

NUISANCE PROPERTIES

ARTICLE I

Chronic Nuisance Properties

§ XXX-1. Legislative intent; purpose.

- A. Chronic nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This article is enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties by providing a process for abatement. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.
- B. Also, chronic nuisance properties are a financial burden to the City due to the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property. This article is a means to ameliorate those conditions and hold accountable those persons responsible for such property.

§ XXX-2. Definitions.

For purposes of this article, the following words or phrases shall have the meaning described below:

ABATE — To repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this article by using means in such manner and to such an extent as the applicable Nuisance Officer or designee(s) of the Common Council determines are necessary in the interest of the general health, safety and welfare of the community;

CHRONIC NUISANCE PROPERTY — Property on which any combination of three or more nuisance activities or conditions occur or exist during any consecutive ninety-day period, or on which any combination of six or more nuisance activities or conditions occur or exist during any consecutive twelve-month period;

CONTROL — The power or ability to regulate, restrain, dominate, counteract or govern property, property conditions, or conduct or events that occur on a property;

DRUG-RELATED ACTIVITY — Any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined in the New York State Penal Law;

NUISANCE ACTIVITY AND/OR CONDITION —

- A. Any nuisance as defined by state or federal law or local ordinance occurring on, around or near a property, including, but not limited to, violations of the following chapters of the City Code of the City of Norwich:

NUISANCE PROPERTIES

153 (Animals); 172 (Brush, Grass and Weeds); 199 (Construction Codes, Uniform); 357 (Noise); 409 (Property Maintenance); 465 (Signs); 474 (Solid Waste and Recycling); 519 (Vehicles, Abandoned)

- B. Any criminal conduct as defined by the New York State Penal Law, federal law, or local ordinance occurring on, around or near a property, including, but not limited to, the following activities or behaviors: A drug-related activity, assault, fighting, menacing, stalking, harassment, disorderly conduct, reckless endangerment, offenses related to prostitution, domestic violence, firearms and/or weapons violations, gambling, loitering, alcoholic beverage law violations, and gang-related activity.

NUISANCE OFFICER — Position to be appointed by Common Council;

PERSON — Natural person, joint venture, partnership, association, club, company, corporation, business trust, organization or other entity, or the manager, lessee, agent, officer or employee of any of them;

PERSON RESPONSIBLE FOR PROPERTY or PERSON RESPONSIBLE — Unless otherwise defined, any person who has titled ownership of the property or structure which is subject to this article, an occupant in control of the property or structure which is subject to this article, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this article and/or any person who has control over the property and allows a violation of this article to continue;

PREMISES and PROPERTY — May be used by this article interchangeably; any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property;

RENTAL UNIT — Any structure or that part of a structure, including but not limited to, a single-family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons.

§ XXX-3. Applicability.

- A. Any property within the City of Norwich which is a chronic nuisance property is in violation of this article and subject to its remedies; and
- B. Any person responsible for property who permits property to be a chronic nuisance property shall be in violation of this article and subject to its remedies.

§ XXX-4. Declaration of chronic nuisance property; procedure.

- A. When the nuisance officer receives documentation or information reasonably supporting a finding of the occurrence of three or more nuisance activities or conditions within a consecutive ninety-day period on any property, said nuisance officer shall review such documentation or information to determine whether it describes any of the nuisance activities or conditions enumerated in § **XXX-X** above. Upon such a finding, the nuisance officer shall give a warning notice to the person responsible for such property, in writing, by certified mail or personal service, that the property is declared to be a chronic nuisance property.
- B. The warning notice shall contain:

- (1) The street address or a legal description sufficient for identification of the property;
 - (2) A concise description of the nuisance activities or conditions that exist, or that have occurred on the property;
 - (3) A demand that the person responsible for such property respond to the nuisance officer within seven days of service of the warning notice to discuss the nuisance activities and conditions and create a plan or course of conduct to abate the chronic nuisance;
 - (4) An offer to the person responsible of an opportunity to abate the nuisance activities or conditions giving rise to the violation; and
 - (5) A statement that, if the person responsible does not respond to the nuisance officer as required in this section, or, if the matter is not voluntarily corrected to the satisfaction of the nuisance officer, the City may file an action to abate the property as a chronic nuisance property and/or take such other action against the property or person responsible as may be necessary to abate the nuisance activity or condition.
 - (6) A statement describing the remedies, penalties, assessments and costs for which the person responsible may be liable, including the closure of the property and revocation of any certificate of occupancy thereof, in the event that the nuisance activities or conditions have not been abated in accordance with this article.
- C. If the person responsible fails to respond to the warning notice within the time prescribed, the nuisance officer shall issue a final notice declaring the property to be a chronic nuisance property and post such notice at the property and issue the person responsible a civil infraction returnable before the City of Norwich Court, punishable by a maximum penalty of \$100 per day for each day the nuisance activity or condition remains unabated. If the person responsible fails to respond to the issued infraction and/or continues to violate the provisions of this article, the matter shall be referred to the Office of the City Attorney for either judicial action or administrative action as hereinafter provided.
- D. If the person responsible responds as required by the warning notice and agrees to abate the nuisance activity or condition, the nuisance officer and the person responsible may work out an agreed-upon course of action which would abate the nuisance activity and/or condition. If the agreed course of action does not result in the abatement of the nuisance activities or conditions, or if no agreement concerning abatement is reached, the matter shall be referred to the City Attorney for enforcement proceedings, either by judicial action or administrative action. In the event the nuisance officer or the City Attorney determines that the person responsible has taken reasonable steps to abate the nuisance activities or conditions, the City Attorney may elect not to commence an enforcement action under this article, notwithstanding the continuance of the nuisance activity or condition.

§ XXX-5. Enforcement; judicial action.

- A. Once the matter is referred to the City Attorney, the City Attorney shall immediately review and make a determination whether to initiate legal action authorized under this article or state statute, or may seek alternative forms of abatement of the nuisance activity or condition. The City Attorney may initiate legal action on the chronic nuisance

property and seek civil penalties and costs in Supreme Court for the abatement of the nuisance.

- B. In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. Copies of police incident reports and reports of other City departments documenting nuisance activities or conditions shall be admissible in such actions. Additionally, evidence of a property's general reputation and the reputation of persons residing in or frequenting the property shall be admissible in such actions. The failure to prosecute an individual, or the fact no one has been convicted of a crime, is not a defense to any enforcement action to abate a chronic nuisance.
- C. The City Attorney may bring and maintain a judicial enforcement action in the name of the City to abate the nuisance and shall commence the action by the filing of a summons and complaint in the manner required by the New York State Civil Practice Law and Rules.
- D. The summons and complaint shall name as defendants the building, structure or real property by describing it by Tax Map number and/or street address, and, shall name as defendants at least one person responsible for the subject property. The summons and complaint may also name as defendants any owner, operator, manager, tenant, lessee or other occupier of the building, structure or real property.
- E. The venue of the action shall be in the Supreme Court of the State of New York, County of Chenango.
- F. In rem jurisdiction over the building, structure or real property shall be completed by affixing the summons and complaint to the building, structure or real property and by mailing the summons and complaint by certified mail, return receipt requested, to the person in whose name the real property is recorded at the office of the city assessor. Defendants other than the building, structure or real property shall be served with a summons and complaint in the manner required by the New York State Civil Practice Law and Rules. In addition, the City Attorney may file a notice of pendency pursuant to the New York State Civil Practice Law and Rules.

§ XXX-6. Judicial action; remedies.

- A. If, upon the trial of an action to abate a nuisance activity or condition, or upon a motion for a summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a nuisance activity or condition, a penalty may be awarded in an amount not to exceed \$100 for each day it is found that defendants conducted, maintained, permitted or allowed the nuisance activity or condition after notice to abate had been given by the nuisance officer. Upon recovery, such penalty shall be paid into the general City fund.
- B. If, upon the trial of an action for a nuisance activity or condition, or upon a motion for a summary judgment, a finding is made that the defendants conducted, maintained, permitted or allowed a nuisance activity or condition, a permanent injunction may be granted, prohibiting the defendants from conducting, maintaining, permitting or allowing the nuisance activity or condition. Said permanent injunction may authorize agents of the City to remove and correct any conditions in violation of this article. The judgment may

further order that the costs of removing and correcting the violations shall be charged against defendants and awarded to the City. The judgment may further order that the costs of removing and correcting the violations shall constitute a lien against the real property and shall be collected in the same manner provided by law for the collection of real property taxes within the City. A judgment ordering a permanent injunction may further direct the closing of the building, structure, or real property by the City, to the extent necessary to abate the nuisance activity or condition. A judgment awarding a permanent injunction shall further provide for all costs and disbursements allowed by the New York State Civil Practice Laws and Rules and for the actual costs, expenses and disbursements of the City in investigating, bringing and maintaining the action, including attorney's fees.

- C. If the judgment directs the closing of the building, structure or real property, the City shall serve the judgment upon defendants in the manner required by the New York State Civil Practice Laws and Rules and shall post a copy of the judgment upon one 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 judgment may 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. 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. A closing pursuant to court order shall not constitute an act of possession, ownership or control by the City.
- D. On a motion or order to show cause filed by the City Attorney in a pending action for a permanent injunction, a preliminary injunction enjoining the nuisance activity or condition may be granted for any of the relief obtainable by a permanent injunction. Pending a motion or order to show cause for a preliminary injunction, a temporary restraining order or a temporary closing order may be granted, without notice to defendants, for any of the relief obtainable by a permanent injunction.
- E. If the judgment directs the closing of the building, structure or real property and requires all persons present in the building, structure or real property to vacate the property, the court shall be authorized to assess against the person or persons responsible the reasonable costs and expenses of relocation expended by any tenant who must relocate because of the order of abatement, provided that such tenant shall be eligible to recover such relocation costs only if the tenant has not participated in the nuisance activities or conditions which are the subject of the judicial action.
- F. If the court determines the property is a chronic nuisance property pursuant to this article, the court may also order any of the following:
 - (1) Order the person responsible to immediately abate the nuisance activity or condition from occurring on the property;
 - (2) Order that the nuisance officer shall have the right to inspect the property to determine if the court's orders have been complied with;
 - (3) Impose the aforescribed civil penalty of up to \$100 per day against each responsible person, calculated from the date the warning notice was issued by the nuisance officer to the date when the nuisance officer confirms that the property is no longer a chronic nuisance property;

- (4) Make any other order that will reasonably abate nuisance activities or conditions from occurring on the property, including authorizing the City to take action to abate nuisance activities or conditions from occurring upon the property if other court orders are not complied with or do not abate any nuisance activity or condition on the property;
 - (5) Closure of the building, structure or real property as aforesaid;
 - (6) Suspension or revocation of any certificate of occupancy, business license or other license issued with respect to such property;
 - (7) Provide that the costs of any City action taken in accordance with the court order are to be paid for by the persons responsible who shall be jointly and severally liable for same.
- G. The Supreme Court shall retain jurisdiction during any period of closure of the building, structure or real property, and during any period of abatement of the nuisance activities or conditions.
- H. After a final decision has been rendered, an appeal may be taken in accordance with Civil Practice Law Section 5515 and shall be served upon the adverse party and the office where the judgment or order as rendered within 30 days of service of the judgment or order upon the party taking the appeal.

§ XXX-7. Administrative action.

- A. Whenever there is prima facie evidence of a chronic nuisance property, the City may elect to initiate an administrative hearing rather than taking judicial action. The following procedures shall be observed:
- (1) Service of notice: A notice of hearing shall be served on all persons responsible for the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building, structure or real property. The notice shall be served in the manner required by New York State Civil Practice Laws and Rules.
 - (2) Content of notice: The notice shall allege the facts constituting the nuisance activities and/or conditions which are prima facie evidence of a chronic nuisance property. The notice shall further contain a time and place for a hearing to be held before a panel, such notice to be given no less than 20 days before the hearing date.
 - (3) Hearing panel: The hearing panel shall consist of five members to be appointed by the Common Council.
 - (4) Site visit: Prior to the hearing, the hearing panel will make a site visit to the address to observe the nuisances.
 - (5) Hearing: At the time and place designated in the notice, the City Attorney or their designee shall present all relevant evidence and/or witnesses demonstrating the existence of nuisance activities or conditions constituting a chronic nuisance property pertaining to the subject building, structure or real property. The persons responsible for the building, structure or real property, or their representatives, shall have the right to examine such evidence and cross examine any witnesses presented by the City Attorney or their designee. Said persons responsible or their representative may present any relevant evidence and/or witnesses in their defense. The City Attorney or their designee shall have the right to examine such evidence and cross examine any witnesses presented by the persons responsible for the building, structure or real

property, or their representatives.

- (6) Panel's findings and recommendations: Within 10 business days of the hearing, the panel shall provide findings of fact to the Mayor or the Mayor's designee. The findings of fact shall state whether there is prima facie evidence of the existence of nuisance activities or conditions constituting a chronic nuisance property at the building, structure or real property. The panel shall further provide a written recommendation of remedies to abate said nuisance activities or conditions.
- B. Upon receipt of the findings of fact and the recommendations from the hearing panel, the Mayor or the Mayor's designee shall have the following powers in furtherance of the abatement of the nuisance activities or conditions:
- (1) To issue a penalty may be imposed in an amount not to exceed \$100 for each day it is found that defendants conducted, maintained, permitted or allowed the nuisance activity or condition after notice to abate had been given by the nuisance officer.
 - (2) To issue a decision and order suspending or revoking, for a period not to exceed one year, the certificate of occupancy or business license for the building, structure or real property.
 - (3) To issue a decision and order directing the closing of the building, structure or real property to the extent necessary to abate the nuisance activities or conditions.
 - (4) In conjunction with, or in lieu of, the foregoing powers, to issue a decision and order that various measures be taken by the persons responsible, including tenants and/or lessees of the property, to the extent necessary to both abate the existing nuisance activities or conditions and insure the prevention of future nuisance activities or conditions from occurring at the subject property, which shall include, but not be limited to: requiring the persons responsible to modify and improve the usage and features of the premises to deter further and future nuisance activities or conditions; mandating compliance with all applicable building, housing and property maintenance codes and regulations pursuant to this code and or state law; and/or directing subsequent purchasers to comply with the provisions of any issued order of revocation or suspension of the certificate of occupancy or business license unless or until the subsequent purchaser appears before the hearing panel to provide an appropriate plan for the panel to review and make recommendations, wherein said plan will set forth measures to avoid incidents of nuisance activities or conditions.
 - (5) The decision and order shall be served upon the person responsible, and any tenant or lessee of the property, either by personal service or certified mail.
 - (6) Nothing within this section shall limit the authority of the Mayor or Mayor's designee to take such other and further actions deemed necessary to abate any existing nuisance activities or conditions to the extent necessary to insure the protection of the health, safety and welfare of the general public.
- C. After a final decision has been rendered, an appeal may be taken in accordance with Civil Practice Law Section 5515 and shall be served upon the adverse party and the office where the judgment or order as rendered within 30 days of service of the judgment or order upon the party taking the appeal.

§ XXX-8. Summary abatement power.

Whenever this article or any other provision of law authorizes the City or nuisance officer to declare a public nuisance pursuant to this article, the nuisance activities or conditions may be summarily abated by any reasonable means and without notice or hearing when immediate

action is necessary to preserve or protect the public health or safety because of the existence of a dangerous condition or imminent threat to life or safety on public or private property. Summary abatement action shall not be subject to the notice and hearing requirements of this article, and the nuisance officer shall not be prohibited from summary abatement actions after initiation of proceedings pursuant to this article, if immediate action at any time becomes necessary to preserve or protect the public health or safety. Summary abatement is to be limited to those actions which are reasonably necessary to immediately remove the threat. In the event a public nuisance is summarily abated, the nuisance officer may nevertheless keep an account of the cost of abatement and bill the person responsible therefore. If the bill is not paid within 15 days from the date of mailing by certified mail to the person responsible, the nuisance officer may proceed to obtain a special assessment and lien against the subject property to be collected in the same manner as other real property tax assessments. In addition to its rights to impose said special assessment, the City shall retain the alternative right to recover its costs by way of civil action against the persons responsible, jointly and severally.

§ 140-9. Severability.

If any clause, sentence, paragraph, word, section or part of this article shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved in the controversy in which said judgment shall have been rendered.

ARTICLE II
Public Nuisance Properties

§ XXX-10. Legislative intent; purpose.

- A. Public nuisance properties can take the form of several conditions, including but not limited to:
- (1) Unsafe structures or premises;
 - (2) Vacant or abandoned properties; or
 - (3) Substandard housing.
- B. Public nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Public nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. Public nuisance properties are a contributing cause of pervasive blight affecting the entire community. This article is enacted to remedy nuisance conditions by providing a process for abatement. This article is a means to ameliorate those conditions and hold accountable those persons responsible for such nuisance properties.
- C. Accordingly, the Common Council of the City of Norwich finds that public nuisance properties and structures within the City, in addition to the obvious hazards which these conditions pose to the public health, safety and welfare, adversely affect the value, utility and habitability of property within the City as a whole and can specifically cause substantial damage to adjoining and nearby properties. This article conveys to the City administration all necessary and proper powers to remedy public nuisance properties, structures or premises that may be found to exist within the City, and, to charge the costs of such action to those responsible and against the properties themselves. This article is an exercise of the City's police power, and it shall be liberally construed to effect this purpose. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

§ XXX-11. Definitions.

For purposes of this article, the following words or phrases shall have the meaning described below:

ABANDONED BUILDING OR STRUCTURE — Any building or structure which has not been actively utilized for a lawful purpose, which has not been maintained, and which has not been rendered inaccessible to members of the public by boarding or similar means, for a continuous period of not less than six months.

ABATE — To repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this article by using means in such manner and to such an extent as the applicable Nuisance Officer or designee(s) of the Common Council determines are necessary in the interest of the general health, safety and welfare of the community;

CONTROL — The power or ability to regulate, restrain, dominate, counteract or govern property, property conditions, or conduct or events that occur on a property;

NUISANCE OFFICER — Position to be appointed by Common Council;

PERSON RESPONSIBLE FOR PROPERTY or **PERSON RESPONSIBLE** — Unless otherwise defined, any person who has titled ownership of the property or structure which is subject to this

article, an occupant in control of the property or structure which is subject to this article, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this article and/or any person who has control over the property and allows a violation of this article to continue;

PERSON — Natural person, joint venture, partnership, association, club, company, corporation, business trust, organization or other entity, or the manager, lessee, agent, officer or employee of any of them;

PREMISES and PROPERTY — May be used by this article interchangeably; any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property;

PUBLIC NUISANCE — One which adversely affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Public nuisances include but are not limited to:

- A. Any property or portion thereof which, as the result of the development, use and/or conditions created thereon, has become unsafe, injurious to health, indecent, offensive to the senses, or which constitutes a fire hazard, or which may have a deleterious impact on the monetary values and enjoyment of neighboring properties;
- B. Any unsafe building or structure.
- C. Any substandard housing or dwelling.

RENTAL UNIT — Any structure or that part of a structure, including but not limited to, a single-family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons.

UNSAFE BUILDING OR STRUCTURE — That the condition or defect hereinafter described exists to the extent that life, health, property or safety of the public or its occupants are endangered:

- A. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size, or is not so arranged as to provide safe and adequate means of exit in case of fire or panic;
- B. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than 1 1/2 times the working stress or stresses allowed in the City Building Code and New York State Building Construction Code for new buildings of similar structure, purpose or location;
- C. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the City Building Code and the New York State Uniform Fire Prevention and Building Code for new buildings of similar structure, purpose or location;
- D. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property;
- E. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of 1/2 of that specified in the New York State Uniform Fire Prevention and Building Code for new buildings of similar structure, purpose or location, without exceeding the working stresses permitted in the New York State Uniform Fire Prevention and Building Code for such buildings;

- F. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds than is required in the case of similar new construction;
- G. Whenever the building or structure, or any portion thereof, because of dilapidation, deterioration or decay, faulty construction; the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay or inadequacy of its foundation, or any other cause, is likely to partially or completely collapse;
- H. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;
- I. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;
- J. Whenever the building or structure, exclusive of the foundation, shows 33% or more damage to or deterioration of its supporting member or members, or 50% damage to or deterioration of its nonsupporting members, enclosing or outside walls or coverings;
- K. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated through lack of maintenance, as to become an attractive nuisance to children; a harbor for vagrants, criminals or immoral persons; or as to enable persons to resort thereto for the purpose of committing unlawful acts;
- L. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50%, or in any supporting part, member or portion less than 66%, of the strength, fire-resisting qualities or characteristics, or weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location;
- M. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise is determined by the nuisance officer, to be unsanitary, unfit for human habitation or in such condition that is likely to cause sickness or disease;
- N. Whenever any building or structure, because of obsolescence, dilapidated condition,

deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, faulty gas connections or heating apparatus, faulty construction, or other cause, is determined to be a fire, health, or safety hazard;

O. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure;

P. Whenever any building or structure is abandoned;

UNSAFE USE OF PROPERTY — In addition to the conditions described in the definition of "unsafe building or structure" in this section, that one or more of the following conditions or defects are present in a dwelling unit, guest room, suite of rooms or the premises on which the same are located, or a condition created on the property through use of the property, which is ordinarily and customarily used for human habitation, to the extent that the life, limb, health, safety or property of the occupants or the public are in danger:

A. Inadequate sanitation, which shall include but are not be limited to the following:

- (1) Lack of or inadequate water closet, lavatory, bathtub or shower;
- (2) Lack of or inadequate kitchen sink;
- (3) Lack of hot and cold running water to plumbing fixtures;
- (4) Lack of adequate heating facilities;
- (5) Lack of or inadequate operation of required ventilation equipment;
- (6) Lack of required electrical lighting;
- (7) Excessive dampness of habitable rooms;
- (8) Infestation of insects, vermin or rodents;
- (9) General dilapidation;
- (10) Lack of connection to functional sewage disposal system;
- (11) Discharge of sewage on the surface of the ground; and
- (12) Lack of an adequate and safe water supply.

B. Structural hazards, which shall include but are not limited to the following:

- (1) Deteriorated or inadequate foundations;
- (2) Defective or deteriorated flooring or floor supports;
- (3) Flooring or floor supports of insufficient size to carry imposed loads with safety;
- (4) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration;
- (5) Members of walls, partitions or other vertical supports that are of insufficient size to carry imposed loads with safety;
- (6) Members of ceilings, roofs, ceiling and roof supports or other horizontal members

which sag, split or buckle due to defective material or deterioration;

- (7) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety;
 - (8) Fireplaces or chimneys which list, bulge or have settled, due to defective materials or deterioration;
 - (9) Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety; and
 - (10) Cesspools and septic tanks which are structurally unsound.
- C. Hazardous wiring.
- D. Hazardous plumbing, which includes but is not limited to the following:
- (1) Any trap which is defective, unprotected against siphonage and back-pressure by vent pipe or does not have a functional sanitary trap seal;
 - (2) Any plumbing fixture or other waste-discharging receptacle or device which is not supplied with sufficient water for flushing to maintain it in a clean condition; and
 - (3) Any other plumbing condition which is sanitarily unsafe to any person whom may occupy the building.
- E. Hazardous mechanical equipment.
- F. Faulty weather protection, which includes but is not limited to the following:
- (1) Deteriorated, crumbling or loose plaster,
 - (2) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations, or floors, including broken windows or doors,
 - (3) Defective or lack of weather protection for exterior wall coverings, including lack of paint or weathering, and
 - (4) Broken, rotted, split or buckled exterior wall or roof coverings.
- G. Fire hazard, which shall mean any building (or portion thereof), device, apparatus, equipment, combustible waste vegetation which is likely to provide a ready source of fuel to augment the spread and intensity of a fire or explosion.
- H. Faulty material of construction.
- I. Hazardous or unsanitary premises, which shall mean those premises on which an accumulation of weeds, vegetation, junk, abandoned refrigerators/freezers, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, hazardous materials, and similar materials or conditions constitute fire, health or safety hazards.
- J. Inadequate exits.
- K. The presence, disposal, release or threatened release of hazardous substances, or hazardous wastes, on, from or under the property. The terms "disposal," "release." "threatened

release," "hazardous substances" and "hazardous wastes" shall have definitions assigned thereto by the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, as amended.

§ XXX-12. Applicability.

- A. Any property within the City of Norwich which is a public nuisance property is in violation of this article and subject to its remedies; and
- B. Any person responsible for property who permits property to be a public nuisance property is in violation of this article and subject to its remedies.

§ XXX-13. Declaration of public nuisance property; procedure.

- A. When the nuisance officer receives documentation or information reasonably supporting a finding that a public nuisance property exists, said nuisance officer shall review such documentation or information to determine whether it describes any of the public nuisance conditions enumerated in § XXX-XX above. Upon such a finding, if it appears to the nuisance officer that substandard housing, an unsafe structure and/or unsafe condition of property is located or existing on private or public property, he or she may follow such administrative procedures to secure voluntary removal, destruction, correction and/or abatement of such substandard housing, unsafe structure and/or unsafe condition of property as appears advisable in each individual case prior to giving a warning pursuant to this article. Upon a determination that such public nuisance cannot be abated voluntarily, the nuisance officer shall give a warning notice to the person responsible for such property, in writing, by certified mail or personal service, that the property is declared to be a public nuisance property.
- B. The warning notice shall contain:
 - (1) The street address or a legal description sufficient for identification of the property;
 - (2) A concise description of the nuisance conditions that exist, or that have occurred on the property;
 - (3) A demand that the person responsible for such property respond to the nuisance officer within seven days of service of the warning notice to discuss the nuisance conditions and create a plan or course of conduct to abate the public nuisance;
 - (4) An offer to the person responsible of an opportunity to abate the nuisance conditions giving rise to the violation; and
 - (5) A statement that, if the person responsible does not respond to the nuisance officer as required in this section, or, if the matter is not voluntarily corrected to the satisfaction of the nuisance officer, the City may file an action to abate the property as a public nuisance property and/or take such other action against the property or person responsible as may be necessary to abate the nuisance condition.
 - (6) A statement describing the remedies, penalties, assessments and costs for which the person responsible may be liable, including the closure of the property and revocation of any certificate of occupancy thereof, in the event that the nuisance conditions have not been abated in accordance with this article.

- C. If the person responsible fails to respond to the warning notice within the time prescribed, the nuisance officer shall issue a final notice declaring the property to be a public nuisance property and post such notice at the property and issue the person responsible a civil infraction returnable before the City of Norwich Court, punishable by a maximum penalty of \$100 per day for each day the nuisance condition remains unabated. If the person responsible fails to respond to the issued infraction and/or continues to violate the provisions of this article, the matter shall be referred to the City Attorney for either judicial action or administrative action as hereinafter provided.
- D. If the person responsible responds as required by the warning notice and agrees to abate the nuisance activity condition, the nuisance officer and the person responsible may work out an agreed upon course of action which would abate the nuisance condition. If the agreed course of action does not result in the abatement of the nuisance conditions, or if no agreement concerning abatement is reached, the matter shall be referred to the City Attorney for enforcement proceedings, either by judicial action or administrative action. In the event the nuisance officer or the City Attorney determines that the person responsible has taken reasonable steps to abate the nuisance conditions, the City Attorney may elect not to commence an enforcement action under this article, notwithstanding the continuance of the nuisance condition.

§ XXX-14. Enforcement; judicial action.

- A. Once the matter is referred to the City Attorney, the City Attorney shall immediately review and make a determination whether to initiate legal action authorized under this article or state statute, or may seek alternative forms of abatement of the nuisance condition. The City Attorney may initiate legal action on the public nuisance property and seek civil penalties and costs in Supreme Court for the abatement of the nuisance.
- B. In determining whether a property shall be deemed a public nuisance property and subject to the court's jurisdiction, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is a public nuisance property. Copies of police incident reports and reports of other City departments documenting nuisance conditions shall be admissible in such actions.
- C. The City Attorney may bring and maintain a judicial enforcement action in the name of the City to abate the nuisance, and, shall commence the action by the filing of a summons and complaint in the manner required by the New York State Civil Practice Law and Rules.
- D. The summons and complaint shall name as defendants the building, structure or real property by describing it by Tax Map number and/or street address, and, shall name as defendants at least one person responsible for the subject property. The summons and complaint may also name as defendants any owner, operator, manager, tenant, lessee or other occupier of the building, structure or real property.
- E. The venue of the action shall be in the Supreme Court of the State of New York, County of Chenango.
- F. In rem jurisdiction over the building, structure or real property shall be completed by affixing the summons and complaint to the building, structure or real property and by mailing the summons and complaint by certified mail, return receipt requested, to the

person in whose name the real property is recorded at the office of the City Assessor. Defendants other than the building, structure or real property shall be served with a summons and complaint in the manner required by the New York State Civil Practice Law and Rules. In addition, the City Attorney may file a notice of pendency pursuant to the New York State Civil Practice Law and Rules.

§ XXX-15. Remedies.

- A. If, upon the trial of an action to abate a public nuisance, or upon a motion for a summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a penalty may be awarded in an amount not to exceed \$100 for each day it is found that defendants conducted, maintained, permitted or allowed the public nuisance condition after notice to abate had been given by the nuisance officer. Upon recovery, such penalty shall be paid into the general City fund.
- B. If, upon the trial of an action for a public nuisance condition, or upon a motion for a summary judgment, a finding is made that the defendants conducted, maintained, permitted or allowed a public nuisance condition, a permanent injunction may be granted, prohibiting the defendants from conducting, maintaining, permitting or allowing the public nuisance condition. Said permanent injunction may authorize agents of the City to remove and correct any conditions in violation of this article. The judgment may further order that the costs of removing and correcting the violations shall be charged against defendants and awarded to the City. The judgment may further order that the costs of removing and correcting the violations shall constitute a lien against the real property and shall be collected in the same manner provided by law for the collection of real property taxes within the City. A judgment ordering a permanent injunction may further direct the closing of the building, structure, or real property by the City, to the extent necessary to abate the nuisance condition. A judgment awarding a permanent injunction shall further provide for all costs and disbursements allowed by the New York State Civil Practice Laws and Rules and for the actual costs, expenses and disbursements of the City in investigating, bringing and maintaining the action, including attorney's fees.
- C. If the judgment directs the closing of the building, structure or real property, the City shall serve the judgment upon defendants in the manner required by the New York State Civil Practice Laws and Rules and shall post a copy of the judgment upon one 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 judgment may 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. The closing directed by the judgment shall be for such period as the court may direct. A closing pursuant to court order shall not constitute an act of possession, ownership or control by the City.
- D. On a motion or order to show cause filed by the City Attorney in a pending action for a permanent injunction, a preliminary injunction enjoining the public nuisance condition may be granted for any of the relief obtainable by a permanent injunction. Pending a motion or order to show cause for a preliminary injunction, a temporary restraining order or a temporary closing order may be granted, without notice to defendants, for any of the relief obtainable by a permanent injunction.
- E. If the judgment directs the closing of the building, structure or real property and requires

all persons present in the building, structure or real property to vacate the property, the court shall be authorized to assess against the person or persons responsible the reasonable costs and expenses of relocation expended by any tenant who must relocate because of the order of abatement, provided that such tenant shall be eligible to recover such relocation costs only if the tenant has not participated in the public nuisance conditions which are the subject of the judicial action.

- F. If the court determines the property is a public nuisance property pursuant to this article, the court may also order any of the following:
- (1) Order the person responsible to immediately abate the nuisance condition from occurring on the property;
 - (2) Order that the nuisance officer shall have the right to inspect the property to determine if the court's orders have been complied with;
 - (3) Impose the aforescribed civil penalty of up to \$100 per day against each responsible person, calculated from the date the warning notice was issued by the nuisance officer to the date when the nuisance officer confirms that the property is no longer a public nuisance property;
 - (4) Make any other order that will reasonably abate public nuisance conditions from occurring on the property, including authorizing the City to take action to abate nuisance conditions from occurring upon the property if other court orders are not complied with or do not abate any nuisance condition on the property;
 - (5) Closure of the building, structure or real property as aforesaid;
 - (6) Suspension or revocation of any certificate of occupancy, business license or other license issued with respect to such property;
 - (7) Provide that the costs of any City action taken in accordance with the court order are to be paid for by the persons responsible who shall be jointly and severally liable for same.
- G. The Supreme Court shall retain jurisdiction during any period of closure of the building, structure or real property, and during any period of abatement of the public nuisance conditions.
- H. After a final decision has been rendered, an appeal may be taken in accordance with Civil Practice Law Section 5515 and shall be served upon the adverse party and the office where the judgment or order as rendered within 30 days of service of the judgment or order upon the party taking the appeal.

§ 140-17. Administrative action.

- A. Whenever there is prima facie evidence of a public nuisance property, the City may elect to initiate an administrative hearing rather than taking judicial action. The following procedures shall be observed:
- (1) Service of notice: A notice of hearing shall be served on all persons responsible for the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building, structure or real property. The notice shall be served in the manner required by New York State Civil Practice Laws and Rules.
 - (2) Content of notice: The notice shall allege the facts constituting the nuisance

conditions which are prima facie evidence of a public nuisance property. The notice shall further contain a time and place for a hearing to be held before a panel, such notice to be given no less than 20 days before the hearing date.

- (3) Hearing panel: The hearing panel shall consist of the nuisance officer and four additional members to be appointed by the Common Council.
 - (4) Site visit: Prior to the hearing, the hearing panel will make a site visit to the address to observe the nuisances.
 - (5) Hearing: At the time and place designated in the notice, the City Attorney or their designee shall present all relevant evidence and/or witnesses demonstrating the existence of nuisance conditions constituting a public nuisance property pertaining to the subject building, structure or real property. The persons responsible for the building, structure or real property, or their representatives, shall have the right to examine such evidence and cross examine any witnesses presented by the City Attorney or their designee. Said persons responsible or their representative may present any relevant evidence and/or witnesses in their defense. The City Attorney or their designee shall have the right to examine such evidence and cross examine any witnesses presented by the persons responsible for the building, structure or real property, or their representatives.
 - (6) Panel's findings and recommendations: Within 10 business days of the hearing, the panel shall provide findings of fact to the Mayor or the Mayor's designee. The findings of fact shall state whether there is prima facie evidence of the existence of nuisance conditions constituting a public nuisance property at the building, structure or real property. The panel shall further provide a written recommendation of remedies to abate said nuisance conditions.
- B. Upon receipt of the findings of fact and the recommendations from the hearing panel, the Mayor or the Mayor's designee shall have the following powers in furtherance of the abatement of the nuisance conditions:
- (1) To issue a penalty may be imposed in an amount not to exceed \$100 for each day it is found that defendants conducted, maintained, permitted or allowed the nuisance activity or condition after notice to abate had been given by the nuisance officer.
 - (2) To issue a decision and order suspending or revoking the certificate of occupancy or business license for the building, structure or real property.
 - (3) To issue a decision and order directing the closing of the building, structure or real property to the extent necessary to abate the nuisance conditions.
 - (4) In conjunction with, or in lieu of, the foregoing powers, to issue a decision and order that various measures be taken by the persons responsible, including tenants and/or lessees of the property, to the extent necessary to both abate the existing nuisance conditions and insure the prevention of future nuisance conditions from occurring at the subject property, which shall include, but not be limited to:
 - (a) Requiring the persons responsible to modify and improve the usage and features of the premises to deter further and future nuisance conditions;
 - (b) Mandating compliance with all applicable building, housing and property maintenance codes and regulations pursuant to this Code and/or state law; and/or
 - (c) Directing subsequent purchasers to comply with the provisions of any issued order of revocation or suspension of the certificate of occupancy or business license unless or until the subsequent purchaser appears before the hearing panel

to provide a written plan for the panel to review, to make recommendations and to set forth measures to avoid incidents of nuisance conditions.

- (5) The decision and order shall be served upon the person responsible, and any tenant or lessee of the property, either by personal service or certified mail.
 - (6) Nothing within this section shall limit the authority of the Mayor or Mayor's designee to take such other and further actions deemed necessary to abate any existing nuisance conditions to the extent necessary to insure the protection of the health, safety and welfare of the general public.
- C. After a final decision has been rendered, an appeal may be taken in accordance with Civil Practice Law Section 5515 and shall be served upon the adverse party and the office where the judgment or order as rendered within 30 days of service of the judgment or order upon the party taking the appeal.

§ XXX-17. Summary abatement power.

Whenever this article or any other provision of law authorizes the City or nuisance officer to declare a public nuisance pursuant to this article, the nuisance conditions may be summarily abated by any reasonable means and without notice or hearing when immediate action is necessary to preserve or protect the public health or safety because of the existence of a dangerous condition or imminent threat to life or safety on public or private property. Summary abatement action shall not be subject to the notice and hearing requirements of this article, and, the City nuisance officer shall not be prohibited from summary abatement actions after initiation of proceedings pursuant to this article, if immediate action at any time becomes necessary to preserve or protect the public health or safety. Summary abatement is to be limited to those actions which are reasonably necessary to immediately remove the threat. In the event a public nuisance is summarily abated, the nuisance officer shall nevertheless keep an account of the cost of abatement and bill the person responsible therefor. If the bill is not paid within 15 days from the date of mailing by certified mail to the person responsible, the nuisance officer may proceed to obtain a special assessment and lien against the subject property to be collected in the same manner as other real property tax assessments. In addition to its rights to impose said special assessment, the City shall retain the alternative right to recover its costs by way of civil action against the persons responsible, jointly and severally.

§ XXX-18. Severability.

If any clause, sentence, paragraph, word, section or part of this article shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved in the controversy in which said judgment shall have been rendered.