

CITY OF HAGERSTOWN, MARYLAND

AN AMENDED ORDINANCE TO AMEND THE CODE OF THE CITY OF HAGERSTOWN, CHAPTER 95 THEREOF, *EXCESSIVE USE OF POLICE SERVICES*, TO REPEAL AND RE-ENACT CHAPTER 95, AS *EXCESSIVE USE OF CITY SERVICES*, TO ADD OR AMEND CERTAIN DEFINITIONS, TO ESTABLISH A DEFINITION FOR CHRONIC NUISANCE PROPERTY, TO AMEND THE MINIMUM NUMBER OF QUALIFYING CALLS WHICH MUST BE MET PRIOR TO BECOMING A CHRONIC NUISANCE PROPERTY, TO ESTABLISH A MINIMUM NUMBER OF PROPERTY MAINTENANCE CODE VIOLATIONS WHICH MUST BE MET PRIOR TO BECOMING A CHRONIC NUISANCE PROPERTY, TO ESTABLISH THE POSITION OF ADMINISTRATIVE HEARING OFFICER TO REVIEW APPEALS THEREOF AND TO MAKE OTHER AMENDMENTS CONSISTENT THEREWITH

RECITALS

WHEREAS, the Mayor and Council previously adopted Chapter 95 of the City Code to establish a process for identifying and provide penalties for excessive use of police services at properties in Hagerstown; and

WHEREAS, the Mayor and Council desire to amend the aforesaid Chapter 95 to establish a definition for a chronic nuisance property thereunder; and

WHEREAS, the Mayor and Council desire to amend the aforesaid Chapter 95 to amend the minimum number of qualifying calls thereupon for different enumerated types of property which will constitute chronic nuisance status; and

WHEREAS, the Mayor and Council desire to amend the aforesaid Chapter 95 to establish a minimum number of Property Maintenance Code violations which must be met prior to a property achieving chronic nuisance status; and

WHEREAS, the Mayor and Council desire to establish a new appeal process, appointing an Administrative Hearing Officer; and

WHEREAS, the Mayor and Council find it to be in the best interests of the citizens of the City of Hagerstown to do so;

NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

Section 1. The Code of the City of Hagerstown be and is hereby amended by deleting and repealing Chapter 95, *Excessive Use of Police Services*.

Section 2. The Code of the City of Hagerstown is hereby amended by adding thereto a new chapter, to replace Chapter 95 hereinabove repealed, to be Chapter 95, *Excessive Use of City Services* to read as follows:

SEE ATTACHED TEXT OF CHAPTER 95

Section 3. Effective Date. This Ordinance shall become effective immediately upon the effective date of this Enacting Ordinance.

BE IT FURTHER RESOLVED, ENACTED AND ORDAINED that this Enacting Ordinance shall become effective at the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL


Donna Spickler, City Clerk

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND


David S. Gysberts, Mayor

Date of Introduction: January 28, 2014
Date of Passage: March 18, 2014
Effective Date: April 18, 2014

PREPARED BY:
NAIRN & BOYER, LLC
City Attorney

**CHAPTER 95
EXCESSIVE USE OF CITY SERVICES**

§95-1 Purpose.

It is the intended purpose of the Mayor and Council of the City of Hagerstown by the adoption of this Chapter to impose on and collect from the owner of a property the costs incurred for police and law enforcement services and code administration services which are over and above the costs of providing normal police protection, law enforcement and code administration services, if said excess costs are spent to abate a nuisance which has occurred or is maintained and permitted on the property. The collection of the costs for such excessive services shall be by assessment of a fee against the property upon which the nuisance occurs, pursuant to the authority contained Sections 401 and 402 of the City Charter and Section 223-11 of the City Code authorizing the abatement of nuisances and the collection of costs by assessment against a property. Any assessment of a fee pursuant to this Chapter shall be in addition to, and not in substitution of the enforcement of any other provisions of the City Code or Maryland law.

§95-2 Definitions.

ADMINISTRATIVE HEARING OFFICER – An independent hearing officer appointed by the Mayor with approval of the City Council to review appeals of the application of this Chapter.

APARTMENT COMPLEX – A single structure that consists of twenty-five (25) or more separate units used for residence or domicile purposes. Apartment complex shall also include two (2) or more multi-unit residential structures under common ownership and located on the same premises.

CHRONIC NUISANCE PROPERTY - For purposes of this Chapter chronic nuisance property shall be any property where the occurrence or commission of behavior which results in the following number of separate HPD qualifying calls occurred at said property within any twelve month period:

<u>Type of Property</u>	<u>Minimum # of Qualifying Calls</u>
Commercial Property	8
Residential Property (1 or 2 units)	3, or 2 if at least one of which constitutes a felony under Maryland law.
Multi-Unit Residential Structure (3-24 units)	4 total, or 3 to any individual unit within the structure, or 2 to any individual unit within the structure if at least one of which constitutes a felony under Maryland law.
Apartment Complex (25-49 units)	6 total, or 3 to any individual unit within the complex, or 2 to any individual unit within the complex if at least one of which constitutes a

Apartment Complex (50-99 units)	felony under Maryland law. 8 total, or 3 to any individual unit within the complex, or 2 to any individual unit within the complex if at least one of which constitutes a felony under Maryland law.
Apartment Complex (100 – 199 units)	10 total, or 3 to any individual unit within the complex, or 2 to any individual unit within the complex if at least one of which constitutes a felony under Maryland law.
Apartment Complex (200 - 399 units)	12 total, or 3 to any individual unit within the complex, or 2 to any individual unit within the complex if at least one of which constitutes a felony under Maryland law.
Apartment Complex (400 or more units)	14 total, or 3 to any individual unit within the complex, or 2 to any individual unit within the complex if at least one of which constitutes a felony under Maryland law.

Chronic Nuisance Property shall also mean any privately owned property, regardless of type, at which there have been at least 3 Code Administration notices of violation issued within any twelve month period for a violation from among the following qualifying property maintenance standards:

- Chapter 64-8, Section 302.1, Sanitation.
- Chapter 64-8, Section 302.4, Weeds.
- Chapter 185, Nuisance Abatement (Weeds, Trash and Debris Abatement Ordinance).

CITY – The City of Hagerstown, Maryland.

COMMERCIAL PROPERTY - Shall mean property that is maintained, at least in part, for business or commercial purposes.

CODE ADMINISTRATION – Shall mean the Planning and Code Administration Division of the Department of Community and Economic Development of the City.

DISTURBANCE - For the purposes of this Chapter a disturbance shall mean conduct consisting of any of the following:

- Controlled dangerous substance or paraphernalia, possession or sale;
- Disorderly conduct;
- Disturbing the peace;
- Liquor law violation, public consumption or open container of alcohol;
- Loud noise complaint;

Loitering;
Prostitution;
Public urination or indecent exposure;
Undesirable, intoxicated or suspicious person; or
Any conduct which constitutes a felony under Maryland law.

Disturbance shall not include calls for service for domestic violence issues.

HPD - Shall mean the Hagerstown Police Department.

MULTI-UNIT RESIDENTIAL STRUCTURE - Shall mean a structure that is maintained, at least in part, as a residence or domicile. For purposes of this Chapter a multi-unit residential structure shall not include a property that has less than 3 separate units used for residence or domicile purposes, nor shall it include a property which qualifies as an apartment complex hereunder

NOTICE - For purposes of this Chapter notice shall mean personal service to any owner, or delivery by first-class mail to any owner and posting of the subject property. The effective date of such notice shall be the date upon which the notice is issued by the City.

PROPERTY - Shall mean any privately owned property within the corporate limits of the City of Hagerstown. Any public or governmental property is specifically excluded.

QUALIFYING CALL - Means that a sworn officer of HPD has been dispatched to, responds to, or otherwise comes upon a situation at a property as a result of certain conduct of the owner, tenant, occupant, patron, guest, or other person present with the implied or express permission of the owner, at or about said property and HPD verifies that said conduct qualifies as a disturbance as defined herein.

RESIDENTIAL PROPERTY - A property that is maintained, at least in part, as a residence or domicile. For purposes of this Chapter a residential property shall not include a property that has 3 or more separate units used for residence or domicile purposes.

§95-3 Notice of Nuisance.

Whenever a qualifying call occurs and/or when a property qualifies as a chronic nuisance property pursuant to this Chapter, the City shall issue a written notice to any owner of said property advising the notice recipient of the following:

- A. A description of the property sufficient to reasonably identify the premises.
- B. An itemization of the dates of all HPD qualifying calls and/or Code Administration notices of violation and a brief description of the related circumstances giving rise to the qualifying calls and/or notices of violation.

- C. That a qualifying call has occurred and/or the property has been deemed a chronic nuisance property for the assessment of fees pursuant to this Chapter for excessive use of City services.
- D. Properties deemed a chronic nuisance property shall have that designation for one year from the date of such notice.
- E. That a fee in the amount of \$100.00 for the first offense, \$250.00 for a second offense, and \$500 for a third or subsequent offense shall be imposed against the property for each HPD qualifying call occurring or Code Administration notice of violation issued for a qualifying property maintenance standard on, at or in the property while the property is deemed a chronic nuisance property. That any such fee assessment shall be payable by the owner(s) of said property and shall constitute a lien on the property to be collected as municipal taxes are collected.
- F. That any affected owner shall have the right to appeal to the Administrative Hearing Officer in writing to contest the notice and to show cause why the property should not be deemed a chronic nuisance property.

§95-4 Chronic Nuisance Property List.

The City shall maintain and annually publish a list of those properties currently deemed chronic nuisance properties as a result of HPD qualifying calls by street address and property owner. The City shall maintain a list of those properties currently deemed Chronic Nuisance Properties as a result of Code Administration qualifying notices.

§95-5 Violation/Fee Assessment.

The City shall issue against a property, written notice of a fee assessment of \$100.00 for a first offense, \$250.00 for a second offense, and \$500 for a third or subsequent offense, for each HPD qualifying call or Code Administration notice of violation arising out of conduct or a condition on, at or in the property, which occurs while the property is deemed a chronic nuisance property. Written notice of any such fee assessment shall be made to any owner of said property. Each HPD qualifying call or Code Administration notice of violation shall constitute a separate and distinct offense and shall give rise to a separate fee assessment. The fee assessment may be collected in the same manner as municipal taxes are collected pursuant to Chapter 223-11 hereof.

In addition to the fee assessments contained herein, the Crime Free Housing Operator's certification issued to the owner, landlord or designated agent pursuant to Chapter 197 is subject to denial, suspension or revocation for a violation of this Chapter, pursuant to Chapter 197-10.

§95-6 Appeal.

A. Any owner of property directly affected by an action of the City for a violation of this Chapter shall have thirty (30) days from the date upon which notice is issued to file an appeal in writing to the Administrative Hearing Officer, stating why the action is invalid or incorrect in whole or in part. The appeal shall be filed on the form provided by the City and must be accompanied by an appeal fee of \$50.00. Failure to file such an appeal within the time

frame required shall render the determination of the City final. Upon a proper and timely appeal, the Administrative Hearing Officer shall schedule the matter for a hearing within 45 days of the filing of said appeal. The Appellant shall be entitled to present evidence to the Administrative Hearing Officer at such hearing and shall have the burden of proving that the action taken is invalid or incorrect, in whole or in part. At the conclusion of the hearing, the Administrative Hearing Officer shall issue a final written decision on the validity of the action taken, including such order which may allow for a reduction in the fee assessment for good cause shown. Any aggrieved party may appeal the decision of the Administrative Hearing Officer to the Circuit Court for Washington County within thirty (30) days after the date upon which a final written decision is issued.