

April 21, 2014

**RESOLUTION  
NO. 2014 – 135**

By Council as a Whole:

**WHEREAS**, a proposed Local Law entitled "**A LOCAL LAW of the City of Elmira, New York, to Amend the Charter of the City of Elmira to Authorize the Corporation Counsel to Seek Sanctions and Penalties against Persons Involved with the Manufacture or Attempt to Manufacture Methamphetamine or Amphetamine and the Operation of Certain Establishments and Certain Properties in Violation of Certain Articles of the Penal Law, Alcoholic Beverage Control Law; and Provisions of the City of Elmira Code of Ordinances**", was duly presented by Council as a Whole for a first reading at a Regular Meeting of this Council held on March 24, 2014, and at said meeting of this Council was duly received, ordered printed in the minutes, copies thereof in its final form having been upon the desks of members of the Council for at least seven (7) calendar days, exclusive of Sunday, prior to this day, and a public hearing having been duly held on April 7, 2014, before the Council upon public notice provided by law, and the said proposed local law having been read in its final form at this meeting;

***NOW, THEREFORE***, be it

**RESOLVED**, that said proposed Local Law entitled "**A LOCAL LAW of the City of Elmira, New York, to Amend the Charter of the City of Elmira to Authorize the Corporation Counsel to Seek Sanctions and Penalties against Persons Involved with the Manufacture or Attempt to Manufacture Methamphetamine or Amphetamine and the Operation of Certain Establishments and Certain Properties in Violation of Certain Articles of the Penal Law, Alcoholic Beverage Control Law; and Provisions of the City of Elmira Code of Ordinances**" and reading as follows, be and hereby is adopted and enacted, to-wit:

**LOCAL LAW NO. 1 OF 2014  
TO AMEND LOCAL LAW NO. 2 OF 2001, AS AMENDED  
BY LOCAL LAW NO. 1 OF 2004, AS AMENDED  
BY LOCAL LAW NO. 1 OF 2005**

**A LOCAL LAW of the City of Elmira, New York, to Amend the Charter of the City of Elmira to Authorize the Corporation Counsel to Seek Sanctions and Penalties against Persons Involved with the Manufacture or Attempt to Manufacture Methamphetamine or Amphetamine and the Operation of Certain Establishments and Certain Properties in Violation of Certain Articles of the Penal Law, Alcoholic Beverage Control Law; and Provisions of the City of Elmira Code of Ordinances.**

**BE IT ENACTED** by the Council of the City of Elmira, New York, as follows:

**Section 1. Legislative Declaration.** The Council of the City of Elmira finds that public nuisances exist in the City of Elmira in the operation of certain commercial establishments and in the use or alteration of residential and commercial property, in violation of certain articles and sections of New York Penal Law, Alcohol and Beverage Control Law, and Multiple Residence Law as hereinafter set forth and the City=s Building and Fire Code and the manufacture or attempt to manufacture methamphetamine or amphetamine . These public nuisances interfere with the interest of the public in property values, public health, safety and welfare, and the quality of life and community environment. The Council further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the City of Elmira and of the businesses thereof and visitors thereto. It is the purpose of the Council to create a standardized procedure for securing legal and equitable remedies relating to the subject matter encompassed by this law, without prejudice to the use of procedures available under existing and subsequently enacted laws, and to strengthen existing laws on the subject.

**Section 2. Definitions.**

(a) Adverse Impact. Includes, but is not limited to, the following: any search warrants served on the property where controlled substances and/or weapons were seized; investigative purchases of controlled substances on or near the property by law enforcement agencies or their agents; arrests for violations of controlled substance law

and or possession of weapons; loitering for the purposes of engaging in illegal activity; an increase in the volume of traffic associated with property; complaints made to law enforcement officials of illegal activity associated with the property, finding of illegal weapons, as defined in section 265 of the Penal Law, or controlled substances, as defined in Articles 220 and 221 of the Penal Law, on or near property by law enforcement officials and their agents.

(b) Building. This word shall have the same meaning as defined in the City=s Zoning Ordinance, as amended.

(c) City. The City of Elmira, New York.

(d) City Manager. The City Manager of the City of Elmira.

(e) Conviction. A conviction for an offense in a court of competent jurisdiction or an administrative bureau shall not be required. Instead, the City shall prove by a preponderance of the evidence that the violations have occurred. However, a conviction as defined and applied in accordance with the provisions of section 1.20 of the Criminal Procedure Law, in any court of competent jurisdiction, or a plea of guilty shall constitute conclusive proof of a violation. Conviction of an attempt to commit a violation of any of the specified provisions shall be considered a conviction for a violation of the specified provision.

(f) Knowledge of public nuisance. The presumption of knowledge provided by subdivision 1 of §235.10 of the Penal Law shall be applicable to this local law.

Notice, by mail or personal service, of activities detailing a public nuisance, to the property owner of record shall be evidence of knowledge of the public nuisance.

(g) Manufacture. In places other than a licensed pharmacy, shall mean the attempt to or the production, cultivation, quality control, and standardization by mechanical, physical, chemical, pharmaceutical or other means, packaging, repackaging, tableting, encapsulating, labeling, relabeling and filling of illegal substances.

(h) Order. A temporary closing order or any other order entered by a court.

(i) Order of closure. An order issued pursuant to section 6 of this local law.

(j) Penal Law. New York State Penal Law.

(k) Premises. A lot, plot or parcel of land including any buildings and structures thereon or portions thereof on or in which the public nuisance exists.

(l) Public Nuisance. Without impairing or in any way limiting the finding of a public nuisance, public nuisance shall include, but not be limited to,

(i) any Premises when in any consecutive twelve-month period there occurs in or upon the Premises, on separate occasions, two or more violations of any provisions of the following enumerated articles or sections of the Penal Law and Alcohol Beverage Control Law of the State of New York: Penal Law Articles 120 (Assault and Related Offenses), 125 (Homicide, Abortion and Related Offenses), 130 (Sex Offenses), 135 (Kidnapping, Coercion and Related Offenses), 220 (Controlled Substances), 221 (Marihuana), 225 (Gambling), 230 (Prostitution), 240

(Public Order), 245 (Offenses Against Public Sensibilities), 260 (Offenses Relating to Children and Incompetents, Disabled Persons and Vulnerable Elderly Persons), 263 (Sexual Performance By a Child), 265 (Firearms & Weapons), 270 (Other Offenses Relating to Public Safety), or Section 123 of the Alcohol Beverage Control Law; or

(ii)(a) any Premises which has been cited on separate occasions for violation of the City=s Code of Ordinances or Local Laws pertaining to the below enumerated matters more than twice within any consecutive six-month period when no substantial progress in remedying the violations was made within the time period set forth in the notice of violation: (1) installation and maintenance of a required fire protection system, (2) installation and maintenance of heating, plumbing, electrical systems in proper working order, (3) failure to maintain structural integrity of any building, (4) failure to maintain exits in a clear unobstructed manner, (5) failure to keep Premises clear of garbage, junk and refuse, (6) failure to install and maintain guard rails or handrails, or (7) failure to maintain sidewalks on or adjoining any Premises; or

(b) any Premises which has been cited on separate occasions for violation of the City=s Code of Ordinances or Local Laws, other than for violations pertaining to the matters enumerated in subparagraph (ii)(a) above, more than three times within any consecutive

six-month period when no substantial progress in remedying the violations was made within the time period set forth in the notice of violation; or

(iii) any Premises on or in which there occurs or which is used in any manner in the illegal manufacture or attempt to illegally manufacture methamphetamine or amphetamine and on or in which is found ephedrine (including its salts, isomers or salts of isomers), norpseudoephedrine (including its salts, isomers or salts of isomers), N-Methylephedrine (including its salts, isomers or salts of isomers), N-Methylpseudoephedrine (including its salts, isomers or salts of isomers), or pseudoephedrine (including its salts, isomers or salts of isomers) while at the same time also possessing any of the following:

(a) amorphous (red) phosphorus or white

phosphorus;

(b) hydroiodic acid;

(c) anhydrous ammonia;

(d) sodium; or

(e) lithium; or

(f) phenylalanine;

(iv) any Premises which a court of competent jurisdiction has found the existence of a public nuisance.

(m) Structure. This word shall have the same meaning as defined in the City's Zoning Ordinance, as amended.

(n) Temporary closing order. An order issued pursuant to section 6 of this local law.

(o) Testimony. Oral, written or other documented evidence tending to show or prove the truth of the matter asserted.

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

**Section 3.** Public Nuisances are hereby prohibited in the City of Elmira.

**Section 4. Applicability.** The provisions of this local law shall apply to an owner, lessor, lessee, tenant, mortgagee and any person in possession of or having charge of or is an agent of or otherwise having any interest in the Premises.

**Section 5. Evidence and presumptions.**

(a) Evidence. In any action under this local law, evidence of the common fame and general reputation of the building, structure or place, of the inhabitants or

occupants thereof, or of those resorting thereto, shall be competent evidence to provide the existence of a property or building nuisance.

**(b) Scier.** If evidence of the general reputation of the building, structure or place, or of the inhabitants or occupants thereof, is sufficient to establish the existence of the nuisance, it shall be prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance, on the part of the owners, lessors, lessees, and all those in possession of or having charge of, as agent or otherwise, or having any interest in any form in the property, real or personal, used in conducting or maintaining the property or building nuisance.

**(c) Presumptions for the purposes of this section.**

(1) Any building, accessory building, business office, lot, or yard wherein, within the period of one year prior to the commencement of an action under this local law, there have occurred two or more convictions, as defined in section 2, on the part of the lessees, owners, operators, or occupants, of the provisions of this local law as defined in section 2 of this local law, shall be prima facie evidence that a public nuisance exists at said location.

(2) Any building, accessory building, business office, lot, or yard wherein, within a one-year period prior to the commencement of an action under this local law, there have occurred two or more violations on the part of the lessees, owners, operators, or occupants, of the provisions of this local law as defined in section 2 of this local law, shall be prima facie evidence that a public nuisance exists at said location.

(3) Any building, accessory building, business office, lot, or yard wherein, within the period of one year prior to the commencement of an action under this local law, there has been presented a preponderance of evidence of repeated criminal activity which has an adverse impact, as defined in section 2 of this local law, on such property or neighborhood, shall be prima facie evidence that a public nuisance exists at said location.

**Section 6. Remedies.**

(a) In the event of a violation of Section 3 herein, the Corporation Counsel may commence and maintain a civil action or proceeding in a court of competent jurisdiction in the name of the City seeking a temporary closing order, a closing order, a temporary restraining order, a temporary injunction, a permanent injunction, civil penalties and any other applicable remedies, either in law or equity. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent injunctive relief.

(b) The action or proceeding shall be commenced against any person set forth in Section 4 of this local law. In any action or proceeding in which the City seeks a temporary closing order or a permanent injunction pertaining to the use of all or a portion of the premises, the owner of the premises shall be named as a defendant. The owner of the premises shall be presumed to be the person in whose name the premises is recorded in the office of the City of Elmira's assessor. Whenever there is evidence that a person was the manager, operator, supervisor, or in any other way in charge of the premises where the public nuisance is being conducted, maintained or permitted, such evidence

shall be presumptive that the person was an agent or employee of the owner or lessee of the premises or the portion thereof upon which the public nuisance exists or existed.

(c) If the court finds that the defendant has conducted, maintained or permitted a public nuisance as defined herein, the Court may award to the City a civil penalty in an amount not to exceed one thousand dollars for each day that the defendant conducted, maintained or permitted the public nuisance. Upon recovery, such penalty shall be paid into the general fund of the City.

(d) In addition to the civil penalty provided herein, the court may issue a temporary closing order, closing order, temporary restraining order, temporary injunction and a permanent injunction.

(i) Upon commencement of the action or proceeding and at anytime thereafter while the matter is pending before the court, the City may request the court to issue a temporary closing order. Upon the City's showing by a preponderance of evidence that a public nuisance is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing, the court may issue without notice a temporary order closing such part of the premises wherein the public nuisance is occurring. Upon issuance of such an order, the court shall hold a hearing for the issuance of a closing order at the earliest possible date. Service of the temporary closing order shall be in the manner as directed by the court. A copy of the order shall be posted in a

conspicuous place on the premises. Temporary closing orders shall be enforced by the City's police department and the corporation counsel. Upon service and posting of the order, all persons occupying the premises subject to the order shall vacate such premises.

(ii) Following issuance of a temporary closing order, upon the city's application and showing by a preponderance of evidence that a person or persons is conducting, maintaining or permitting the public nuisance, the Court may grant injunctive relief, provided, however, a bond or other security shall not be required of the City.

**Section 7. Enforcement.**

(i) Any temporary closing order and any type of injunctive order shall be served upon each named defendant in the manner and within the time specified by the Court. In addition, any such order shall be posted in a conspicuous place on the premises.

(ii) It shall be a misdemeanor for any person to use or occupy or to permit any other person to use or occupy any Premises or portion thereof following the issuance of an order of closure or temporary order of closure or any injunctive order directing closure of all or a portion of the premises. Mutilation or removal of a posted order shall be punishable by a fine of not more than \$1,000.00, or by imprisonment not to exceed fifteen (15) days, or both, provided such order contains therein a notice of such penalty. Following issuance of a temporary order of closure, or injunctive order directing closure,

the Court may grant permission to a person to enter upon the Premises subject to the order on a designated date or dates and during specified times solely for purposes of maintaining the Premises.

**Section 8. Noncompliance with Order.**

Any person who intentionally fails to comply with the provisions of this local law or an order issued pursuant hereto, or any person who intentionally resists, impedes or interferes with the enforcement of any such order, in addition to any other punishment or remedy prescribed or permitted by law, shall be punishable by a fine of not more than \$1,000.00 or by imprisonment not to exceed thirty (30) days, or both. A second offense within ten years of the first shall be punishable by a fine of not less than one thousand dollars (\$1,000.00) and not more than two thousand five hundred dollars (\$2,500.00) or by imprisonment not to exceed six (6) months, or both.

**Section 9. Abatement, Costs, Liability.**

(a) In the event of the issuance of a temporary closing order or injunctive order by reason of a public nuisance as defined in Section 2(1)(iii) hereof, the Court also may issue an order to the owner or occupant or both of the Premises to immediately abate the public nuisance. The owner or occupant or both shall promptly cause to be undertaken appropriate environmental testing and remediation of the nuisance. The owner or occupant shall provide written documentation which shall include a statement from the remediation contractor that the Premises is safe for human occupancy and that the remediation was conducted in accordance with the laws of the State of New York.

(b) The owner and each adult occupant of the Premises shall be responsible jointly and severally for all costs and expenses incurred for the testing and remediation of the public nuisance.

(c) If after service of a temporary closing order or injunctive order containing an order to abate and the expiration of ten calendar days the owner has failed to cause to be undertaken appropriate testing followed by remediation, the City may undertake to cause to be performed such testing and remediation. In the event the City causes such work to be undertaken, the owner and each adult occupant of the Premises shall be liable jointly and severally to the City for (1) all costs and expenses incurred by the City for such work, and (2) public costs incurred by the City including, but not limited to, posting of the Premises, notification of required persons, and laboratory fees, together with an administrative charge equal to twenty-five percent of the total costs incurred by the City. Upon the owner=s or occupant=s failure to pay these charges to the city, the City may recover the costs by civil action against the owner and adult occupants, and such costs shall become a lien on the Premises and may be collected in the same manner as special assessments levied against the Premises.

**Section 10. Invalidity.**

If any provisions of this local law or the application thereof to any person or circumstances is held invalid, the remainder of the local law and the application of such provisions to other persons and circumstances shall not be rendered invalid thereby.

**Section 11.** This local law shall not be construed to exclude or prohibit any other remedy provided by law for the protection, health, safety and welfare of the people of the City of Elmira.

**Section 12.** Provisions of all local laws and ordinances inconsistent with the provisions set forth in this local law hereby are repealed.

**Section 13.** This local shall become effective immediately upon publication and filing.

**ADOPTED BY THE FOLLOWING VOTE**

<b>AYES</b>		<b>NAYS</b>
X	Councilmember Royle	
X	Councilmember Roe	
X	Councilmember Parks	
X	Councilmember Duffy	
X	Councilmember McCarthy	
Absent	Councilmember Stermer	
X	Mayor Skidmore	

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