

CHAPTER 13.

NUISANCES.

For state law as to authority of city to abate or cause to be abated public nuisances and to provide for elimination of hazards to public health and safety, see W. Va. Code, § 8-12-5(23). As to authority of city to prevent injury or annoyance to public or individuals from anything dangerous, offensive or unwholesome, see W. Va. Code, § 8-12-5(13).

As to garbage and refuse generally, see ch. 8 of this Code. As to disposition of abandoned motor vehicles, see § 11-115. As to noise generally, see ch. 12. As to water and sewers generally, see ch. 18.

Article I. In General.

- § 13-1. Certain acts, etc., prohibited and declared nuisances; violations.

Article II. Abatement.

- § 13-2. Complaint; abatement by city.
 § 13-3. Written notice.
 § 13-4. Responsibility for costs.
 § 13-5. Authority to abate.
 § 13-6. Remedies cumulative.

Article I. In General.Sec. 13-1. Certain acts, etc., prohibited and declared nuisances; violations.

(a) It shall be unlawful for any person to create, make, erect, place, maintain, conduct or operate, upon his own property or upon the property of another, or upon any public street or alley, any building, structure, excavation, machine, materials, substance, deposit, condition, noise, odor, business or operation which injures, damages or endangers or tends to injure, damage or endanger the life, health or property of any of the inhabitants of the city or which is or tends to be unnecessarily offensive, objectionable, annoying, unsightly or unwholesome to inhabitants of the city or which unnecessarily obstructs, or interferes with or tends to obstruct or interfere with the inhabitants of the city in the lawful pursuit of their business or pleasure or in the lawful use of their property of the public streets or alleys.

(b) It shall likewise be unlawful for any owner, tenant or occupant of any property to suffer, permit, allow, continue, or fail to abate, in or upon any property owned by him or under his control, any act, thing or condition prohibited or made unlawful herein.

(c) Any person violating any provision of subsections (a) or (b) hereof shall, upon conviction, be fined not less than five dollars nor more than thirty dollars, and may, in the discretion of the mayor, be imprisoned for not more than thirty days. And each day such nuisance is continued or permitted to continue shall be a separate offense.

(d) Every act, thing or condition prohibited or made unlawful herein shall be deemed a nuisance. (10-6-38, §§ 1 to 4.)

Article II. Abatement.

Sec. 13-2. Complaint; abatement by city.

The city council is empowered, upon its own motion, to investigate, and shall, upon complaint, either written or oral, of the mayor, city health officer or city police, or upon complaint in writing of any inhabitant of the city, investigate any act, thing or conditions which is alleged to be or is suspected of being a nuisance; the city council is further empowered after notice and opportunity to be heard as provided herein, to determine if any person has violated this chapter and to declare such violation a nuisance and to enter an order against any person responsible therefor or against any owner, tenant or occupant of property permitting such in or upon property owned by him or under his control, requiring such person so responsible or such owner, tenant or occupant to abate such nuisance, fixing a reasonable time within which to begin and within which to complete such abatement, and upon failure to comply with such order, directing appropriate officer, officers or employees of the city to abate such nuisance, the costs thereof to be paid by the city and charged to the person so ordered to abate and failing to do so. All the power and authority herein vested in the city council is and shall be also vested in the mayor in vacation of the council or while the council is not in session, but what the mayor shall do hereunder he shall report to the next meeting of the city council, which shall have power to review and to modify, confirm or revoke the action of the mayor in whole or in part as it may deem proper. (10-6-38, § 5.)

Sec. 13-3. Written notice.

(a) The notice required in section 13-2 shall be in writing and shall require the person to appear before the city council or before the mayor in vacation of the council at a specified time and place to show cause, if any he can, why the act, thing or condition complained of should not be declared a nuisance, why he should not be required to abate same, and, on his failure to do so, why the city should not abate same and charge him with the costs thereof. Such notice shall be dated and shall be signed by the mayor.

(b) A copy of such notice shall be served at least three days before the day set for hearing, upon the person, in any manner which a summons or notice may be served for the circuit court under the laws of the state, if such person be found or if he have a usual place of abode within the corporate limits of the city. The return upon such notice shall be evidence of the service and the manner thereof, and if made by a city policeman, need not be sworn to.

(c) If such person cannot be found or if he does not have a usual place of abode within the corporate limits of the city, and such a return upon the notice shall be evidence thereof, such notice may be given by publication once each week for two successive weeks in some newspaper printed within the city, the second publication thereof to be at least three days before the day set for hearing, and by posting one copy thereof at the front door of the city hall and one copy at or near the location of the alleged nuisance at least seven days before the day set for hearing. The proceedings under notice so published and posted shall otherwise be the same as under notice served as provided in subsection (b) above.

(d) Upon the return of such notice so served or published and posted, or upon any continuance thereof, the city council or the mayor in vacation of the council, shall afford such person notified an opportunity to be heard in his defense if he appears and desires a hearing, at which hearing he may introduce any proper evidence pertinent to the issue. (10-6-38, §§ 6 to 9.)

Sec. 13-4. Responsibility for costs.

When a nuisance is found to exist as provided in this chapter, the person responsible therefor or the owner, tenant or occupant of property permitting same shall be charged with the costs of service of notice upon him at the rate of seventy-five cents for each notice served, which shall be paid to the person making service, or if the notice was served by publication and posting such person shall be charged with the actual costs of such publication and seventy-five cents for each copy posted, which last shall be paid to the person who posted the notices, and such person shall be charged three dollars for any hearing requested by him. When the city shall abate a nuisance, it shall charge such person with the actual costs thereof in addition to the aforesaid costs of notice and hearing. (10-6-38, § 11.)

Sec. 13-5. Authority to abate.

It shall be lawful for members of the city council, mayor, health officer or city policeman, to enter upon or into any property within the city where any nuisance exists or is suspected, for the purpose of inspecting, investigating and determining whether a nuisance exists thereon or therein. It shall also be lawful for any of the aforesaid city officials and employees under the direction of any of the aforesaid officials to enter upon or into any property within the city and to abate any act, thing or condition found to be a nuisance and not abated by the person responsible therefor or by the owner, tenant or occupant

of property, as required in this chapter, and such officials and employees under their supervision shall have full power and authority reasonably necessary and essential to abate such nuisance, and without limiting such general authority, they shall have the specific power and authority to ditch, drain, excavate, repair, build, alter, dismantle, destroy or remove as may be reasonably necessary or apparently necessary to abate effectively any such nuisance.

Notwithstanding any provision in this chapter to the contrary, the city council, mayor, health officer or police or employees under their supervision, shall have full power and authority to abate any nuisance as herein defined or which is reasonably believed by them to be such, by any method provided in this chapter, and power and authority to enter upon or into any property for that purpose, without notice or hearing, provided such nuisance or such conditions reasonably believed to be a nuisance is or is reasonably believed to be an eminent danger to the life, health or property of any inhabitant of the city, and in such case the costs thereof shall be charged to the person responsible therefor or the owner, tenant or occupant of property permitting same in or upon property owned by him or under his control in the same manner as if notice and hearing had been given. (10-6-38, §§ 10, 12.)

Sec. 13-6. Remedies cumulative.

The provisions in this chapter as to penalties in relation to nuisances and the provisions as to abating nuisances shall be construed as cumulative remedies, neither being exclusive in any case, the city being privileged to resort to either or both. (10-6-38, § 13.)