

## MEMORANDUM

**TO:** Mayor Casale and  
Members of the City of Beacon City Council

**FROM:** Keane & Beane, P.C.

**RE:** Proposed Nuisance Local Law

**DATE:** August 21, 2019

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The attached proposed local law creates a new Chapter 159, Article II to regulate public nuisance abatement to provide more due process to property owners and to make the law a better and more practical enforcement tool. Our office has worked with the Building Inspector, Dave Buckley, and Lieutenant Tom Figlia to draft the attached local law. In response to their comments, suggestions and concerns our office has drafted the attached local law to completely update Chapter 159, Article II as follows:

- A public nuisance is presumed to exist for any building, structure or real property as follows:
  - Any building, structure or real property used for the illegal use, possession or distribution of a controlled substance or marijuana, as defined by the State Penal Law.
  - Any building, structure or real property used for prostitution as defined by the State Penal Law.
  - Any building, structure or real property used for indecent or obscene performances and/or promotion of obscene material as defined by the State Penal Law.
  - Any building, structure or real property used for illegal gambling activity as defined by the State Penal Law.
  - Any building, structure or real property used for the commission of illegal possession, use or sale of firearms or weapons as defined by the State Penal Law.
  - Any building, structure or real property used for the illegal sale, manufacture or consumption of alcohol beverages as defined by the State Alcohol Beverage Control Law.
  - Any building, structure or real property wherein there exists or has occurred a criminal nuisance, as defined by the State Penal Law.
  - Any building, structure or real property used for loitering, as defined by the State Penal Law.

- Any building, structure or real property wherein there exists or has occurred any violation of the City Code, including, but not limited to, Chapter 223, Zoning, and the New York State Uniform Fire Prevention and Building Code, including 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 this Code by reference.
- The law redefines the term “Public Nuisance” to eliminate use of a point system to determine when a public nuisance exists. Under the provisions of the proposed local law a public nuisance is presumed to exist if there is (a) a conviction or adjournment in contemplation of dismissal for any of the activities set forth in the definition of “public nuisance” occurring on the premise, (b) service of an accusatory instrument for a violation of the New York State Uniform Fire Prevention and Building Code and/or any violation of the Code of the City of Beacon occurring on the premise or (c) service of a search warrant on the building, structure or real property where controlled substances, marijuana and/or weapons are seized.
- The law establishes a Panel to review cases where a presumption of public nuisance exists. The Panel consists of the Police Chief, the City Administrator, or the Building Inspector.
- Whenever any “Panel” member (the City Administrator, Chief of Police or the Building Inspector) has evidence to support a presumption of public nuisance, he or she will notify the other members of the Panel to discuss the public nuisance. The Panel will meet to review all supporting documentation, including copies of tickets and/or arrest paperwork. After its review, the Panel must make a determination on whether a presumption of public nuisance exists on the premise.
- Once the Panel determines that a presumption of public nuisance exists, the Panel will provide notice to the property owner and any other person directly or indirectly control of the premise. The notice will advise the property owner that he or she has 30 days to eliminate the public nuisance or 10 days to schedule a meeting with the Panel to develop an abatement plan.
- If the owner does not meet with the Panel within 10 days of receipt of notice, the owner shall have 30 days to abate the nuisance. The owner is required to meet with the Panel within 5 days after the 30 days has expired to demonstrate to the Panel that the nuisance has been eliminated.
- •The Panel shall notify the City Council that a nuisance exists on the premises **if** (a) the nuisance is not corrected within 30 days of the date of service, or (b) upon noncompliance with any written agreement reached with the Panel.
- At the direction of the City Council, the City Attorney may bring and maintain a civil action in the name of the City to abate the public nuisance and commence a civil action.