

REQUIRED MOTION

MAYOR & CITY COUNCIL HAGERSTOWN, MARYLAND

DATE: November 22, 2022

TOPIC: **Introduction of an Ordinance:** Amending Chapter 95, Excessive Use of City Services, to impose fees for police, 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 at transient housing facilities.

Charter Amendment	_____
Code Amendment	_____
Ordinance	<u> X </u>
Resolution	_____
Other	_____

MOTION: I hereby move that the Mayor and City Council introduce an ordinance to amend Chapter 95, Excessive Use of City Services, of the Code of the City of Hagerstown. These amendments will:

1. Establish definitions for transient housing facility and short-term rental;
2. Amend the definitions for commercial property, multiunit residential structure, and residential property;
3. Add Transient Housing Facility to Chronic Nuisance Property definition for HPD qualifying calls with a minimum number of 60 qualifying calls in a twelve-month period;
4. Require HPD and Code Administration to publish a list of properties deemed chronic nuisance properties annually.

DATE OF INTRODUCTION:	11/22/2022
DATE OF PASSAGE:	12/20/2022
EFFECTIVE DATE:	1/20/2023

CITY OF HAGERSTOWN, MARYLAND

**AN ORDINANCE TO AMEND THE CODE
OF THE CITY OF HAGERSTOWN, BY
AMENDING CHAPTER 95 THEREOF, ENTITLED
*EXCESSIVE USE OF CITY SERVICES***

RECITALS

WHEREAS, by virtue of State Law and the City Charter, the City of Hagerstown has the authority to regulate and require inspections of buildings within the City; and

WHEREAS, the Mayor and Council have a responsibility to maintain a safe, clean environment within the City; and

WHEREAS, contemporaneously with the enactment of this Amendment, the Mayor and Council are enacting a new Code Chapter, namely Chapter 230 *Transient Housing*;

WHEREAS, the Mayor and Council desire to assure compliance with all laws, ordinances and regulations applicable to transient facilities in the City of Hagerstown, including but not limited to Chapter 95 *Excessive Use of City Services*; and

WHEREAS, the Mayor and Council desire to clarify that violations of appeals of Chapter 95 *Excessive Use of City Services* shall be heard by the City Board of Code Appeals; and

WHEREAS, the Mayor and Council have therefore determined that it is in the best interest of the citizens of Hagerstown to amend Chapter 95, *Excessive Use of City Services*, to include transient housing facilities as that term is defined in Chapter 230, *Transient Housing* and also to clarify the appeal mechanism of Chapter 95.

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:

1. The foregoing recitals be and are incorporated herein as if restated verbatim.
2. The Code of the City of Hagerstown is hereby amended by amending Chapter 95, to read as follows:

(See Attached)

3. This amendment to the Code of the City of Hagerstown 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 upon the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna K. Spickler
City Clerk

Emily N. Keller
Mayor

Date of Introduction: 11/22/2022
Date of Passage: 12/20/2022
Effective Date: 1/20/2023

PREPARED BY:
SALVATORE & MORTON, 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 § 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.

As used in this chapter, the following terms shall have the meanings indicated:

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 25 or more separate units used for residence or domicile purposes. "Apartment complex" shall also include two or more multiunit residential structures under common ownership and located on the same premises.

CHRONIC NUISANCE PROPERTY

- A. 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 Number of Qualifying Calls</u>
Commercial property	8
Transient Housing Facility	60
Residential property (1 or 2 units)	3, or 2 if at least 1 of which constitutes a felony under Maryland law.
Multiunit residential structure (3-24 units)	4 total, or 3 to any individual unit within the structure, or 2 to any individual unit within

Apartment complex (25-49 units)	the structure if at least 1 of which constitutes a felony under Maryland law 6 total, or 3 to any individual unit within the complex, or 2 to any individual unit within the complex if at least 1 of which constitutes a felony under Maryland law
Apartment complex (50-99 units)	8 total, or 3 to any individual unit within the complex, or 2 to any individual unit within the complex if at least 1 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 1 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 1 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 1 of which constitutes a felony under Maryland law

- B. "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 64-8, Section 302.8 Motor Vehicles.

Chapter 185, Nuisance Abatement (Weeds, Trash and Debris Abatement Ordinance).

CITY

The City of Hagerstown, Maryland.

CODE

The Code of the City of Hagerstown, as from time to time amended.

CODE ADMINISTRATION

The Code Administration Division of the Planning and Code Administration Department of the City.

COMMERCIAL PROPERTY

Property that is maintained, at least in part, for business or commercial purposes excluding transient housing facilities.

DISTURBANCE

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

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

HPD

The Hagerstown Police Department.

MULTIUNIT RESIDENTIAL STRUCTURE

A structure that is maintained, at least in part, as a residence or domicile including short-term rentals. For purposes of this chapter, a multiunit residential structure shall not include a property that has less than three separate units used for residence or domicile purposes, nor shall it include a property which qualifies as an apartment complex hereunder.

NOTICE

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

Any privately owned property within the corporate limits of the City of Hagerstown. Any public or governmental property is specifically excluded.

QUALIFYING CALL

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 including short-term rentals. For purposes of this chapter, a "residential property" shall not include a property that has three or more separate units used for residence or domicile purposes.

SHORT-TERM RENTAL

As defined in the Transient Housing Ordinance, Chapter 230 of the Code.

TRANSIENT HOUSING FACILITY

As defined in the Transient Housing Ordinance, Chapter 230 of the Code excluding Short-term rental.

§ 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 for the first offense, \$250 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; and 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 or Code Administration qualifying property maintenance standards by street address and property owner.

§ 95-5 Violation/Fee assessment.

- A. The City shall issue against a property written notice of a fee assessment of \$100 for a first offense, \$250 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 § 223-11 hereof.
- B. 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 § 197-10.

§ 95-6 Appeals.

Any owner of property directly affected by an action of the City for a violation of this chapter shall have 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. 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 30 days after the date upon which a final written decision is issued.