

DRAFT LOCAL LAW NO. ____ OF 2019

**CITY COUNCIL
CITY OF BEACON**

**PROPOSED LOCAL LAW TO
AMEND CHAPTER 159 ARTICLE II OF THE CODE OF THE
CITY OF BEACON**

A LOCAL LAW to amend Chapter 159 Article II of Code of the City of Beacon, concerning public nuisance abatement.

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

Section 1. Chapter 159, Article II of the Code of the City of Beacon entitled “Public Nuisance Abatement” is hereby repealed in its entirety.

Section 2. Chapter 159, Article II of the Code of the City of Beacon entitled “Public Nuisance Abatement” is hereby created as follows:

Article II Public Nuisance Abatement

§ 159-2 Findings and intent.

- A. The City Council finds that public nuisances exist in the City of Beacon in the operation of certain establishments and the use of property in flagrant violation of certain Penal Law, New York State Uniform Building and Fire Code and Municipal Code provisions, which nuisances 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 Beacon and its neighborhoods thereof, businesses thereof and visitors thereto.
- B. As a result of the activities occurring at these properties, and/or the conditions in which they are maintained, these properties tend to receive and require more than the general, acceptable level of police and code enforcement services. As a result they place an undue and inappropriate burden on the City’s taxpayers. The City Council has determined that existing laws do not sufficiently encourage such property owners to take reasonable steps to abate the nuisances that their properties are creating, and has determined that enhanced penalties will give such property owners additional incentives to ameliorate said problems and help to compensate the City for the increase in code enforcement services.
- C. This local law is enacted to encourage property owners to recognize their responsibility to ensure that activities occurring on their property conform to the law and do not adversely affect their neighborhoods, unduly burden the City’s resources and provide a mechanism for the City to take action against property owners who fail to ensure property they own does not require a disproportionate level of the City’s resources to be devoted to such property.

- D. This Article is not intended to discourage crime victims or a person in legitimate need of police services from requesting them.
- E. This Article does not affect a property owner's duty to comply with all other laws governing residential tenancies which are contained in New York State Statutes.

§ 159-3 Definitions.

For the purposes of this article, the following terms shall have the meanings indicated:

MORTGAGEE

The person who is listed as the mortgagee on any unsatisfied or otherwise open mortgage on the premises recorded in the office of the Dutchess County Clerk.

OWNER

The person in whose name the premises affected by an order, issued in accordance with this article, is recorded as the owner in the office of the Dutchess County Clerk.

PANEL

The Chief of Police of the City of Beacon or their designee, the Fire Chief of the City of Beacon or their designee, the City Administrator of the City of Beacon or their designee and the Building Inspector of the City of Beacon or their designee and a member of the Human Relations Commission.

PREMISES

The building, place or property whereon a public nuisance is being conducted or exists.

PUBLIC NUISANCE

- A. The below definition of public nuisance is not intended and shall not be interpreted to cover or include requests for assistance from police, medical, fire or ambulance services from an owner, tenant or occupant of a building or premises.
- B. For purposes of this article, a public nuisance shall be presumed to exist pursuant to § 159-5.B for any building, structure or real property as follows:
 - (1) 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.
 - (2) Any building, structure or real property used for prostitution as defined by the State Penal Law.
 - (3) 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.
 - (4) Any building, structure or real property used for illegal gambling activity as defined by the State Penal Law.
 - (5) 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.
 - (6) 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.

- (7) Any building, structure or real property wherein there exists or has occurred a criminal nuisance, as defined by the State Penal Law.
- (8) Any building, structure or real property used for loitering, as defined by the State Penal Law.
- (9) 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.

§ 159-4 Nuisance forbidden.

No owner, operator, manger or tenant of any premises shall conduct, maintain, permit or allow the existence of a public nuisance at the premises.

§ 159-5 Prima Facie Evidence of Public Nuisance.

- A. Notice by first-class mail or personal service, from the City of Beacon, of the activities entailing a public nuisance to the owner, operator, manger or tenant of premises shall be prima facie evidence of knowledge of a public nuisance.
- B. The following shall constitute prima facie evidence of a public nuisance:
 - (1) The existence of two or more incidents of the following activities at any premises within the three-year period prior to the commencement of a civil action pursuant to this Chapter shall be prima facie evidence of the existence of a public nuisance:
 - (a) Any conviction or adjournment in contemplation of dismissal for any of the activities set forth in the definition of “public nuisance” in § 159-3 occurring on the premise.
 - (b) Service of an accusatory instrument (i.e. notice of violation or order to remedy) 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.
 - (c) Service of a search warrant on the building, structure or real property where controlled substances, marijuana and/or weapons are seized.
- C. The lack of knowledge of, acquiescence or participation in, or responsibility for a public nuisance on the part of the owner, mortgagee 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.

§ 159-6 Determination by Panel.

Whenever any Panel member has evidence to support a presumption of public nuisance, they shall notify the other members of the Panel to discuss the public nuisance. The Panel shall meet to review all supporting documentation, including copies of tickets and/or arrest paperwork. After its review, the Panel shall make a determination on whether a presumption of public nuisance exists at the premise.

§ 159-7 Service of notice.

- A. Once the Panel determines that a presumption of public nuisance exists, the Panel shall give notice to the property owner, and any other person directly or indirectly in control of the premises, and any tenants and/or occupants of the premises wherein the public nuisance is being conducted, maintained or permitted. Such notice and opportunity to be heard may be given to a mortgagee of the premises. Such notice shall be served upon an owner or any other person directly or indirectly in control of the premises pursuant to Article 3 of the New York State Civil Practice Law and Rules, 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.
- B. The notice provided for in Subsection A of this section shall:
- (1) Specify the activity creating the public nuisance;
 - (2) Provide 30 days for elimination of the public nuisance;
 - (3) Inform the owner or any other person directly or indirectly in control of the premises that, within five days after the 30 days has expired, the property owner must contact the City to schedule a meeting with the Panel to demonstrate to the Panel that the nuisance has been eliminated;
 - (4) Inform the owner or any other person directly or indirectly in control of the premises of their right to request a meeting with the Panel within 10 days of service of the notice;
 - (5) Inform the owner or any other person directly or indirectly in control of the premises that, upon expiration of 35 days after service without a meeting with the Panel, or upon noncompliance with any written agreement reached with the Panel, the City shall act to obtain compliance as provided by this article; and
 - (6) Inform the owner or any other person directly or indirectly in control of the premises of the obligation to post a copy of the notice within five days of receipt of said notice, in a conspicuous place, so that all premises occupants and others entering the premises shall have notice that the public nuisance is being conducted, maintained or permitted on the premises and that, upon expiration of 30 days after service of the notice, the City shall proceed under § 159-10.

§ 158-8 Meeting with the Panel.

- A. Upon receipt of notice, any person served with a notice described in § 158-7, shall have 10 days upon receipt of notice to request a meeting with the Panel to devise an abatement plan to remedy the nuisance activity.
- (1) If an abatement plan is not agreed upon, or the owner fails to abide by the abatement plan and a nuisance activity occurs within 12 months following the date of the meeting, the Panel shall advise the City Council that a presumption of public nuisance exists on the premises.
 - (2) If the owner abides by the abatement plan and no new nuisance activity occurs within the 12 months following the date of the abatement plan, the public nuisance determination shall

be waived. Any presumption of public nuisance after 12 months shall require a new determination by the Panel and additional notice pursuant to § 158-7.

- B. If the property owner or any other person directly or indirectly fails to schedule a meeting with the Panel within 10 days of receipt of the notice described in § 158-7, they shall have 30 days after service of the notice to eliminate the public nuisance.
- (1) The property owner shall be required to appear before the Panel within five days after the 30 days has expired to demonstrate to the Panel that the nuisance has been eliminated. The property owner must contact the City to request a meeting with the Panel within such time.
 - (2) The Panel shall make a determination about whether the public nuisance has been eliminated. If Panel determines that the nuisance has been abated, the public nuisance determination shall be waived. Any presumption of a public nuisance after such waiver, shall require a new determination by the Panel and additional notice pursuant to § 158-7. If the Panel determines that the nuisance has not been abated, then the Panel shall advise the City Council that a presumption of public nuisance exists on the premise.
 - (3) If the property owner fails to schedule the required meeting with the Panel, the Panel shall advise the City Council that a presumption of public nuisance exists on the premise.

§ 159-9 Remedies enumerated.

- A. At the direction of the City Council of the City of Beacon, the City Attorney may bring and maintain a civil proceeding in the name of the City for the following types of relief:
- (1) Civil penalties. Civil penalties may be pursued in Dutchess County Supreme Court or in the City Court of the City of Beacon.
 - (2) Permanent injunction. Permanent injunction may only be pursued in Dutchess County Supreme Court.
 - (3) Temporary closing order, as set forth under § 159-13. Temporary closing of any structure may only be issued by the Dutchess County Supreme Court.
 - (4) Temporary restraining order. A temporary restraining order may only be pursued in Dutchess County Supreme Court.
 - (5) Temporary injunction. A temporary injunction may only be pursued in Dutchess County Supreme Court.

§ 159-10 Summons and complaint for civil action.

- A. If the nuisance is not corrected within 30 days of the date of service of the notice set forth in § 159-7, or upon noncompliance with any written agreement reached with the Panel, the Panel shall notify the City Council that a public nuisance exists.
- B. At the direction of the City Council of the City of Beacon, the City Attorney may bring and maintain a civil action in the name of the City to abate a public nuisance and shall commence a civil action by filing a summons and complaint in the manner required by the New York State Civil Practice Laws and Rules.

- C. The summons and complaint shall name as defendant at least one of the owners of some portion of or having some interest in the property, as set forth in the last filed tax roll, and shall describe the owner's premises by tax number and/or street address.
- D. The summons and complaint may also name as defendant any owner, operator, manager or tenant of the premises.
- E. The complaint shall allege the facts constituting the public nuisance.
- F. The complaint shall be accompanied by an affidavit, to affirm that the owner or their agent had notice of the public nuisance and an opportunity to abate the public nuisance.
- G. Because the public nuisance is conducted, maintained, permitted or allowed in the City of Beacon, the venue of such action shall be in Dutchess County Supreme Court or in the City Court of the City of Beacon.
- H. In rem jurisdiction over the premises shall be completed by affixing the summons to the premises 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 as determined by the last filed tax rolls.
- I. With respect to any action commenced or to be commenced, the City Attorney may file a notice of pendency pursuant to the New York State Civil Practice Laws and Rules.

§ 159-11 Civil penalty.

If, upon the trial of an action for a public nuisance or upon a motion for summary judgment in Supreme Court or in City Court, a finding is made that defendant(s) have conducted, maintained, permitted or allowed a public nuisance, notwithstanding any other provision in the Beacon City Code concerning penalties, a penalty may be awarded as follows for each day it is found that the defendant conducted, maintained, permitted or allowed the public nuisance after notice to abate had been given by the City:

Period of noncompliance	Penalty per day
1-15 days	\$ 1,000
16-30 days	\$ 2,500
31 days or more	\$ 5,000

§ 159-12 Permanent injunction.

- A. If, upon the trial of a civil action for a public nuisance or upon a motion for summary judgment in Dutchess County Supreme Court, a finding is made that defendant(s) have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted.
- B. A permanent injunction may prohibit defendant from conducting, maintaining, permitting or allowing the public nuisance.
- C. A permanent injunction may authorize agents of the City to remove and correct any condition(s) in violation of the City Code. The judgment may further order that the cost of removing and correcting the violation(s), plus a charge of 50% as compensation to the City of administration and supervision expenses, be charged against defendant(s) and awarded to the City. The judgment may further order that the cost of removing and correcting the violation(s), plus the charge of

50% as compensation to the City for administration and supervision expenses, shall constitute a lien against the real property and shall be collected in the same manner as provided by law for the collection of real property taxes within the City.

- D. A judgment ordering a permanent injunction may direct the closing of the premises by the City, to the extent necessary to abate the public nuisance.
- E. A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the New York State Civil Practice Laws and Rules and of the actual costs, expenses and disbursements of the City in investigating, bringing and maintaining the action.

§ 152-13 Closing of the building, structure or real property.

- A. If the judgment directs the closing of the building, structure or real property, the City shall serve the judgment upon defendant(s) in the manner required by the New York State Civil Practice Laws and Rules and shall post a copy of the judgment upon one (1) or more of the doors at entrances of the building, structure or real property, or in another conspicuous place on the building, structure or real property.
- B. In addition, the City shall affix upon one (1) or more of the doors at entrances of the building, structure or real property or in another conspicuous place on the building, structure or real property, a printed notice stating "CLOSED BY COURT ORDER" in block lettering of sufficient size to be observed by anyone intending to enter the premises. Mutilation or removal of such posted judgment or notice while it remains in force will be considered a separate violation and shall be punishable as contempt of court.
- C. After posting, the City may then command all persons present in the building, structure or real property to vacate the property forthwith. After the building, structure or real property has been vacated, the City may secure the premises.
- D. The closing directed by the judgment shall be for such period as the court may direct, but in no event shall the closing be for a period of more than a year from the posting of the judgment.
- E. A closing by the City shall not constitute an act of possession, ownership or control by the City.

§ 159-14 Administrative liability.

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

§ 159-15 Severability.

If any provision of this article or the application thereof to any person or circumstances 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. Numbering for Codification

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law

shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word “Local Law” shall be changed to “Chapter,” “Section” or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 4. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. Effective Date

This local law shall take effect immediately upon filing with the Office of the Secretary of State.