

LOCAL LAW NO.: \_\_\_\_\_ - 2009

OF

AUGUST 10, 2009

A LOCAL LAW PROVIDING FOR THE ADDITION OF CHAPTER 126  
ENTITLED “BUILDINGS, NUISANCE”  
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH

BE IT ENACTED by the City Council of the City of Newburgh as follows:

**SECTION 1 - Title**

This Local Law shall be referred to as “A Local Law providing for the addition of Chapter 126 entitled “Buildings, Nuisance” of the Code of the City of Newburgh”.

**SECTION 2 - Chapter 126, “Buildings, Vacant”**

**§ 126.1 Findings and Legislative Intent.**

The City Council of the City of Newburgh finds that public nuisances exist in the City of Newburgh in the uses and operation of certain establishments and the use of property in flagrant violation of the penal and building and safety and other laws relating to controlled substances, dangerous drugs, prostitution, gambling, trespass, vandalism, stolen property and illegal use or possession of weapons, as well as other provisions of state and local law, all of which 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 City Council further finds that the occurrence of such activities and violations is detrimental to the health, safety and welfare of the City of Newburgh and of the residents and businesses thereof and visitors thereto. It is the purpose of this article to authorize and empower the authorized officers and officials of the City of Newburgh to impose sanctions and penalties for such public nuisances. Such powers may be exercised either in conjunction with, in addition to, or apart from, the powers contained in other laws without prejudice to the use of procedures and remedies available under such other laws. The City Council further finds that the sanctions and penalties imposed pursuant to this article constitute an additional and appropriate method of law enforcement in response to the proliferation of the above described public nuisances. The sanctions and penalties contained herein are reasonable and necessary in order to protect the health and safety of the people of the City of Newburgh and to protect and promote the general welfare.

**§ 126.2 Definitions.**

The terms used in this Chapter shall have the following meanings, unless otherwise defined herein.

CITY - The City of Newburgh in the State of New York.

CITY MANAGER - The City Manager of the City of Newburgh and/or the person duly authorized by the City Manager.

DEPARTMENT HEAD, SUPERVISOR, CHIEF - The senior-most manager of a unit of government of the City of Newburgh or the duly-authorized designee of such person.

MORTGAGEE - The person or entity who or which is listed as mortgagee on any unsatisfied and/or otherwise open mortgage on the premises recorded in the Office of the Orange County Clerk.

OWNER - A person vested with legal ownership or control over any property or facility or any part thereof located in the City of Newburgh; or any person vested with responsibility therefore by such owner, including but not limited to an owner of fee title, manager, supervisor, superintendent, agent, custodian, tenant, squatter, roommate, guest, mortgagee, landlord or other such person.

SQUATTER - A person occupying or using property without the consent of the owner thereof.

**§126.3 Nuisance or Public Nuisance.**

The term “nuisance” shall be held to embrace whatever is dangerous to human life or detrimental to health or welfare and shall include but not be limited to a particular building, structure, improvement, location or place whereat violations of the following provisions of laws, rules and regulations have occurred, are occurring, exist or have been or are allowed to exist within the immediately preceding twelve (12) month period in the amount and/or number specified:

- (A) Any one public nuisance as known, described, and/or defined under common law, statutory law, case law or in equity jurisprudence.
- (B) Any building, structure, improvement, location or place wherein there is occurring any one or more criminal nuisances as defined in Section 240-45 of the Penal Law of New York State. (Criminal Nuisance - 2<sup>nd</sup> degree; unlawful, reasonable conduct knowingly or recklessly endangering the safety or health of a number of persons; or maintaining premises where persons gather to engage in unlawful conduct.)

- (C) Any one of any violations of any of the provisions of Article 39 of the General Business Law of New York State. (Possession, Manufacture and/or sale of Drug-related Paraphernalia).
- (D) Any building, structure, improvement, location or place used for the purpose of any one business activity or enterprise which is not licensed as required by law.
- (E) Two (2) or more violations of any of the provisions of one or more of the following laws, separately or in combination; including but not necessarily at the same time:
  - (1) Article 220 of the Penal Law (Controlled Substances Offenses).
  - (2) Article 221 of the Penal Law (Offenses Involving Marihuana).
  - (3) Article 225 of the Penal Law (Gambling Offenses).
  - (4) Article 230 of the Penal Law (Prostitution Offenses).
  - (5) Sections 165.40, 165.45, 165.50, 165.52 and 165.54 of the Penal Law (Criminal possession of stolen property).
  - (6) Sections 65 or 82 of the Alcoholic Beverage Control Law.
  - (7) Article 265 of the Penal Law (Firearms and Other Dangerous Weapons).
  - (8) Sections 260.20 and 260.21 of the Penal Law (Unlawfully dealing with a child).
  - (9) Article 263 of the Penal Law (Sexual Performance by a Child).
  - (10) Section 415-a of the Vehicle and Traffic Law (Vehicle dismantlers).
  - (11) Section 175.10 of the Penal Law (Falsifying business records).
  - (12) Sections 170.65 and 170.70 of the Penal Law (Forgery of and illegal possession of a vehicle identification number).
  - (13) Possession, use, sale, or offer of 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.
  - (14) Article 178 of the Penal Law (Criminal Diversion of Prescription Medications and Prescriptions).
  - (15) Section 147 of the Social Services Law (Food Stamp Program fraud).
  - (16) Operating a business during hours which the business is required to be closed pursuant to Chapter 300 of the City Code, the Zoning Ordinance of the City of Newburgh.
  - (17) Any section of the Agriculture & Markets Law of the State of New York and/or of the Code of the City of Newburgh prohibiting the improper keeping and care of any animal(s); or the collection and hoarding thereof.

For purposes of this article, 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 at a proceeding brought under this Chapter 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, 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 for the purposes of this Chapter.

- (F) A “nuisance” shall also be deemed to exist on or in any premises or property which meets and/or satisfies the conditions described below:
- (1) Any building, structure, improvement, location or place containing any one rent impairing violation as defined in the New York State Multiple Residence Law and regulations promulgated thereunder, regardless of whether such building, structure, erection or place is subject to the New York State Multiple Residence Law, or any one violation of any state or local law, ordinance or regulation which endangers human life or constitutes a threat to human life or health, including but limited to structures which do not have adequate egress, safeguards against fire, adequate electrical service, installation and wiring, structural support, ventilation, plumbing, sewerage or drainage facilities, is overcrowded or inadequately cleaned or lighted; or
  - (2) Any building, structure, improvement, location or place in which has occurred six (6) or more violations of any of the provisions of the Building Code of the State of New York and/or of the provisions of the City Code of the City of Newburgh pertaining to property maintenance and/or sanitation; or
  - (3) Any building, structure, improvement, location or place in which has occurred any one (1) or more violations of any of the provisions of any of the laws listed under sub-section (E) hereinabove and any three (3) or more violations of any of the provisions of any of the laws, codes or regulations listed under subsection (F)(2) hereinabove.
- (G) The building, structure, erection or place which is deemed abandoned in that it has been unoccupied for more than one (1) year and one (1) or more of the following conditions exist:
- (1) There are unpaid real property taxes or water and sewer charges or fines or penalties due and owing to the City in whole or in part against the property for one (1) year or more.
  - (2) Trash, garbage, junk or debris has accumulated on the property or in the building or structure.
  - (3) The building or structure has unsecured openings.
  - (4) There is evidence of insect, vermin or rodent infestation.

- (5) The building or structure has a negative visual impact on the surrounding neighborhood and/or caused a substantial depreciation in property values in the immediate neighborhood.
  - (6) The building or structure contains one (1) or more violations of any state or local law, ordinance or regulation, and the owner has failed to remove or repair said building or structure for a period of one (1) year or more.
- (H) Any building, structure, erection or place used for congregate housing for students or others which has been the subject of two (2) or more complaints to City Administration, City Code Enforcement or City Police Department within the most recent past six (6) month period, which have been confirmed and verified by the City Administration or Police Department, for disturbing the surrounding neighborhood by excessive noise and/or holding large parties, which have resulted in excessive noise, garbage and litter, destruction of neighborhood property, increased traffic and parking violations, abusive and threatening conduct to neighbors and/or illegal sale and consumption of alcoholic beverages and/or controlled substances.

**§ 126.4. Remedies to abate public nuisances.**

In addition to the enforcement procedures established elsewhere in this article and in other laws, codes, rules and regulation, the City Manager, Chief of Police, and/or the Code Compliance Supervisor, after notice and opportunity for a hearing, to be provided to the owner, shall be authorized:

- (A) To order the immediate discontinuance of such activity at the premises where such public nuisance exists; and/or
- (B) To order the immediate closing of the premises to the extent and for such time as is necessary to abate the public nuisance, including but not limited to the erection of barriers and otherwise securing the property against use or entry by any person or persons. The cost to the City incurred for the erection of such barriers and/or the reasonable provision of any other security measures shall be a charge upon the property. After said charge shall have been duly demanded of the owner and shall have gone unpaid in whole or in part, the City shall have the right to re-levy any unpaid amounts as a tax upon the property and may enforce payment in the same manner provided by law for the non-payment of taxes.

**§126.5. Investigations and reports by authorized official of City.**

- (A) It shall be the duty of the authorized officials of the City including but not limited to the Supervisor of Code Compliance, the Police Chief, the Fire Chief and their designees to investigate all nuisances complained of and report to the City Manager action as may be necessary. The authorized official of the City shall, in

making such report, give the location of the property or properties whereon the nuisance exists, together with the nature, character and cause of the nuisance.

- (B) At the expiration of the time set by a notice served in accord with this article for the abatement of a nuisance, the authorized official of the City shall re-inspect the nuisance and report what actions, if any, has been taken in the premises to abate the nuisance to the City Manager.

**§126.6 Order to abate.**

- (A) Whenever any nuisance is found to exist by the officers so authorized by City law and code, they shall issue an order to abate such nuisance. Such order shall be directed by regular U.S. Mail to the owner of the premises upon which the nuisance exists and to the persons committing or responsible for such nuisance, and shall be prominently posted upon the premises.
- (B) The order to abate a nuisance shall specify the time within which the nuisance is to be removed or otherwise abated by the persons to whom the order is directed. Such order may include a requirement to immediately discontinue the activities constituting the nuisance or the closing of the premises to the extent necessary to abate the nuisance, or both.
- (C) In all cases of nuisances to be abated by the agent, occupiers or owners of property, who have been notified to that effect, they shall complete the abatement within the time prescribed in the order or notice.
- (D) The lack of knowledge of, acquiescence or participation in, or responsibility for a public nuisance on the part of the owner, lessors, lessees, agents, mortgagees or any other person directly or indirectly in control of the premises or having any interest in the premises or in any property, real or personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owner, mortgagee or other person.

**§126.7. Abatement by authorized official.**

The authorized officials of the City, having properly served parties who have committed or are responsible for a nuisance, shall abate such nuisance at the expiration of the time limit provided in such notice under the rules of the City Charter and Code for its abatement, and for such abatement by the City the penalties and cost chargeable by the City against the owner as provided in this Chapter shall be imposed and collected in the manner provided by law regulating the collection of fines; and if not so collected same may be added to and re-levied as property tax against the property and enforced and collected in the same manner as provided by law for the enforcement of unpaid taxes.

**§126.8. Action for permanent injunction.**

- (A) In addition to all other remedies provided for by law and in the City of Newburgh Code of Ordinances, as an additional supplemental remedy, the Corporation Counsel may bring and maintain a civil proceeding in the name of the City in the Newburgh City Court or other court of competent jurisdiction pursuant to Article 63 of the Civil Practice Law and Rules to permanently enjoin the nuisance defined in this Article and the person or persons conducting, maintaining or permitting the nuisance from further conducting, maintaining or permitting the nuisance. The owner, lessor and lessee of a building, structure, erection or place, wherein the nuisance is being conducted, maintained or permitted may be made defendants in the action. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this article. During the pendency of such proceeding, the City may obtain a temporary order for the immediate vacating of such building, structure, erection or place and/or restraining the defendants and all persons from further conducting, maintaining or permitting the nuisance upon proof that the public health, safety or welfare is threatened or endangered and immediately require a closing of said building, structure, improvement, location or place or order and restraining defendants and all other persons from conducting, maintaining or permitting the nuisance.
- (B) *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.
- (C) *Penalty. Costs of Action; Costs of Abatement of Nuisance.* If, upon the trial of an action under this Chapter, or upon a motion for summary judgment in an action under this Article, a finding is made that the defendants have intentionally conducted, maintained or permitted a nuisance defined in this Article, in addition to a permanent injunction, the following penalties and costs to be included in the judgment, may be awarded in favor of the City against any and all such defendants, jointly and severally, in an amount not to exceed one thousand (\$1,000.00) dollars for each day it is found that the defendants intentionally conducted, maintained or permitted the nuisance, and the actual costs including charges, expenses and legal and attorneys' fees of bringing the action; and the actual costs and expenses including wages, consulting fees equipment and materials and other costs related to the action undertaken by the City to secure the premises, abate and prevent the nuisance and remediate its impacts and effects. Upon recovery, all such penalties and costs shall be paid into the general fund of the City of Newburgh.

**§126.9. Permanent injunction.**

- (A) A judgment awarding a permanent injunction pursuant to this Article may direct the closing of the building, structure, erection or place by the City Marshall to the extent necessary to abate the nuisance and shall direct the City Marshall to post a copy of the judgment and a printed notice of such closing on the building, structure, improvement, location or place. 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 (\$250.00) dollars 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. A closing by the City Marshall pursuant to the provisions of this subdivision shall not constitute an act of possession, ownership or control by the Marshall or the City of the closed premises.
- (B) Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this Article, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than five hundred (\$500.00) dollars or by imprisonment not exceeding six (6) months, or both.
- (C) A judgment rendered awarding a permanent injunction pursuant to this Article shall be and become a lien upon the building, structure, 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 County Clerk. Every such lien shall have priority before any mortgage or other lien that exists prior to such filing except tax liens.
- (D) A judgment awarding a permanent injunction pursuant to this Article shall provide, in addition to the costs and disbursements allowed by the Civil Practice Law and Rules, upon satisfactory proof of affidavit or such other evidence as may be submitted, the actual costs, expenses and disbursements of the City in investigating, bringing the maintaining the action, including legal and attorneys' fees; and the City's actual costs of securing the premises, abating and preventing the nuisance and remediating its impacts as provided herein.

**§126.10. Judgment and action by Corporation Counsel**

- (A) the Corporation Counsel shall have the power, on ex parte application to any court of competent jurisdiction, to appoint a receiver of rents and profits of the premises for the purposes of collecting the civil penalty established pursuant to **§126.8 (C)** of this article, and abating the public nuisance. The receiver shall have the powers, duties, and rights of a receiver of rents and profits of real estate,

as provided by law; provided, however, that the Corporation Counsel shall act as counsel to the receiver, and the receiver shall not be allowed any expenditure for counsel fees, and the receiver's commission shall be no greater than 10% of the receiver's collections from the premises, which sum shall be full compensation for the receiver's services and those of any agent or agents whom the receiver may retain. The receivership shall continue until the amount of the city's liens, costs, expenses, fines and penalties as set forth herein with interest at the rate of 9% per annum and the receiver's commissions, have been fully paid and the nuisance abated; provided, further, that nothing in this section shall be construed to prevent any prior lienor from applying to a court in a proper case for a receiver of the premises.

- (B) At any time after the entry of any judgment establishing a lien upon the premises, the Corporation Counsel, on behalf of the City of Newburgh, may apply to a court for leave to sell the premises. Upon such application, the court may order the premises sold at public auction or private sale, subject to taxes, assessments, water rates, mortgages and mechanics liens.

**§126.11. City action no possession.**

Any action taken or proceeding undertaken by the City pursuant to this Article shall not constitute an act of possession, ownership or control by the City of Newburgh of the subject premises.

**§126.12. Disobedience of order.**

- (A) It shall be a misdemeanor for any person to use or occupy, or to permit any other person to use or occupy, the premises, or any portion thereof, ordered closed by the authorized City officials or by a court of law pursuant to this Article.
- (B) Intentional disobedience of or resistance to any provision of the order issued by the authorized City officials, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than five hundred (\$500.00) dollars, or imprisonment not exceeding fifteen (15) days, or both.
- (C) Each day's violation of this section shall constitute a separate offense.

**§126.13. Powers of enforcement.**

In addition to all powers of authorized City officials and officers to enforce the provisions of this Chapter conferred herein, such officials and officers shall have the same powers to enforce the provisions of this Chapter as those conferred upon them to enforce any and all other provisions of the laws, codes, rules and regulations of the State of New York and/or of the City of

Newburgh and/or either of them pertaining to property maintenance and sanitation and housing and building safety.

**§126. 14. No legal or administrative liability of City.**

Neither the City of Newburgh, nor any officer, agent or employee thereof, shall be corporately or personally liable for any damage resulting from any official determination, order or action required or permitted by or under this article.

**§126. 15. Construction.**

For the purpose of this Article, references to the Penal Law, Alcoholic Beverage and Control Law, Vehicle and Traffic Law, Tax Law and other laws and codes shall mean the laws of the State of New York and the laws, codes, rules and regulations of the state of New York, the City of Newburgh, and any departments and agencies thereof duly authorized by law to promulgate same.

**§126. 16. Severability.**

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

**SECTION 3 - Effective Date**

THIS LOCAL LAW SHALL TAKE EFFECT immediately upon its filing in the Office of the Secretary of State as provided by Law.