

**AN ORDINANCE AMENDING, ENACTING AND RE-ENACTING THE OFFICIAL CODE OF THE CITY OF BRIDGEPORT, HARRISON COUNTY, WEST VIRGINIA, BY ADDING TO PART FIVE THEREOF A NEW ARTICLE DESIGNATED AS ARTICLE 546, HEREIN DEFINING A NUISANCE PROPERTY; CREATING A PROHIBITION ON THE MAINTAINING OF A NUISANCE PROPERTY; PROVIDING FOR THE ISSUANCE OF AN ORDER OF ABATEMENT REASONABLY CALCULATED TO PREVENT THE REOCCURRENCE OF A NUISANCE PROPERTY; PROVIDING A PENALTY FOR ANY OWNER THAT ENCOURAGES OR PERMITS THE OWNER'S PROPERTY TO BE A NUISANCE PROPERTY; AND, PROVIDING A PENALTY FOR AN OWNER THAT FAILS TO IMPLEMENT REASONABLE AND WARRANTED ABATEMENT MEASURES CONTAINED IN AN ABATEMENT ORDER.**

**WHEREAS**, West Virginia Code §8-12-5(13) grants the governing body of a municipality plenary power and authority to adopt such ordinances to prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome; and,

**WHEREAS**, West Virginia Code §8-12-5(18) grants the governing body of a municipality plenary power and authority to adopt such ordinances to arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or under his control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting the same; and,

**WHEREAS**, West Virginia Code §8-12-5(23) grants the governing body of a municipality plenary power and authority to adopt such ordinances to provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of the majority of the governing body is a public nuisance; and,

**WHEREAS**, West Virginia Code §8-12-5(44) grants the governing body of a municipality plenary power and authority to adopt such ordinances to protect and promote public morals, safety, health, welfare and good order; and,

**WHEREAS**, West Virginia Code §8-12-5(58) grants the governing body of a municipality plenary power and authority to adopt such ordinances to provide penalties for the offences and violations of law; and,

**WHEREAS**, the governing body of the City of Bridgeport, after careful consideration, has determined that illicit activities, such as illegal possession, storage, delivery or trafficking in controlled substances, illegal paraphernalia and illegal drugs, illegal gambling, dog fighting and prostitution occurring on Property in the City of

Bridgeport is dangerous, offensive and unwholesome and further such acts injure the public; and,

**WHEREAS**, the governing body of the City of Bridgeport, after careful consideration, has determined that illicit activities, such as illegal possession, storage, delivery or trafficking in controlled substances, illegal paraphernalia and illegal drugs, illegal gambling, dog fighting and prostitution occurring on property in the City of Bridgeport is a public nuisance; and,

**WHEREAS**, the governing body of the City of Bridgeport, after careful consideration, has determined that adopting an ordinance prohibiting property in the City of Bridgeport for being used for the above-cited illicit activities is necessary to protect and promote public morals, safety, health, welfare and good order within the City; and,

**WHEREAS**, the governing body of the City of Bridgeport, after careful consideration, has determined that adopting an ordinance providing a mechanism for the abatement of properties within the City that constitute a public nuisance is necessary to protect the health and safety of the public; and,

**WHEREAS**, the governing body, after careful consideration, finds it has a significant interest in preventing injury and annoyance to the public and individuals from properties that constitute a public nuisance; and,

**WHEREAS**, the governing body, after careful consideration, finds it has a significant interest in protecting the safety, health and welfare of the public from properties which constitute a public nuisance; and,

**WHEREAS**, the governing body, after careful consideration, has determined it necessary and proper in order to promote and protect the safety, health and welfare of the municipality to provide regulations prohibiting an owner from maintaining a property that constitutes a public nuisance and to provide for the abatement of properties that constitute a public nuisance subject to the rules and regulations prescribed in this Ordinance.

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BRIDGEPORT, WEST VIRGINIA:**

**546.01 PURPOSE.**

(a) The City has determined that illegal possession, delivery, storage or trafficking in controlled substance or other drug activities and illicit activities such as prostitution, and gang related activities are occurring more frequently in the City of Bridgeport and the occurrence of such activities constitutes a public nuisance which must be abated.

(b) The purpose of this article is to promote the public health and safety for the citizens and visitors to the City by preventing occurrence and reoccurrence of illicit activities on Property within the corporate limits of the City.

#### **546.02 SCOPE.**

This article applies to all hotels, rental properties, residential structures, apartment complexes, apartment buildings and apartments within the City.

#### **546.03 DEFINITIONS.**

For the purpose of this article, the terms listed below shall be assigned the following definitions:

- (a) "Abatement" means measures directed to prevent any illicit activities which may create a Nuisance Property.
- (b) "Abatement Order" means an order entered by the municipal court containing measures and requirements reasonably calculated to prevent the recurrence of a Property becoming a Nuisance Property
- (c) "Apartment" means any unit which is offered in whole or part for residential purposes and for which remuneration is received.
- (d) "Apartment Building" means any structure containing two or more apartments.
- (e) "Apartment Complex" means any property on which there is affixed two or more apartment buildings.
- (f) "Illicit Activities" means illegal possession, storage, delivery or trafficking in controlled substances or illegal paraphernalia or illegal drugs, illegal gambling, dog fighting or prostitution, any activity deemed a public nuisance.
- (g) "hotel" means any facility, building or buildings, publicly or privately owned, including a facility located in a State, County or Municipal park, in which the public may, for a consideration, obtain sleeping accommodations. The term shall include, but not be limited to, boarding houses, hotels, motels, inns, courts, lodges, cabins and tourist homes.
- (h) "manager or person in control" means an individual person or persons upon which the Property Owner has conferred authority upon to oversee and regulate the use of the Property.
- (i) "Nuisance Property" means a property which meets the criteria set forth in Section 546.04.
- (j) "Property" means any real estate on which a hotel, rental property, residential structure, apartment complex, apartment building or apartment is affixed, including land, and that which is affixed, incidental, or appurtenant to the real estate. For Property consisting of more than one unit, the term Property may refer to a specific unit or to the portion of the Property on which Nuisance Activity has occurred or is occurring. Property may also include areas used in common by all units of the Property, including without limitation, other structures erected on the Property and areas used for parking, loading, and landscaping.

- (k) "Property Owner" means the owner of record of any tract or parcel of real estate within the City of Bridgeport, as reflected by the records maintained in the office of the Clerk of the County Commission of Harrison County, West Virginia, but may also include the grantee or transferee of any interest in any real estate situated within the City by an owner-financed sale evidenced by written agreement, such as a land contract.
- (l) "Rental Property" means any commercial or residential structure which is offered in whole or part for residential or commercial purposes and for which remuneration is received.
- (m) "Residential Structure" means any structure occupied by the actual property owner or by any person or persons related thereto by blood, marriage or adoption and where no remuneration is received.
- (n) "Unit" means a single unit in any Apartment Building or Hotel that provides independent living or sleeping facilities for one or more persons.

#### **546.04 NUISANCE PROPERTY.**

- (a) Any Property, as defined herein, used for any illicit activity as defined herein, is hereby deemed a Nuisance Property.

#### **546.05 PROHIBITION ON MAINTAINING A NUISANCE PROPERTY.**

- (a) Any Property Owner, manager or person in control of any Property deemed to be a Nuisance Property and who:

- (1) Encourages or permits any illicit activity as described herein to occur or continue on said Property; or

- (2) Fails to implement reasonable and warranted abatement measures as designated in Article 546.06 Order of Abatement, or measure subsequently agreed to or other abatement measure within the 30-day period following the Order of Abatement, or any agreed upon period of time, shall be subject to fines as set forth in Article 546.07 Violation Penalties.

#### **546.06 ORDER OF ABATEMENT.**

- (a) The Chief of Police, Community Development Director, or other authorized representative of the city may bring an action to abate a Nuisance Property, in the form of a citation to be commenced in the name of the City in a court of competent jurisdiction, which shall include the Bridgeport Municipal Court, which is hereby conferred such authority hereunder.

- (b) Upon a finding by the Municipal Court that the Property is a Nuisance Property as defined in Section 546.04(a), the Municipal Court, in consultation with the Chief of Police, Community Development Director or other authorized representative of the City, shall issue an Order of Abatement.

(c) The Order of Abatement shall contain requirements for the Property Owner to initiate measures reasonably calculated to prevent the recurrence of the Property as constituting a Nuisance Property.

(d) The Order of Abatement may also authorize the issuance of search warrants reasonably calculated to determine whether the nuisance has been abated or whether the order of the court has been obeyed.

(e) The Order of Abatement may require Property Owner, manager or person in control of the Property to secure background checks on future tenants prior to allowing occupancy, require Property Owner, manager or person in control of the Property to conduct routine inspections of Property or units comprising the Property; and, such other requirements reasonably calculated to prevent the recurrence of the Property as a Nuisance Property.

**546.07 PENALTY.**

(a) Violation of this article shall constitute a strict misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) per occurrence provided that:

- (1) No person shall be found in violation of 546.05(a)(2) unless the City proves by a preponderance of the evidence that the abatement measures were reasonable and warranted and proves beyond a reasonable doubt that the defendant knowingly failed to implement them.
- (2) A person may be found in violation of 546.05(a)(1) regardless of whether an Order of Abatement is issued.
- (3) A person may be found in violation of 546.05(a)(2) only after an Abatement Order has been issued.

(b) Each day that such violation continues shall be considered a separate and distinct offense.

**ADOPTED** by the Council of the City of Bridgeport on second and final reading this \_\_\_\_ day of \_\_\_\_\_, 2019.

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MAYOR

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RECORDER