

## HN 10-56

### RESOLUTION

CITY OF HORNELL, NY

November 15, 2010

**BY:** Shepard/Hann

699

### ORDINANCE

BUILDINGS, NUISANCE

GENERAL REFERENCES

Vacant Building & Unsafe Buildings

#### **Legislative findings**

The Council finds that public nuisances exist in the City of Hornell in the operation of certain establishments and the use and occupation of property in flagrant and persistent violation of state and local laws and ordinances, which nuisances substantially and seriously interfere with the interest of the public in enhancing the quality of life and community environment in the City, and in fostering and facilitating commerce, maintaining and improving property values, and in preserving and protecting the public health, safety and welfare. The Council further finds that the persistence of such activities and violations is detrimental to the health, safety, and welfare of the people of the City of Hornell and of the businesses thereof and the visitors thereto. It is the purpose of the Council to authorize and empower the Board of Public Safety to impose sanctions and penalties for such public nuisances, and such powers of the Board of Public Safety 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 that may be imposed by the Board of Public Safety pursuant to this chapter 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.

#### **Use of point system to determine existence of nuisance**

For purposes of this chapter, a public nuisance shall be deemed to exist wherever, through violations of any of the following provisions resulting from separate incidents at a building, erection or place, 12 or more points are accumulated within a period of six months or 18 or more points are accumulated 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. For the purpose of this chapter, an "incident" will be defined as the execution of an enforcement action.

## Assessment of points

- A. The following violation shall be assigned a point value of eight points: §265 of the Penal Law, Firearms and other dangerous weapons.
- B. The following violations shall be assigned a point value of six points:
- (1) Article 220 of the Penal Law, Controlled Substances Offenses (except if the charge is a B felony or above, it shall be eight points).
  - (2) Article 221 of the Penal Law, Offenses Involving Marijuana (except if the charge is a B felony or above, it shall be eight points).
  - (3) Article 225 of the Penal Law, Gambling Offenses.
  - (4) Section 230.00 of the Penal Law, Prostitution.
  - (5) Sections 165.40, 165.45, 165.50, 165.52 and 165.54 of the Penal Law, Criminal possession of stolen property.
  - (6) Section 123 of the Alcoholic Beverage Control Law.
  - (7) Sections 260.20 and 260.21 of the Penal Law, Unlawfully dealing with a child.
  - (8) Section 263 of the Penal Law, Sexual Performance by a Child.
  - (9) Section 415-a of the Vehicle and Traffic Law, Vehicles dismantlers.
  - (10) 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.
  - (11) Article 158 of the Penal Law, Welfare Fraud,
  - (12) Article 178 of the Penal Law, Criminal Diversion of Prescription Medications and Prescriptions.
- C. The following violations shall be assigned a point value of four points:
- (1) Chapter 122, Housing, and Chapter 168, Property Maintenance Requirements, and Title V of the Chapter, Improvements; Streets and Sidewalks; Sewers, §267, Maintenance of sidewalks and curbs, of this Code:
  - (2) Permitting persons to be on the premises in excess of occupancy limit
  - (3) Violations regarding building certificates of occupancy in violation of Chapter 120.
- D. The following violations shall be assigned a point value of three points,
- (1) Chapter 160, Littering, Article II, Littering or Dumping, of this Code.
  - (2) Chapter 115, Garbage, Rubbish and Refuse, of this Code.
  - (3) Chapter 198, Noise, of this Code.
  - (4) Chapter 135, Dogs and Other Animals, of this Code,
  - (5) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
  - (6) Section 175.10 of the Penal Law, Falsifying business records.
  - (7) Sections 170.65 and 170.70 of the Penal Law, forgery of or illegal possession of a vehicle identification number.
  - (8) Section 147 of the Social Services Law, food stamp program fraud

(9) Article 26 of the Agriculture and Markets Law, cruelty to animals.

(10) Chapter 167, Vehicles, Abandoned, of this Code.

### **Conviction not required**

For purposes of this section, a conviction for an offense in a court of competent jurisdiction shall not be required to establish that a specified violation of law has occurred at a building, erection, or place. Instead, the City shall be required to prove a specified violation by a preponderance of the evidence. However, a conviction as defined and applied in accordance with the provisions of § 1.20 of the Criminal Procedure Law, in any court of competent jurisdiction, shall constitute conclusive proof of such a violation of law. Conviction of an attempt to commit a violation of any of the specified provisions shall be equivalent to a conviction for a violation of the specified provision.

### **Powers of Board of Public Safety enumerated**

In addition to any other enforcement procedures established elsewhere, the Board of Public Safety or its 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;
- B. To suspend for a period not to exceed six months or revoke for a period of one year a certificate of use issued for such premises, and to prevent the operator from obtaining a new certificate of use for another location for the period of suspension or revocation;
- 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. Any combination of the above.

### **Notice**

- A. Prior to the issuance of orders by the Board of Public Safety or its designee pursuant to this section, the Board of Public Safety or its designee shall give notice and opportunity for a hearing to the owner, lessor, lessee, or mortgagee of a building, erection, or place wherein the public nuisance is being conducted, maintained, or permitted.
- B. 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. Proceedings shall be commenced by service of the notice.

## **Presumption of ownership**

The owner of the property affected by the orders of the Board of Public Safety or its designee shall be presumed to be the person in whose name title to the real estate is recorded in the Office of the Steuben County Clerk.

## **Opportunity for hearing**

An opportunity for a hearing shall be within 60 days after the occurrence of the most recent violation cited in the notice.

## **Lack of knowledge not a defense**

The lack of knowledge of, acquiescence or participation in or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgages and all those persons in possession or having charge of the property 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, mortgages, and such other persons.

## **Orders**

- A. Orders of the Board of Public Safety or its 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.
- B. Five business days after the posting of an order issued pursuant to this section and upon the written directive of the Board of Public Safety or its designee, officers of the City of Hornell Police Department are authorized to act upon and enforce such orders,
- C. Where the Board of Public Safety or its designee closes a building, erection or place pursuant to this section, such closing shall be for such period as the Board of Public Safety or its 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 Board of Public Safety or its designee, but not exceeding the value of the property ordered to be closed, and submit proof satisfactory to the Board of Public Safety or its designee that the nuisance has been abated and will not again 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 Board of Public Safety or its designee, then the Board of Public Safety or its designee may vacate the provisions of the order that direct the closing of the building, erection or place.
- D. A closing directed by the Board of Public Safety or its designee pursuant to this section shall not constitute an act of possession, ownership, or control by the City of the closed premises.

## **Penalties for offenses**

- A. It shall be a misdemeanor for any person to use or occupy any building, erection or place, or portion thereof, ordered closed by the Board of Public Safety or its designee pursuant to this chapter.
- B. Mutilation or removal of a posted order of the Board of Public Safety or its designee shall be punishable by a fine of not less than \$250.00 or by imprisonment not exceeding 15 days, or both, provided such order contains therein a notice of such penalty.
- C. Intentional disobedience or disregard of any provision or orders issued by the Board of Public Safety or its designee pursuant to this section, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$1,000.00 or by imprisonment not to exceed six months, or both.

## **Power to promulgate rule& and regulations**

The Board of Public Safety or its designee shall promulgate rules and regulations to carry out and give full effect to the provisions of this chapter.

Ayes (8)

Nays (1)

Absent (1) Foreman