

TOWN OF NEW HARTFORD, NEW YORK
Local Law Introductory "B" of 2008

A LOCAL LAW TO AMEND THE CODE OF THE TOWN OF NEW HARTFORD, BY ADDING A NEW CHAPTER 86 ENTITLED PUBLIC NUISANCE ABATEMENT LAW.

BE IT ENACTED by the Town Board of the Town of New Hartford as follows:

§86-1. Title.

This chapter shall be known and cited as the "Town of New Hartford Public Nuisance Abatement Law."

Sec. 86-2. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public nuisance includes, but shall not be limited to:

- (1) Any building, structure or real property used for the purpose of illegal use, possession or distribution of a controlled substance or marihuana [marijuana] as defined by the New York State Penal Law.
- (2) Any building, structure or real property used for the purposes of prostitution as defined by the New York State Penal Law.
- (3) Any building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene material as defined by the New York State Penal Law and this Code.
- (4) Any building, structure or real property used for purposes of illegal gambling activity as defined in the New York State Penal Law.
- (5) Any building, structure or real property used for the purpose of the commission of illegal possession, use or sale of firearms or weapons as defined by the New York State Penal Law.
- (6) Any building, structure or real property used for the purpose of illegal sale, manufacture or consumption of alcohol beverages as defined by the New York State Alcohol Beverage Control Law.
- (7) Any building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the New York State Penal

Law.

- (8) Any building, structure or real property used for purposes of loitering as defined by the New York State Penal Law.
- (9) Any building, structure or real property wherein there exists or has occurred any violation of the Code of the Town of New Hartford, including, but not limited to, Chapter 56, Dogs And Pets; Chapter 118, Zoning, including the New York State Uniform Fire Prevention and Building Code, the Property Maintenance Code of New York State, and any subsequent amendments or superseding provisions thereto, all of which have been previously adopted and incorporated into said Code of the Town of New Hartford by reference.
- (10) Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities involving assault, gang assault, harassment or disorderly conduct, as said criminal activities are defined by the New York State Penal Law.
- (11) Any building, structure or real property wherein an occupant, guest or business invitee conducts or performs activities or behaves in a manner that detrimentally effects the quiet and reasonable use and enjoyment of adjacent or neighboring property as such conduct and activities are defined by the New York State Penal Law.

Sec. 86-3. Nuisance forbidden.

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

Sec. 86-4. Presumption of knowledge.

Notice by first class mail or personal service of activities entailing a public nuisance to the property owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall be prima facie evidence of knowledge of the public nuisance.

Sec. 86-5. Administrative review hearing.

Whenever there is prima facie evidence of a public nuisance at any building, structure or real property within the Town of New Hartford, the Town Attorney shall initiate an administrative review hearing, before bringing a civil action as described in Sec. 86-6 herein.

- (a) *Service of notice:* A notice of the review hearing shall be served on one or

more owners of the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building. The notice shall be served in the manner required by New York State Civil Practice Law and Rules.

- (b) *Content of notice:* The notice shall allege the facts constituting the public nuisance. The notice shall be accompanied by affidavit(s) for purposes of showing that the owner or his agent had notice of the nuisance, had an opportunity to abate the nuisance and failed to do so. The notice shall further contain a time, date and place for the review hearing to be held before a panel.
- (c) *Hearing panel:* The panel shall consist of a member to be appointed by the chief code enforcement officer, a member to be appointed by the chief of police and a member to be appointed by the Town Board. Each appointing authority shall be authorized to appoint himself/herself or any member of his/her staff or department to the hearing panel.
- (d) *Hearing:* At the time, date and place designated in the notice, the Town Attorney or his/her designee shall present all relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the building, structure or real property, the presumption of knowledge of the subject nuisance(s), proper service of sufficient notice on one or more owners, the failure or refusal of the owner(s) of the building, structure or real property to fully and properly abate said nuisance, despite notice and opportunity to do so. The owners of the building, structure or real property, or their representatives, shall have the right to examine such evidence and cross-examine any witnesses presented by the Town Attorney or his/her designee. The owners of the building, structure or real property, or their representatives, may present any relevant evidence and/or witnesses in their defense. The Town Attorney, or his/her designee, shall have the right to examine such evidence and cross-examine any witnesses presented by the owners of the building, structure or real property, or their representatives.
- (e) *Panel's finding and recommendation:* Within five (5) business days of the review hearing, the panel shall provide a written decision to the Town Supervisor for presentment to the Town Board at or before the next regularly scheduled Town Board meeting.

Within five (5) business days of the review hearing, the panel shall provide a copy of its decision to the Town Board, Town Attorney, the Code Enforcement Officer, the Police Chief and to the owner(s) of the subject building, structure or real property. The written decision shall state whether or not the panel determined there is prima facie evidence of the existence of a public nuisance at the building, structure or real

property. If a public nuisance is found to exist, the panel shall further state in its decision the remedial measures the owner(s) of the subject building, structure or real property are to perform or undertake to abate the public nuisance, along with a specified time frame within which the nuisance is to be abated.

Responsibility for monitoring the abatement of the identified nuisance shall rest with the Police Department and/or the Code Enforcement Office. Upon satisfactory abatement of the subject nuisance within the designated time frame, the Police Chief and/or the Code Enforcement Officer shall provide written notification of compliance to the panel, the Town Board, the Town Attorney and the owner(s) of the building, structure or real property.

In the event of non-compliance with the decision of the panel, the Police Chief and/or the Code Enforcement Officer shall provide written notification of non-compliance to the panel, Town Board, Town Attorney and owner(s) of the building, structure or real property and expressly request the Town Attorney to seek Town Board authority to bring a civil action as described in Sec. 86-6 herein.

Sec. 86-6. Summons and complaint for civil action.

- (a) The Town Attorney 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 and serving of a summons and complaint in the manner required by 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 at least one of the owners of some portion of or some interest in the property.
- (c) The summons and complaint may also name as defendants any owner, operator, manager, tenant, lessee or other occupier 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 affidavit(s) for purposes of showing that the owner or his agent had notice of the nuisance, had opportunity to abate the nuisance and failed to do so.
- (f) The venue of the action shall be in the New York State Supreme Court (“Supreme Court”) located in the County of Oneida where the public nuisance is being conducted, maintained, permitted or allowed.

- (g) In the event personal jurisdiction cannot be obtained over a proper party, 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 person in whose name the real property is recorded at the office of the Town Assessor.
- (h) With respect to any action commenced or to be commenced, the Town Attorney shall file a notice of pendency pursuant to the New York State Civil Practice Law and Rules.

Sec. 86-7. Civil penalty.

If, upon the trial of an action in Supreme Court for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a penalty may be awarded in an amount not to exceed \$1,000.00 for each day it is found that defendants conducted, maintained, permitted or allowed the public nuisance after first notice to abate had been given by the Town. Upon recovery, such penalty shall be paid into the general Town fund.

Sec. 86-8. 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 defendants have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted as ordered by the Court.
- (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 civil action.

Sec. 86-9. Preliminary injunction.

Upon a motion or order to show cause from the Town Attorney 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.

Sec. 86-10. Temporary restraining order.

Pending a motion or 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.

Sec. 86-11 No act of ownership.

Injunctive action taken by the Town police department or Code Office in accordance with any Court order shall not constitute an act of possession, ownership or control by the Town, and shall not relieve the owner(s) of his/her/their duties, responsibilities and legal obligations as relate to the building, structure or real property.

Sec. 86-12 Severability.

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

Sec. 86-13 Exclusivity.

Nothing within this Section of the Code of the Town of New Hartford shall preclude the New Hartford Police and/or the New Hartford Code Enforcement Officers from prosecuting and/or enforcing the very same acts of public nuisance against the same owner(s), occupiers, tenants or lessees of the subject building, structure or real property under any other applicable section of the Town Code or laws of the State of New York.

Sec. 86-14 Effective Date.

This Local Law shall become effective immediately upon its filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.