

**Ordinance 2022-07**

**CITY OF WESTON ON-SITE CITATION ORDINANCE**

WHEREAS the City of Weston intends to pass an ordinance to create more methods to abate nuisances in the City,

WHEREAS, West Virginia Code §8-12-5(10) authorizes municipalities to prohibit the accumulation and require the disposal of garbage, refuse, debris, waste, ashes, trash, and other similar accumulations whether on private or public property;

WHEREAS, West Virginia Code §8-12-5(23) permits municipalities 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 governing body is a public nuisance;

WHEREAS, the City of Weston has determined that its Municipal Court is better suited to handle particular nuisances issues;

WHEREAS, the City of Weston now adopts the following ordinance, to be known as the "On-Site Citation Ordinance"

**§1 ADOPTION**

The City of Weston enacts this On-Site Citation ordinance. This ordinance becomes effective the day after it is passed. Any prior On-Site Citation ordinance ("prior codes") are hereby repealed and replaced with this ordinance. Any penalties or civil actions instituted under prior codes are still in effect until the resolution of such penalties or civil actions.

**§2 PUBLIC NUISANCE DEFINED**

For the purpose of this article, a public nuisance shall be taken to mean a thing or act, committed or permitted, failure to act, occupation or use of property which:

- (a) Shall annoy, injure or endanger the safety, health, comfort or repose of any number of persons;
- (b) Shall offend the public decency;
- (c) Shall unlawfully interfere with, obstruct or tend to obstruct or render dangerous for passage, any public park, public playground, street, alley or highway; or,
- (d) Shall in any way render any number of persons insecure in life or in the use and enjoyment of their property.

**§3 NUISANCES AFFECTING HEALTH.**

The following are hereby declared to be public nuisances affecting health:

- (a) All decayed or unwholesome food offered for sale to the public, or kept or maintained so as to be obnoxious.
- (b) All diseased animals running at large.
- (c) All ponds, pools of water, or vessels holding stagnant water in which mosquitoes can breed.
- (d) Carcasses of animals not buried or otherwise disposed of in a sanitary manner within eighteen hours after death.

City of Weston On-Site Citation Ordinance 2022 Ordinance No. 2022-07

- (e) Accumulation of manure or rubbish which are breeding places for flies, mosquitoes or vermin.
- (f) Privy vaults and garbage cans which are not fly tight.
- (g) All noxious weeds and other rank growth of vegetation upon public or private property.
- (h) All public exposure of persons having contagious disease.
- (i) All other acts, omission of acts, occupations and use of property which are in fact a menace or detriment to the public health, including nuisances that may also be identified under the West Virginia State Building Code as adopted by the City of Weston.

**§4 NUISANCES AFFECTING MORALS.**

The following are hereby declared to be public nuisances affecting public morals and decency:

- (a) All gambling devices, slot machines and punchboards, not permitted by State statute.
- (b) All houses, apartments, tenements, or any part or parts thereof, kept for the purpose of prostitution or promiscuous sexual intercourse and houses of ill fame and bawdy houses.
- (c) All places where intoxicating liquors are manufactured, sold, bartered or given away in violation of law, or where persons are permitted to resort for the purpose of drinking intoxicating liquors kept for sale, barter or distribution in violation of law, and all liquors, bottles, kegs, pumps, bars and other property kept at and used for maintaining such a place.
- (d) Any vehicle used for any immoral or illegal purpose.
- (e) All indecent or obscene pictures, books, pamphlets, magazines and newspapers.
- (f) Betting, bookmaking, selling baseball pools, race horse pools, and all apparatuses used in such connection. This ordinance shall not apply to any gambling that the state of West Virginia has deemed to be legal.
- (g) Gambling houses and all poolrooms where minors under the age of eighteen years are permitted to enter and are permitted to loaf and loiter therein; where punchboards, slot machines, race horse pools, baseball pools or any other scheme, device or apparatus is kept and promoted which constitutes a game of chance, gambling device or any other scheme by whatsoever name known which is classed as and is defined by state statute as a game of chance.

**§5 NUISANCES AFFECTING PEACE AND SAFETY.**

The following are declared to be public nuisances affecting peace and safety:

- (a) All snow and ice not removed from public sidewalks in accordance with rules and regulations promulgated by the City Manager and approved by Council.
- (b) All limbs of trees which project over a sidewalk or street and which are less than eight feet above the surface of such public sidewalk or ten feet above the surface of such street.
- (c) All buildings, walks or other structures which have been damaged by fire, decay or otherwise, and which are so situated as to endanger the safety of the public.
- (d) All explosives, flammable liquids and other dangerous substances stored in any manner or in any amount other than that provided by this Code or other ordinance of the City.
- (e) All use or display of fireworks, except as provided by this Code or other ordinance of the City.
- (f) All loud or unusual noises, either made or permitted to be made or condoned, and annoying vibrations, which offend the peace and quiet of persons of ordinary sensibilities.
- (g) Obstructions and excavations affecting the ordinary use by the public, of streets, alleys and sidewalks, or public grounds, except under such conditions as are provided by this Code or other ordinance of the City.

(h) All hanging signs, awnings and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety.

(i) The allowing of rainwater, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.

(j) All barbed-wire fences which are located within three feet of any public sidewalk or thoroughfare.

(k) The distribution of handbills, except as provided by this Code and other ordinance of the City.

(l) All abandoned or discarded items of personal property, junk or collection of equipment exposed to public view, including automobiles, furniture, stoves, refrigerators, freezers, cans, boxes and containers.

#### **§6 DEPOSITING MATERIAL IN WATERWAYS IN THE CITY.**

(a) No person shall deposit or throw or cause to be deposited or thrown any offal from any slaughterhouse or any other building or any dead animals or fowl or other deleterious material into the waterways of Weston or its tributaries within the corporate limits of the City.

(b) Upon conviction of a violation of any provision of the first paragraph of this section, the person so convicted shall have a reasonable time to remove the offal or dead animal or fowl or other deleterious material involved in the conviction, within the discretion of the Chief of Police, but such time shall not exceed two (2) days.

#### **§7 COMPLAINTS; NOTICE.**

(a) The Police Chief, any police officer, the Chief of the Fire Department, and the City Building Code Official or his designee, shall have the authority to identify nuisances and provide a warning to the alleged violator. Said warning shall give the violator a reasonable amount of time to abate the nuisance. In the event that the alleged violator does not abate the nuisance within the time given, the City official issuing the warning shall issue a citation to the alleged violator.

(b) Upon receipt of a violation, the alleged violator shall:

1. Pay the citation to the City of Weston and alleged violator abate the nuisance; or

2. Appeal the citation to the Weston Municipal Court. The amount of said fine shall be used as bond for Municipal Court purposes. Upon a finding of guilty or upon a failure to appear, the alleged violator shall adhere to whatever resolution the Weston Municipal Court orders, including, but not limited to, the alleged violator forfeiting the bond. If the Weston Municipal Court rules in favor of the alleged violator, the Municipal Court shall release the citation fine/bond amount back to the alleged violator.

(c) Upon issuing a citation, the city official issuing said citation shall provide the Municipal Court with a copy of the citation. This citation shall be considered the alleged violator's notice to appear in Municipal Court. The Municipal Court shall provide the alleged violator a date, time, and place to appear before the Court and to show cause why such nuisance should not be abated. Such notice shall be served, as other legal notices are served, on the owner, lessee, agent, manager in charge, or any servant or employee in charge or control of the premises where the nuisance in question is alleged to exist, at least five days prior to the time set therein for the hearing before Council.

- (d) If the alleged violator does not pay the fine and fails to appear in Municipal Court, then the alleged violator shall be subject to any particular legal measures the Municipal Court deems necessary to address the situation, including but not limited to, any applicable warrant that applies to the situation.

#### **§8 HEARING BEFORE MUNICIPAL COURT**

Pursuant to notice, the Court shall conduct a hearing pursuant to this article, at which hearing both the complainant and the person so charged with maintaining such nuisance, together with such witnesses as they may produce shall be fully heard. Upon such hearing a continuance for proper cause shown may be granted at the instance of either party. If upon the hearing of the matter the Court shall determine that such nuisance exists as charged in the complaint, it shall provide an order for its abatement as follows:

- (a) If such nuisance be in a place of business or other establishment for the conduct of which the City has issued a license, then such license may be revoked.
- (b) If the nuisance found to exist be that of conducting a house of ill fame bawdy house, house of prostitution, gambling house, or place for the handling, sale or other disposition of intoxicating liquors contrary to the statutes of the state or the provisions of this Code or other ordinances of the City, the Court order may order said nuisance to be abated within any means authorized by city, state, or federal law.
- (c) If any nuisance be found to exist other than those specially enumerated in subsections (a) and (b) hereof, and the provisions of this ordinance does not provide for its abatement, the Court may issue a warrant, upon the complaint of any official of the City, or any bona fide resident, filed before the Court, and prosecution shall immediately be had of any person shown to be maintaining or harboring such nuisance.

#### **§9 RESPONSIBILITY OF OWNERS, LESSEES, TENANTS.**

- (a) Any person having control over any premises upon or in which a nuisance is maintained or harbored in violation of this article whether he be the owner, lessee, sublessee, tenant, occupant or the agent or manager in charge for any such owner, lessee, sublessee, tenant or occupant thereof, shall be subject to the provisions of this article and may be proceeded against in all respects as fully as is provided in the foregoing provisions of this article with reference to the occupant of such premises.
- (b) Prosecutions under this article shall not be deemed to be exclusive, but shall be in addition to all other penalties provided by any other provision of this Code or other ordinance of the City authorizing the prosecution and conviction for any violation of the provisions of this Code or other ordinances of the City, even though the result of the offense charged would be the setting up, maintaining or harboring of a nuisance and within the purview of this article.

#### **§10 FINES AND PENALTIES**

For §3, §4, and §5, the fine for a:

- first offense shall be between \$100 and \$250, at the discretion of the Weston Municipal Court;

City of Weston On-Site Citation Ordinance 2022 Ordinance No. 2022-07

- second offense for the same nuisance committed within 12 months shall be between \$501 and \$750, at the discretion of the Weston Municipal Court;
- third offense for the same nuisance committed within 12 months shall be between \$751 and \$1000, at the discretion of the Court; and
- Any subsequent offenses shall be penalized in a manner deemed suitable by the Weston Municipal Court, which may include any jail time allowed by law.

The Weston Municipal Court shall have the authority to order the City of Weston, or its designees, to abate any nuisance, with the costs of said abatement being charged as a lien against the property or as a debt to the alleged violator that may be paid by the alleged violator in a manner suitable to the City of Weston.

An alleged violator has the right to appeal any Weston Municipal Court to any court of competent jurisdiction. An alleged violator shall have 14 calendar days to appeal any Weston Municipal Court order related to this ordinance.

**§11 RELATIONSHIP TO STATE BUILDING CODE**

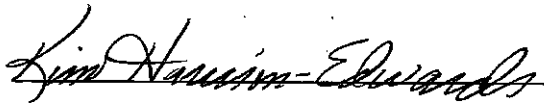
Nothing in this ordinance is intended to supplant the City's ability to utilize the Codes Appeals Board for purposes related to enforcement of the West Virginia State Building Code as adopted by the City of Weston. This ordinance is just another mechanism to help identify and abate various public nuisances.

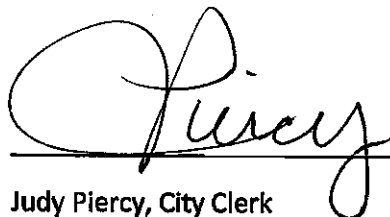
**§99 GENERAL PENALTY**

Any person who shall knowingly cause or create any public nuisance or permit any public nuisance to be created or to be placed upon or to remain upon any premises owned or occupied by him, shall be guilty of a misdemeanor, and shall, in addition to all other penalties provided for in this ordinance be subject to fines and penalties of other relevant sections of the Weston City Code. After an order for the violator to abate a nuisance has been issued, each day a nuisance is maintained or harbored shall constitute a separate offense and may be proceeded against by separate prosecution until such nuisance is abated.

First Reading March 7, 2022

Second Reading April 4, 2022

  
Kim Harrison-Edwards, Mayor

  
Judy Piercy, City Clerk