

## ORDINANCE 2019-12

AN ORDINANCE AMENDING AND REENACTING THE CITY OF MARTINSBURG CODE, PART 5, GENERAL OFFENSES CODE, CHAPTER 5, ADMINISTRATIVE, BY AMENDING ARTICLE 552, DRUG AND GANG HOUSES, HOUSES OF PROSTITUTION AND OTHER DISORDERLY HOUSES, SECTION 552.03 PENALTY

### **Section 552.01 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; is hereby declared to be a public nuisance; provided that no public nuisance or violation of this section shall be deemed to exist unless:
- i. the property is used for two or more such offenses or incidents within any twelve-month period,  
or
  - ii. 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
- i. encourages or permits an illegal activity described in subsection (a) to occur or continue on such premises; or
  - ii. fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to section 552.02, 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 552.03.

### **Section 552.02 Order of Abatement**

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

(b) The Chief of Police, City Engineer, or other authorized representative of the city shall issue an order of abatement upon a finding of liability under this section.

(c) The order of abatement shall require the defendant 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 reasonably calculated to determine whether the nuisance has been abated or whether the order of the court has been obeyed.

### **Section 552.03 Penalty**

(a) Each day that a violation of this section continues shall be considered a separate and distinct offense.

i. No person shall be found in violation of 552.01 (b)(ii) 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.

ii. A person may be found in violation of (b)(i) or (b)(ii) of section 552.01 regardless of whether an order of abatement is issued under section 552.02 or in violation of 552.01 (b)(i) regardless of whether a notice has been given under section 552.02 . A fine in accordance with subsection (c) may be assessed by the Martinsburg Municipal Court.

**(b) Upon a finding of liability under this ordinance, the defendant shall be fined: \$250.00 for a first offence, \$500.00 for a second offense, and for each subsequent offense the fine shall be \$1,000.00. Provided, that if a 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.**

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

Introduced: November 14, 2019

Adopted: December 12, 2019

THE CITY OF MARTINSBURG, WEST  
VIRGINIA, a Municipal corporation

By: \_\_\_\_\_  
George Karos, Mayor

Attest:

\_\_\_\_\_  
\_\_\_\_\_, City Recorder