

## CHAPTER 1, GENERAL PROVISIONS

[History: Adopted by the City Council of the City of Binghamton as indicated in article histories. Amendments noted where applicable.]

### ARTICLE I, Definitions, Interpretation and Penalties [Adopted 10-5-1970 (Ch. 1, §§ 1-2, 1-3, 1-6, 1-8 and 1-9, of the 1970 Code)]

#### § 1-1. General definitions and rules of construction.

In the construction of this Code, and of all ordinances, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the City Council:

A. Terms defined. As used in this Code, the following terms shall have the meanings indicated:

CITY COUNCIL; COMMON COUNCIL --Whenever the term "City Council" or "Common Council" is used, it shall be construed to mean the Council of the City of Binghamton.

CITY; CORPORATION -- Whenever the words "the City," "this City," "the corporation" or "this corporation" are used, they shall be construed as if the words "of Binghamton, New York," followed them.

CORPORATE LIMITS; CORPORATION LIMITS -- Whenever the words "corporate limits," "corporation limits" or "City limits" are used, they shall mean the legal boundary of the City of Binghamton.

COUNCIL MEMBER -- The words "Council member" shall mean any person elected or appointed to that office.

COUNTY -- The words "the county" or "this county" shall mean the County of Broome in the State of New York.

KEEPER and PROPRIETOR -- The words "keeper" and "proprietor" shall mean and include persons, firms, associations, corporations, clubs and partnerships, whether acting by themselves or a servant, agent or employee.

MAYOR -- Whenever the word "Mayor" is used it shall mean the Mayor of the City of Binghamton.

MONTH -- The word "month" shall mean a calendar month.

OATH -- The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

OR; AND -- "Or" may be read "and," and "and" may be read "or" if the sense requires it.

OWNER -- The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

PERSON -- The word "person" shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as to individuals.

PERSONAL PROPERTY -- The term "personal property" includes every species of property except real property, as herein described.

PRECEDING; FOLLOWING -- The words "preceding" and "following" mean next before and next after, respectively.

PREMISES -- Whenever the word "premises" is used it shall mean place or places.

PROPERTY -- The word "property" shall include real and personal property.

PUBLIC PLACE -- The term "public place" shall mean any park, cemetery, school yard or open space adjacent thereto and all waterways.

REAL PROPERTY -- The term "real property" shall include lands, tenements and hereditaments.

RESIDENCE -- The term "residence" shall be construed to mean the place adopted by a person as his or her place of habitation and to which, whenever he or she is absent, he or she has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed his or her residence.

SEAL -- Whenever the word "seal" is used it shall mean the City or corporate seal.

SIDEWALK -- The word "sidewalk" shall mean any portion of a street between the curb line and the adjacent property line, intended for the use of pedestrians, excluding parkways.

SIGNATURE or SUBSCRIPTION -- The "signature" or "subscription" of a person shall include a mark when the person cannot write.

STATE -- The words "the state" shall be construed to mean the State of New York.

STREETS -- The word "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public highways in the City.

TENANT; OCCUPANT -- The words "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease or who occupies the whole or a part of such building or land, either alone or with others.

WEEK -- The word "week" shall be construed to mean seven days.

WRITTEN; IN WRITING -- The words "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

YEAR -- The word "year" shall mean a calendar year.

#### B. Rules of construction.

- (1) Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given, or such act is done, shall be counted in computing the time, but the day on which such proceeding is to be had shall not be counted.
- (2) Delegation of authority. Whenever a provision appears requiring the head of a department of the City to do some act or make certain inspections it is to be construed to authorize the head of the department to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.
- (3) Gender, singular and plural. Every word in this Code and in any ordinance imparting the masculine gender may extend and be applied to females and to firms, partnerships and corporations, as well as males; provided that these rules of construction shall not be applied to any provision which contains any express language excluding such construction or when the subject matter or context of such provision may be repugnant thereto. [Amended 12-4-2006 by L.L. No. 2-2006]
- (4) Interpretation. In the interpretation and application of any provision of this Code, it shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the Code imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.
- (5) Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.
- (6) Name of officer. Whenever the name of an officer is given it shall be construed as though the words "of the City of Binghamton" were added.
- (7) Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
- (8) Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.
- (9) Tense. Words used in the past or present tense include the future as well as the past and present.

#### § 1-2. Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, or as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

**§ 1-3. Amendments to Code.**

- A. All ordinances passed subsequent to this Code, which amend, repeal or in any way affect this Code, may be numbered in accordance with the numbering system of this Code and printed for inclusion therein, or, in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the City Council.
- B. Amendments to any of the provisions of this Code should be made by amending such provisions by specific reference to the section of this Code in substantially the following language: "That Section \_\_\_\_\_ of the Code of the City of Binghamton, New York, is hereby amended to read as follows: \_\_\_\_\_ (Set out new provisions in full) \_\_\_\_\_."
- C. When the governing body desires to enact an ordinance of a general and permanent nature on a subject not heretofore existing in the Code, which the governing body desires to incorporate into the Code, a section in substantially the following language shall be made a part of the ordinance: "Section \_\_\_\_\_. It is the intention of the governing body, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Binghamton, New York, and the sections of this ordinance may be renumbered to accomplish such intention."
- D. All sections, articles, chapters or provisions of this Code desired to be repealed should be specifically repealed by section number or chapter number, as the case may be.

**§ 1-4. General penalty; continuing violations. [Amended 9-18-2000 by Ord. No. 00-117; Amended 10-1-07 by Ord. No. 45A-2007]**

- A. Whenever in this Code or in any ordinance or resolution of the City any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such Code, ordinance or resolution the doing of any act is required or the failure to do any act is declared to be unlawful, where not specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance or resolution shall constitute a misdemeanor, except that an ordinance may provide that a violation thereof shall be an offense, and the Common Council may provide therein or by general ordinance, that any person guilty of such violation shall be liable to such a fine which shall not exceed \$500 or to imprisonment not exceeding 15 days, or to both such fine and imprisonment, or such ordinance may provide for a penalty not exceeding \$1500, together with the cost of any clean-up, extermination, removal or garbage, or other remedial action, to be recovered by the City in a civil action. Each day any violation of any provision of this Code or of any such ordinance or resolution shall continue shall constitute a separate offense.
- B. In addition to the penalty hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code or any such ordinance or resolution shall be deemed a public nuisance and may be, by the City, abated as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.

- C. Whenever the word "fine" or "penalty" is used in any section of this Code, the same may be construed to mean and include either "fine" or "penalty," according as procedure shall be taken, either by civil action or by criminal information, but either a judgment in, or the pendency of, a criminal prosecution for an alleged offense, or a judgment in, or the pendency of, any civil action to collect a penalty for the same alleged offense, shall be a bar to the other proceeding.
- D. Whenever, by any provision contained in this Code, a fine is provided absolute in amount, with no discretion in the court imposing the same, and such court is satisfied that the convicted person in the commission of the offense acted neither willfully nor wantonly and without malice, such court may impose, in its discretion, a fine of any amount less than that provided.

**§ 1-5. Prosecution where different penalties exist for same offense.**

In all cases where the same offense may be made punishable, or shall be created by different clauses or sections of the ordinances of the City, the prosecuting officer may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense.

**ARTICLE II, Adoption of Code [Adopted 12-4-2006 by L.L. No. 2-2006]**

**§ 1-6. Legislative intent. [Amended 3-17-10 by Local Law 1-2010]**

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the City of Binghamton consisting of the Supplemental Charter and Chapters 1 through 410, together with an Appendix, shall be known collectively as the "Code of the City of Binghamton," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the City of Binghamton" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, article number or section number where such legislation appears in the Code, as if such local law, ordinance or resolution had been formally amended to so read.

**§ 1-7. Continuation of existing provisions. [Amended 3-17-10 by Local Law 1-2010]**

The provisions of the Code, insofar as they are substantively the same as those of the previous versions of the Code and local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law, are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law, ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the City Council of the City of Binghamton, and it is the intention of said Council that each such provision contained within the Code is hereby reaffirmed as it appears in said Code. Only such provisions of the previous versions of the Code and former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-8 below.

**§ 1-8. Repeal of inconsistent enactments. [Amended 3-17-10 by Local Law 1-2010]**

All provisions of the previous versions of the Code, local laws and ordinances or parts of local laws or ordinances inconsistent with the provisions contained in the Code adopted by this local law are hereby repealed; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the City of Binghamton which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.

**§ 1-9. Enactments saved from repeal; matters not affected.**

The repeal of local laws and ordinances provided for in § 1-8 of this local law shall not affect the following classes of local laws, ordinances, rights and obligations, which are hereby expressly saved from repeal:

- A. Any right or liability established, accrued or incurred under any legislative provision of the City of Binghamton prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.
- B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the City of Binghamton or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law brought pursuant to any legislative provision of the City of Binghamton.
- D. Any agreement entered into or any franchise, license, right, easement or privilege heretofore granted or conferred by the City of Binghamton.
- E. Any local law or ordinance of the City of Binghamton providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the City of Binghamton or any portion thereof.
- F. Any local law or ordinance of the City of Binghamton appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the City of Binghamton or other instruments or evidence of the City's indebtedness.
- G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract, agreement or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The annexation or dedication of property.
- J. Any local law or ordinance relating to salaries and compensation.
- K. Any local law or ordinance amending the Zoning Map.
- L. Any local law or ordinance relating to or establishing a pension plan or pension fund for City employees.
- M. Any local law or ordinance or portion of a local law or ordinance establishing a specific fee amount for any license, permit or service obtained from the City.
- N. Any provisions of or amendments to the Traffic Code.
- O. Any local law adopted subsequent to September 18, 2006.

**§ 1-10. Severability.**

If any clause, sentence, paragraph, section, article, chapter or part of this local law or of any local law, ordinance or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, chapter or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**§ 1-11. Copy of Code on file. [Amended 3-17-10 by Local Law 1-2010]**

A copy of the Code, in loose-leaf form, shall be filed in the office of the City Clerk of the City of Binghamton and shall remain there for use and examination by the public. The City Clerk and Corporation Counsel shall maintain an updated electronic version of the Code, and the City Clerk shall publish this Code on the City of Binghamton website. The availability of a copy of the Code for inspection by the public, along with publication on the City of Binghamton website, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

**§ 1-12. Amendments to Code. [Amended 3-17-10 by Local Law 1-2010]**

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the City of Binghamton" or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the City Council to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto. Such amendments shall also be implemented in the electronic version of the Code to be maintained by the City Clerk and Corporation Counsel for publication on the City of Binghamton website. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the City Council deems desirable.

**§ 1-13. Code book to be kept up-to-date. [Amended 3-17-10 by Local Law 1-2010]**

It shall be the duty of the City Clerk to keep up-to-date the certified copy of the book containing the Code of the City of Binghamton required to be filed in the office of the City Clerk for use by the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the City Council subsequent to the enactment of this local law in such form as to indicate the intention of said City Council to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws, ordinances or resolutions until such changes, local laws, ordinances or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein. The City Clerk and Corporation Counsel shall also maintain a correct and updated electronic version of the Code for publication on the City of Binghamton's website.

**§ 1-14. Sale of Code book; supplementation.**

Copies of the Code, or any chapter or portion of it, may be purchased from the City Clerk, or an authorized agent of the Clerk, upon the payment of a fee to be set by resolution of the City Council. The Clerk may also arrange for procedures for the periodic supplementation of the Code.

**§ 1-15. Penalties for tampering with Code.**

Any person who, without authorization from the City Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the City of Binghamton or who alters or tampers with such Code in any manner whatsoever which will cause the legislation of the City of Binghamton to be misrepresented thereby or who violates any other provision of this local law shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

**§ 1-16. Changes in previously adopted legislation; new provisions.**

- A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the City of Binghamton, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection B hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one or more of said

pieces of legislation. It is the intention of the City Council that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.

- B. In addition, the amendments and/or additions as set forth in Schedule A attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)

**§ 1-17. Incorporation of provisions into Code.**

The provisions of this local law are hereby made Article II of Chapter 1 of the Code of the City of Binghamton, such local law to be entitled "General Provisions, Article II, Adoption of Code," and the sections of this local law shall be numbered §§ 1-6 to 1-18, inclusive.

**§ 1-18. When effective.**

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