three (3) business days from the granting of such order; a decision on the motion for a preliminary injunction shall be rendered by the court within three (3) business days after the conclusion of the hearing.
- B. 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.

**§ 294-12. Grant of both closing and restraining orders.**

- A. Generally. If, on a motion for a preliminary injunction, the Corporation Counsel submits evidence warranting both a temporary closing order and a temporary restraining order, the court shall grant both orders.
- B. Enforcement of temporary closing orders and temporary restraining orders. Temporary closing orders shall be enforced by the agency at whose request the underlying action is being brought. In the event that the underlying action is being brought at the direction of the Mayor or at the request of several city agencies or

by the Corporation Counsel on his or her own initiative or upon the request of a District Attorney, the order shall be enforced by the city agency designated by the Mayor. The Police Department shall, upon the request of the agency involved or upon the direction of the Mayor, assist in the enforcement of a temporary closing order or a temporary restraining order.

- C. Inventory upon service of temporary closing orders and temporary restraining orders. The officers serving a temporary closing order or 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 Article and shall enter upon the building, erection 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, not limited to photographing such person property.
- D. Closing of premises to temporary closing order. The officers serving a temporary closing order shall, upon service of the order, command all persons present in the building, erection or place to vacate the premises forthwith. Upon the building, erection 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, erection or place involved. If the fee owner, lessor or lessee is not at the building, erection 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, in which event, the officers shall deliver the keys to such owner, lessor or lessee.
- E. Posting of temporary closing order and temporary restraining order; posting of notices; offenses. Upon service of a temporary closing order or a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one (1) 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 closing order has been granted, the officers shall affix in a conspicuous place or upon one (1) or more of the principal doors at entrances of such premises a printed notice that the premises have been closed by court order, which 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. In addition, where a temporary restraining order has been granted, the officers shall affix, in the same manner, a notice similar to the notice provided for in relation to a temporary closing order except that the notice shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. 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 fifteen hundred dollars (\$1,500.) or by imprisonment not exceeding fifteen (15) days, or by both, provided that such order or notice contains therein a notice of such penalty. The Police Department shall, upon the request of the agency involved or upon the direction of the Mayor, assist in the enforcement of this subsection.
- F. Intentional disobedience of or resistance to temporary closing order or temporary restraining order. Intentional disobedience of or resistance to a temporary closing order or a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than one thousand five hundred dollars (\$1,500.) or by imprisonment not exceeding ninety (90) days, or by both.

### **§ 294-13. Remedies of defendant.**

- A. A temporary closing order or a temporary restraining order shall be vacated, upon notice to the Corporation Counsel, if the defendant shows by affidavit and such other proof as may be submitted that the public nuisance within the scope of this Article has been abated. An order vacating a temporary closing order or a temporary restraining order shall include a provision authorizing agencies of the city to inspect the building, erection 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 closing order or a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than fifteen hundred dollars (\$1,500.) or by imprisonment not exceeding fifteen (15) days, or by both. The Police Department shall, upon the request of the agency involved and upon the direction of the Mayor, assist in the enforcement of an inspection provision of an order vacating a temporary closing order or temporary restraining order.

- B. A temporary closing order or a temporary restraining order may be vacated by the court, upon notice to the Corporation Counsel, 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 valuation of the building, erection 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 city, in the event that a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements in investigating, bringing and maintaining the action.

#### **§ 294-14. 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 (1) 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 administered by any person authorized to take acknowledgements of deeds by the Real Property Law. 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.

#### **§ 294-15. Permanent injunction.**

- A. A judgment awarding a permanent injunction pursuant to this Article may direct the Sheriff to seize and remove from the building, erection or place all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and shall direct the sale by the Sheriff 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 city.

- B. A judgment awarding a permanent injunction pursuant to this Article may authorize agents of the city to forthwith remove and correct construction and structural alterations as provided in Chapter 113 of this Code.
- C. A judgment awarding a permanent injunction pursuant to this Article may direct the closing of the building, erection or place by the Sheriff to the extent necessary to abate the nuisance and shall direct the Sheriff to post a copy of the judgment and a printed notice of such closing conforming to the requirements of Subsection E of § 294-13 of this Article. 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 two hundred fifty dollars (\$250.) or by imprisonment not exceeding fifteen (15) days, or by both, provided that such judgment contains therein a notice of such penalty. 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 (1) year from the posting of the judgment provided for in this Article. 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, erection or place has been directed to be closed in the judgment, the court may vacate the provisions of the judgement that direct the closing of the building, erection or place. A closing by the Sheriff pursuant to the provisions of this subsection shall not constitute an act of possession, ownership or control by the Sheriff of the closed premises.
- D. 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 fifteen hundred dollars (\$1,500.) or by imprisonment not exceeding fifteen (15) days, or by both.
- E. Upon the request of the agency involved and upon the direction of the Mayor, the Police Department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this chapter.
- F. A judgment rendered awarding a permanent injunction pursuant to this Article shall be and become a lien upon the building, erection or place named in the complaint in such action, such lien to date from the time of filing a notice of lis pendens in the office of the Clerk of the county wherein the building, erection or place is located. Every such lien shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens.
- G. 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 city in investigating, bringing and maintaining the action.

### **ARTICLE III, Public Nuisances Regarding Obscenity**

#### **§ 294-16. Applicability.**

This Article shall be applicable to public nuisances defined in Subsections B and C of § 294-4 of this chapter.

#### **§ 294-17. Action for civil penalty.**

- A. Generally. Upon the direction of the Mayor or at the request of the head of a department or agency of the city or at the request of a District Attorney of any county within the city or upon his or her own initiative the Corporation Counsel may bring and maintain a civil proceeding in the name of the city in the Supreme Court to recover a civil penalty against any person conducting, maintaining or permitting a public nuisance

within the scope of this Article. The amount of any civil penalty awarded in a judgment entered pursuant to this Article shall be in an amount of one thousand five hundred dollars (\$1,500.) for each day the public nuisance has been conducted, maintained or permitted. Upon recovery, such penalty shall be paid into the general fund of the city. The venue of such action shall be in the county wherein the public nuisance is being conducted, maintained or permitted.

- B. The summons and its service; naming of parties as defendants. The Corporation Counsel shall name as defendants all persons conducting, maintaining or permitting a public nuisance within the scope of this Article. Other persons may be named as defendants pursuant to the rules governing joinder of parties set forth in the Civil Practice Law and Rules. The summons shall be served in the manner provided by the Civil Practice Law and Rules.
- C. Scierer. A temporary restraining order shall not be granted nor shall a judgement be entered against a defendant unless the court is satisfied that the defendant had knowledge of the public nuisance which the defendant conducted, maintained or permitted. The presumption of knowledge provided by Subdivision 1 of § 235.10 of the Penal Law shall be applicable to this Article.

#### **§ 294-18. Preliminary injunction.**

- A. Generally. Pending an action pursuant to § 294-17 of this Article, the court may grant a preliminary injunction enjoining a defendant from making a bulk transfer, as defined in Subsection B of this section. An order granting a preliminary injunction shall direct a trial of the issues within three (3) business days after joinder of issue or, if issue has already been joined, within three (3) business days after entry of the order. Where a preliminary injunction has been granted, the court shall render a decision with respect to the final determination of the action within three (3) business days after the conclusion of the trial. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this Article is being conducted, maintained or permitted. The existence of an adequate remedy at law shall not prevent the granting of a temporary injunction or a temporary restraining order pursuant to this Article.
- B. Bulk transfer. A bulk transfer is any transfer of a major part of the materials, supplies, merchandise or other inventory or equipment of the transfer in the building erection or place where the public nuisance is being conducted, maintained or permitted that is not in the ordinary course of the transferor's business.
- C. Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the agency or agencies specified in Subsection B of § 294-8 of this chapter.
- D. Preliminary injunction; inventory. If the court grants a preliminary injunction, the provisions of Subsection D of § 294-20 of this Article shall be applicable.

#### **§ 294-19. Motion papers for preliminary injunction.**

The Corporation Counsel shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a civil penalty within the scope of this Article.

#### **§ 294-20. Temporary restraining order.**

- A. Generally. If, on a motion for a preliminary injunction pursuant to § 294-18 of this Article, the Corporation Counsel shall show by clear and convincing evidence that a public nuisance within the scope of this Article 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 Subsection B of § 294-18, 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 a preliminary injunction at the earliest possible time, but in no event later than three (3) business days from the granting of such order; a decision on the motion for a preliminary injunction shall

be rendered by the court within three (3) business days after the conclusion of the hearing.

- B. 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 a preliminary injunction shall be personally served, in the same manner as a summons as provided in the Civil Practice Law and Rules.
- C. Enforcement of temporary restraining order. A temporary restraining order shall be enforced by the city agency or agencies specified in Subsection B of § 294-8 of this chapter.
- D. Inventory upon service of temporary restraining order. 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 Article and shall enter upon the building, erection or place for such purpose.

**§ 294-21. Vacation of temporary injunction or 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 actual costs of the prosecution of the action to be determined by the court, upon a motion on notice to the Corporation Counsel 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 Article.

**§ 294-22. Judgment.**

- A. Seizure and destruction of obscene material. A judgment awarding a civil penalty pursuant to this Article shall direct the Sheriff to seize and remove from the building, erection or place and to forthwith destroy all material found by the court or jury to be obscene, as defined in § 235.00 of the Penal Law.
- B. Enforcement of the judgment for a civil penalty. A judgment awarding a civil penalty shall be enforced by the Sheriff pursuant to the provisions of the Civil Practice Law and Rules.

**§ 294-23. Remedy not exclusive.**

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 City of Buffalo.

**ARTICLE I, In General**

**§ 1. Legislative declaration.**

The Council of the City of Binghamton finds that public nuisances exist in the City of Binghamton in the operation of certain commercial establishments and the use or alteration of residential and commercial property, in flagrant violation of the building code, zoning regulations, health laws, multiple dwelling law, penal laws regulating obscenity, prostitution and related conduct, gambling, controlled substances and dangerous drugs, possession of stolen property and licensing laws. All of these interfere with the interest of the public in property values, public health, safety, and welfare, and the quality of life and community environment. The Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the City of Binghamton and of the businesses thereof and visitors thereto. It is the purpose of the Council to create one standardized procedure for securing legal and equitable remedies relating to the subject matter encompassed by this law, without prejudice to the use of procedures available under existing and subsequently enacted laws, and to strengthen existing laws on the subject.

(L.L. No. 6-1995, Art. I, § 1)

**§ 2. Short title.**

This chapter (sub part) shall be known as the "Property and Building Nuisance Reform Law.

(L.L. No. 6-1995, Art. I, § 2)

**§ 3. Definitions.**

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 Section 265 of the Penal Law, or controlled substances, as defined in Article 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 (See § 408 of the Zoning Regulations of the City of Binghamton.)

BUSINESS OFFICE -- A building or portion thereof utilized to accommodate the activities of a business.

BUSINESS -- An activity, occupation, employment or enterprise which requires time, attention, labor and material and wherein merchandise is exhibited or sold, or services offered.

CONVICTION -- The entry of a plea of guilty to, or a verdict of guilty, upon an accusatory instrument or to one or more counts of such instrument.

KNOWLEDGE OF PUBLIC NUISANCE -- The presumption of knowledge provided by subdivision, one of Section 235.10 of the Penal Law shall be applicable to the Property and Building Nuisance Reform Law.

Notice, by mail or personal service, of activities retailing 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 ordinance.

PENAL LAW -- New York State Penal Law.

PUBLIC NUISANCE -- Public nuisance shall include but not be limited to:

- A. Any building, building accessory, business office, lot, or yard used for the purpose of illegal drug use, possession, distribution, and/or loitering for the purpose of unlawfully using or possessing controlled substances as defined in Articles 220, 221 and Section 240.36 of the Penal Law.
- B. Any building, building accessory, business office, lot, or yard, used for the purposes of prostitution as defined in Section 230.00 of the Penal Law and loitering for the purposes set forth in Section 240.37 of the Penal Law.
- C. Any building, building accessory, business office, lot, or yard, used for the purposes of loitering as defined in Section 240.35 of the Penal Law.
- D. Any building, building accessory, business office, lot, or yard, used for the purposes of obscene performances and/or promotion of obscene material as defined in Article 235 of the Penal Law.
- E. Any building, building accessory, business office, lot, or yard, used for purpose of a business, activity or enterprise which is not licensed as required by federal, state or local law and/or ordinance.
- F. Any building, building accessory, business office, lot, or yard, used for the purpose of unlawful activities described in Section 123 of the Alcohol Beverage Control Law (Unlawful sale, manufacture, or consumption).
- G. Any building, building accessory, business office, lot, or yard, used for the purpose of gambling activities described in Article 225 of the Penal Law.
- H. Any building, building accessory, business office, lot, or yard, wherein there exists or is occurring a violation of the zoning ordinances of the City of Binghamton.
- I. Any building, building accessory, business office, lot, or yard, wherein there is or has occurred a criminal nuisance as defined in Sections 240.45 and 240.46 of the Penal Law.
- J. Any building, building accessory, business office, lot, or yard, wherein there is or has occurred a violation of the provisions of Section 165.40, 164.45, 165.50 (Criminal Possession of Stolen Property), 170.65 (Forgery of Vehicle Identification Number), 170.70 (Illegal Possession Vehicle Identification Number), 175.10 (Falsifying Business Receipts) of the Penal Law or Section 415(a) (Vehicle Dismantlers) of the Vehicle and Traffic Law.
- K. Any building, building accessory, business office, lot, or yard, used for the purpose of, or to aid in, the commission of a violation of Article 265 of the Penal Law (Firearms and dangerous weapons).
- L. Any building, structure or place which is in violation of the Code of Ordinances of the City of Binghamton, Chapter 11, § 5 (Registration of Rental Housing Units); Chapter 11, § 14 (Garbage and Sanitation); Chapter 11, § 15 (Unfit dwellings); and Article 8 of the zoning ordinances of the City of Binghamton.
- M. Any building, structure or place, wherein there is occurring a violation of Subpart XXXII of Part S of the Charter of the City of Binghamton (Dangerous and unsafe buildings) or failure to comply with an order issued pursuant to that section.
- N. Any building, building accessory, business office, lot, or yard, used for the purpose of animal fighting as defined in Section 351 of the Agriculture and Markets Law of the State of New York.

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 the Property and Building Nuisance Reform law. 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, increase volume of traffic associated with the property.

YARD -- An open area on a lot which is open to the sky that is unoccupied by any land use or activity except as may otherwise be provided in the zoning regulations for the City of Binghamton.

(L.L. No. 6-1995, Art. I, § 3)

#### **§ 4. Evidence and presumptions.**

- A. Evidence. In any action under this subdivision, 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. Scier. 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.
  - (1) Any building, building accessory, business office, lot, or yard, wherein within the period of one year prior to the commencement of an action under this chapter (local law), there have occurred two or more convictions, as defined in § 3, on the part of the lessees, owners, operators, or occupants, of the provisions of the Property and Building Nuisance Reform Law as defined in § 3 of this article, shall be prima facie evidence that a public nuisance exists at said location.
  - (2) Any building, building accessory, business office, lot, or yard, wherein within a one year period prior to the commencement of an action under this chapter (local law), there have occurred four or more violations on the part of the lessees, owners, operators, or occupants, of the provisions of the Property and Building Nuisance Reform law as defined in § 3 of this article, shall be prima facie evidence that a public nuisance exists at said location.
  - (3) Any building, building accessory, 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 § 3 of this article, on such property or neighborhood, shall be prima facie evidence that a public nuisance exists at said location.

(L.L. No. 6-1995, Art. I, § 4)

## **ARTICLE II, Remedies for Property and Building Nuisances**

*Applicability.* This article shall be applicable to the public nuisances defined in Article I of this chapter (local law).

(L.L. No. 6-1995, Art. II)

### **§ 1. Remedies.**

The Corporation Counsel shall bring and maintain a civil proceeding in the name of , the city for the following types of relief:

- A. Permanent injunction.
- B. Temporary closing order.
- C. Temporary restraining order.
- D. Temporary injunction.

E. Civil penalties.

- (1) The summons. The Corporation Counsel 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.
- (2) The complaint.
  - (a) The corporation counsel shall bring and maintain a civil proceeding in the name of the City of Binghamton 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, § 3 of this chapter (local law), from further conducting, maintaining, or permitting the public nuisance in the manner provided in Article II of this chapter (local law). 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.
  - (b) The venue of such action shall be in the county where the public nuisance is being conducted, maintained or permitted.
  - (c) The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter.
  - (d) The civil action shall be commenced by the filing of a summons and complaint alleging the facts constituting the nuisance.
  - (e) 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 possess some part of or an interest in the property.
  - (f) Any complaint filed under this chapter shall be verified or accompanied by affidavit(s) for purposes of showing that the owner or his/her agent has notice of the nuisance and has had an opportunity to abate the nuisance.
  - (g) 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.
  - (h) The complaint or affidavit shall describe the adverse impact associated with the property on the surrounding neighborhood.
- (3) 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.
- (4) 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.
- (5) Notice of pendency. With respect to any action commenced or to be commenced pursuant to this chapter, the Corporation Counsel may file a notice of pendency pursuant to the provisions of Article 65 of the civil practice law and rules.
- (6) 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 City of Binghamton Assessor and/or the office of the Clerk of the County of Broome.
- (7) 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.
- (8) 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 city. Upon recovery, such penalty shall be paid into the general fund of the city.

- (9) Enforcement. A judgment pursuant to this chapter shall be enforced by the City of Binghamton Police Department and the office of Corporation Counsel.

(L.L. No. 6-1995, Art. II, § 1)

## **§ 2. Judgment awarding permanent injunction.**

- A. A judgment awarding a permanent injunction, pursuant to this chapter, may direct the Sheriff 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 Sheriff 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 city.
- B. A judgment awarding a permanent injunction pursuant to this chapter may authorize agents of the city to forthwith remove and correct construction and structural alterations in violation of the city 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 Sheriff, to the extent necessary to abate the nuisance, and shall direct the Sheriff to post a copy of the judgment and a printed notice of such closing conforming to the requirements of Subdivision H of § 3 of Article II 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 subdivision.
- 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 Sheriff pursuant to this subdivision shall not constitute an act of possession, ownership or control by the Sheriff 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 \$1,000, or by imprisonment not exceeding six months, or by both.
- H. Upon the request of the Corporation Counsel, or the Mayor, the City of Binghamton police department 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 city in

investigating, bringing and maintaining the action.  
(L.L. No. 6-1995, Art. II, § 2)

### **§ 3. 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 Corporation Counsel and the City of Binghamton Police Department.
- (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 Corporation Counsel 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 § 3 of this article the Corporation Counsel 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 Corporation Counsel 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 Corporation Counsel and the City of Binghamton police department.
- 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 police department shall, upon the request of the office of Corporation Counsel, or upon the direction of the Mayor, assist in the enforcement of this subdivision.
- I. Intentional disobedience of or resistance to temporary restraining order and permanent injunction. Intentional disobedience of, or resistance to, a temporary restraining order, 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 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.

(L.L. No. 6-1995, Art. II, § 3)

#### **§ 4. Temporary restraining order; defendant's remedies.**

##### **A. Temporary restraining order to be vacated; inspection provision.**

- (1) A temporary restraining order shall be vacated, upon notice to the Corporation Counsel, if the defendant shows by affidavit and such other proof as may be submitted that the public nuisance within the scope of this chapter has been abated. An order vacating a temporary closing order, or a temporary restraining order shall include a provision authorizing agencies of the city 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, on conviction, by a fine of not more than \$1,000 or by imprisonment not exceeding six months, or by both. The police department shall, upon the request of the office of Corporation Counsel, or upon the direction of the Mayor, assist in the enforcement of an inspection provision of an order vacating a temporary restraining order.
- (2) A temporary restraining order may be vacated by the court, upon notice to the Corporation Counsel, 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 city, in the event a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements in investigating, bringing and maintaining the action.

##### **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 Corporation Counsel, 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.**

(L.L. No. 6-1995, Art. II, § 4)

#### **§ 5. 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 Corporation Counsel 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 § 3 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 office of Corporation Counsel or by the City of Binghamton police department.
- E. Preliminary injunction; inventory. If the court grants a preliminary injunction, the provisions of the § 3 of this article shall be applicable.

(L.L. No. 6-1995, Art. II, § 5)

## **§ 6. 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.

(L.L. No. 6-1995, Art. II, § 6)

## **§ 7. (Reserved)**

## **§ 8. 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 City of Binghamton.

(L.L. No. 6-1995, Art. II, § 8)

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<sup>i</sup>Editor's Note: Local Law No. 6-1995, § 1 (App. A), adopted Sept. 18, 1995, filed with the Secretary of State on Oct. 31, 1995, amended former Sub-Part LXXXI to read as herein set out. Former Sub-Part LXXXI pertained to similar subject matter and derived from Local Law No. 7-1993, §§ 1 through 14.