

THE CITY OF FREDERICK  
MAYOR AND BOARD OF ALDERMEN

ORDINANCE NO: G-16-28

AN ORDINANCE concerning excessive use of police services

FOR the purpose of adding certain categories of disturbances; reducing the number of qualifying calls allowed before a property is given a warning or placed on probationary nuisance status; updating references; clarifying language; and generally relating to the excessive use of police services.

BY repealing and reenacting, with amendments,  
Section 15-46  
The Code of the City of Frederick, 1966 (as amended)

SECTION I. BE IT ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Section 15-46 of The Code of the City of Frederick, 1966 (as amended) is hereby repealed and reenacted, with amendments, as follows:

Sec. 15-46. Excessive use of police services.

(a) Definitions.

- (1) In general. In this section the following words have the meanings indicated unless a different meaning is clearly intended from the context.
- (2) Call. "Call" means a call for police services.
- (3) Criminal Law Article. "Criminal Law Article" means the Criminal Law Article of the Annotated Code of Maryland.
- (4) [Department] Department. "Department" means the Frederick Police Department.
- (5) [Disturbance] Disturbance. "Disturbance" means any of the following conduct, when engaged in by a property owner, operator, manager, resident, occupant, tenant, guest, visitor, or invitee, or an agent or employee of any of the foregoing persons.
  - [(1)] (A) [Alcoholic] alcoholic beverage violation, including but not limited to public consumption, as defined in Title 10, Subtitle I of the Criminal Law [Article of the Annotated Code of Maryland;] Article;
  - [(2)] (B) [Disorderly] disorderly conduct, as defined in Title 10, Subtitle II of the Criminal Law [Article of the Annotated Code of Maryland;] Article;
  - [(3)] (C) [Disturbing] disturbing the peace, as defined in Title 10, Subtitle II of the Criminal Law [Article of the Annotated Code of Maryland;] Article;

- [(4)] **(D)** [Excessive] excessive noise, as prohibited by section 15-21.2 of [the Frederick City] this Code;
- [(5)] **(E)** [Littering,] littering, as defined in Title 10 of the Criminal Law [Article of the Annotated Code of Maryland,] Article;
- [(6)] **(F)** [Improperly] improperly parking a vehicle in violation of [the Frederick City] this Code;
- [(7)] **(G)** [Possession] possession of a barking or howling animal, as prohibited by [section 3-27 of the Frederick City] Sec. 3-7 of this Code;
- [(8)] **(H)** [Possession or distribution] possession, distribution, or manufacturing of a controlled dangerous [substance] substance, or attempt to possess, distribute, or manufacture a controlled substance, as defined in Title 5 of the Criminal Law [Article of the Annotated Code of Maryland,] Article;
- (I)** a violation of Chapter 12, Article 1, of this Code, relating to synthetic drugs;
- [(9)] **(J)** [Prostitution,] prostitution, as defined in Title 11 of the Criminal Law [Article of the Annotated Code of Maryland,] Article;
- [(10)] Public urination or defecation,];
- [(11)] **(K)** Indecent exposure, as prohibited by Title 11 of the Criminal Law [Article of the Annotated Code of Maryland,] Article.
- (L)** a felony violation of Title 4 of the Criminal Law Article; or
- (M)** a felony violation of Title 10, Subtitle 6 of the Criminal Law Article.
- (6)** [Mixed use property] Mixed use property. “Mixed use property” means a lot used for nonresidential and residential purposes.
- (7)** [Multifamily residential property] Multifamily residential property. “Multifamily residential property” means a lot used for residential purposes and [comprised of ten (10)] consisting of 10 or more dwelling units.
- (8)** [Nonresidential property] Nonresidential property. “Nonresidential property” means a lot that is not used for residential purposes.
- (9)** Officer. “Officer” means a sworn officer of the Frederick Police Department.
- (10)** [Private property] Private property. “Private property” includes any residential, mixed use, multifamily residential or nonresidential lot within [The City of Frederick,] the City but does not include any lot owned by a local, state, or federal government agency.

(11) [Property owner] Property owner. "Property owner" or "owner" means a person holding legal title to a private property within [The City of Frederick.] the City.

(12) [Residential property] Residential property. "Residential property" means a lot used for residential purposes and [comprised of] including fewer than [ten (10)] 10 dwelling units.

(b) **Responsibility for qualifying calls.**

(1) [Owner responsible.] Generally. A property owner is [hereby deemed] responsible for the generation of qualifying calls [for police services to the owner's property in excess of the minimum number of qualifying calls permitted under this section.] relating to disturbances on the owner's property as further described in this subsection.

(2) **Determination of qualifying call.** A call [for police services] is deemed to be a qualifying call [if:] for which a property owner is responsible if the call:

(A) [The call] is in response to a [disturbance, as defined in this section:] disturbance that originated on the owner's property;

(B) [The call] results in the dispatch of [a sworn officer of the Department to a private property; and] an officer; and

(C) [The call] results in a determination by [a sworn officer of the Department.] the officer, based on the officer's personal knowledge or on an affidavit by a witness, that a disturbance actually did occur or is [occurring.] occurring on the owner's property.

(c) **Probationary nuisance status.**

(1) **Warning.** Subject to [subsection (c)(6),] paragraph 6 of this subsection, after the number of qualifying calls specified in this [subsection (c)(1)] paragraph has been made with regard to a property within any [six (6) month] 12-month period, the Department will issue the property owner a written notice warning that the property is approaching probationary nuisance status.

Type of Property	Number of Qualifying Calls
Nonresidential or Mixed Use	[10] <u>5</u>
Residential	[5] <u>3</u>
Multifamily Residential	[10] <u>6</u>

(2) **Placement on probationary nuisance status.** Subject to [subsection (c)(6),] paragraph (6) of this subsection, after the [minimum] number of qualifying calls specified in this [subsection (c)(2)] paragraph has been made with regard to a property within any [six (6) month] 12-month period, the Department will place the property on probationary nuisance status.

Type of Property	[Minimum] Number of Qualifying Calls
Nonresidential or Mixed Use	[20] <u>10</u>
Residential	[10] <u>5</u>
Multifamily Residential	[25] <u>12</u>

- (3) **Multiple calls on same day.** In calculating the number of qualifying calls, the Department may count separate qualifying calls occurring at different times on the same day.
- (4) **Multifamily residential properties.** In calculating the number of qualifying calls for a multifamily residential property, the Department may count any qualifying call made to any dwelling unit or other area on the property.
- (5) **Probationary status period.** Subject to [subsection (c) (6),] paragraph (6) of this subsection, a property that is placed on probationary nuisance status will be removed from such status once the property has had no qualifying calls for a continuous period of [twelve (12)] 12 months.
- (6) **Transfer of ownership.** When legal title to a [private] property is transferred, any qualifying calls counted for the previous property owner prior to the property being placed on probationary nuisance status will be voided, and the qualifying call count will begin again for the new property owner. A property that has been placed on probationary nuisance status will be removed from probationary nuisance status when legal title to the property is transferred. Any charge assessed against a property pursuant to subsection (e) of this section is the responsibility of the person who owned the property at the time of the qualifying call giving rise to the charge.

(d) **Procedure.**

- (1) **Notice.** After the Department determines that a property is on probationary nuisance status, the Department shall issue the property owner a written notice including the following:
  - (A) [A] a street address or legal description sufficient to identify the property, including apartment or unit number if any;
  - (B) [Date] the date and a brief description of every qualifying call giving rise to the probationary nuisance status;
  - (C) [A] a statement that the property has been placed on probationary nuisance status due to the excessive [police] calls;
  - (D) [A] a statement describing the charges that may be imposed against the property for qualifying calls occurring while the property is on probationary nuisance status and explaining that unpaid charges constitute a lien on the property; and

- (E) [A] a notice of the property owner's right to appeal the probationary nuisance status to the Excessive Use of Police Services Board.
- (2) **Appeal.** In accordance with subsection [(h),] **(h) of this section**, a property owner may appeal the placement of property on probationary nuisance status within [thirty (30) of] **30 days after** the date of the written notice described in [subsection (d)(1).] **paragraph (1) of this subsection**.
- (e) **Assessment of charges.**
- (1) **Amount of charges.** Once a property is placed on probationary nuisance status, [The City of Frederick] **the Department** shall assess a charge against the property in accordance with the following:
- First Qualifying Call (after placement on probationary nuisance status)—[one hundred dollars (\$100.00)] **\$100**
- Second Qualifying Call (after placement on probationary nuisance status)—[two hundred fifty dollars (\$250.00)] **\$250**
- Third or Subsequent Qualifying Call (after placement on probationary nuisance status)—[five hundred dollars (\$500.00)] **\$500**
- (2) **Notice.** For each charge assessed under this subsection, [The City of Frederick] **the Department** will issue a written notice to the property owner.
- (3) **Collection.** In accordance with section 1-9 of [the Frederick City Code,] **this Code**, a charge may be collected in the same manner as municipal taxes are collected.
- (4) **Appeal.** In accordance with subsection [(h),] **(h) of this section**, a property owner may appeal the assessment of a charge within [thirty (30) days of] **30 days** after the date of the written notice described in [subsection (e)(2).] **paragraph (2) of this subsection**.
- (f) **Notice—Method of [service.] issuance.**
- (1) **Scope.** **This subsection applies to** [Any] **any** notice required by this [section is deemed to be properly served if a copy thereof is:] **section**.
- [(1)](2) **Methods.** [Delivered] **A copy of the notice must be:**
- (A) **delivered** personally to the property owner; or
- [(2)] [Regular mail and posting. Posted]
- (B) **posted** in a conspicuous place on or about the property affected by the notice and sent by first class mail to the mailing address of the property owner on file with the Maryland Department of Assessments and Taxation.

(g) **Excessive Use of Police Services Board.**

- (1) **Establishment and membership.** There is hereby created an Excessive Use of Police Services Board, [~~comprised~~] **composed** of the following members:
  - (A) [~~The~~] **the** Chief of Police or the Chief's designee;
  - (B) [~~A~~] **a** professional member of the property management profession appointed by the Mayor, with the advice and consent of the Board of Aldermen, for a term of [~~two (2)]~~ **2** years; and
  - (C) [~~A~~] **a** resident of [~~The City of Frederick~~] **the City** appointed by the Mayor, with the advice and consent of the Board of Aldermen, for a term of [~~three (3)]~~ **3** years.
- (2) **Duty.** The Excessive Use of Police Services Board shall hear appeals of actions of [~~The City of Frederick~~] **the Department** in accordance with subsection (h) of this section.

(h) **Appeals.**

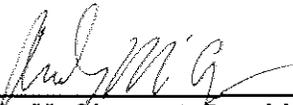
- (1) **Filing.** A property owner wishing to appeal the action of [~~The City of Frederick~~] **the Department** pursuant to subsection [(c)] **(d)** or (e) of this section must file a written notice of appeal with the Department. The notice of appeal must be on a form provided by the Department and must include a statement of the grounds for the appeal. Failure to timely file an appeal renders [~~The City of Frederick's~~] **the Department's original** action final.
- (2) **Schedule of hearing.** Upon the filing of a timely and proper appeal, the Excessive Use of Police Services Board shall schedule a hearing to take place within [~~forty-five (45)]~~ **45** days after the date of filing of the appeal.
- (3) **Hearing procedure.** At the hearing scheduled in accordance with [subsection (h)(2) of this section,] **paragraph (2) of this subsection,** the property owner may present witnesses and other evidence and may cross-examine witnesses.
- (4) **Decision.** No later than [~~ten (10)]~~ **10** days after the conclusion of the hearing, the Excessive Use of Police Services Board shall issue a written decision affirming, modifying, or reversing the action being appealed. In affirming or modifying the action, the Excessive Use of Police Services Board may reduce the amount of the charge assessed upon finding that mitigating circumstances justify the reduction. In reversing the action being appealed, the Excessive Use of Police Services Board shall order that any applicable charge assessed by the City be nullified.
- (5) **Appeal to Circuit Court.** Any person aggrieved by a final decision of the Excessive Use of Police Services Board may [~~appeal the decision,~~] **file a petition for judicial review** no later than [~~thirty (30)]~~ **30** days after [~~its issuance,~~] **the issuance of the decision,** to the Circuit Court for Frederick [~~County.~~] **County in accordance with Title 7, Chapter 200 of the Maryland Rules.**

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that in the event any provision, section, sentence, clause, or part of this ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause, or part of this ordinance, it being the intent of the City that such remainder shall be and shall remain in full force and effect.

**SECTION III. BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK** that this ordinance shall take effect on the date it is approved by the Mayor and all other ordinances or parts of ordinances inconsistent with the provisions of this ordinance will as of that date be repealed to the extent of such inconsistency.

**PASSED:**

**DATE:**

  
\_\_\_\_\_  
Randy McClement, President,  
Board of Aldermen

December 1, 2016

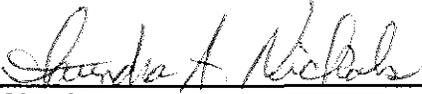
**APPROVED:**

**DATE:**

  
\_\_\_\_\_  
Randy McClement, Mayor

December 1, 2016

**Approved for Legal Sufficiency:**

  
\_\_\_\_\_  
City Attorney