

Ordinance No.:  
Introduced:  
Passed:

**ORDINANCE TO ABATE PUBLIC NUISANCE AND DISCOURAGE DRUG ACTIVITY IN RENTAL HOUSING WITHIN THE CITY OF HINTON, WEST VIRGINIA**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HINTON:

WHEREAS, W. Va. Code § 8-12-5 and West Virginia Code § 7-1-3(k)(k) provides plenary power and authority upon municipalities, including The City of Hinton, to regulate and adopt ordinances that abate public nuisances, The City Council of the City of Hinton, West Virginia, wishes to abate anything which, in the opinion of the Chief of Police, City Manager, The City Council, or other authorized representative of the City, constitutes a public nuisance as detailed within this Article after due notice to parties of interest that could be affected pursuant to the process as provided within this Article. The City of Hinton shall rely upon information deemed necessary to ascertain a factual and rational basis for the abatement of any such public nuisance.

WHEREAS, the City Council is committed to becoming more vigilant respecting all matters involving public nuisance abatement threatening the general welfare of the residents of the City of Hinton;

WHEREAS, in order to facilitate the public good and promote the general public welfare, the City Council has determined that there are public nuisances that without abatement affect the general welfare of the residents of the City of Hinton;

WHEREAS, the city needs a new ordinance to enforce certain public nuisance abatements;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL, AS FOLLOWS: THAT ARTICLE \_\_\_\_ OF THE CODIFIED ORDINANCES OF THE CITY OF HINTON BE ENTITLED ORDINANCE TO ABATE PUBLIC NUISANCE AND DISCOURAGE DRUG ACTIVITY IN RENTAL HOUSING WITHIN THE CITY OF HINTON, WEST VIRGINIA.

IS HEREBY ENACTED AS FOLLOWS:

(1). The provisions of this Article shall apply to all public nuisances of premises used for illegal activity as hereinafter designated which are now in existence or which may hereafter exist in the City.

(2). Drug and Gang Houses, Houses of Prostitution and Other Disorderly Houses are hereby defined as follows:

(a). Any premises used for prostitution; illegal gambling; illegal possession, storage, or delivery of or trafficking in controlled substances, or other illegal drug activity; is hereby declared to be a public nuisance; provided that no public nuisance or violation of this Article shall be deemed to exist unless:

- The property is used in connection with two or more such offenses or incidents within any twelve-month period, or
- The offense for which the property is used in connection with is punishable by imprisonment for one year or more.

(3). Any person who owns, manages or controls any premises and who:

(a). Encourages, permits, or knew or should have known an illegal activity described in this Article has occurred or continuing to occur on such premises; or

(b). Fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to this Article, or subsequently agreed to, or other abatement measures which successfully abate the nuisance within the 30-day period following the notice, or within any other agreed upon period, shall be subject to a fine according to the schedule set forth in this Article;

(4). The Chief of Police, City Manager, or other authorized representative of the City may bring an action to abate a public nuisance described by this Article in the Municipal Court of Summers County, West Virginia.

(5). The Chief of Police, City Manager, or other authorized representative of the City shall issue an Order of Abatement upon a finding by the Municipal Judge of liability under this Article.

(6). The Order of Abatement shall require the Defendant/Respondent/Responsible Party of Interest to take measures reasonably calculated to prevent the recurrence of the illegal activity.

(7). The Order of Abatement may also authorize the issuance of search warrants, by the Municipal Court, reasonably calculated to determine whether the nuisance has been abated or whether the Order of the Court has been obeyed.

(8). PENALTY

(a). Each day that a violation of this Article continues shall be considered a separate and distinct offense.

(b). No person shall be found in violation of this Article unless the City proves by a preponderance of the evidence that the abatement measures were reasonable and warranted, and that the Defendant/Respondent/ Responsible Party of Interest knowingly failed to implement them.

(c). Upon a finding of liability under this Article, the Defendant/Respondent/Responsible Party of Interest shall be fined: not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) per offense.

(9). APPEALS AND ENFORCEMENT.

In the event that such Defendant/Respondent/Responsible Party of Interest/Property Owner, tenant, business manager and/or licensee, etc., may be aggrieved by such declared Order of Abatement which may include and not be limited to penalties imposed, revocation or suspension of any licensures and/or the restricted use of such property wherein a public nuisance or violation of this Article having been deemed to exist, such aggrieved party may petition for such party seeking such review which must be filed with the Circuit Court of Summers County, West Virginia, within a period of thirty (30) days from and after the date of final action by the Municipal Court of Summers County, West Virginia. Any such review shall be required to pay the costs, bonds and fees incident to transcribing, certifying and transmitting

the records pertaining to such matter to the Circuit Court. Any such party so affected has the right to apply to the Circuit Court for a temporary injunction pursuant to the provisions of the W. Va. Code. The Municipality is also entitled to any and all appropriate judicial relief, including reasonable fees and costs expended in defending its actions to abate such public nuisances.

(10). SEVERABILITY.

If any section, subsection, provision, clause, or phrase of this Article or the application thereof to any party, person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, subsections, provisions, clauses or phrases or applications of the chapter, and to this end each and every article, section, subsection, provision, clause and phrase of this chapter is declared to be severable.

The above article is in addition to and not dependent upon other sections of this Code.

(11). This Ordinance shall be adopted upon passage and approval by the Hinton City Council.

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Mayor, Jack Scott

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