

ORDINANCE 286

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA REVISING AND AMENDING CITY CODE §130.085, §130.086 AND §130.999 REGARDING NUISANCE PROPERTIES

WHEREAS, the Common Council has previously adopted Ordinance 223 which provided for a procedure for the City, through its Police Department, to determine that certain criminal activities at a premise may be considered a public nuisance; and

WHEREAS, the Common Council has determined that it is in the best interest of the citizens and residents of the City to amend Ordinance 223, now codified as Elkins City Code §130.085, §130.086 and §130.999;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMON COUNCIL OF THE CITY OF ELKINS THAT ELKINS CITY CODE §130.085, §130.086 and §130.999 BE AMENDED AND SHALL READ AS FOLLOWS:

NUISANCE PROPERTIES

§ 130.085 DRUG AND GANG HOUSES, HOUSES OF PROSTITUTION AND OTHER DISORDERLY HOUSES.

(A) Any premises used for prostitution; illegal gambling; illegal possession, storage or delivery of or trafficking in controlled substances, or other illegal drug activity or other illegal activity, is hereby declared to be a public nuisance, provided that no public nuisance or violation of this section shall be deemed to exist unless:

- (1) The property is used for two or more such offenses or incidents within any 12-month period; or
- (2) The offense for which the property is used is punishable by imprisonment for one year or more.

(B) Any person who owns, manages or controls any premises and who

- (1) Encourages or permits an illegal activity described in division (A) above to occur or continue on such premises; or
- (2) Fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to § 130.086, 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 § 130.999(K).

§ 130.086 ORDER OF ABATEMENT.

(A) The Chief of Police or other authorized representative of the city may bring an action to abate a public nuisance described by this section in the Elkins Municipal Court.

(B) The Chief of Police or other authorized representative of the city, when practicable, shall make reasonable efforts to provide notice to the owner of the property of the causes of the public nuisance prior to filing for the order of abatement.

(C) Upon notice the property owner shall within 72 hours provide to the Chief of Police or other authorized representative of the city an action plan to abate the public nuisance.

(D) If the Chief of Police or other authorized representative of the city is unable to make contact with the property owner or the proposed action plan is insufficient to abate the public nuisance, as determined in the sole discretion of the Chief of Police or other authorized representative of the city, then the Chief of Police or other authorized representative of the city shall proceed to file a petition requesting an order of abatement.

(E) The Municipal Judge shall, upon a petition to abate a public nuisance and finding of probable cause of a public nuisance, issue an order of abatement.

(F) The order of abatement shall require the defendant to take measures reasonably calculated to prevent the recurrence of the illegal activity or to show cause that a public nuisance does not exist.

(G) 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.

§ 130.999 PENALTY

(K)(1) Each day that a violation of §130.085 and §130.086 continues shall be considered a separate and distinct offense.

(a) No person shall be found in violation of §130.085(B)(2) unless the city proves by a preponderance of the evidence that the abatement measures were reasonable and warranted, and that the defendant knowingly failed to implement them.

(b) A person may be found in violation of §130.085(B)(1) or (B)(2) regardless of whether an order of abatement is issued under §130.086 or in violation of §130.085(B)(1) regardless of whether a notice has been given under §130.086. A fine may be assessed by the Elkins Municipal Court.

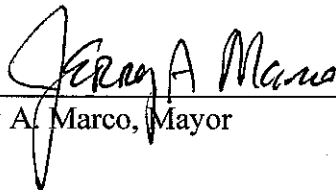
(2) Upon a finding of liability under this ordinance, the defendant shall be fined: \$100.00 for the first offense, \$200.00 for a second offense, \$500.00 for a third offense and for each subsequent offense the fine shall be \$1,000.00. PROVIDED, that if defendant has not had a second violation within twelve (12) months from the first violation, then the violation shall be considered a first offense for purposes of assessing a fine.

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective upon the date of its final adoption.

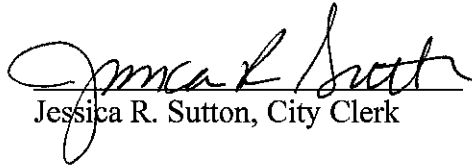
PASSED AND APPROVED ON THE FIRST READING: June 17, 2021.

PASSED AND APPROVED ON THE SECOND AND FINAL READING THIS 1st DAY OF July, 2021.



Jerry A. Marco, Mayor

Attest:



Jessica R. Sutton, City Clerk