

Chapter 315, PROPERTY AND BUILDING NUISANCE REFORM
[HISTORY: Adopted by the City Council of the City of Binghamton 9-18-1995 by L.L. No. 6-1995
(Sub-Part LXXXI of the 1970 Code); amended in its entirety 6-20-2005 by L.L. No. 2-2005.

Subsequent amendments noted where applicable.]

GENERAL REFERENCES

- Building construction -- See Ch. 200.
- Unsafe buildings -- See Ch. 203.
- Fire prevention -- See Ch. 235.
- Housing and property maintenance -- See Ch. 265.
- Noise -- See Ch. 292.
- Solid waste -- See Ch. 350.
- Trees and shrubs -- See Ch. 391.
- Zoning -- See Ch. 410.

ARTICLE I, General Provisions

§ 315-1. Findings.

The Common Council of the City of Binghamton finds that public nuisances exist in the City of Binghamton in the operation of certain establishments and the use of property in flagrant violation of certain Penal Law 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 Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the City of Binghamton and of the businesses thereof and the visitors thereto. It is the purpose of the Council to authorize and empower the Mayor to impose sanctions and penalties for such public nuisances, and such power of the Mayor 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 imposed by the Mayor 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.

§ 315-2. Title.

This chapter shall be known as the "Property and Building Nuisance Reform Law."

§ 315-3. Definitions. [Amended 5-21-07 by Ord. No. 16-2007; Amended 3-17-10 by Local Law 1-2010]

As used in this chapter, the following terms shall have the meanings indicated:

ADVERSE IMPACT -- Includes, but is not limited to, the following: any search warrants served on the property where controlled substances and/or weapons were seized; investigative purchases of controlled substances on or near the property by law enforcement agencies or their agents; arrests for violations of controlled substance law and or possession of weapons; loitering for the purposes of engaging in illegal activity; an increase in the volume of traffic associated with property; complaints made to law enforcement officials of illegal activity associated with the property, finding of illegal weapons, as defined in § 265 of the Penal Law, or controlled substances, as defined in Articles 220 and 221 of the Penal Law, on or near property by law enforcement officials and their agents.

BUILDING -- A structure where space is covered or enclosed for the use, shelter, storage or protection of persons, animals, chattel or property of any kind, and which is permanently affixed to the land.

BUILDING, ACCESSORY -- A building subordinate to the principal building on the lot and used for purposes which are clearly related but incidental to that of said principal building (See § 410-19, Accessory buildings and uses, of Chapter 410, Zoning, of the Code of the City of Binghamton.)

BUSINESS -- An activity, occupation, employment or enterprise which requires time, attention, labor and material and wherein merchandise is exhibited or sold, or services offered.

BUSINESS OFFICE -- A building or portion thereof utilized to accommodate the activities of a business.

CONVICTION -- 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 that the violations have occurred. 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, or a plea of guilty 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.

DISTURBANCE -- Actions, behavior, or conduct by person or persons at a particular location that disturbs the peace.

KNOWLEDGE OF PUBLIC NUISANCE -- The presumption of knowledge provided by Subdivision 1 of § 235.10 of the Penal Law shall be applicable to this chapter. Notice, by mail or personal service, of activities retailing a public nuisance, to the property owner of record shall be evidence of knowledge of the public nuisance.

LOT -- A parcel of land, with or without buildings or structures, delineated by lot line and having access to a street as defined in this chapter.

PENAL LAW -- New York State Penal Law.

PUBLIC NUISANCE -- For the purposes of Article III, a public nuisance shall be deemed to exist whenever, through violations of any of the following provisions resulting from separate incidents at a building, erection or place, or immediately adjacent to the building, erection or place as a result of the operation of the business, 12 or more points are accumulated within a period of six (6) months, or 18 or more points within a period of twelve (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.

- (1) The following violations shall be assigned a point value of two (2) points:
 - (a) Section 240.36 and 240.37 of the Penal Law—Loitering in the First Degree
 - (b) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
 - (c) Chapter 292 of the Code of Ordinances of the City of Binghamton—Noise.
 - (d) Chapter 350, Article II, of the Code of the City of Binghamton—Littering.
 - (e) Chapter 178, Article II, of the Code of the City of Binghamton regarding howling dogs, and/or repetitive barking, number of dogs, unlicensed dogs and dangerous or nuisance dogs.
- (2) The following violations shall be assigned a point value of four (4) points:
 - (a) Disorderly conduct by individual or individuals.
 - (b) Any violation of Chapter 265 of the Code of the City of Binghamton—Housing and Property Maintenance, including any garbage collection violation. Each repeat offense is an additional four (4) points.
 - (c) General disturbances at a particular location.
 - (d) Article 225 of the Penal Law—Gambling Offenses.
 - (e) The Alcoholic Beverage Control Law.
 - (f) Section 415-a of the Vehicle and Traffic Law—Vehicle Dismantlers.
 - (g) Sections 170.65 and 170.70 of the Penal Law—Forgery or Illegal Possession of a Vehicle Identification Number.
 - (h) 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.
 - (i) The Agriculture and Markets Law.
- (3) The following violations shall be assigned a point value of six (6) points:
 - (a) Article 178 of the Penal Law—Criminal Diversion of Prescription Medications and Prescriptions.
 - (b) Article 220 of the Penal Law—Controlled Substances Offenses.
 - (c) Article 221 of the Penal Law—Offenses Involving Marijuana.

- (d) Sections 165.15, (6), (7), and (8), 165.40, 165.45, 165.50, 165.50, 165.52, 165.54, 165.71, 165.72 and 165.73 of the Penal Law—Criminal Possession of Stolen Property.
 - (e) Article 158 of the Penal Law—Welfare Fraud.
 - (f) Section 147 of the Social Services Law—Food stamp program fraud.
 - (g) Section 2024 of Title 7 of the United States Code—Illegal Use of Food Stamps.
 - (h) Any commercial violations of Chapter 410, Zoning, of the City of Binghamton.
 - (i) Allowing persons on the premises in excess of occupancy limits.
 - (j) Section 3383 of the Public Health Law—Imitation controlled substances.
 - (k) Operating a premises without the requisite certificate of use in violation of Chapter 410, Zoning of the Code of the City of Binghamton.
- (4) The following violations shall be assigned a point value of ten (10) points:
- (a) Article 230 of the Penal Law—Prostitution Offenses.
 - (b) Article 265 of the Penal Law—Firearms and other Dangerous Weapons.
 - (c) Sections 260.20 and 260.21 of the Penal Law—Unlawfully Dealing with a Child.
 - (d) Article 263 of the Penal Law—Sexual Performance by a Child.
 - (e) Loitering for the purpose of engaging in a prostitution offense.
- (5) The following violation shall have a point value of twelve (12) points: penal law violations, including but not limited to murder, attempted murder, assault, attempted assault, sex offenses, etc.

TESTIMONY -- Oral, written or other documented evidence tending to show or prove the truth of the matter asserted.

VIOLATION -- Conduct, or evidence of conduct, prohibited under this chapter. A violation does not require criminal prosecution and conviction but only a preponderance of evidence that the prohibited conduct is occurring or has occurred. Evidence of prohibited conduct may include, but is not limited to, police reports, investigative reports, execution of search warrants, results of police surveillance, arrest and/or conviction of local and state and federal laws, activities associated with trafficking of controlled substances, finding of weapons and/or controlled substances on or near the property, increased volume of traffic associated with the property.

YARD -- An open area on a lot which is open to the sky and that is unoccupied by any land use or activity except as may otherwise be provided in Chapter 410, Zoning, of the Code of the City of Binghamton.

§ 315-4. Evidence and presumptions.

- A. Evidence. In any action under this chapter, evidence of the common fame and general reputation of the building, structure or place, of the inhabitants or occupants thereof, or of those resorting thereto, shall be competent evidence to prove the existence of a property or building nuisance.
- B. Scienter. If evidence of the general reputation of the building, structure or place, or of the inhabitants or occupants thereof, is sufficient to establish the existence of the nuisance, it shall be prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance, on the part of the owners, lessors, lessees, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form in the property, real or personal, used in conducting or maintaining the property or building nuisance.
- C. Presumptions for the purposes of this section.
 - (1) Any building, accessory building, business office, lot, or yard wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more convictions, as defined in § 315-3, on the part of the lessees, owners, operators, or occupants, of the provisions of this chapter as defined in § 315-3 of this article, shall be prima facie evidence that a public nuisance exists at said location.

- (2) Any building, accessory building, business office, lot, or yard wherein, within a one-year period prior to the commencement of an action under this chapter, there have occurred four or more violations on the part of the lessees, owners, operators, or occupants, of the provisions of this chapter as defined in § 315-3 of this article, shall be prima facie evidence that a public nuisance exists at said location.
- (3) Any building, accessory building, business office, lot, or yard wherein, within the period of one year prior to the commencement of an action under this chapter, there has been presented a preponderance of evidence of repeated criminal activity which has an adverse impact, as defined in § 315-3 of this article, on such property or neighborhood, shall be prima facie evidence that a public nuisance exists at said location.

ARTICLE II, Civil Remedies for Property and Building Nuisances

§ 315-5. Applicability.

This article shall be applicable to the public nuisances defined in Article I of this chapter.

§ 315-6. Civil remedies. [Amended 5-21-07 by Ord. No. 16-2007]

- A. The Corporation Counsel may bring and maintain a civil proceeding in the name of the City for the following types of relief:
 - (1) Permanent injunction.
 - (2) Temporary closing order.
 - (3) Temporary restraining order.
 - (4) Temporary injunction.
 - (5) Civil penalties.
- B. The summons. The Corporation Counsel shall name as defendants the building, structure or place wherein the public nuisance is being conducted, maintained or permitted, by describing it by Tax Map number and/or street address, and at least one of the owners of some part of or interest in the property.
- C. The complaint.
 - (1) The Corporation Counsel shall bring and maintain a civil proceeding in the name of the City of Binghamton in the Supreme Court of Broome County, or any other court of competent jurisdiction, to permanently enjoin the public nuisance and the persons conducting, maintaining or permitting the public nuisance, as defined in Article I, § 315-3 of this chapter, from further conducting, maintaining, or permitting the public nuisance in the manner provided in Article II of this chapter. The owner, operator, and/or lessee of a building, structure or place wherein the public nuisance is being conducted, maintained or permitted may be made defendants in the action.
 - (2) The venue of such action shall be in the county where the public nuisance is being conducted, maintained or permitted.
 - (3) The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter.
 - (4) The civil action shall be commenced by the filing of a summons and complaint alleging the facts constituting the nuisance.
 - (5) The complaint shall name as defendants the building, structure or place wherein the nuisance is being conducted, maintained or permitted, by describing it by Tax Map number and/or street address, and at least one of the owners who possesses some part of or an interest in the property.

(6) Any complaint filed under this chapter shall be verified or accompanied by an affidavit(s) for purposes of showing that the owner of his or her agent has notice of the nuisance and has had an opportunity to abate the nuisance. The Corporation Counsel will give the owner, and any designated property manager, written notice of the nuisance and ten (10) business days to personally meet with and provide to Corporation Counsel a written plan to abate the nuisance within thirty days. If part of the plan to abate the nuisance is to evict a tenant, then the owner will commence the eviction proceeding within ten (10) business days from the meeting with Corporation Counsel.

The complaint or affidavit shall contain a description of the attempts by the applicant to notify and locate the owner of the property and/or the owner's agent.

The complaint or affidavit shall describe the adverse impact associated with the property on the surrounding neighborhood.

- D. In rem jurisdiction over building, structure, or place. In rem jurisdiction shall be complete over the building, structure or place wherein the public nuisance is being conducted, maintained or permitted by affixing the summons to the door of the building, structure or place and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners who possesses some part of or an interest in the property. Proof of service shall be filed within two days thereafter with the Clerk of the court designated in the summons. Service shall be complete upon such filing.
- E. Service of summons on other defendants. Defendant(s), other than the building, structure or place wherein the public nuisance is being conducted, maintained or permitted, shall be served with the summons as provided in the Civil Practice Law and Rules.
- F. Notice of pendency. With respect to any action commenced or to be commenced pursuant to this chapter, the Corporation Counsel may file a notice of pendency pursuant to the provisions of Article 65 of the Civil Practice Law and Rules.
- G. Presumption of ownership. The owner of the real estate affected by the action shall be presumed to be the person in whose name the real estate is recorded in the office of the City of Binghamton Assessor and/or the office of the Clerk of the County of Broome.
- H. Presumption of employment or agency. Whenever there is testimony that a person was the manager, operator, supervisor, or in any other way in charge of the premises at the time a public nuisance was being conducted, maintained or permitted, such evidence shall be presumptive that he or she was an agent or employee of the owner or lessee of the building, structure or place considered to be a nuisance.
- I. Penalty. If, upon the trial of an action under this chapter, or upon a motion for summary judgment in an action under this chapter, a finding is made that the defendant has conducted, maintained or permitted a public nuisance defined in this chapter, a penalty may be awarded in an amount not to exceed \$1,000 for each day it is found that the defendant conducted, maintained or permitted the public nuisance after notice to abate has been given by the City. Upon recovery, such penalty shall be paid into the general fund of the City.
- J. Enforcement. A judgment pursuant to this chapter shall be enforced by the City of Binghamton Police Department and the office of Corporation Counsel.

§ 315-7. Judgment awarding permanent injunction. [Amended 5-21-07 by Ord. No. 16-2007]

- A. A judgment awarding a permanent injunction, pursuant to this chapter, may direct the Binghamton Police Department to seize and remove from the building, structure or place all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and shall direct the sale by the Binghamton Police Department of such property in the manner provided for the sale of personal property under execution pursuant to the provisions of the Civil Practice Law and Rules. The net proceeds of any such sale, after deduction of the lawful expenses involved, shall be paid into the general fund of the City.
- B. A judgment awarding a permanent injunction pursuant to this chapter may authorize agents of the City to forthwith remove and correct construction and structural alterations in violation of the City Housing Code. Any and all costs associated with these repairs or alterations shall become a lien against said property and shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens and any nuisance abatement lien.
- C. A judgment awarding a permanent injunction, pursuant to this chapter, may direct the closing of the building, structure or place by the Binghamton Police Department, to the extent necessary to abate the nuisance, and shall direct the Binghamton Police Department to post a copy of the judgment and a printed notice of such closing conforming to the requirements of § 315-8H of this chapter. 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 \$500 or by imprisonment not exceeding 15 days, or by both, provided such judgment contains therein a notice of such penalty.
- 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 one year from the posting of the judgment provided for in this section.
- E. If the owner shall file a bond in the value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, structure or place has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the building, structure or place.
- F. A closing by the Binghamton Police Department pursuant to this section shall not constitute an act of possession, ownership or control by the Binghamton Police Department of the closed premises.
- G. Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both.
- H. Upon the request of the Corporation Counsel, or the Mayor, the City of Binghamton Police Department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this chapter.
- I. A judgment rendered awarding a permanent injunction pursuant to this chapter shall be and become a lien upon the building, structure or place named in the complaint in such action, such lien to date from the time of filing a notice of liens pending in the office of the Clerk of the county wherein the building, structure or place is located. Every such nuisance abatement lien shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens.

- J. A judgment awarding a permanent injunction pursuant to this chapter shall provide, in addition to the costs and disbursements allowed by the Civil Practice Law and Rules, upon satisfactory proof by affidavit or such other evidence as may be submitted, the actual costs, expenses and disbursements of the City in investigating, bringing and maintaining the action.

§ 315-8. Preliminary injunction. [Amended 5-21-07 by Ord. No. 16-2007]

A. Generally.

- (1) Pending an action for a permanent injunction as provided for in this article, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this chapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. An order granting the preliminary injunction shall direct a trial of the issues at the earliest possible time. Where preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction at its earliest convenience after the conclusion of the trial. A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted.
- (2) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the Corporation Counsel and the City of Binghamton Police Department.
- (3) Preliminary injunctions, inventory, closing of premises, posting of order and notices, offenses. If the court grants a preliminary injunction, the provisions of this article shall be applicable.

B. Motion papers for preliminary injunction. The Corporation Counsel shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a permanent injunction abating a nuisance within the scope of this chapter.

C. Temporary closing order.

- (1) If, on a motion for a preliminary injunction pursuant to this section the Corporation Counsel shall show by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing order, a temporary order closing such part of the building, structure or place wherein the nuisance is being conducted, maintained or permitted may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time; a decision on the motion for a preliminary injunction shall be rendered by the court at the earliest possible time.
- (2) Service of temporary closing order. Unless the court orders otherwise, a temporary closing order, together with the papers upon which it was based and a notice of hearing for the preliminary injunction, shall be personally served, in the same manner as a summons as provided in the Civil Practice Law and Rules.

D. Temporary restraining order.

- (1) A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, or permitted and that the public health, safety, or welfare immediately requires the granting of a temporary restraining order. This order shall restrain the defendants and all persons from removing or transferring off the property or in any manner interfering with the fixtures and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance. A temporary restraining order may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary restraining order, the court shall direct the holding of a hearing for the preliminary injunction.
 - (2) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served in the same manner as a summons as provided in the Civil Practice Law and Rules.
- E. Temporary closing order; temporary restraining order.
- (1) If, on motion for a preliminary injunction, the Corporation Counsel submits evidence warranting both a temporary closing order and a temporary restraining order, the court shall grant both orders.
 - (2) Enforcement of temporary closing orders and temporary restraining orders. Temporary closing orders and temporary restraining orders shall be enforced by the Corporation Counsel and the City of Binghamton Police Department.
- F. Inventory upon service of temporary closing orders and temporary restraining orders. The officers serving a temporary restraining order shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a public nuisance within the scope of this chapter and shall enter upon the building, structure or place for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory, including, but not limited to, photographing such personal property.
- G. Closing of premises pursuant to temporary closing orders and temporary restraining orders. The officers serving a temporary restraining order shall, upon service of the order, command all persons present in the building, structure or place to vacate the premises forthwith. Upon the building, structure or place being vacated, the premises shall be securely locked and all keys delivered to the officers serving the order who thereafter shall deliver the keys to the fee owner, lessor or lessee of the building, structure or place involved. If the fee owner, lessor or lessee is not at the building, structure or place when the order is being executed, the officers shall securely padlock the premises and retain the keys until the fee owner, lessor or lessee of the building is ascertained, at which time, the officers shall deliver the keys to such owner, lessor or lessee, if such individual resides within Broome County.
- H. Posting of temporary closing orders and temporary restraining orders. Upon service of a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the public nuisance is being conducted, maintained or permitted. In addition, where a temporary restraining order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. If the temporary restraining order directs that the premises are to be closed by court order, the notice shall contain the legend "Closed by Court Order" in block lettering of sufficient size to be observed by anyone intending or likely to

enter the premises, the date of the order, the court from which issued and the name of the office or agency posting the notice. Mutilation or removal of such a posted order or such a posted 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 \$1,000 or by imprisonment not exceeding 90 days, or by both, provided such order or notice contains therein a notice of such penalty. The Police Department shall, upon the request of the Office of Corporation Counsel, or upon the direction of the Mayor, assist in the enforcement of this subsection.

- I. Intentional disobedience of or resistance to temporary restraining order and permanent injunction. Intentional disobedience of, or resistance to, a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both.
- J. Temporary restraining order or preliminary injunction bond required. A temporary restraining order or preliminary injunction shall not issue under this chapter, except upon the giving of a bond or security by the applicant, in the amount of \$1,000, for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully restrained or enjoined. A bond or security shall not be required of the State of New York, Municipal Corporations, or political subdivisions of the State of New York.

§ 315-9. Temporary restraining order; defendant's remedies. [Amended 5-21-07 by Ord. No. 16-2007]

- A. Temporary restraining order to be vacated; inspection provision.
 - (1) A temporary restraining order may be vacated by the court, upon notice to the Corporation Counsel, when the defendant gives an undertaking and the court is satisfied that the public health, safety or welfare will be protected adequately during the pendency of the action. The undertaking shall be in an amount equal to the assessed valuation of the building, structure or place where the public nuisance is being conducted, maintained or permitted or in such other amount as may be fixed by the court. The defendant shall pay to the City, in the event a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements in investigating, bringing and maintaining the action.
 - (2) An order vacating a temporary closing order, or a temporary restraining order, shall include a provision authorizing agencies of the City to inspect the building, structure or place, which is the subject of an action pursuant to this chapter, periodically without notice, during the pendency of the action, for the purpose of ascertaining whether or not the public nuisance has been resumed, Intentional disobedience of, or resistance to, an inspection provision of an order vacating a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, no conviction, by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both. The Police Department shall, upon the request of the office of Corporation Counsel, or upon the director of the Mayor, assist in the enforcement of an inspection provision of an order vacating a temporary restraining order.
- B. Vacating a temporary injunction or a temporary restraining order. When the defendant gives an undertaking in the amount of the civil penalty demanded in the complaint, together with costs, disbursements and the projected annual costs of the prosecution of the action to be determined by the court, upon a motion on notice to the Corporation Counsel, a temporary injunction or a temporary restraining order shall be vacated by the court. The provisions of the Civil Practice Law and Rules governing undertakings shall be applicable to this chapter.

§ 315-10. Preliminary injunction of bulk transfer.

- A. Generally, pending an action pursuant to this chapter, the court may grant a preliminary injunction enjoining a defendant from making a bulk transfer, as defined in this section.
- B. If, on a motion for a preliminary injunction of a bulk transfer, the Corporation Counsel shall show by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, or permitted, a temporary restraining order may be granted, without notice, restraining the defendants and all persons from making or permitting a "bulk transfer," as defined in this article, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Application for a temporary restraining order shall be made pursuant to § 315-9 of this article.
- C. "Bulk transfer" defined. A "bulk transfer" is any transfer of a major part of the materials, supplies, merchandise or other inventory or equipment of the transferor in the building, structure or place where the public nuisance is being conducted, maintained or permitted that is not in the ordinary course of the transferor's business.
- D. Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the office of Corporation Counsel or by the City of Binghamton Police Department.
- E. Preliminary injunction; inventory. If the court grants a preliminary injunction, the provisions of the § 315-8 of this article shall be applicable.

§ 315-11. Temporary receiver.

- A. Appointment, duration and removal. In any action wherein the complaint alleges that the nuisance is being conducted or maintained in the residential portions of any building or structure or portion thereof, which are occupied in whole, or in part, as the home, residence or sleeping place of one or more human beings, the court may, upon motion on notice by the plaintiff, appoint a temporary receiver to manage and operate the property during the pendency of the action, in lieu of a temporary closing order. A temporary receivership shall not continue after final judgment unless otherwise directed by the court. Upon the motion of any party, including the temporary receiver, or on its own initiative, the appointing court may remove a temporary receiver at any time.
- B. Powers and duties. The temporary receiver shall have such powers and duties as the court shall direct, including, but not limited to, collecting and holding all rents due from all tenants, leasing or renting portions of the building or structure, making or authorizing other persons to make necessary repairs or to maintain the property, hiring security or other personnel necessary for the safe and proper operation of a dwelling, prosecuting or defending suits flowing from his or her management of the property and retaining counsel therefor, and expending funds from the collected rents in furtherance of the foregoing powers.
- C. Oath. A temporary receiver, before entering upon his or her duties, shall be sworn or shall affirm faithfully and fairly to discharge the trust committed to such receiver. The oath or affirmation may be waived upon consent of all parties.
- D. Undertaking. A temporary receiver shall give an undertaking, in an amount to be fixed by the court making the appointment, that such receiver will faithful discharge his or her duties.
- E. Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to

inspection by any person having an apparent interest in the property. Upon motion of the temporary receiver, or of any person having an apparent interest in the property, the court may require the keeping of particular records, or direct or limit inspection, or require presentation of a temporary receiver's accounts. Notice of motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on the temporary receiver's undertaking as well as upon each party.

§ 315-12. Chapter not exclusive remedy.

This chapter shall not be construed to exclude any other remedy provided by law for the protection of the health, safety and welfare of the people of the City of Binghamton.

ARTICLE III, Administrative Remedies for Property and Building Nuisances

§ 315-13. Applicability.

This article shall be applicable to the public nuisances defined in Article I of this chapter.

§ 315-14. Powers of Mayor with respect to public nuisances. [Amended 5-21-07 by Ord. No. 16-2007]

- A. In addition to and as an alternative to the enforcement procedures established elsewhere, the Mayor or the Mayor's designee, after notice and opportunity for a hearing may, pursuant to Article I, § 315-3, deem the existence of a public nuisance as such is defined thereunder and shall thereafter be authorized:
- (1) To order the closing of the building, erection, place, or place of business to the extent necessary to abate the nuisance; or
 - (2) 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; or
 - (3) 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
 - (4) To revoke for a period of five years eligibility to secure grants or loans from the City of Binghamton; or
 - (5) Any combination of the above.
- B. Service of notice.
- (1) Prior to the issuance of orders by the Mayor or the Mayor's designee pursuant to this section, the Mayor or the Mayor's designee shall give notice and opportunity for a hearing to the owner, lessor, lessee and mortgagee of a building, erection or place wherein the public nuisance is being conducted, maintained or permitted. Such 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. The person in whose name the real estate affected by the orders of the Mayor or the Mayor's designee is recorded in the office of the County Clerk shall be presumed to be the owner thereof. Proceedings shall be commenced by service of the notice and opportunity for a hearing within 60 days after the occurrence of the most recent violation cited in the notice.
 - (2) The lack of knowledge of acquiescence or participation in or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charge of, 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, mortgagees and such other persons.

- (3) Every certificate of occupancy, certificate of zoning compliance and real property tax bill issued by any City department shall state the number of nuisance points, if any, assessed against the premises as of the date of the record being issued.
- C. Orders of the Mayor or the Mayor's 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 or record thereof within one business day of the posting.
- D. Five business days after the posting of an order issued pursuant to this section and upon the written directive of the Mayor or the Mayor's designee, officers of the Binghamton Police Department are authorized to act upon and enforce such orders.
- E. Where the Mayor or the Mayor's designee closes a building, erection or place pursuant to this section, such closing shall be for such period as the Mayor or the Mayor's 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 Mayor or the Mayor's designee, but which may not exceed the value of the property ordered to be closed, and submits proof satisfactory to the Mayor or the Mayor's designee that the nuisance has been abated and will not 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 Mayor or the Mayor's designee, then the Mayor or the Mayor's designee may vacate the provisions of the order that direct the closing of the building, erection or place.
- F. A closing directed by the Mayor or the Mayor's designee pursuant to this section shall not constitute an act of possession, ownership or control by the City of the closed premises, nor will it constitute a closure caused by a government for purpose of nonconformity under Article XII, Nonconforming Use of Buildings, Structures and Land, of Chapter 410, Zoning, of the Code of the City of Binghamton.
- G. It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any building, erection or place, or portion thereof, ordered closed by the Mayor or the Mayor's designee. Mutilation or removal of a posted order of the Mayor or the Mayor's designee shall be punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or both, provided such order contains therein a notice of such penalty.
- H. Intentional disobedience or resistance to any provision of the orders issued by the Mayor or Mayor's designee pursuant to this section, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$5,000, or by imprisonment not to exceed six months, or both.
- I. The Mayor or the Mayor's designee may promulgate rules and regulations to carry out and give full effect to the provisions of this section.

§ 315-15. Penalties for offenses.

- A. Any owner who, having been served with a notice or order to remove any violation of this chapter or any nuisance, fails to comply therewith within the time fixed by law shall be guilty of an offense punishable for each offense by a fine or penalty not exceeding those set forth in § 1-4 of the Code of the City of Binghamton. Every day of such violation may be held to constitute a separate offense.

- B. The term "owner" as used in this section shall include any person or persons deemed to be an owner or owners of property as set forth in Chapter 265, Housing and Property Maintenance, of the Code of the City of Binghamton.
- C. Violations of this chapter may also be referred to the Code Enforcement Department or any other appropriate municipal department and be prosecuted pursuant to Chapter 265, Housing and Property Maintenance, or any other provision of the Charter and Code of the City of Binghamton.