

**AN ORDINANCE OF COUNCIL AMENDING, MODIFYING AND RE-ENACTING
ARTICLE 502 OF THE CODIFIED ORDINANCES OF THE CITY OF HUNTINGTON,
AS REVISED, REGARDING ALTERNATIVE ENFORCEMENT OF EXTERNAL
SANITATION AND COMMON NUISANCES.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HUNTINGTON, CABELL
AND WAYNE COUNTIES, WEST VIRGINIA,** that Article 502 of the Codified Ordinances of
the City of Huntington, as revised, are hereby **AMENDED, MODIFIED** and **RE-ENACTED** to
read as follows:

ARTICLE 502

**ALTERNATIVE ENFORCEMENT OF EXTERNAL
SANITATION AND COMMON NUISANCES**

502.01 Authority.

This Article is enacted pursuant to the authority of West Virginia Code §8-1-5a, Home Rule
Pilot Program Act.

502.02 Purpose and applicability.

(1) The purpose of this section is to provide additional and alternative methods and processes
to enforce the municipal code provisions regarding exterior sanitation and common nuisances related
to property located within the city in a fair, speedy and inexpensive manner, and to improve
compliance with such provisions. To the extent this article conflicts with an existing ordinance
identified below, Article 502 shall be controlling.

(2) This section shall be in addition to those methods and processes otherwise contained in
the Codified Ordinances of the City of Huntington and shall be applied at the discretion of the
enforcement officer enforcing the provisions of this section.

(3) This section shall apply to the following exterior sanitation and common nuisance
violations contained in the Codified Ordinances of the City of Huntington:

- a. Sanitation (IPMC 302.1, City Code Article 951);
- b. Drainage (IPMC 302.2, City Code §905.14);
- c. Sidewalks in disrepair (IPMC 302.3, City Code Article 909, §905.11);
- d. High weeds/grass (IPMC 302.4, City Code Article 953);
- e. Graffiti (IPMC 302.9, City Code Article 536);
- f. Exterior garbage and/or rubbish accumulation (IPMC 307.1, City Code
Article 951);
- g. Junk storage (City Code Article 534);
- h. Structural integrity (City Code Article 1739); and
- I. Public health concerns.

(4) Any and all planning, zoning, building, and law enforcement officers shall have authority
to enforce the provisions of this section and shall be referred to herein collectively as enforcement
officials.

502.03 Investigations.

Upon receipt of information indicating the likelihood of a violation of any provision of the Codified Ordinances of the City of Huntington regarding external sanitation or common nuisance, the enforcement official shall investigate the facts and may, to the extent permitted by law, make an inspection of the premises.

502.04 Issuance of citations.

(1) If an investigation reveals that a code violation exists, the enforcement official may issue a citation for such violation to the person having either ownership or control of any land, building, structure, sign, property, licensed or permitted business or operation which violation, and shall order that violation be corrected.

(2) A citation may be served by personal or substituted service in accordance with the West Virginia Rules of Civil Procedure, by either delivering the notice to the person in violation personally or by delivering the notice to a member of that person's family who is above the age of 16 years and by advising such person of the purpose of the citation. Proof of personal service shall be made at the time of service by a written declaration executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made. If personal service cannot be effectuated, the enforcement official may send the citation to the person via certified mail, return receipt requested, to the person's last known address. If the return receipt is not returned, a citation shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service.

The citation shall be in writing and shall contain the following:

- a. The date the citation is issued;
- b. The name and address of the person(s) charged with the violation;
- c. The section of the ordinance that has been violated;
- d. The nature of the violation;
- e. The place and time the violation occurred;
- f. The amount of the fine imposed for the violation;
- g. The name, address and telephone number of the enforcement official issuing the citation;
- h. The time period allowed for the violation to be corrected. The time period allowed shall take into consideration the threat posed by the violation to the health, safety and welfare of the public and the nature of the work required to correct the violation, provided that no such time period for correction shall be less than ten days; and
- I. The name, address and telephone number of the office of the city collector, where fines are to be paid, and of the municipal court, where citations may be appealed.

502.05 Penalties.

(1) Any person issued a citation pursuant to section 502.04 shall be punished by a fine as follows: within any 12-month period, \$100.00 for the first citation, \$200.00 for the second citation, \$300.00 for the third citation, and \$500.00 for each citation thereafter.

(2) Any person issued a citation pursuant to section 502.04 shall be found not guilty of the offense provided that the defendant produces evidence that the code violation that caused the citation to be issued has been corrected within ten days of the date of receipt.

502.06 Nonpayment of fines.

All fines imposed by citations under this section shall be due within ten days of service of the citation. The failure to pay when due any fine imposed under this section shall result in the

issuance of a warrant and notification of the Department of Motor Vehicles.

502.07 Appeal.

(1) Issuance of a citation under the provisions of this section shall be deemed to be prima facie evidence of the violation indicated on the face of the citation. As such, any person who is issued a citation shall pay the fine indicated for the violation, as set forth in section 502.05, in full to the office of the city collector within ten days of service of the citation. Any person alleging he or she was improperly issued such citation may, within ten days of service of such citation, file a petition for appeal of the citation or payment thereof, along with the required bond, with the municipal court clerk in accordance with the following:

- a. In order to properly and timely appeal his or her citation, within ten days of service of the citation, the alleged violator shall pay the required amount of the applicable fine in full to the municipal court clerk, which amount will be held by the municipal court as bond pending evidentiary hearing before and resolution of the case by the municipal court; the municipal court clerk shall issue a receipt to the alleged violator showing the amount of the bond paid. In addition to the bond, the alleged violator shall file with the municipal court clerk a petition for appeal of the citation. If any petition for appeal filed in accordance with this section is not timely filed or is not accompanied with the required bond, the alleged violator shall be deemed to have waived his or her right to appeal the citation, and such petition shall be summarily denied as untimely filed; provided, however, that nothing set forth hereinabove shall prevent the municipal court judge from finding, upon a proper showing, that an alleged violator suffers from financial hardship, and, as a result, waiving the requirement that the bond be posted as a prerequisite to filing a petition for appeal.
- b. Any petition for appeal filed with the municipal court clerk must be in writing, on the form to be provided by the municipal court clerk, and must be signed by the alleged violator affirming that the contents of the petition are true and accurate to the best of the alleged violator's knowledge at that time. Such petition for appeal shall state the facts and reasons in support of the petition. Upon filing any such petition for appeal with the municipal court clerk, the alleged violator shall serve a copy of the petition and receipt showing proof of bond or waiver thereof upon the city attorney.

(2) Upon filing of a petition for appeal with the municipal court clerk, the clerk or his or her designee shall place the case on the municipal court docket, set the case for evidentiary hearing within 30 days from the date of the filing of the petition for appeal, provide a notice of hearing to the alleged violator, and forward a copy of the petition to the enforcement officer. Upon receipt of the petition, the enforcement officer shall cause a copy of the citation at issue to be forwarded to the municipal court clerk who shall file it as the original complaint alleging the violation indicated therein.

(3) The municipal court shall treat the citation itself as the original complaint before the court, and shall treat it as prima facie evidence of the violation alleged therein. At the close of all of the evidence, should the municipal judge find against the alleged violator, the bond posted by the alleged violator shall be applied as payment for the fine imposed for the violation. In the event the municipal court judge finds that a violator suffers from financial hardship, the municipal court judge may permit alternative sentencing. Should the court find in favor of the alleged violator, the bond shall be refunded to the alleged violator by the municipal court clerk.

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BE IT FURTHER ORDAINED that Article 502 of the Codified Ordinances of the City of Huntington shall become effective upon its adoption by Council, approval by the Mayor and the

Home Rule Board.

BE IT FURTHER ORDAINED that all other articles, sections and sub-sections of the Codified Ordinances of the City of Huntington, as revised, shall remain in full force and effect until further Ordinance of this Council.

SPONSORED BY COUNCILMAN DAVID BALL

APPROVED AS TO FORM BY SEM

FIRST READING 5/13/2013 - ORDERED ADVERTISED FOR SPECIAL CALL TO BE HELD
ON May 23, 2013

SECOND READING 5/23/2013 - ADOPTED (8 yeas, 0 nay, 3 absent-Caserta,
Simmons and Bates)

DATE May 23, 2013

Barbara Nelson
BARBARA NELSON, CITY CLERK

DATE May 23, 2013

Steve Williams
STEVE WILLIAMS, MAYOR

✓
APPROVE

DATE 5/23/2013

VETO