

CITY OF ROME, NEW YORK CODE OF ORDINANCES

CHAPTER 26. ENVIRONMENT

ARTICLE II. NUISANCES

DIVISION 4. PUBLIC NUISANCE ABATEMENT

Sec. 26-91. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public nuisance includes, but shall not be limited to:

- (1) Any building, structure or real property used for the purpose of illegal use, possession or distribution of a controlled substance or marihuana [marijuana] as defined by the state penal law.
- (2) Any building, structure or real property used for the purposes of prostitution as defined by the state penal law.
- (3) Any building, structure or real property used for purposes of indecency, obscene performances and/or promotion of obscene material as defined by the state penal law and this Code.
- (4) Any building, structure or real property used for purposes of illegal gambling activity as defined in the state penal law.
- (5) Any building, structure or real property used for the purpose of the commission of illegal possession, use or sale of firearms or weapons as defined by the state penal law.
- (6) Any building, structure or real property used for the purpose of illegal sale, manufacture or consumption of alcohol beverages as defined by the state alcohol beverage control law.
- (7) Any building, structure or real property wherein there exists or has occurred a criminal nuisance as defined by the state penal law.
- (8) Any building, structure or real property used for purposes of loitering as defined by the state penal law.

(9) Any building, structure or real property wherein there exists or has occurred any violation of this Code, including, but not limited to, Chapter 10, animal control, Chapter 80, zoning, and the New York State Uniform Fire Prevention and Building Code, including the Property Maintenance Code of New York State, and any subsequent amendments or superseding provisions thereto, all of which have been previously adopted and incorporated into this Code by reference.

(10) Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities involving assault, gang assault, harassment or disorderly conduct, as said criminal activities are defined by the state penal law.

Sec. 26-92. Nuisance forbidden.

No owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall knowingly conduct, maintain, permit or allow the existence of a public nuisance at the building, structure or real property.

Sec. 26-93. Presumption of knowledge.

Notice by first class mail or personal service of activities entailing a public nuisance to the property owner, operator, manager, tenant, lessee or other occupier of a building, structure or real property shall be prima facie evidence of knowledge of the public nuisance.

Sec. 26-94. Criminal convictions as presumption of the existence of a public nuisance.

The existence of two (2) or more criminal convictions for any of the activities set forth in the definition of a public nuisance in section 26-91 at any building, structure or real property within a two (2) -year period prior to the commencement of a civil action and/or an administrative hearing shall be prima facie evidence of the existence of a public nuisance. For the purposes of this Division, a criminal conviction shall be defined as the entry of a plea of guilty to, and/or a verdict of guilty for, one (1) or more counts set forth in an accusatory instrument.

Sec. 26-95. Other evidence of prohibited conduct as presumption of the existence of a public nuisance.

The existence of two (2) or more incidents of the following activities at any building, structure or real property within a one (1) -year period prior to the

commencement of a civil action and/or an administrative hearing shall be prima facie evidence of the existence of a public nuisance:

- (1) Conviction for any of the activities set forth in the definition of a public nuisance in section 26-91 occurring on or near the property.
- (2) Arrest for any of the activities set forth in the definition of a public nuisance in section 26-91 occurring on or near the property
- (3) Service of an accusatory instrument charging any of the activities set forth in the definition of a public nuisance in section 26-91 occurring on or near the property. For the purposes of this Division, an accusatory instrument shall include, but not be limited to, any criminal information, misdemeanor and/or felony complaint filed in a court of competent jurisdiction, and/or, with regard to unfit, unsafe and/or fire damaged structures on or near the property, a notice of violation issued by the Rome Code Enforcement Office, Police or Fire Departments and/or other authorized entity with jurisdiction in the City of Rome and/or an order to abate issued by the administrative panel pursuant to Chapter 14 of this Code.
- (4) Service of a search warrant on the building, structure or real property where controlled substances, marihuana [marijuana], and/or weapons are seized.
- (5) Finding of illegal controlled substances or illegal firearms or weapons on the building, structure or real property.
- (6) Investigative purchases of illegal controlled substances on the building, structure or real property by law enforcement agencies or their agents.

Sec. 26-96. Summons and complaint for civil action.

- (a) The corporation counsel may bring and maintain a civil action in the name of the city to abate a public nuisance and shall commence the civil action by the filing of a summons and complaint in the manner required by state civil practice laws and rules.
- (b) 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 of the owners of some portion of or some interest in the property.
- (c) 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.

- (d) The complaint shall allege the facts constituting the public nuisance.
- (e) The complaint shall be accompanied by affidavits for purposes of showing that the owner or his agent had notice of the nuisance and had an opportunity to abate the nuisance.
- (f) The venue of the action shall be in the county where the public nuisance is being conducted, maintained, permitted or allowed.
- (g) In rem jurisdiction over the building, structure or real property shall be completed by affixing the summons to the building, structure or real property and by mailing the summons and complaint by certified or registered mail, return receipt requested, to the person in whose name the real property is recorded at the office of the city assessor.
- (h) Defendants other than the building, structure or real property shall be served with the summons and complaint in the manner required by the state civil practice laws and rules.
- (i) With respect to any action commenced or to be commenced, the corporation counsel may file a notice of pendency pursuant to the state civil practice laws and rules.

Sec. 26-97. Civil penalty.

If, upon the trial of an action for a public nuisance or upon a motion for 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 \$1,000.00 for each day it is found that defendants conducted, maintained, permitted or allowed the public nuisance after notice to abate had been given by the city. Upon recovery, such penalty shall be paid into the general city fund.

Sec. 26-98. Permanent injunction.

- (a) If, upon the trial of an action for a public nuisance or upon a motion for summary judgment, a finding is made that defendants have conducted, maintained, permitted or allowed a public nuisance, a permanent injunction may be granted.
- (b) A permanent injunction may prohibit defendants from conducting, maintaining, permitting or allowing the public nuisance.
- (c) A permanent injunction may authorize agents of the city to remove and correct any conditions in violation of this Code. The judgment may further order

that the costs of removing and correcting the violations, plus a charge of 50 percent as compensation to the city for administering, supervising and handling such work, shall be charged against defendants and awarded to the city. The judgment may further order that the costs of removing and correcting the violations, plus a charge of 50 percent as compensation to the city for administering, supervising and handling such work, 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.

(d) A judgment ordering a permanent injunction may direct the closing of the building, structure or real property by the city police department, to the extent necessary to abate the nuisance.

(e) A judgment awarding a permanent injunction shall provide for all costs and disbursements allowed by the state civil practice laws and rules and for the actual costs, expenses and disbursements of the city in investigating, bringing and maintaining the action.

Sec. 26-99. Closing of the building, structure or real property.

(a) If the judgment directs the closing of the building, structure or real property, the city police department shall serve the judgment upon defendants in the manner required by the 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.

(b) In addition, the city police department shall affix 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 printed notice stating "CLOSED BY COURT ORDER" in block lettering of sufficient size to be observed by anyone intending to enter the premises.

(c) Mutilation or removal of such posted judgment or notice while it remains in force will be considered a separate violation under the state penal law and shall be punishable pursuant to section 1-15.

(d) The city police department may then command all persons present in the building, structure or real property to vacate the property forthwith. After the building, structure or real property has been vacated, the city police department may secure the premises.

(e) The closing directed by the judgment shall be for such period as the court may direct, but in no event shall the closing be for a period of more than a year from the posting of the judgment.

(f) A closing by the city police department shall not constitute an act of possession, ownership or control by the city.

Sec. 26-100. Preliminary injunction.

Upon a motion or order to show cause from the corporation counsel and pending an action for a permanent injunction, a preliminary injunction enjoining the public nuisance may be granted for any of the relief obtainable by a permanent injunction.

Sec. 26-101. Temporary restraining order.

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.

Sec. 26-102. Administrative hearing.

Whenever there is prima facie evidence of a public nuisance at any building, structure or real property within the City of Rome, the corporation counsel may initiate an administrative hearing.

(a) *Service of notice:* A notice of the hearing shall be served on all owners of the building, structure or real property and may also be served on any known tenants or lessees or other occupiers of the building. The notice shall be served in the manner required by New York State Civil Practice Law and Rules.

(b) *Content of notice:* The notice shall allege the facts constituting the public nuisance. The notice shall further contain a time and place for a hearing to be held before a panel.

(c) *Hearing panel:* The panel shall consist of a member to be appointed by the chief code enforcement officer, a member to be appointed by the chief of police and a member to be appointed by the fire chief. Each appointing authority shall be authorized to appoint himself/herself or any member of his/her staff to the hearing panel.

(d) *Hearing:* At the time and place designated in the notice, the corporation counsel or his/her designee shall present all relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the building, structure or real property, and as to appropriate remedies. The owners of 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 corporation counsel

or his/her designee. The owners of the building, structure or real property, or their representatives, may present any relevant evidence and/or witnesses in their defense. The corporation counsel, or his/her designee, shall have the right to examine such evidence and cross-examine any witnesses presented by the owners of the building, structure or real property, or their representatives.

(e) *Panel's finding and recommendation:* Within five (5) business days of the hearing, the panel shall provide a finding of fact to the commissioner of public safety, or, if there is no commissioner of public safety, to the mayor or the mayor's designee. The finding of fact shall state whether there is prima facie evidence of the existence of a public nuisance at the building, structure or real property. The panel shall further provide a written recommendation of remedies to abate the public nuisance.

Sec. 26-103. Administrative remedies.

(a) The commissioner of public safety, or, if there is no commissioner of public safety, the mayor or the mayor's designee, upon receipt of a finding of fact and recommendation from the panel, shall have the following powers in furtherance of the abatement of public nuisances:

(1) To issue a Decision and Order suspending or revoking, for a period not to exceed one (1) year, the certificate of occupancy for the building, structure or real property.

(2) To issue a Decision and Order directing the closing of the building, structure or real property by the Rome Police Department, to the extent necessary to abate the nuisance, pursuant to the procedures set forth above in section 26-99.

(3) In conjunction with, or in lieu of, the foregoing powers, to issue a Decision and Order that various measures be taken by the owner, tenant and/or lessee of the property to the extent necessary to both abate the existing nuisance and ensure the prevention of future nuisance actions from occurring at or near the property, which shall include, but not be limited to: requiring the owner to modify and improve the usage and features of the premises to deter further and future public nuisance activity; 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 for the certificate of occupancy 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 further incidents of public nuisance.

(b) The Decision and Order shall be served upon the owner, tenant and/or lessee of the property in a manner similar to that described in Section 26-102(a) herein.

(c) Nothing within this Section shall limit the authority of the Commissioner of Public Safety, Mayor or Mayor's designee, to take such other and further actions deemed necessary to abate any existing public nuisance to the extent necessary to ensure the protection of the health, safety and welfare of the general public.

Sec. 26-103.1 Severability.

If any clause, sentence, paragraph, word, section or part of this Division 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.

Historical Notes: The City of Rome's Public Nuisance Abatement Law was originally adopted by the Rome Common Council on February 11, 1998 via Ordinance No.: 7037, and was subsequently amended by the Common Council pursuant to Ordinance No.: 7246 adopted March 22, 2000, Ordinance No.: 7423 adopted May 23, 2001, and Ordinance No.: 8069 adopted August 24, 2005.