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Title:	Ordinance to Amend and Reenact the City Code of the City of Hampton, Virginia by Amending Chapter 24, Offenses, Article II, Pertaining to the Definitions Relating to Criminal Blight and Options Available for Corrective Action with Respect to Criminal Blight to Remain Consistent with Recently Amended State Code Authority				

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Ordinance to Amend and Reenact the City Code of the City of Hampton, Virginia by Amending Chapter 24, Offenses, Article II, Pertaining to the Definitions Relating to Criminal Blight and Options Available for Corrective Action with Respect to Criminal Blight to Remain Consistent with Recently Amended State Code Authority

PURPOSE/BACKGROUND:

These are housekeeping amendments to bring City Code relating to drug blight into compliance with state law due to amendments enacted by the 2018 General Assembly to the enabling drug blight statute, Code of Virginia § 15.2- 907.

Discussion:

The proposed updates expand the scope of drug blight into what is now known as criminal blight. Criminal blight now includes provisions for properties plagued by regular use for commercial sex acts and repeated acts of malicious discharge of a firearm. The updates also include changes to the process for corrective action that can be taken when a property has been determined to be the situs of criminal blight, with more protections for property owners through stricter notice requirements and additional opportunities for compliance prior to the City being able to commence legal action.

Approval of these amendments will ensure that Hampton's criminal blight ordinance complies with the provisions of the Code of Virginia.

Impact:

The City will need to review its current drug blight enforcement process and implement changes in accordance with the new requirements for example, how notices are sent to property owners.

Additionally, enforcement will be expanded as under the new language the City will now be authorized to bring civil actions against property owners for regular use of properties for commercial sex acts and repeated acts of malicious discharge of a firearm.

Recommendation:

Approval of the Ordinance Amendments

BE IT ORDAINED by the City Council of the City of Hampton, Virginia, that Chapter 24 of the City Code of the City of Hampton, Virginia be amended to read as follows:

CHAPTER 24 - OFFENSES

ARTICLE II. - CRIMINAL BLIGHT

Sec. 24-111. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the following meanings, unless the content clearly indicates otherwise:

Affidavit means the affidavit sworn to under oath prepared by the chief of police, or his designee, in accordance with subsection 24-112(b)(1).

Commercial sex acts means any specific activities that would constitute a criminal act under Article 3 (§ 18.2-344 et. seq.) of Chapter 8 of Title 18.2 or a substantially similar ordinance under Article I of this chapter if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

Controlled substance means illegally obtained controlled substances or marijuana, as defined in § 54.1-3401 of the Code of Virginia, as amended.

Corrective action means (i) taking specific actions with respect to the buildings or structures on property that are reasonably expected to abate criminal blight on such real property, including the removal, repair or securing of any building, wall or other structure, or (ii) changing specific policies, practices, and procedures of the real property owner that are reasonably expected to abate criminal blight on real property. The chief of police, or his designee shall prepare an affidavit on behalf of the

city that states specific actions to be taken on the part of the property owner that the city determines are necessary to abate the identified criminal blight on such real property and that do not impose an undue financial burden on the owner.

Criminal blight means a condition existing on real property that endangers the public health or safety of residents of the city and is caused by (i) the regular presence on the property of persons under the influence of controlled substances; (ii) the regular use of the property for the purpose of illegally possessing, manufacturing or distributing controlled substances; (iii) the regular use of the property for engaging in commercial sex acts; or (iv) repeated acts of the malicious discharge of a firearm within any building or dwelling that would constitute a criminal act under § 18.2-279 or a substantially similar ordinance under Article 2 of Chapter 40 of Hampton City Code.

Owner means the record owner of real property.

Property means real property.

Sec. 24-112. - Corrective action for buildings and other structures harboring illegal drug use or other criminal activity; abatement

- (a) This section is adopted pursuant to the powers vested in the city by section 15.2-907 of the Code of Virginia, 1950, as amended
- (b) The city may require the owner of real property to undertake corrective action with respect to property which has been determined to be the situs of criminal blight, or the city may undertake corrective action in accordance with the procedures described herein:
 - (1) The chief of police, or his designee, shall execute and forward to the director of community development an affidavit, citing this section and § 15.2-907 of the Code of Virginia of 1950, as amended, to the effect (i) that criminal blight exists on the property and in the manner described therein; (ii) the city has used diligence without effect to abate the criminal blight; and (iii) the criminal blight constitutes a present threat to the public's health, safety or welfare.
 - (2) The director of community development, or his designee, shall then send a notice to the owner of the property, to be sent by (i) certified mail, return receipt requested; (ii) hand delivery; or (iii) overnight delivery by a commercial service or the United States Postal Service, to the last address listed for the owner on the city's assessment records for the property, together with a copy of such affidavit, advising that (a) the owner has up to thirty (30) days from the date thereof to undertake corrective action to abate the criminal blight described in such affidavit, and (b) the city will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action to abate the criminal blight described in such affidavit. If the owner notifies the city in writing within the 30-day period

that additional time to complete the corrective action is needed, the city shall allow such owner an extension for an additional 30-day period to take such corrective action.

- (3) If appropriate corrective action is not undertaken during such thirty-day period, or during the extension if such extension is granted by the city, the director of community development, or his designee, shall send by certified mail, return receipt requested, an additional notice to the owner of the property, at the address stated in subsection b(2), stating (i) the date on which the city may commence corrective action to abate the criminal blight on the property or (ii) the date on which the city may commence legal action in a court of competent jurisdiction to obtain a court order to require that the owner take such corrective action or, if the owner does not take corrective action, a court order to revoke the certificate of occupancy for such property, which date shall be no earlier than fifteen (15) days after the date of mailing of the notice. Such notice shall also reasonably describe any corrective action contemplated to be taken by the city. Upon receipt of such notice, the owner shall have a right, within 20 days after mailing notice by the city, to seek judicial relief, and the city shall initiate no corrective action while a proper petition for relief is pending before a court of competent jurisdiction.
- (c) If the city undertakes corrective action with respect to the property after complying with the provisions of subsection (b)(3), the costs and expenses thereof shall be chargeable to, and paid by, the owner of such property and may be collected by the city as taxes are collected.
- (d) Every charge authorized by this section with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property with the same priority as liens for unpaid local taxes and enforceable in the same manner as provided in articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of chapter 39 of title 58.1, Code of Virginia of 1950, as amended.
- (e) A criminal blight proceeding pursuant to this section shall be a civil proceeding in a court of competent jurisdiction in the Commonwealth.
- (f) If the owner of real property takes timely corrective action pursuant to this section, the city shall deem the criminal blight abated, shall close the proceeding without any charge or cost to the owner, and the director of codes compliance, or his designee, shall promptly provide written notice to the owner that the proceeding has been terminated satisfactorily. The closing of a proceeding shall not bar the city from initiating a subsequent proceeding if the criminal blight recurs.
- (g) Nothing in this section shall be construed to abridge, diminish, limit, or waive any rights or remedies of an owner of property at law or any permits or nonconforming rights the owner may have under Chapter 22 of Title 15.2, Code of Virginia of 1950, as amended or under this ordinance. If an owner in good faith takes corrective action, and despite having taken such action, the specific criminal blight identified in the affidavit of the city persists, such owner shall be deemed to be in compliance with this section. Further, if a tenant in a rental dwelling unit, or a tenant on a manufactured home lot, is the cause of criminal blight on such property and the owner in good faith initiates legal action and pursues the same by requesting a final order by a court of competent jurisdiction, as otherwise authorized by Code of Virginia of 1950, as amended, against such tenant to remedy such noncompliance or to terminate the tenancy,

such owner shall be deemed in compliance with this section.

State Law reference- Authority to require removal, repair, etc., of buildings and other structures harboring illegal drug use or other criminal activity, Code of Virginia, § 15.2-907 et seq.