

Council Member Igoe on behalf of his committee introduced the following, which was approved:

LOCAL LAW Q OF 2021

A LOCAL LAW AMENDING CHAPTER 255 (PEACE AND GOOD ORDER) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO UNNECESSARY AND UNUSUAL NOISES AND THE TREATMENT OF SUCH NOISES AS NUISANCES

Be it enacted by the Common Council of the City of Albany as follows:

Section 1. Section 255-35 (Penalties for offenses) of Article V (Unnecessary and Unusual Noises) of Chapter 255 (Peace and Good Order) of Part II (General Legislation) of the Code of the City of Albany is hereby amended to read as follows:

§ 255-35 Penalties for offenses.

Any person violating any of the provisions of this article as defined herein shall be guilty of a violation and, upon conviction thereof, shall be liable for a fine [~~not to exceed \$250~~] or imprisonment not exceeding 15 days, or to both such fine and imprisonment. For a first conviction under this Article, the person so convicted shall be liable for a fine not to exceed \$250. For a second conviction under this Article, the person so convicted for a second time shall be liable for a fine not to exceed \$500. For a third conviction under this Article and for all such further convictions, the person so convicted for a third or subsequent time shall be liable for a fine not to exceed \$1,000 per conviction.

Section 2. Section 255-44 (Definitions) of Article VIII (Public Nuisance Abatement) of Chapter 255 (Peace and Good Order) of Part II (General Legislation) of the Code of the City of Albany is hereby amended to read as follows:

§ 255-44 Definitions.

For the purposes of this article, the following terms shall have the meanings indicated, unless the context clearly requires otherwise:

Chief

The Chief of Police or his or her designee.

Mortgagee

The person who is listed as the mortgagee on any unsatisfied or otherwise open mortgage on the premises recorded in the office of the Albany County Clerk.

Owner

The person in whose name the premises affected by an order, issued in accordance with this article, is recorded as the owner in the office of the Albany County Clerk.

Premises

The building, place or property whereon a public nuisance is being conducted or exists.

Public Nuisance

- A. For purposes of this article, a public nuisance shall be deemed to exist whenever, through violations of any of the following provisions resulting from separate incidents occurring at or predicated at events, circumstances or activities occurring on the premises, 12 or more points are accumulated within a period of six months, or 18 or more points are accumulated within a period of 12 months, in accordance with the following point 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. The following violations shall be assigned the point value indicated:
- (1) Article 220 of the Penal Law (Controlled Substances Offenses): six points.
 - (2) Article 221 of the Penal Law (Offenses Involving Marihuana): six points.
 - (3) Article 225 of the Penal Law (Gambling Offenses): six points.
 - (4) Article 230 of the Penal Law (Prostitution Offenses): six points.
 - (5) Section 165.40, 165.45, 165.50, 165.52 and 165.54 of the Penal Law (Criminal possession of stolen property): six points.
 - (6) Sections 65 or 82 of the Alcoholic Beverage Control Law: six points.
 - (7) Article 265 of the Penal Law (Firearms and Other Dangerous Weapons): six points.
 - (8) Sections 260.20 and 260.21 of the Penal Law (Unlawfully dealing with a child): six points.
 - (9) Article 263 of the Penal Law (Sexual Performance by a Child): six points.
 - (10) Section 415-a of the Vehicle and Traffic Law (Vehicle dismantlers): four points.
 - (11) Section 175.10 of the Penal Law (Falsifying business records): four points.
 - (12) Sections 170.65 and 170.70 of the Penal Law (Forgery of and illegal possession of a vehicle identification number): four points.
 - (13) 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: four points.

- (14) Article 178 of the Penal Law (Criminal Diversion of Prescription Medications and Prescriptions): four points.
- (15) Section 147 of the Social Services Law (Food Stamp Program fraud): four points.
- (16) Operating a business during hours which the business is required to be closed pursuant to Chapter 375 (~~Zoning~~ Unified Sustainable Development Ordinance) of the Code of the City of Albany: four points.
- (17) Article V (Unnecessary and Unusual Noises) of Chapter 255 (Peace and Good Order) of the Code of the City of Albany: one point.

B. For purposes of this article, 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, 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.

Section 3. This local law shall take effect upon final passage, public hearing, and filing with the Secretary of State.

**APPROVED AS TO FORM THIS
4TH DAY OF AUGUST, 2021**

Corporation Counsel

To: Danielle Gillespie, City Clerk

From: Brett Williams, Esq., Senior Assistant Corporation Counsel

Re: Common Council Legislation
Supporting Memorandum

Date: August 4, 2021

Sponsor: Council Member Igoe

LOCAL LAW Q of 2021

TITLE

A LOCAL LAW AMENDING CHAPTER 255 (PEACE AND GOOD ORDER) OF THE CODE OF THE CITY OF ALBANY IN RELATION TO UNNECESSARY AND UNUSUAL NOISES AND THE TREATMENT OF SUCH NOISES AS NUISANCES

GENERAL PURPOSE OF THE LEGISLATION

This local law takes a two-fold approach to tackling one of the most pervasive quality of life issues throughout the City of Albany: noise violations.

First, the legislation does away with the existing, fine of up to \$250 for each conviction of a noise violation and replaces it with a graduated fee structure whereby the fine increases with each subsequent time an individual is convicted of a noise violation. A first offense will now be punishable by the original fine of up to \$250, a second violation will be punishable by a fine of up to \$500, and a third violation, as well as all subsequent violations an individual may commit, will each be punishable by a fine of up to \$1,000.

Second, this local law adds noise violations to the public nuisance abatement provisions of Article VIII of Chapter 255, so that the City will now be able to take measures against properties at which noise violations frequently occur in the same manner that the City can seek to abate, or even shut down, properties at which other crimes and violations are persistently committed.

NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW

Section 1 of the local law amends § 255-35 by deleting the existing flat fine amount of up to \$250 and replaces it with a structure under which the maximum fine amount increases with each new noise violation up to three, after which the maximum fine remains at \$1,000 for each violation. The local law retains the Court's ability to impose a jail sentence of up to 15 days.

Section 2 of the local law amends § 255-44 by adding noise violations to the point system currently in existence for public nuisance abatement. Each noise violation counts for one point. If a property accumulates 12 or more points within a period of six months, or 18 or more points within a 12 month period, the City can act to abate the nuisance at such property, up to and including shutting the property down.

Additionally, but unrelated to noise violations, the local law also takes the opportunity to update language in § 255-44 which had referred to Ch. 375 of the Code as “Zoning,” but will now reflect the current “Unified Sustainable Development Ordinance” title.

FISCAL IMPACT(S)

The local law increases noise violation fine amounts from a maximum of \$250 to a maximum of \$250, \$500, or \$1,000, depending on the number of times an individual has been convicted of a noise violation.

Passed by the following vote of all the Council Members elected voting in favor thereof:

Local Law Q was *co-sponsored by Council Members Anane, Balarin, Flynn, Kimbrough, O'Brien*

Affirmative – Anane, Balarin, Conti, Doeschate, Fahey, Farrell, Flynn, Frederick, Hoey, Igoe, Johnson, Kimbrough, Love, O'Brien, Robinson

Affirmative 15 Negative 0 Abstain 0

Clerk of the Common Council

President of the Common Council

Mayor

Date

I, Danielle Gillespie, City Clerk and Clerk of the Common Council, do hereby certify that Local Law Q was passed at a meeting of the Albany Common Council on October 4, 2021.

In Affirmation thereof, I hereto set my hand and affix The Seal of the City of Albany this ____ day of _____ 2021.

Clerk of the Common Council