

The following claims have been filed in the Office of the City Clerk during the month of May 2013, the claims were subsequently referred to the Office of the Corporation Counsel.

**NOTICE OF CLAIM**

Verizon PO Box 60770 Oklahoma City, OK 73146-0770	Property damages sustained from digging.
Gibson, Mary 1144 Niagara Ave Garcia, Donna 8214 Lindbergh Ave.	Property damages sustained from sewer backing up into house. Automobile damages sustained from hitting pot hole.
Allen, Alicia c/o State Farm Gross PHC, LLC c/o Lewandowski & Associates	Automobile damages sustained from being hit by a snow plow.
Wooock, Nancy 460 73 <sup>rd</sup> St	Property damages sustained from sewer.
Dumas, Reggie c/o Edward L. Smith, III, Esq. Waterskraus LLC See attached list of names (on file in the City Clerk's Office)	Property damages sustained from City tree roots Personal injuries sustained from exposure. Personal injury and or damages to property or loss of property in the near future.
Brave, Michael 806 87 <sup>th</sup> St	Automobile damages sustained from hitting a ditch in the road.

**NOTICE OF SUPPLEMENTAL SUMMONS**

Allen, Chanita c/o Thomas M. Mercure, Esq.	Index No. 149841
---	------------------

**SUMMONS**

Lisa Pierini Individually and as Parent and Natural Guardians of Danni Pierini and Nicholas Pierini, Infants, c/o Phillips & Paolicelli, LLP Waters, Kraus, LLP Fanizzi & Barron PC Christen Civeletto Morris, Esq.	Index#149844
--	--------------

Pearson, Lisa 789 West Ferry St Apt. B-2 Buffalo, NY 14222	Index#17144
--	-------------

Bocchicchia, Lorene c/o Edward L. Smith, Esq.	Index# 150126
--	---------------

*RE: Request for Cantilever/canopy encroachment on Fourth Street as part of a proposed four story hotel*

Council Members:

Plati Niagara, Inc. is planning to construct a four story hotel at the corner of Fourth Street and Rainbow Boulevard. It is proposing to construct a cantilever/canopy which will encroach onto the Fourth Street City right-of-way by approximately ten feet. It will measure up to 14 feet high and be 25 feet wide. There will be no posts or anything constructed in the City right-of-way. It will be located approximately 100 feet south of Rainbow Boulevard on Fourth Street. Attached is a rendering of this proposed encroachment.

Any approval will be subject to the following conditions:

1. The owner will add the City of Niagara Falls as an additional insured on its liability insurance policy.
2. The owner will defend and indemnify the City for liability related to this encroachment.
3. The City can revoke the license for the encroachment on 60 days written notice.
4. The owner will receive all applicable permits and inspections.

In addition, any approval will be subject to a favorable recommendation by the Planning Board. This is on the agenda for the Planning Board's meeting on June 12, 2013.

Will the Council so approve?

*RE: Encroachment for Niagara Falls Culinary School*

Council Members:

Niagara Falls Culinary Institute is requesting that it be permitted to utilize a portion of the City owned right-of-way at 28 Old Falls Street for the purpose of an outdoor dining patio encroachment. Attached hereto (on file in the City Clerk's Office) is a copy of the plan submitted by the Niagara Falls Culinary Institute. This proposal is in the process of being reviewed by appropriate City Departments and will be reviewed by the Planning Board.

Any approval will be subject to the following conditions for this encroachment:

1. The owner will add the City of Niagara Falls as the additional insured in its liability policy.
2. The owner will defend and indemnify the City from liability related to the encroachment.
3. The City can revoke the license for the encroachment on sixty (60) days written notice.
4. The owner will receive all applicable permits and inspections.
5. The patio encroachment must comply with any conditions imposed by the City Engineer with regard to sufficient space for pedestrian passage on the sidewalk and to ensure that no damage occurs to the City's right-of-way. In addition, this approval is subject to a positive recommendation being granted by the Planning Board. This matter is on the agenda for the Planning Board's meeting June 12, 2013.

Will the Council so approve?

*RE: Temporary help for Department of Public Works*

Council Members:

The Director of Code Enforcement and the Director of the Department of Public Works (DPW) each report that their departments are receiving numerous phone calls from residents complaining about high grass, etc. on privately owned lots in various areas of the City. The Director of DPW reports that because of current ongoing projects and manpower commitments, he lacks personnel to engage in grass cutting, etc. after the property owner has been duly notified by the Department of Code Enforcement to cut the grass, etc. In the event that the owner refuses to cut the grass, etc. after having been notified and directed by the Department of Code Enforcement, the City will cut the grass, etc. itself. Therefore, the Director of DPW requests that he be permitted to hire ten (10) temporary employees for the months of June, July, August and September 2013 to be assigned this task. The rate of pay for these temporary employees will be \$10.00 per hour and they will work 40 hours per week. It is anticipated that a portion of this expense will be recovered by the City as these property owners are billed by the City. The Director of DPW requests the sum of \$70,000.00 (\$65,025.00 for wages and \$4,975.00 for FICA) in order to accomplish this task. It is requested that funding be made available from the Tourism Fund Balance and transferred to the DPW Clean Neighborhood budget line.

Will the Council so approve?

*RE: Agreement with Psychological Resources Support Systems, Inc.*

Council Members:

The Director of Personnel is requesting that the City enter into an agreement with Psychological Resources Support Systems, Inc. to provide psychological testing and evaluation services for candidates who have applied to become members of the City of Niagara Falls Police Department. This is but one tool to be used in the selection process. Psychological Resources Support Systems, Inc. will charge a \$50.00 fee to enroll the City in its system and will charge \$110.00 per applicant tested. This is the same service utilized by the Niagara County Sheriff's Department. The utilization of Psychological Resources Support Systems, Inc. has been approved by the Municipal Civil Service Commission. Funding is available in the Personnel Department budget.

Will the Council so approve and authorize the Mayor to execute an agreement satisfactory to the Corporation Counsel?

*RE: Chief Electrical Inspector Trainee*

Council Members:

The Director of Code Enforcement advises that the person who serves as Chief Electrical Inspector will be retiring from City service within the next month or so. A replacement has been located and is prepared to come to work for the City after giving appropriate notice to his present employer and successfully completing City pre-employment requirements. It is desirable that the incumbent remain in place for two weeks after the replacement begins in order to facilitate and accomplish training in the responsibilities of the position. It is likely that this training will commence in June of 2013 and will not be for more than a two week period of time. The salary and benefits for the incumbent will continue as budgeted until he retires. It is anticipated that the cost for the replacement for the two week training period will not exceed \$1,900.80 plus FICA, pension contribution and other related benefits. Funding for this is available from the bi-weekly salary line in the Department of Code Enforcement.

Will the Council so approve?

*RE: Amendment of Use Permit for Sal Maglie Stadium*

Council Members:

The School District has a Use Permit to utilize Sal Maglie Stadium for its purposes which expires June 30, 2013. The School District has an option to renew this permit for a five (5) year period of time. The School District has commenced a project which will result in the construction of new athletic fields. The School District projects its project to be complete in the spring of 2014.

Because the School District will not need Sal Maglie Stadium after its project is complete, the District is requesting a modification of the existing Use Permit to substitute an option to renew for one (1) year with two optional six (6) month extensions in the event that delays are encountered during construction. This presents an opportunity for the City to begin a search for a new user of Sal Maglie Stadium.

Will the Council so approve and authorize the Mayor to execute an amendment to the Use Permit in form and content satisfactory to the Corporation Counsel?

**RE: AGENDA ITEM: Federal Budget Finalization - 2013 Department of Housing and Urban Development - Community Development Block Grant, HOME and Emergency Solutions Grant (ESG) Programs**

The City Council approved the Fiscal Year 2013 Community Development Consolidated Annual Plan in November 2012. The Consolidated Annual Plan included the Community Development Block Grant (CDBG) Program, HOME, and Emergency Solutions Grant Program (ESG); all funded through annual Department of Housing and Urban Development (HUD) allocations. These budgets were presented to the City Council based on estimate, to accommodate the city and federal governments' differing fiscal year budget schedules. HUD's final Fiscal Year 2013 allocations were released on May 27, 2013. The City's final CDBG, HOME and ESG Budget is cumulatively higher than the estimated 2013 budget previously approved by the City Council.

Funding Source	2012 FINAL ALLOCATION	2013 Estimate - Approved by City Council	2013 FINAL Allocation Announced 5/30/13	1212 Niagara Street Repayment Approved by City Council	FINAL CDBG TOTAL
CDBG	\$2,121,101	\$2,161,700	\$2,202,197	-\$27,300	\$2,174,897
HOME	\$347,028	\$315,000	\$357,405		
ESG	\$198,000	\$156,000	\$154,741		
<b>TOTAL</b>	<b>\$2,666,129</b>	<b>\$2,632,700</b>	<b>\$2,714,343</b>		

The Administration proposes the following budget revisions to align the 2013 Community Development Consolidated Action Plan with the HUD final allocation. Per HUD and City of Niagara Falls Citizen Participation Plan Guidelines, the city will adjust programmatic budgets to meet the final allocation without deviating from the project scopes or objectives already approved by the City Council.

**CDBG**

\$432,340: Estimated Administrative Budget (After 1212 Niagara Repayment)

\$434,980: FINAL Administrative Budget

*\$2,640: Change*

\$50,000: Estimated Commercial Façade Rehabilitation Budget

\$116,917: FINAL Commercial Façade Rehabilitation Budget

*\$66,917: Change*

**HOME Investment Partnership Program**

City of Niagara Falls

\$100,000: Estimated Budget

\$114,135: FINAL Budget

*\$14,135: Change*

Niagara Falls Neighborhood Housing Services Inc.

\$107,500: Estimated Budget

\$121,635: FINAL Budget

*\$14,135: Change*

Center City Neighborhood Development Corporation

\$107,500: Estimated Budget

\$121,635: FINAL Budget

*\$14,135: Change*

**ESG**

\$93,600: Estimated Emergency Shelter and Street Outreach Budget

\$92,845: FINAL Emergency Shelter and Street Outreach Budget

*-\$755: Change*

\$50,700: Estimated Rapid Re-Housing Assistance Budget

\$50,291: FINAL Rapid Re-Housing Assistance Budget

*-\$409: Change*

\$11,700: Estimated ESG Program Administrative Budget (City of Niagara Falls)

\$11,606: FINAL ESG Program Administrative Budget (City of Niagara Falls)

*-\$94: Change*

Will Council vote to so approve and authorize the Community Development Director to make the necessary budget adjustments?

**RE:            City Council Agenda Item: Award of Demolition Contract CD2013-1  
                  Utility Abandonment, Asbestos Abatement and Demolition of Various Properties**

**Council Members:**

The following bids were received by the Department of Community Development on June 4, 2013 for the demolition of fourteen (14) structures identified on the attached list (on file in the City Clerk's Office).

<b><u>CONTRACTOR</u></b>	<b><u>BID AMOUNT</u></b>
Regional Environmental Demolitions, Inc.	\$245,222.00
Mark Cerrone, Inc.	438,880.00
C & R Housing, Inc.	469,625.00
Metro Contracting, Inc.	580,725.00

It is our recommendation that a contract be awarded to the low bidder, Regional Environmental Demolitions, at their base bid amount of \$245,222.00. Funding is available in the following budget codes:

CD1.8666.0000.0450.500 (CDR399)	\$44,622.00
H.0910.2009.0910.0449.599 (Code Enforcement)	40,600.00
CD1.6920.0000.0450.500 (MRV099 Misc. Revenue)	<u>160,000.00</u>
Total	\$245,222.00

The miscellaneous revenue will be reimbursed with an Empire State Development Corporation grant.

Will the Council vote to award contract CD2013-1 to Regional Environmental Demolitions, Inc. and authorize the Mayor to execute any documents necessary to effectuate the same?

***RE: October 25, 2012 Auction***  
***Property: 2612 Tenth Street***  
***Ward 12, Pro 4220***

Council Members:

At your December 10, 2012 meeting you approved the sale of the above referenced premises.

Due to an error, the wrong bidder was identified as the successful bidder and, therefore, it is recommended that the Council approve the sale of the property to Linda Benson, 1517 James Avenue, Niagara Falls, NY 14305 for the bid price of \$250.00, together with an auction fee of \$25.00 and related expenses, and authorize the Mayor to execute a deed to her.

Will the Council so approve?

***RE: Approval to pay Medical Expenses of Kimberly Stanek in the amount of \$71.04***

Council Members:

The above claimant has incurred medical expenses for personal injuries suffered by her when she was a passenger in a City police vehicle which was involved in a motor vehicle accident on November 12, 2011.

Under the New York State No-Fault Law, the City of Niagara Falls, as a self-insured entity, is obligated to pay the claimant's medical expenses arising out of this incident. If the same meets with your approval, please vote to direct the City Clerk to draw a warrant on the City Controller directing her to issue the following check:

<u>Provider</u>	<u>Date of Service</u>	<u>Amount</u>
Cardamone Chiropractic	05/16/2013	\$35.52
	05/23/2013	\$35.52

Please be advised that there may be further medical bills which will have to be paid pursuant to the New York State No-Fault Law.

Will the Council so approve?

BE IT RESOLVED by the City Council of Niagara Falls, New York that Chapter 737 of the Codified Ordinances entitled "Property and Building Nuisance Reform" is hereby adopted to read as follows:

## **CHAPTER 737 PROPERTY AND BUILDING NUISANCE REFORM**

### **ARTICLE I, GENERAL PROVISIONS**

#### **§737-1 FINDINGS.**

**The City Council of the City of Niagara Falls finds that public nuisances exist in the City of Niagara Falls in the operation of certain establishments and the use of property in flagrant violation of certain Penal Law and City Ordinance provisions, which nuisances substantially and seriously interfere with the interest of the public in the quality of life and total community environment, commerce in the City, property values and the public health, safety and welfare. The City 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 Niagara Falls and of the businesses thereof and the visitors thereto.**

#### **§737-2 TITLE.**

**This chapter shall be known as the "Property and Building Nuisance Reform Law."**

#### **§737-3 DEFINITIONS.**

**As used in this chapter, the following terms shall have the meaning indicated:**

**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 §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.

**BUILDING** – A structure where space is covered or enclosed for the use, shelter, storage or protection of persons, animals, chattel or property of any kind, and which is permanently affixed to the land.

**BUILDING ACCESSORY** – A building subordinate to the principal building on the lot and used for purposes which are clearly related but incidental to that of said principal building.

**BUSINESS** – An activity, occupation, employment or enterprise which requires time, attention, labor and material and wherein merchandise is exhibited or sold, or services offered.

**BUSINESS OFFICE** – A building or portion thereof utilized to accommodate the activities of a business.

**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 §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.

DISTURBANCE – Actions, behavior, or conduct by person or persons at a particular location that disturbs the peace.

KNOWLEDGE OF PUBLIC NUISANCE – The presumption of knowledge provided by Subdivision 1 of §235.10 of the Penal Law shall be applicable to this chapter. Notice, by first class, certified and/or registered mail or by personal service, of activities detailing a public nuisance, to the property owner of record shall be evidence of knowledge of the public nuisance.

LOT – A parcel of land, with or without buildings or structures, delineated by lot line and having access to a street as defined in this chapter.

PENAL LAW – New York State Penal Law

PUBLIC NUISANCE – For the purposes of Article III, a public nuisance shall be deemed to exist whenever, through violations of any of the following provisions resulting from separate incidents at a building, erection or place, or immediately adjacent to the building, erection or place as a result of the operation of the business, 12 or more points are accumulated within a period of six (6) months, or 18 or more points within a period of twelve (12) months, in accordance with the following points system. Where more than one violation occurs during a single incident, the total points for the incident shall be the highest point value assigned to any single violation.

(1) The following violations shall be assigned a point value of two (2) points:

- (a) Section 240.36 and 240.37 of the Penal Law – Loitering in the First Degree
- (b) Suffering or permitting the premises to become disorderly, including suffering or permitting fighting or lewdness.
- (c) City noise
- (d) City littering
- (e) Dogs – regarding howling dogs, and/or repetitive barking, number of dogs, unlicensed dogs and dangerous or nuisance dogs.

(2) The following violations shall be assigned a point value of four (4) points:

- (a) Disorderly conduct by individual or individuals
- (b) Housing and Property Maintenance, including any garbage collection violation. Each repeat offense is an additional four (4) points.
- (c) General disturbances at a particular location.
- (d) Article 225 of the Penal Law – Gambling Offenses
- (e) The Alcoholic Beverage Control Law
- (f) Section 415-a of the Vehicle and Traffic Law – Vehicle Dismantlers
- (g) Sections 170.65 and 170.70 of the Penal Law – Forgery or illegal possession of a Vehicle Identification Number.
- (h) Possession, use, sale or offer for sale of any alcoholic beverage in violation of Article 18 of the Tax Law, or of any cigarette or tobacco products in violation of Article 20 of the Tax Law.
- (i) The Agriculture and Markets Law.

(3) The following violations shall be assigned a point value of six (6) points:

- (a) Article 178 of the Penal Law – Criminal Diversion of Prescription Medication and Prescriptions.
- (b) Article 220 of the Penal Law – Controlled Substances Offenses
- (c) Article 221 of the Penal Law – Offenses involving Marijuana.
- (d) Sections 165.15, (6), (7), and (8), 165.40, 165.45, 165.50, 165.52, 165.54, 165.71, 165.72 and 165.73 of the Penal Law – Criminal Possession of Stolen Property.
- (e) Article 158 of the Penal Law – Welfare Fraud.
- (f) Section 147 of the Social Services Law – Food stamp program fraud.
- (g) Section 2024 of Title 7 of the United States Code – illegal Use of Food Stamps.

(h) Any commercial violations of the Codified Ordinances of the City of Niagara Falls.

(i) Allowing persons on the premises in excess of occupancy limits.

(j) Section 3383 of the Public Health Law – Imitation controlled substances.

(k) Operating a premises without the requisite certificate of use in violation of the Codified Ordinances of the City of Niagara Falls.

(4) The following violations shall be assigned a point value of ten (10) points:

(a) Article 230 of the Penal Law – Prostitution Offenses.

(b) Article 265 of the Penal law – Firearms and other dangerous weapons.

(c) Sections 260.20 and 260.21 of the Penal Law – Unlawfully Dealing with a Child.

(d) Article 263 of the Penal Law – Sexual Performance by a Child.

(e) Loitering for the purpose of engaging in a prostitution offense.

(5) The following violations shall be a point value of twelve (12) points: penal law

violations, including but not limited to murder, attempted murder, assault, attempted assault, sex offenses, etc.

TESTIMONY – Oral, written or other documented evidence tending to show or prove the truth of the matter asserted.

VIOLATIONS – Conduct, or evidence of conduct, prohibited under this chapter. 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, increased volume of traffic associated with the property.

YARD – An open area on a lot which is open to the sky and that is unoccupied by any land use or activity.

#### §737-4 EVIDENCE AND PRESUMPTIONS

A. Evidence. In any action under this chapter, 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 prove the existence of a property or building nuisance.

B. Sciencer. 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 chapter, where there have occurred two or more convictions, as defined in §737-3, on the part of the lessees, owners, operators, or occupants, of the provisions of this chapter as defined in §737-3 of this chapter, 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 chapter, where there have occurred four or more violations on the part of the lessees, owners, operators, or occupants, of the provisions of this chapter as defined in §737-3 of this article, 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 chapter, there has been presented a preponderance of evidence of repeated criminal activity which has an

adverse impact, as defined in §737-3 of this chapter, on such property or neighborhood, shall be prima facie evidence that a public nuisance exists at said location.

## ARTICLE II, CIVIL REMEDIES FOR PROPERTY AND BUILDING NUISANCES

### §737-5 APPLICABILITY.

This article shall be applicable to the public nuisances defined in Article I of this chapter.

### §737-6 CIVIL REMEDIES

- A. The Corporation Counsel may bring and maintain a civil proceeding in the name of the City for the following types of relief:

  - (1) Permanent injunction
  - (2) Temporary closing order
  - (3) Temporary restraining order
  - (4) Temporary injunction
  - (5) Civil penalties
- B. The summons. The Corporation Counsel shall name as defendants the building, structure or place wherein the public nuisance is being conducted, maintained or permitted, by describing it by Tax Map number and/or street address, and at least one of the owners of some part of or interest in the property.
- C. The complaint.

  - (1) The Corporation Counsel shall bring and maintain a civil proceeding in the name of the City of Niagara Falls in the Supreme Court of Niagara County, or any other court of competent jurisdiction, to permanently enjoin the public nuisance and the persons conducting, maintaining or permitting the public nuisance, as defined in Article I of this chapter, from further conducting, maintaining, or permitting the public nuisance in the manner provided in Article II of this chapter. The owners, operator, and/or lessee of a building, structure or place wherein the public nuisance is being conducted, maintained or permitted may be made defendants in the action.
  - (2) The venue of said action shall be Niagara County.
  - (3) The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter.
  - (4) The civil action shall be commenced by the filing of a summons and complaint alleging the facts constituting the nuisance.
  - (5) The complaint shall name as defendants the building, structure or place wherein the nuisance is being conducted, maintained or permitted, by describing it by Tax map number and/or street address, and at least one of the owners who possesses some part of or an interest in the property.
  - (6) Any complaint filed under this chapter shall be verified or accompanied by an affidavit(s) for purposes of showing that the owner or his or her agent has notice of the nuisance and has had an opportunity to abate the nuisance. The Corporation Counsel will give the owner, and any designated property manager, written notice of the nuisance and ten (10) business days to personally meet with and provide to Corporation Counsel a written plan to abate the nuisance within thirty days. If part of the plan to abate the nuisance is to evict a tenant, then the owner will commence the eviction proceeding within ten (10) business days from the meeting with Corporation Counsel.
  - (7) The complaint or affidavit shall contain a description of the attempts by the applicant to notify and locate the owner of the property and/or the owner's agent.
  - (8) The complaint or affidavit shall describe the adverse impact associated with the property on the surrounding neighborhood.
- D. In rem jurisdiction over building, structure, or place. In rem jurisdiction shall be complete over the building, structure or place wherein the public nuisance is being conducted, maintained or permitted by affixing the summons to the door of the building, structure or place and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners who possesses some part of or an interest in the property. Proof of

service shall be filled within two days thereafter with the Clerk of the court designated in the summons. Service shall be complete upon filing.

E. Service of summons on other defendants. Defendant(s), other than the building, structure or place wherein the public nuisance is being conducted, maintained or permitted, shall be served with the summons as provided in the Civil Practice Law and Rules.

F. Notice of pendency. With respect to any action commenced or to be commenced pursuant to this chapter, the Corporation Counsel may file a notice of pendency pursuant to the provisions of Article 65 of the Civil Practice Law and Rules.

G. Presumption of ownership. The owner of the real estate affected by the action shall be presumed to be the person in whose name the real estate is recorded in the office of the City of Niagara Falls Assessor and/or the office of the Clerk of the County of Niagara.

H. Presumption of employment or agency. Whenever there is testimony that a person was the manager, operator, supervisor, or in any other way in charge of the premises at the time a public nuisance was being conducted, maintained or permitted, such evidence shall be presumptive that he or she was an agent or employee of the owner or lessee of the building, structure or place considered to be a nuisance.

I. Penalty. If, upon the trial of an action under this chapter, or upon a motion for summary judgment in an action under this chapter, a finding is made that the defendant has conducted, maintained or permitted a public nuisance defined in this chapter, a penalty maybe awarded in an amount not to exceed \$1,000 for each day it is found that the defendant conducted, maintained or permitted the public nuisance after notice to abate has been given by the City. Upon recovery, such penalty shall be paid into the general fund of the City.

J. Enforcement. A judgment pursuant to this chapter shall be enforced by City of Niagara Falls Corporation Counsel or his designee.

#### §737-7 JUDGEMENT AWARDING PERMANENT INJUNCTION

A. A judgment awarding a permanent injunction, pursuant to this chapter, may direct the City of Niagara Falls Police Department to seize and remove from the building, structure or place all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and shall direct the sale by the City of Niagara Falls Corporation Counsel, or his designee of such property in the manner provided for the sale of personal property under execution pursuant to the provisions of the Civil Practice Law and Rules. The net proceeds of any such sale, after deduction of the lawful expenses involved, shall be paid into the general fund of the City.

B. A judgment awarding a permanent injunction pursuant to this chapter may authorize agents of the City to forthwith remove and correct construction and structural alterations in violation of the City Ordinances. Any and all costs associated with these repairs or alterations shall become a lien against said property and shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens and any nuisance abatement lien.

C. A judgment awarding a permanent injunction, pursuant to this chapter, may direct the closing of the building, structure or place by the City of Niagara Falls Department of Code Enforcement, to the extent necessary to abate the nuisance, and shall direct the City of Niagara Falls Department of Code Enforcement to post a copy of the judgment and a printed notice of such closing conforming to the requirements of §737-8H of this chapter. Mutilation or removal of such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable on conviction by a fine of not more than \$500 or by imprisonment not exceeding 15 days, or by both, provided such judgment contains therein a notice of such penalty.

D. 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 provided for in this section.

- E. If the owner shall file a bond in the amount of the assessed value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained or permitted for such period of time as the building, structure or place has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the building, structure or place.
- F. A closing by the City of Niagara Falls Department of Code Enforcement pursuant to this section shall not constitute an act of possession, ownership or control by the City of Niagara Falls nor does the City of Niagara Falls assume any liability related to the possession, ownership or control of the closed premises.
- G. Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both.
- H. Upon the request of the Corporation Counsel, or his designee, the City of Niagara Falls Police Department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this chapter.
- I. A judgment rendered awarding a permanent injunction pursuant to this chapter shall be and become a lien upon the building, structure or place named in the complaint in such action, such lien to date from the time of filing a notice of liens pending in the office of the clerk of the county wherein the building, structure or place is located. Every such nuisance abatement lien shall have priority before any mortgage or other lien that exists prior to such filing except tax and assessment liens.
- J. A judgment awarding a permanent injunction pursuant to this chapter shall provide, in addition to the costs and disbursement allowed by the Civil Practice Law and Rules, upon satisfactory proof by affidavit or such other evidence as may be submitted, the actual costs, expenses, and disbursements of the City in investigating, bringing and maintaining the action.

## §737-8 PRELIMINARY INJUNCTION

- A. Generally.
  - (1) Pending an action for a permanent injunction as provided for in this article, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this chapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. An order granting the preliminary injunction shall direct a trial of the issues at the earliest possible time. Where a preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction at its earliest convenience after the conclusion of the trial. A temporary closing order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires the granting of a temporary closing order. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted.
  - (2) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the Corporation Counsel and the City of Niagara Falls Police Department.
  - (3) Preliminary injunctions, inventory, closing of premises, posting of order and notices, offenses. If the court grants a preliminary injunction, the provisions of this article shall be applicable.
- B. Motion papers for preliminary injunction. The Corporation Counsel shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a permanent injunction abating a nuisance within the scope of this chapter.
- C. Temporary closing order.

(1) If, on a motion for a preliminary injunction pursuant to this section, the Corporation Counsel shall show by clear and convincing evidence that a nuisance within the scope of this chapter is being conducted, maintained or permitted and that the public health, safety or welfare immediately requires a temporary closing order, a temporary order closing such part of the building, structure or place wherein the nuisance is being conducted, maintained or permitted may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order by the court. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time; a decision on the motion for a preliminary injunction shall be rendered by the court at the earliest possible time.

(2) Service of temporary closing order. Unless the court orders otherwise, a temporary closing order, together with the papers upon which it was based and a notice of hearing for the preliminary injunction, shall be personally served, in the same manner as a summons as provided in the Civil Practice Law and Rules.

**D. Temporary restraining order.**

(1) A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, or permitted and that the public health, safety, or welfare immediately requires the granting of a temporary restraining order. This order shall restrain the defendants and all persons from removing or transferring off the property or in any manner interfering with the fixtures and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance. A temporary restraining order may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary restraining order, the court shall direct the holding of a hearing for the preliminary injunction.

(2) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served in the same manner as a summons as provided in the Civil Practice Law and Rules.

**E. Temporary closing order; temporary restraining order.**

(1) If, on motion for a preliminary injunction, the Corporation Counsel submits evidence warranting both a temporary closing order and a temporary restraining order, the court shall grant both orders.

(2) Enforcement of temporary closing orders and temporary restraining orders. Temporary closing orders and temporary restraining orders shall be enforced by the Corporation Counsel and the City of Niagara Falls Police Department.

**F. Inventory upon service of temporary closing orders and temporary restraining orders. The officers serving a temporary restraining order shall forthwith make and return to the court an inventory of personal property situated in and used in conducting, maintaining or permitting a public nuisance within the scope of this chapter and shall enter upon the building, structure or place for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory, including, but not limited to, photographing such personal property.**

**G. Closing of premises pursuant to temporary closing orders and temporary restraining orders. The officers serving a temporary order shall, upon service of the order, command all persons present in the building, structure or place to vacate the premises forthwith. Upon the building, structure or place being vacated, the premises shall be securely locked and all keys delivered to the officers serving the order who thereafter shall deliver the keys to the fee owner, lessor or lessee of the building, structure or place involved. If the fee owner,**

lessor or lessee is not at the building, structure or place when the order is being executed, the officers shall securely padlock the premises and retain the keys until the fee owner, lessor or lessee of the building is ascertained, at which time, the officers shall deliver the keys to such owner, lessor or lessee, if such individual resides within Niagara County.

H. Posting of temporary closing orders and temporary restraining orders. Upon service of a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the public nuisance is being conducted, maintained or permitted. In addition, where a temporary restraining order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. If the temporary restraining order directs that the premises are to be closed by court order, the notice shall contain the legend "Closed by Court Order" in block lettering of sufficient size to be observed by anyone intending or likely to enter the premises, The date of the order, the court from which issued and the name of the office or agency posting the notice. Mutilation or removal of such a posted order or such a posted notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$1,000 or by imprisonment not exceeding 90 days, or by both, provided such order or notice contains therein a notice of such penalty. The City of Niagara Falls Police Department, or the City of Niagara Falls Department of Code Enforcement shall, upon the request of the Office of Corporation Counsel, assist in the enforcement of this subsection.

I. Intentional disobedience of or resistance to temporary restraining order and permanent injunction. Intentional disobedience of, or resistance to, a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both.

J. Temporary restraining order or preliminary injunction bond required. A temporary restraining order or preliminary injunction shall not issue under this chapter, except upon the giving of a bond or security by the applicant, in the amount of \$1,000, for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully restrained or enjoined. A bond or security shall not be required of the State of New York, Municipal Corporation, or political subdivision of the State of New York.

#### §737-9 TEMPORARY RESTRAINING ORDER; DEFENDANT'S REMEDIES.

A. Temporary restraining order to be vacated; inspection provision.

(1) A temporary restraining order may be vacated by the court, upon notice to the Corporation Counsel, when the defendant gives an undertaking and the court is satisfied that public health, safety or welfare will be protected adequately during the pendency of the action. The undertaking shall be in an amount equal to the assessed valuation of the building, structure or place where the public nuisance is being conducted, maintained or permitted or in such other amount as may be fixed by the court. The defendant shall pay to the City, in the event a judgment of permanent injunction is obtained, its actual costs, expenses and disbursements, including attorney's fees in investigating, bringing and maintaining the action.

(2) An order vacating a temporary closing order, or a temporary restraining order, shall include a provision authorizing agencies of the City to inspect the building, structure or place, which is the subject of an action pursuant to this chapter, periodically without notice, during the pendency of the action, for the purpose of ascertaining whether or not the public nuisance has been resumed. Intentional disobedience of, or resistance to, an inspection provision of an order vacating a temporary restraining order, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$5,000, or by imprisonment not exceeding six months, or by both. The City of Niagara Falls Police Department or the City of Niagara Falls Department of Code Enforcement shall, upon the

request of the Office of Corporation Counsel, assist in the enforcement of an inspection provision of an order vacating a temporary restraining order.

**B. Vacating a temporary injunction or a temporary restraining order. When the defendant gives an undertaking in the amount of the civil penalty demanded in the complaint, together with costs, disbursements and the projected annual costs of the prosecution of the action to be determined by the court, upon a motion on notice to the Corporation Counsel, a temporary injunction or a temporary restraining order shall be vacated by the court. The provisions of the Civil Practice Law and Rules governing undertakings shall be applicable to this chapter.**

**§737-10 PRELIMINARY INJUNCTION OF BULK TRANSFER.**

**A. Generally, pending an action pursuant this chapter, the court may grant a preliminary injunction enjoining a defendant from making a bulk transfer, as defined in this section.**

**B. If, on a motion for a preliminary injunction of a bulk transfer, the Corporation Counsel shall show by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, or permitted, a temporary restraining order may be granted, without notice, restraining the defendants and all persons from making or permitting a “bulk transfer,” as defined in this article, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Application for a temporary restraining order shall be made pursuant to §737-9 of this article.**

**C. “Bulk Transfer” defined. A “bulk transfer” is any transfer of a major part of the materials, supplies, merchandise or other inventory or equipment of the transferor in the building, structure or place where the public nuisance is being conducted, maintained or permitted that is not in the ordinary course of the transferor’s business.**

**D. Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the Office of Corporation Counsel and by the City of Niagara Falls Police Department.**

**E. Preliminary injunction; inventory. If the court grants a preliminary injunction, the provisions of the §737-8 of this article shall be applicable.**

**§737-11 TEMPORARY RECEIVER.**

**A. Appointment, duration and removal. In any action wherein the complaint alleges that the nuisance is being conducted or maintained in the residential portions of any building or structure or portion thereof, which are occupied in whole, or in part, as the home, residence or sleeping place of one or more human beings, the court may, upon motion on notice by the plaintiff, appoint a temporary receiver to manage and operate the property during the pendency of the action, in lieu of a temporary closing order. A temporary receivership shall not continue after final judgment unless otherwise directed by the court. Upon the motion of any party, including the temporary receiver, or on its own initiative, the appointing court may remove a temporary receiver at any time.**

**B. Powers and duties. The temporary receiver shall have such powers and duties as the court shall direct, including, but not limited to, collecting and holding all rents due from all tenants, leasing or renting portions of the building or structure, making or authorizing other persons to make necessary repairs or to maintain the property, hiring security or other personnel necessary for the safe and proper operation of a dwelling, prosecuting or defending suits flowing from his or her management of the property and retaining counsel therefor, and expending funds from the collected rents in furtherance of the foregoing powers.**

**C. Oath. A temporary receiver, before entering upon his or her duties, shall be sworn or shall affirm faithfully and fairly to discharge the trust committed to such receiver. The oath or affirmation may be waived upon consent of all parties.**

**D. Undertaking. A temporary receiver shall give an undertaking, in an amount to be fixed by the court making the appointment that such receiver will faithful discharge his or her duties.**

**E. Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds.**

which shall be open to inspection by any person having an apparent interest in the property. Upon motion of the temporary receiver, or of any person having an apparent interest in the property, the court may require the keeping of particular records, or direct or limit inspection, or require presentation of a temporary receiver's accounts. Notice of motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on the temporary receiver's undertaking as well as upon each party.

**§737-12 CHAPTER NOT EXCLUSIVE REMEDY**

This chapter shall not be construed to exclude any other remedy provided by law for the protection of the health, safety and welfare of the people of the City of Niagara Falls.

**§737-15 PENALTIES FOR OFFENSES.**

- A. Any owner who, having been served with a notice or order to remove any violation of this chapter or any nuisance, fails to comply therewith within the time fixed by law shall be deemed guilty of a violation and upon conviction thereof shall be fined in an amount not exceeding \$250.00, or be imprisoned for a period not exceeding fifteen (15) days, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as an offense and shall be punishable as such hereunder.
- B. The term "owner" as used in this section shall include any person or persons deemed to be an owner or owners of property as set forth in Subsection G of Section 737-6 herein. Violations of this chapter may also be referred to the Department of Code Enforcement or any other appropriate municipal department and be prosecuted pursuant to Codified Ordinances of the City of Niagara Falls.

Bold and Underlining indicate **Additions**.

Bold and Brackets indicate [Deletions].

Tuesday June 10, 2013 Council Meeting

PRESENTATIONS:

---

ADMINISTRATIVE UPDATE:

1. City Engineer – status
2. 2014 City Budget – planning and preparation