

REGULAR MEETING
September 23, 2024

A regular meeting of the Sherrill City Commission was held at 7:00 p.m. on September 23, 2024. Present were Mayor W. Vineall, Commissioners C. Niles, B. Piccola, K. Sayles, City Manager B. Lovett and City Clerk M. Holmes.

MINUTES

Motion was made by K. Sayles and seconded by C. Niles that the minutes of the previous meeting be approved as written.

AYES: Niles, Piccola, Sayles, Vineall

BILLS

Motion was made by B. Piccola and seconded by K. Sayles that the following bills be approved for payment and W. Vineall be authorized to sign the warrant.

Fund	Warrant No.	Date	Dollars
City Claims on	17	9/23/2024	\$ 85,093.71
Sewer Claims on	17	9/23/2024	\$ 3,826.90
P&L Claims on	17	9/23/2024	\$181,533.71
Trust & Agency Claims on	17	9/23/2024	\$ 1,250.00

AYES: Niles, Piccola, Sayles, Vineall

SET PUBLIC HEARING – AMENDMENT LOCAL ORDINANCE #34
(PUBLIC NUISANCE ABATEMENT)

The following resolution was offered by Commissioner K. Sayles, who moved its adoption, and seconded by Commissioner B. Piccola, to wit:

WHEREAS, it is desired to call a public hearing on the question of establishing Ordinance #34 (Public Nuisance Abatement).

WHEREAS, a copy of the proposed amendment and adoption of the ordinance has been distributed to the Commission and shall be attached to the minutes as Exhibit A.

NOW THEREFORE, be it

RESOLVED, by the City Commission of the City of Sherrill, New York, as follows:

§1. A public hearing shall be held at the regular meeting of the City Commission on October 14, 2024, at 7:15 PM at the Sherrill City Hall, 377 Sherrill Road in said City, for the purpose of considering modifying Ordinance #34 (Public Nuisance Abatement) in the form provided to the Commission and more particularly set forth in “Exhibit A”, attached hereto and made a part hereof.

§2. The City Clerk is hereby authorized and directed to cause a notice of said public hearing and the Amended and Restated Ordinance to be published in the Rome Daily Sentinel in the manner provided by law, which notice shall be in substantially the form provided to the Commission.

A roll call was taken on the motion which resulted as follows:

Mayor William Vineall	AYE
Commissioner Becca Piccola	AYE
Commissioner Kevin Sayles	AYE
Commissioner Chris Niles	AYE
Commissioner Joseph Shay	ABSENT

The resolution was thereupon declared adopted.

ORDINANCE NO. 34 PUBLIC NUISANCE ABATEMENT

SECTION 1. PURPOSE.

It is hereby declared to be the policy of the City of Sherrill to provide for the proper use of real property to prevent illegal, unhealthful, hazardous or dangerous conditions. By this Chapter, the City Commission of the City of Sherrill seeks to establish a procedure for the City of Sherrill to effectively abate those dangers which constitute a nuisance to public safety, health, life and property, and to assess the cost of abatement against those individuals who knowingly conduct, maintain, allow or permit the existence of a public nuisance and the real properties on which such activity occurs.

Section 2: 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:

CRIMINAL CONVICTION--The entry of a plea of guilty or a verdict of guilty for one or more counts as set forth in an accusatory instrument.

ILLEGAL DRUG ACTIVITY--The use or possession of a controlled substance, as defined by the New York State Penal Law.

OWNER--The owner(s) or landlord(s) of a building, structure or real property, including his or her agent.

PREMISES-- Real property or a building or structure, or any part thereof.

PUBLIC NUISANCE:

A. 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 cannabis as defined by the New York State Penal Law.
2. Any building, structure or real property used for the purposes of prostitution as defined by the New York 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 New York State Penal Law and this code.
4. Any building, structure or real property used for purposes of illegal gambling activity as defined in the New York 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 New York 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 New York 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 New York State Penal Law.
8. Any building, structure or real property used for purposes of loitering as defined by the New York State Penal Law.
9. Any building, structure or real property where there exists or has occurred a violation of this code and including but not limited to violations of the City of Sherrill Zoning Regulations, and/or the New York State Uniform Fire Prevention and Building Code {1} including the Property Maintenance Code of New York State, and any subsequent amendments or superseding provision thereto, all of which have been previously adopted and incorporated into this Code.
10. Any building, structure or real property wherein an occupant, guest or business invitee commits criminal activities including but not limited to assault, harassment or disorderly conduct, as said criminal activities are defined by the New York State Penal Law.

B. The above definition of public nuisance is not intended and shall not be interpreted to cover or include request for police, medical, fire or ambulance services in the face of a threat or a perceived threat to person or property, or any request for the assistance of the police to enforce a court order, including but not limited to circumstances in which the request for police, medical, fire or ambulance services or public service intervention arises from an incident relating to intimate partner violence, sexual assault, child abuse or stalking against a person at or near the premises.

TENANT—the lessee or occupant of a building, structure or real property. For purposes of this chapter, the term “tenant” shall include an occupant of one or more rooms in a rooming house or a residence, not including a transient occupant, of one or more rooms in a hotel/motel for 30 consecutive days or longer.

Section 3. NUISANCE FORBIDDEN

No owner, operator, manager, agent in control, 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.

Section 4. PRESUMPTION OF PUBLIC NUISANCE

- A. The following shall constitute a presumption of a public nuisance:
1. Notice by first class mail, or personal service, of activities entailing a public nuisance to the property owner, operator, manager, agent in control, tenant, lessee or other occupier of a building, structure or real property, shall be prima facie evidence of knowledge of the public nuisance.
 2. The existence of two or more criminal convictions for any of the activities set forth in the definition of a public nuisance in Section 1 at any building, structure or real property within a two-year period prior to the commencement of a civil action shall be prima facie evidence of the existence of a public nuisance. A criminal conviction shall be defined as the entry of a plea of guilty to or a verdict of guilty for one or more counts set forth in an accusatory instrument.
 3. The existence of two or more incidents of the following activities at any building, structure or real property within a one-year period prior to the commencement of a civil action shall be prima facie evidence of the existence of a public nuisance:
 - a. Service of a search warrant on the premises where controlled substances and/or weapons are seized.
 - b. Finding of illegal controlled substances or illegal firearms or weapons on the premises.
 - c. Investigative purchase of illegal controlled substances on the premises by law enforcement agencies or their agents.
- B. Once there exists the presumption of a public nuisance, as set forth in Subsection A above, the City shall serve, by means of first-class mail or personal service, written notice upon the owner, as set forth in the last filed tax roll advising of such presumption. Such notice shall set forth the alleged facts constituting the public nuisance and shall inform the owner of the City's intent to pursue action under either section 5 or 11 herein.
- C. Upon notification from the City of Sherrill of the presumption of a public nuisance, as set forth in Subsection B above, good faith efforts, commenced by the owner in a timely manner to eradicate such public nuisance, shall preclude further enforcement action by the City of Sherrill, unless and until such good faith efforts cease or activities constituting a public nuisance resume. In the event an owner's good faith efforts cease or public nuisance activity resumes, the City of Sherrill shall notify the owner, in the manner set forth in Subsection B above, of its intent to proceed under either section 5 or 11 herein.

Section 5. SUMMONS AND COMPLAINT FOR CIVIL ACTION

- A. At the direction of the City Commission of the City of Sherrill, the City Attorney may bring and maintain a civil action in the name of the City to abate a public nuisance and shall commence a civil action by filing a Summons and Complaint in the manner required by the New York State Civil Practice Laws and Rules.
- B. The Summons and Complaint shall name as defendant(s) at least one of the owners of some portion of or some interest in the property, as set forth in the last filed tax roll and shall describe the owner's premises by tax map number and/or street address.
- C. The Summons and Complaint may also name as defendant any owner, operator, manager or tenant of the premises.
- D. The Complaint shall allege the facts constituting the public nuisance.
- E. The Complaint shall be accompanied by an affidavit, to affirm that the owner or his agent had notice of the public nuisance and had an opportunity to abate the public nuisance.

- F. Because the public nuisance is conducted, maintained, permitted or allowed in the City of Sherrill, the venue of such action shall be Oneida County.
- G. In rem jurisdiction over the premises shall be completed by affixing the summons to the premises 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 as determined by the last filed tax rolls.
- H. Defendant(s), other than the record property owner of the premises, shall be served with the Summons and Complaint in the manner required by the New York State Civil Practice Law and Rules.
- I. With respect to any action commenced or to be commenced, the City Attorney may file a Notice of Pendency pursuant to the New York State Civil Practice Law and Rules.

Section 6. 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 the defendant(s) have conducted, maintained, permitted or allowed a public nuisance, a penalty may be awarded in an amount not to exceed \$1,000 for each day it is found that the defendant(s) conducted, maintained, permitted or allowed the public nuisance after notice to abate had been given by the City.

Section 7. PERMANENT INJUNCTION

- A. If, upon the trial of a civil action for a public nuisance or upon a motion for summary judgment, a finding is made that the defendant(s) have conducted, maintained, permitted, or allowed a public nuisance, a permanent injunction may be granted.
- B. A permanent injunction may prohibit defendant(s) from conducting, maintaining, permitting, or allowing the public nuisance.
- C. A permanent injunction may authorize agents of the City to remove and correct any condition(s) in violation of this Code. The judgment may further order that the cost of removing and correcting the violation(s), plus a charge of 50% as compensation to the City for administration and supervision expenses, be charged against the defendant(s) and awarded to the City. The judgment may further order that the cost of removing and correction the violation(s), plus the charge of 50% as compensation to the City for administration and supervision expenses, shall constitute a lien against the real property and shall be collected in the same manner as 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 premises by the Sherrill City Police Department, to the extent necessary to abate the public nuisance.
- E. A judgment awarding a permanent injunction shall 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.

Section 8. CLOSING THE PREMISES

- A. If the judgment of a civil action directs the closing of the premises, the Sherrill City Police Department shall serve the judgment upon defendant(s) in the manner required by New York State Civil Practice Laws and Rules and shall post a copy of the judgment upon one or more the doors at entrances of the premises or in a conspicuous place on the premises.
- B. In addition, the Sherrill City Police Department shall affix upon one or more of the doors at entrances of the premises or in a conspicuous place on the premises, a printed notice stating "Closed by Court Order" in block lettering of a sufficient size to be observed by anyone intending to enter the premises.
- C. Mutilation or removal of the posted judgment or notice, while it remains enforced, will be considered a separate violation and shall be punishable by section 55.10(3)(a) of State Penal Law.

- D. The Sherrill City Police Department may then command all persons present in the premises to vacate the property. After the premises are vacated, the Sherrill City Police Department may secure the premises.
- E. The closing directed by the judgment shall be for a period as the Court may direct but in no event shall the closing period exceed one year from the posting of the judgment.
- F. A closing by the Sherrill City Police Department shall not constitute an act of possession, ownership or control by the City.

Section 9. PRELIMINARY INJUNCTION

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

Section 10. TEMPORARY RESTRAINING ORDER

Pending a motion or order to show cause for a preliminary injunction, a temporary restraining order or temporary closing order may be granted, without notice to defendant(s), for any of the relief obtainable by a permanent injunction.

Section 11. ADMINISTRATIVE HEARING

As an alternative or in addition to commencing a civil action, whenever there exists a presumption of a public nuisance, as set forth in section 4 above, at any premises within the City, the City Attorney may, at the direction of the City Commission, initiate an administrative hearing in accordance with the following procedure:

- A. A notice of the hearing shall be served on all owners of the premises as determined by the last filed tax roll and may also be served on a any known operator, manager and/or tenant of the premises. The notice shall be served in the manner required by the New York State Civil Practice Laws and Rules.
- B. The notice shall allege the facts constituting the public nuisance, shall contain a time and place for a hearing to be held before a panel, and shall advise the owner(s), and any known operator, manager and/or tenant, of their right to appear and be represented by counsel.
- C. The hearing panel shall consist of the Police Chief, the Fire Chief, a ZBA Member (to be selected at the time of the hearing), a Planning Board member (to be selected at the time of the hearing) and a member of the City Commission (to be selected at the time of the hearing).
- D. At the time and place designated in the notice, the City Attorney shall present all relevant evidence and/or witnesses demonstrating the existence of a public nuisance at the premises and as to appropriate remedies. The owner, operator, manager and/or tenant of the premises shall have the right to examine such evidence and shall cross-examine any witnesses presented. The owner, operator, manager and/or tenant of the premises may present any relevant evidence and/or witnesses as a defense. The City Attorney shall have the right to examine such evidence and cross-examine any witnesses presented by the owner, operator, manager and/or tenant of the premises.
- E. Within five (5) business days of the hearing, the panel shall provide a finding of facts to the City Manager. The finding of facts shall state whether there is prima facie evidence of the existence of a public nuisance at the premises. The panel shall further provide written recommendation of remedies to abate the public nuisance.

Section 12. ADMINISTRATIVE REMEDIES

- A. To abate a public nuisance, the City Manager, upon receipt of a finding of facts and recommendation from the panel, shall have the power:
 - 1. To issue a decision and order suspending the certificate of occupancy for the premises for a period not to exceed one (1) year.
 - 2. To issue a decision and order directing the closing of the premises by the Sherrill City Police Department, to the extent necessary to abate the public nuisance, pursuant to the procedures set forth in section 8.

3. In conjunction with, or in lieu of, the foregoing powers, to issue a decision and order for various measures to be taken by the owner, operator, manager and/or tenant of the premises, to the extent necessary to abate the existing public nuisance and to ensure the prevention of future public nuisance actions from occurring at or near the premises, which shall include, but shall not be limited to:

- a. Requiring the owner, operator, manager and/or tenant to modify and improve the premises to deter further and future public nuisance activity; and/or
 - b. Directing subsequent purchaser(s) to comply with the provisions of any orders of suspension for the certificate of occupancy, unless or until the subsequent purchaser appears before the hearing panel with an appropriate plan to avoid further incidents of public nuisance for the panel to review and make recommendations.
- B. The decision and order shall be served upon the owner, operator, manager and/or tenant of the premises in a manner similar to that described in section 11A herein.
 - C. Nothing within this section shall limit the authority of the City Manager to take such other and further actions deemed necessary to abate any existing public nuisances to the extent necessary to ensure the protection of the health, safety and welfare of the general public.

Section 13. SEVERABILITY

If any clause, sentence, paragraph, word, section or part of this chapter shall be adjudged by any court or competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined to 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.

PROPOSED LOCAL LAW NO. 1 OF 2024
A LOCAL LAW AMENDING THE ZONING ORDINANCE
OF THE CITY OF SHERRILL, ONEIDA COUNTY, NEW YORK

The following motion was made by K. Sayles and seconded by B. Piccola that:

WHEREAS the City Commission of the City of Sherrill has entered into a project to update the Zoning Regulations of the City of Sherrill pursuant to section 49 in September 2022 and received recommended amendments and modifications to the City's Zoning Regulations from the planning board in December 2023, a contracted the services of Bond, Schoeneck & King PLLC to review the recommended changes and incorporate them within; and

WHEREAS the City Commission received the final recommended changes from Bond, Schoeneck & King PLLC in August 2024 and is of the opinion that such amendments to the Zoning Regulations would be in the best interest of the City and would further strengthen the provisions of its Zoning Regulations; and

WHEREAS pursuant to *Sherrill City Zoning Regulations s45*, all proposed amendments to the City's Zoning Regulations are required to be referred to the City's Planning Board for a report and recommendation and whereas the Planning Board has thirty (30) days after receiving the Amendment to respond; and

WHEREAS, pursuant to *General Municipal Law s239-l* and *s239-m* said amendments must be referred to the County planning agency for approval, and the planning agency must have thirty (30) days from the date of receipt to make a determination; and

WHEREAS the amendments to the Zoning Regulations are being made in accordance with a comprehensive plan, and any comprehensive plan considered by a City must be reviewed as a Type 1 action under SEQRA.

NOW, THEREFORE, BE IT RESOLVED, that the City Commission recommends passage of the City Zoning Regulation as written in the form attached hereto; and it is further

RESOLVED that the written recommendation of the City Commission is hereby referred to the City's Planning Board for a report and recommendation; and it is further

RESOLVED that the said amendments shall be referred to the County Planning agency for approval, and it is further

RESOLVED that the Environmental Assessment Form shall be prepared and that the City Commission elects Brandon Lovett to act as sponsor, complete Part 1 and submit same to City Commission for review at the next scheduled meeting. The City Commission shall act as the involved agency.

AYES: Niles, Piccola, Sayles, Vineall

Motion was made by K. Sayles and seconded by C. Niles to adjourn.

AYES: Niles, Piccola, Sayles, Vineall

Michael Holmes
City Clerk