



**NUISANCE ABATEMENT COMMITTEE
MEMORIAL CITY HALL
24 SOUTH STREET
AUBURN, NY 13021**

Date: June 15, 2021

Abatement Committee: Jeff Dygert, City Manager
Nate Garland, Assistant Corporation Counsel
Mark Fritz, Fire Chief
Shawn Butler, Chief of Police
James Slayton, Lieutenant

Minutes: No minutes to report.

This is the 1st Nuisance Abatement Committee meeting for the City of Auburn held on June 15, 2021 at 9:00 a.m. in Council Chambers, which will be adjourned by 10:00 a.m. The Committee will not be taking any complaints today, but will meet with people after the meeting to help with further guidance.

The Nuisance Abatement Committee meetings will be held every 3rd Wednesday of each month starting at 9:00 a.m. and will advertise to the public of this change.

The committee that makes up the Nuisance Abatement Committee is the City Manager, Fire Chief and the Police Chief. The Committee will be going over where the committee gets its authority and how they will handle issues and actions. The Committee will not be handling minor complaints but will handle more complex issues in regards to complaints.

Nate Garland, Assistant Corporation Counsel discussed in a presentation how the City of Auburn's Nuisance Chapter is followed:

- The Nuisance Chapter has been in the Municipal Code for about 20 years, but has not been fully utilized until now.
- The Uniform Code does allow Code Enforcement Officers under the building and fire code to declare structures a nuisance.

- Attractive Nuisance is something on your property that is alluring to a certain group of people that as a property owner need to take measures to stop that group of people from coming on your property.
- This Committee is not part of a criminal action.
- Cause of action in the law of torts:
 - unreasonableness on the part of a defendant
 - continuance of acts constituting nuisance for an unreasonable period
 - casual connection between defendant and nuisance complained of
 - existence of injury or damage threat
- Public Nuisance - A public nuisance is that which obstructs the public in the exercise of rights common to all. A public nuisance abatable by the sovereign need not involve injury to plaintiff's right in land. Rather, it is created where public rights or privileges common to every person in the community are interrupted or interfered with, though the interference need not affect every member of the community. It may offend public morals, interfere with the use of a public place, or endanger property, health, safety, or comfort. Public Nuisance and Public Plaintiffs: Rediscovering the Common Law. 16 ELR 10293
- City of Auburn Municipal Code - Public Nuisance "any building, structure, lot, site or separately identifiable portion thereof where activities which create an unreasonable interference with a person's lawful use and enjoyment of their own property due to excessive noise and general disturbance of the peace.
- Nuisance Chapter Miscellaneous Provisions:
 - Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
 - Operating a business at the premises in a manner which causes it to be a source of disruption for the neighborhood and/or a focal point of police attention.
 - **Activities which result in numerous police investigations within a six-month period of time**
 - Permitting situations or conditions which allow rodents, insects and other vermin to live on or in real property and/or failing to take reasonable actions to abate, eliminate and/or exterminate rodents, insects, and other vermin when the landowner, occupant or user of such real property becomes aware or should have known of the existence of such rodents, insects and vermin infestation. It is the intention of this section to declare rodent, insect, and vermin infestation as a public nuisance and to take whatever actions are permitted to declare those persons responsible for the infestation, including but not limited to occupants, owners, or any other entity occupying said real property.

- Evidentiary Presumptions
 - Any building, building accessory, business office, lot, or yard, wherein, within a one year period prior to the commencement of an action under this chapter, there have occurred four or more **violations as defined in § 213-3** of this chapter, on the part of the lessees, owners, operators, or occupants, shall be prima facie evidence that a public nuisance exists at said location.
 - Any building, building accessory, business office, lot, or yard, wherein, within the period of one year prior to the commencement of an action under this chapter, there has been presented a preponderance of evidence of repeated criminal activity which has an **adverse impact, as defined in § 213- 3** of this chapter, on such property or neighborhood shall be prima facie evidence that a public nuisance exists at said location.
- Violation ≠ Criminal Conviction
 - A violation does not require criminal prosecution and conviction, but only a **preponderance of evidence that the prohibited conduct is occurring or has occurred**. Evidence of prohibited conduct may include, but is not limited to, police reports, investigative reports, execution of search warrants, research of search warrants, results of police surveillance, arrest and/or conviction of local and state and federal laws, activities associated with trafficking of controlled substances, finding of weapons and/or controlled substances on or near the property, increased volume of traffic associated with the property.
- Adverse Impact
 - Any search warrants served on the property where controlled substances and/or weapons were seized;
 - Investigative purchases of controlled substances on or near the property by law enforcement agencies or their agents;
 - Arrests for violations of controlled substance law and/or possession of weapons;
 - Loitering for the purposes of engaging in illegal activity;
 - An increase in the volume of traffic associated with property;
 - Complaints made to law enforcement officials of illegal activity associated with the property,
 - Finding of illegal weapons ...or controlled substances ...on or near the property by law enforcement officials and their agents.
- Nuisance Abatement Committee
 - Impose appropriate sanctions and proportional penalties as may serve to eliminate public nuisances,

- Exercised either in conjunction with, or apart from, the powers contained in other laws, without prejudice to the use of procedures and remedies available under such laws.
 - Additional and appropriate method of law enforcement in response to the proliferation of public nuisances within the City of Auburn.
- Administrative Process for Property and Building Nuisances: Notice and Opportunity to be Heard
 - City Must Serve Notice upon
 - Owner
 - Lessor
 - Lessee
 - Mortgagee
- Administrative Process for Property and Building Nuisances: Hearing
 - City Nuisance Chapter is silent on the particulars of how a hearing may be held.
 - The Committee may promulgate rules and regulations to carry out and give full effect to the provisions of the Nuisance Chapter
- Administrative Process for Property and Building Nuisances: Remedies
 - To **order the discontinuance of such activity** at the building, structure, lot, site and/or separately identifiable portion thereof where such public nuisance exists; and/or
 - To **order the closing of the building**, structure, lot and/or separately identifiable portion thereof necessary to abate the nuisance; and/or
 - To **suspend** for a period not to exceed six months **or revoke** for a period of one year a **certificate of occupancy** issued for such premises, and to prevent the owner from obtaining a new certificate of occupancy for another location for the period of suspension or revocation;
 - To **suspend** for a period not to exceed six months **or revoke** for a period of one year **any occupational license or permit** issued by the City related to the conduct of a business or trade at the premises, which suspension or revocation shall also apply to any other locations operated by the holder for which the license or permit is required
 - To **suspend** for a period not to exceed six months **or revoke** for a period of one year **eligibility to secure grants or loans from the City of Auburn**
- Administrative Process for Property and Building Nuisances: Enforcement
 - Orders of Committee

- Posted at the building, structure, lot, site
 - Mailed to the owner of record thereof within one business day of the posting
 - Five business days after the posting of an order, the Police Department of the City of Auburn is hereby authorized to act upon and enforce such order.
- Building Blocks Software:
 - Useful for Committee for the ability to access and analyze data for number of calls for service, what the calls were and what the action was that was taken.
- Jeff Dygert, City Manager:
 - Neighbor disputes will be looked into to see if any action was taken. We encourage people to call APD but people need to be careful they do not abuse of the system.
 - The committee is here to look into legitimate problems.
 - Problems that could be addressed through this committee have increased especially over the last 12-18 months. Covid may have played a part in this, not sure, but it definitely has an impact.
 - There has been a lot of outreach to various staff to try and address some of these issues. The committee is not here to take care of all the issues, but are here to handle more of the major issues.
- Nate Garland, Assistant Corporation Counsel:
 - As for notice, the only responsible party ends up being the property owner, the property owner will bear responsibility of the property whether they are the cause of it or not. The property owner can put in a complaint on their own property if they are having issues with a tenant. Yes, it is possible to help remedy the problem at the property but this can be part of a moratorium on evictions. The committee doing this administratively there are no laws of procedure that has not been passed by the NYS Legislature that everyone that fills out a form has to be heard.
 - Matter of procedure complaints from staff, code enforcement, police department or neighbors. No restriction for where the complaint comes from however the 2 prima fascia evidence of nuisance and adverse impact would be the proof and impact or violation. It will need to show what impact it has on the person.
 - Complaint Form: This form is located on the website www.auburnny.gov under the City Manager's Department. Once filled out please return to the City Manager's Office. The form is to help people experiencing problems with property that they are observing that could factor in as a violation and help the

city determine if there is a nuisance. The question, if you would like to remain anonymous will be honored. In a case we are litigating now, neighbors put their names on paper and swear affidavits, to help with the process, so we will be looking for this form of proof in our administrative process. There is a place on the form if there are other people to add to the list.

- Shawn Butler, Chief of Police: You do have the right to stay anonymous but we need your help by filling out an affidavit to help us help you with how it is affecting your life. We understand the fear of putting your name down especially with a problem neighbor worrying about the impact of it but it is helpful if we can get an affidavit.
- Jeff Dygert, City Manager: Next time we meet we will most likely have a few items to discuss. Various staff will be looking at complaints to see how many calls to the address has been made and other complaints for the committee to discuss prior to the meeting to discuss if the committee should take some type of punitive action. This can be a start to communicate with the property owner we have received a complaint.
 - Nate Garland, Assistant City Manager: This committee is empowered to make rules to fully enforce the nuisance chapter, so that means that an intermediate step could be crafted where certain measures can be taken to let property owner that they are on the City's radar and perhaps they didn't know and don't want a nuisance to take place. We will discuss putting a standard letter to send to property owner to put them on notice that they are not following the municipal code and they are put on notice.
- After this meeting if you have questions please feel free to talk to the Chiefs or the City Manager.

Questions:

1. Was misguided; it seems to be centered on unresponsive landlords/ homeowners. Maybe these owners live out of town and not in the area. **City Manager's answer:** We ran a report in the vacant registry reports and thought it was mostly going to be absentee owners that lived out of state, but we were surprised how many were locally owned and not maintained. We have a pretty even mix amount of absentee landlords and landlords that we work with almost daily.
2. Has a problem with neighbor continually calling her names, antagonizes her dog, sets fireworks off, goes by the house and stares. She continues to call the police. **City Manager's answer:** Right now we don't have time to get into specific cases but it seems like the things that are happening are law enforcement calls when they happen. He suggests to work with the APD Chief to communicate with you. We have some points of

contact in the police department to work with you. One of the remedies that is out there is a Civil Action directly action between you and property owner in the courts as well.

Next meeting: Wednesday, July 21, 2021 at 9:00 a.m.

ADJOURNMENT: By unanimous vote the Committee adjourned the meeting, **1st:** Shawn Butler, Chief of Police and **2nd:** Mark Fritz, Fire Chief. The meeting was adjourned at 9:48 a.m.