

**ARTICLE 1137  
Public Nuisances**

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**CROSS REFERENCES**

Authority to abate - see W. Va. Code 8-12-5(13), (23)

**1137.01 PURPOSE.**

Strict control over nuisances on public and private property within the corporate limits of the Town is required to protect property values, preserve the historic and scenic character of the Town, protect and enhance the desirability of the Town as a place to reside and to conduct commercial and civic activities, to secure a safe, healthy and more desirable living environment for its citizens and visitors and to protect the public welfare. This article establishes rules and regulations pertaining to nuisances and provides penalties for violation.  
(Ord. 7-15-87.)

**1137.02 DEFINITION OF PUBLIC NUISANCE.**

For the purpose of this article, "public nuisance" means a thing or act, committed or permitted, failure to act, occupation or use of property which:

- (a) Annoys, injures or endangers the safety, health, comfort or repose of any number of persons;
- (b) Offends the public decency;
- (c) Unlawfully interferes with, obstructs or tends to obstruct or render dangerous for passage, any public park, public playground, street, alley or highway; or
- (d) In any way renders any number of persons insecure in life or in the use and enjoyment of their property.

(Ord. 7-15-87.)

**1137.03 ENUMERATION OF PUBLIC 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 noxious.
- (b) All ponds, pools of water, or vessels holding stagnant water in which mosquitoes can breed.
- (c) Carcasses of animals not buried or otherwise disposed of in a sanitary manner within eighteen hours after death.
- (d) Accumulation of manure or rubbish which are breeding places for flies, mosquitoes or vermin.
- (e) Privy vaults and garbage cans which are not sufficiently sealed to prevent contamination by flies or other insects.
- (f) All noxious weeds and other rank growth of vegetation upon public or private property.
- (g) All other acts, omission of acts, occupations and use of property which are in fact a menace or detriment to the public health.  
(Ord. 7-15-87.)

**1137.04 ENUMERATION OF PUBLIC NUISANCES AFFECTING PEACE AND SAFETY.**

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

- (a) All buildings, which have been damaged by fire, decay or otherwise, and which are so situated as to endanger the safety of the public.
- (b) All explosives, flammable liquids and other dangerous substances stored in any manner which may endanger the health or safety of adjoining property.
- (c) 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.
- (d) All hanging signs, awnings and other similar structures over the street or sidewalks so situated or constructed as to endanger public safety.  
(Ord. 7-15-87.)
- (e) All abandoned, discarded, junk or unused objects or equipment including, but not limited to, crafts, vehicles or motor vehicles, as further defined in subsection (e)(1) and (2) below, motor vehicle parts, washing machines, freezers, refrigerators, other appliances, cans or containers, clothing or building supplies.

Ownership as to which liability attaches shall be defined as one who has any right, title or expectancy, including a gift, loan, lease, bailment for any period of time or any and all other prospective advantage.

- (1) Abandoned crafts, vehicles or motor vehicles shall include more than one partially dismantled, craft, vehicle or motor vehicle or any abandoned or junk or otherwise non-operating craft, vehicle or motor vehicle, as defined in West Virginia Code 17 B-1-1(a), (b) and (c) and 17-1-4, and including any part of which is unattended, discarded, deserted, incapable of being operated or is unlicensed and not otherwise defined as a public nuisance, and not in an enclosed building or so located upon the premises so as not to be readily visible from any public place or from any surrounding private property or not in a licensed salvage yard or in the actual possession of a licensed demolisher and has remained so situated on any private property for a period of thirty days or an unreasonable period of time, whichever shall first occur, and/or the display of which shall be deemed unreasonable or unwarranted or habitual or endangers life or health or obstructs the reasonable and comfortable use of or which unreasonably interferes with the use, enjoyment and value of another's property.
- (2) Abandoned crafts, vehicles or motor vehicles shall include any partially dismantled craft, vehicle or motor vehicle or any abandoned or junk or otherwise non-operating craft, vehicle or motor vehicle, as defined in West Virginia Code 17 B-1-1(a), (b) and (c) and 17-1-4, and including any part of which is unattended, discarded, deserted, incapable of being operated or is unlicensed and not otherwise defined as a public nuisance, and not in an enclosed building or so located upon the premises so as not to be readily visible from any public place or from any surrounding private property and has remained so situated on any public property for a period of thirty days or an unreasonable period of time, whichever shall first occur, and/or the display of which shall be deemed unreasonable or unwarranted or habitual or endangers life or health or obstructs the reasonable and comfortable use of or which unreasonably interferes with the use, enjoyment and value of another's property.  
(Ord. 12-18-90.)

**1137.05 COMPLAINTS; NOTICE OF HEARING BEFORE JUDGE;  
EMERGENCY PROCEDURE.**

The Police Chief, any police officer or any bona fide citizen residing in the Town may file under oath a complaint against any person maintaining or harboring any nuisance enumerated in Sections 1137.03 and 1137.04. Written notice shall be served to such person, requiring him/her within ten days to either remove, otherwise abate the nuisance or file an appeal in writing to the Police Chief and also the Town Recorder.

If such complaint is filed by a citizen other than by some one of the Town officials above designated, such complaint may be laid before Council at its next regular or special session or meeting, and if Council directs, the Town Recorder shall issue a written notice to be served upon the person charged with maintaining or harboring such nuisance, requiring him, within ten days, to remove or otherwise abate the nuisance or file an appeal in writing to the Police Chief and Recorder.

Upon filing of the notice of appeal or failure to respond to the complaint or remove or abate the nuisance, the Town Recorder shall issue a notice requiring the person charged to appear before the Town Judge at a designated time and place, and to show cause, if any he/she can, why such nuisance should not be abated. Such notice shall be served, as any 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 ten days prior to the time and place set therein for the hearing before the Town Judge, and said notice shall contain a statement or specification of the charges, grounds or reasons for such proposed contemplated action.

If the complaint is filed by any Town official above named, the Town Recorder may forthwith issue such notice without the necessity of referring the complaint to Council.

In the event that the nuisance creates an immediate threat to the public health or safety, the Mayor, with the approval of at least two Council members may declare a public emergency and call for an immediate hearing before the Town Judge with the requirement for a ten day period between service of notice and court appearance waived.  
(Ord. 7-15-87.)

#### **1137.06 HEARING BEFORE TOWN JUDGE; DISPOSITION OF COMPLAINT.**

Pursuant to notice, the Town Judge shall conduct a hearing in accordance with 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 Town Judge shall determine that such nuisance exists as charged in the complaint and other ordinances of the Town do not provide for its abatement, prosecution shall immediately be had of any person shown to be maintaining or harboring such nuisance.  
(Ord. 7-15-87.)

#### **1137.07 RESPONSIBILITY OF OWNER; PROCEDURE TO BE CUMULATIVE.**

Any person having control over any premises upon or in which a nuisance is maintained or harbored in violation of this article, whether he/she is 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.

Prosecutions under this article shall not be deemed to be exclusive, but shall in addition to all other penalties provided by any other provision of this Code or other ordinance of the Town authorizing the prosecution and conviction for any violation of the provisions of this Code or other ordinances of the Town, even though the result of the offense charged would be the setting up, maintaining or harboring of a nuisance within the purview of this article.  
(Ord. 7-15-87.)

**1137.99 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, in addition to all other penalties provided for in this article or any other provisions of the Code or ordinances of the Town, be fined not more than one hundred dollars (\$100.00) for each separate offense, and 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.

(Ord. 7-15-87.)