

Ordinance 1 - 2003

BY: Board of Commissioners

INTRODUCTION: February 19, 2003

ADOPTION: March 5, 2003

AN ORDINANCE CONCERNING

Code of the Town of Elkton

Title 9

Chapter 9.20

PROPERTY NUISANCE ABATEMENT

FOR THE PURPOSES of addressing the illegal activity of a person on real property within the Town which constitutes a public nuisance; to maintain the health, safety and welfare of the public through the abatement of public nuisance(s); and to hold the owner of real property responsible for a public nuisance created and maintained on its property.

WHEREAS, the Constitution of the State of Maryland, Article XI-E; Article 23A, Annotated Code of Maryland; and the Charter and Code of the Town of Elkton, provide the authority under which the Board of Commissioners may adopt, repeal and/or amend the ordinances of the Town of Elkton; and

WHEREAS, the Board of Commissioners has determined that a person engaged in certain criminal activity on property within the Town may constitute a public nuisance; and

WHEREAS, the Board of Commissioners has further determined that a public nuisance is detrimental to the health, safety and welfare of the public; and

WHEREAS, the Board of Commissioners has further determined that the owner of real property shall be responsible for the proper management of its property to prevent, abate or eliminate a public nuisance on its property.

NOW, THEREFORE, the Board of Commissioners of the Town of Elkton hereby ordains that:

Section 1. The Code of the Town of Elkton shall be amended to add Chapter 9.20, Property Nuisance Abatement, to the Code of the Town of Elkton, Title 9, Public Peace and Welfare, which shall read as follows:

CODE OF THE TOWN OF ELKTON
TITLE 9
CHAPTER 9.20
PROPERTY NUISANCE ABATEMENT

§ 9.20.010 Public nuisance.

A public nuisance shall be created by a person:

A. when possessing, manufacturing, selling, dispensing, using or permitting the use of any controlled substance(s) set forth under the Criminal Law Article, Annotated Code of Maryland, as amended, upon any real property in the town; and/or

B. when engaging in prostitution, soliciting for prostitution, or other sexual activity prohibited under the Criminal Law Article, Annotated Code of Maryland, as amended, upon any real property in the town; and/or

C. when possessing, discharging, displaying a firearm or other weapon prohibited under the Criminal Law Article, Annotated Code of Maryland, as amended, or prohibited by other local ordinance, State or Federal statute or regulation, upon any real property in the town; and/or

D. when engaging in any criminal activity which threatens the life, health, safety or welfare of any other person, upon any real property in the town.

§ 9.20.020 Creation and maintenance of a public nuisance unlawful.

It shall be unlawful for a person owning commercial or residential property in the town to rent, lease, or otherwise provide the use of real property to a person who creates or maintains a public nuisance, as set forth under this chapter.

§ 9.20.030 Responsibility for property management.

A. Every owner of real property within the town is required to manage the property in a manner so as not to create or allow a public nuisance or to have an adverse impact on adjoining properties or the neighborhood or to violate the provisions of this chapter. The owner shall remain liable for violations thereof regardless of any contract or agreement with any third party regarding the property.. B. Every building or unit within a building used for the purpose of unlawfully manufacturing, delivering, selling, storing or giving away any controlled substance, and every building or unit within a building

wherein or upon which such acts take place, is a public nuisance which shall be enjoined, abated and prevented, whether it is a public or private nuisance.

C. As used in this chapter: ADVERSE IMPACT includes consideration of, but is not limited to, the following: (1) any search warrants served on the property where controlled substances were seized; (2) investigative purchases of controlled substances on or near the property by law enforcement officers or their agents; (3) arrests of persons who frequent the property for violation of controlled substances laws; (4) increased volume of traffic associated with the property; and (5) the number of complaints made to law enforcement officers of illegal activity associated with the property. BUILDING includes, but is not limited to, any structure or any separate part or portion thereof, whether permanent or not, or the ground itself.

§ 9.20.040 Enforcement; notice; period for compliance; abatement plan.

A. The Town or a person adversely impacted by a public nuisance set forth under this chapter may bring a civil action for injunctive relief to abate the nuisance against a property owner in violation of this chapter, provided that the Town or said person adversely impacted by the public nuisance has given the property owner, its agent or representative, written notice to abate said public nuisance. Notice shall be hand-delivered to the property owner, its agent or representative, by a law enforcement officer or by United State Postal Service, certified mail, return receipt requested. The notice shall describe the public nuisance, any adverse affect on the adjoining properties and/or the surrounding area, direct the property owner to abate the public nuisance, the time for compliance and the penalty for failure to abate a public nuisance. The property owner shall have forty-five (45) days from the date the notice is received to abate the public nuisance before a formal complaint is filed with the court; provided, however, that if the violation cannot be abated within the time period specified, the Mayor and Commissioners may extend the time period for compliance for a reasonable period of time upon submission of an acceptable abatement plan by the property owner. In determining whether the abatement plan is acceptable, consideration by the Mayor and Commissioners shall include, but shall not be limited to: (a) the sufficiency and dates of all actions undertaken to abate the public nuisance; and (b) the sufficiency of a plan detailing further actions which are needed to abate the public nuisance; and (c) the length of time necessary to complete the abatement of the public nuisance. The Mayor and Commissioners may grant the property owner an additional period of time upon the property owner's written request and its submission of an abatement plan acceptable to the town. Said abatement plan shall minimally provide a description of all

action taken, or to be taken, by the property owner to abate the public nuisance, along with a schedule in which action is to be taken. Upon receipt by the town of any written request, accompanied by an abatement plan, from a property owner for additional time to abate a public nuisance, the Mayor and Commissioners shall respond in writing within thirty (30) business days granting or denying the property owner's request.

B. Any complaint filed under this chapter shall be accompanied by an affidavit for purposes of showing that the owner has had an opportunity to abate the public nuisance, including time extensions, if any. The affidavit shall contain a description of all attempts to notify and locate the owner, its agent or representative.

§ 9.20.050 Injunction.

The Town or other person shall have the following remedy:

A. Failure to abate the public nuisance within the time period specified by this chapter, including any extensions, if any, shall be subject to an application for a temporary restraining order or preliminary injunction. The court may, upon a showing of good cause, issue an ex parte restraining order or preliminary injunction preventing the defendant and all other persons from continuing or causing the reoccurrence of the public nuisance pending a decision. Any violation of the order or injunction is a contempt of court, and where such order or injunction is posted, mutilation or removal thereof while the same remains in force is a contempt of court if such posted order or injunction contains a notice to that effect.

B. If the existence of the public nuisance is established in the action, an order of abatement shall be entered as part of the final judgment in the case. Plaintiff's costs in the action, including those of abatement, shall constitute a lien upon the building or unit within a building. The lien is enforceable and collectible by execution issued by order of the court.

C. If the court finds the owner has been making reasonable efforts to abate the public nuisance, has not been guilty of contempt of court in the proceedings, will immediately abate any such public nuisance that may exist at the building or unit within a building and prevent it from being a public nuisance within a period of one year thereafter, the court may order the building or unit within a building to be delivered to the owner, its agent or representative, and no order of abatement shall be entered. If the owner meets the requirements of this subsection, the order of abatement shall be

cancelled.

§ 9.20.060 Final order of abatement.

Any final order of abatement issued under this chapter shall:

A. provide for the immediate closure of the building or unit within a building against its use for any purpose and for keeping it closed for such period of time as the court may determine; and

B. state that while the order of abatement remains in effect the building or unit within a building shall remain in the custody of the court.

§ 9.20.070 Requirement for notification of Property Nuisance Abatement Ordinance.

Upon adoption of this chapter, all written leases, rental contracts and agreements that give individuals or groups of individuals the right or privilege to occupy real property for the purpose of using such property as a residence, dwelling, refuge, shelter or other purpose shall contain the following provision: "The Town of Elkton has adopted a Property Nuisance Abatement Ordinance which states it is a public nuisance and for any person, firm, or corporation, whether owner, lessor, lessee, sublessor, sublessee or occupant of any premises in the town to permit those premises to be used in such a manner so as to create an adverse impact on adjoining properties or the surrounding neighborhood. 'Adverse impact' includes consideration of, but is not limited to, the following: (a) any search warrants served on the property where controlled substances were seized; (b) investigative purchases of controlled substances on or near the property by law enforcement officers or their agents; (c) arrests of persons who frequent the property for violation of controlled substances laws; (d) increased volume of traffic associated with the property; or (e) the number of complaints made to law enforcement of illegal activity associated with the property. It shall be a violation of this agreement and grounds for eviction if any of the adverse impact offenses occur as a result of activity on this property."

** END OF SECTION **

DATE OF EFFECT

This ordinance shall become effective on the _____ day of _____, 2002.

CERTIFICATION OF LEGAL REVIEW

This ordinance was reviewed and approved as to form and legal sufficiency.

Mr. H. Norman Wilson, Jr., Esq., P.A.

Date

EXECUTION BY THE BOARD OF COMMISSIONERS

AFFIRMING:

Attest:

Lewis H. George, Jr., Town Administrator

Board of Commissioners

Joseph L. Fisona, Mayor

Jean A. Broomell, Commissioner

John K. Burkley, II, Commissioner

Charles H. Givens, Commissioner

C. Gary Storke, Commissioner

DISSENTING:

ABSTAINING:

ABSENT:

CERTIFICATION OF PUBLICATION

This ordinance was published in the Cecil Whig, a newspaper of general circulation within the Town, on the following date: _____ and _____, and posted on the Town of Elkton's Website www.townofelkton.org on _____.

Lewis H. George, Jr., Town Administrator

[Note: **Language printed in bold and underlined font indicates language added to the Code.**].