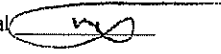


Legal Counsel Approval 

R.L 07-090

Intro. No. 007-17

Perm. No. 007-16



IN
THE COUNCIL OF THE CITY OF BINGHAMTON
STATE OF NEW YORK

Dated: May 21, 2007

Sponsored by Councilmember(s): Gerchman, Russo, Papastrat, Rennia, Weslar, Kramer

Introduced by Committee(s) on: Planning

ORDINANCE
entitled

A LOCAL LAW AMENDING THE PROPERTY AND
BUILDING NUISANCE REFORM LAW OF THE CITY
OF BINGHAMTON.

WHEREAS, the Code of the City of Binghamton, Chapter 315, *Property and Building Nuisance Reform*, was adopted by the City Council on 9-18-1995 by L.L. No. 6-1995 (Sub-Part LXXXI of the 1970 Code) and amended in its entirety on 6-20-2005 by L.L. No. 1-2005; and

WHEREAS, City Council wishes to amend the law to decrease the number of points necessary for the City to take action, to increase the points for certain nuisances, to increase the fines for violations, and further define the notice procedures and time frames to abate the nuisance.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Code of the City of Binghamton, *Chapter 315*, Property and Building Nuisance Reform, is amended and restated as attached hereto.

Section 2. That this ordinance shall take effect immediately.

**REVISIONS TO CHAPTER 315 Chapter 315,
PROPERTY AND BUILDING NUISANCE REFORM**

May 21, 2007

§ 315-3. *Definitions.*

PUBLIC NUISANCE -- For purposes of Article III, a public nuisance shall be deemed to exist whenever, through violations of any of the following provisions resulting from separate incidents at a building, erection or place, or immediately adjacent to the building, erection or place as a result of the operation of the business, 12 or more points are accumulated within a period of six (6) months, or 18 or more points within a period of twelve (12) months, in accordance with the following point system. Where more than one violation occurs during a single incident, the total points for the incident shall be the highest point value assigned to any single violation.

A. The following violations shall be assigned a point value of two (2) points:

- (1) Sections 240.36 and 240.37 of the Penal Law -- Loitering in the First Degree.
- (2) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
- (3) Chapter 292 of the Code of Ordinances of the City of Binghamton -- Noise.
- (4) Chapter 350, Article II, of the Code of the City of Binghamton -- Littering.
- (5) Chapter 178, Article II, of the Code of the City of Binghamton regarding howling dogs, and/or repetitive barking, number of dogs, unlicensed dogs and dangerous or nuisances dogs.

B. The following violations shall be assigned a point value of four (4) points:

- (1) Disorderly conduct by individual or individuals.
- (2) Any violation of Chapter 265 of the Code of the City of Binghamton -- Housing and Property Maintenance, including any garbage collection violation. Each repeat offense is an additional four (4) points.
- (3) General disturbances at a particular location.
- (4) Article 225 of the Penal Law -- Gambling Offenses.
- (5) The Alcoholic Beverage Control Law.
- (6) Section 415-a of the Vehicle and Traffic Law -- Vehicle Dismantlers.
- (7) Sections 170.65 and 170.70 of the Penal Law -- Forgery or Illegal Possession of a Vehicle Identification Number.
- (8) 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.
- (9) The Agriculture and Markets Law.

C. The following violations shall be assigned a point value of six (6) points:

- (1) Article 178 of the Penal Law -- Criminal Diversion of Prescription Medications and Prescriptions.
- (2) Article 220 of the Penal Law -- Controlled Substances Offenses.
- (3) Article 221 of the Penal Law -- Offenses Involving Marijuana.

- (4) Sections 165.15, (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.
- (5) Article 158 of the Penal Law -- Welfare Fraud.
- (6) Section 147 of the Social Services Law -- Food stamp program fraud.
- (7) Section 2024 of Title 7 of the United States Code- Illegal Use of Food Stamps.
- (8) Any commercial violations of Chapter 410, Zoning, of the City of Binghamton.
- (9) Allowing persons on the premises in excess of occupancy limits.
- (10) Section 3383 of the Public Health Law -- Imitation controlled substances.
- (11) Operating a premises without the requisite certificate of use in violation of Chapter 410, Zoning, of the Code of the City of Binghamton.

D. The following violations shall be assigned a point value of ten (10) points:

- (1) Article 230 of the Penal Law -- Prostitution Offenses.
- (2) Article 265 of the Penal Law -- Firearms and other Dangerous Weapons.
- (3) Sections 260.20 and 260.21 of the Penal Law -- Unlawfully Dealing with a Child.
- (4) Article 263 of the Penal Law -- Sexual Performance by a Child.
- (5) Loitering for the purpose of engaging in a prostitution offense.

E. The following violation shall have a point value of twelve (12) points:

- (1) Penal law violations, including but not limited to murder, attempted murder, assault, attempted assault, sex offenses, etc.

§ 315-6. *Civil remedies.*

C. The complaint.

(6) Any complaint filed under this chapter shall be verified or accompanied by an affidavit(s) for purposes of showing that the owner or his or her agent has notice of the nuisance and has had an opportunity to abate the nuisance. The Corporation Counsel will give the owner, and any designated property manager, written notice of the nuisance and ten (10) business days to personally meet with and provide to Corporation Counsel a written plan to abate the nuisance within thirty days. If part of the plan to abate the nuisance is to evict a tenant, then the owner will commence the eviction proceeding within ten (10) business days from the meeting with Corporation Counsel.

§ 315-7. *Judgment awarding permanent injunction.*

G. Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both.

§ 315-8. *Preliminary injunction.*

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 \$5,000 or by imprisonment not exceeding six months, or by both.

§ 315-9. *Temporary restraining order; defendant's remedies.*

A. Delete A (1) and (2) in its entirety and replace as follows:

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

(1) 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.

(2) 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 \$5,000 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.

§ 315-14. *Powers of Mayor with respect to public nuisances.*

A.(4) To revoke for a period of five years eligibility to secure grants or loans from the City of Binghamton; or

H. Intentional disobedience or resistance to any provision of the orders issued by the Mayor or Mayor's designee pursuant to this section, in addition to any other punishment prescribed by law, shall be punishable by a fine or not more than \$5,000 or by imprisonment not to exceed six months, or both.