

AN ORDINANCE AMENDING THE CODIFIED LAWS OF THE CITY OF WHEELING ENACTING PART FIVE, GENERAL OFFENSES CODE, BY ENACTING ARTICLE 550 REGARDING ABATEMENT OF PUBLIC NUISANCES SUCH AS DRUG AND GANG HOUSES, HOUSES OF PROSTITUTION AND OTHER DISORDERLY PREMISES.

ARTICLE 550

Public Nuisances -- Premises Used for Illegal Activity

550.01	Purpose; public nuisance abatement	550.05	Order of abatement
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550.03	Definition of public nuisance/ premises used for illegal activity	550.07	Appeals and enforcement
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CROSS REFERENCES

Power to regulate – see W. Va. Code 8-12-5

550.01 PURPOSE; PUBLIC NUISANCE ABATEMENT.

The Council of the City of Wheeling wishes to abate anything which, in the opinion of the Chief of Police, City Manager 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 Wheeling shall rely upon information deemed necessary to ascertain a factual and rational basis for the abatement of any such public nuisance.

550.02 APPLICATION OF ARTICLE.

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.

550.03 DEFINITION OF PUBLIC NUISANCE/PREMISES USED FOR ILLEGAL ACTIVITY

Drug and Gang Houses, Houses of Prostitution and Other Disorderly Houses are hereby defined as follows:

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:

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

550.04 RESPONSIBLE PARTIES OF INTEREST AND NOTICE

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 section 550.05, 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 section 550.06.

550.05 ORDER OF ABATEMENT

- (a) 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 a Wheeling Municipal Court.
- (b) The Chief of Police, City Manager, or other authorized representative of the City shall issue an Order of Abatement upon a finding of liability under this Article.
- (c) 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.
- (d) 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.

550.06 PENALTY

- (a) Each day that a violation of this Article continues shall be considered a separate and distinct offense.
 - i. No person shall be found in violation of 550.04 (a) 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.
 - ii. A person may be found in violation of (a) of section 550.04 regardless of whether an Order of Abatement is issued under section 550.05 or in violation of 550.04 (b) regardless of whether a notice has been given under section 550.05. A fine in accordance with section 550.06 may be assessed by the Wheeling Municipal Court.

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

550.07 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 within a period of thirty days from and after the date of final action by the Municipal Court. 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.

550.08 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, in particular Section [701.28](#) of the Business and Taxation Code of the City, which provides that the Council may forthwith suspend, revoke or alter any such license when they believe the public safety will be adversely affected by the continued operation of such nuisance.

Be it further Ordained by the City Council of the City of Wheeling that this Ordinance shall take effect upon the date of adoption.

Introduced : _____

Adopted : _____

THE CITY OF WHEELING, WEST VIRGINIA,
A Municipal Corporation

By: _____
Mayor

Attest:

