



2018-04

ORDINANCE

CITY OF BERLIN

In the year of our Lord Two Thousand Eighteen

AN ORDINANCE amending the CODE OF ORDINANCES, Chapter 10.5 , OFFENSES AND MISCELLANEOUS PROVISIONS by adding Article IV Opioid Cost Recovery and Public Nuisance Legislation

Be it ordained by the City Council of the City of Berlin, as follows:

That Article IV Opioid Cost Recovery and Public Nuisance Legislation is hereby added as depicted below.

ARTICLE IV OPIOID COST RECOVERY AND PUBLIC NUISANCE LEGISLATION

Sec. 10.5 - 1. Purpose and intent.

The opioid epidemic is sweeping the country. Indeed, addiction to and abuse of opioids is one of the greatest challenges facing the City of Berlin, New Hampshire (hereinafter "City of Berlin"). A cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioids were sold, distributed, and prescribed in the City of Berlin over the past several years, a practice that continues today. The selling, distributing, and prescribing of large amounts of opioids in our community has created a public health and safety hazard affecting the residents of the City of Berlin. This crisis has devastated families, wreaked havoc on our economy, and produced a generation of narcotic dependence. As a result of the opioid epidemic, costs related to healthcare, family and social services, criminal justice, addiction and rehabilitation, and many other areas have significantly increased. Many of these costs are paid by the City of Berlin.

The purpose and intent of this legislation is to allow the City of Berlin to recover these costs, despite the existence of the common-law municipal cost recovery rule (a.k.a. free public services doctrine) and declare the opioid epidemic and its effects on the City of Berlin a public nuisance. Specifically, the City of Berlin provides services related to the opioid epidemic, which are funded by tax revenues. This statute clarifies that reimbursement may be sought for the costs of providing such services whenever practicable, from the responsible party. To accomplish this, the City of Berlin establishes this cost-recovery procedure and declares the opioid epidemic and its effects on the City of Berlin a public nuisance.

Sec. 10.5 - 2. Definitions.

“Costs” means all expenditures related to the opioid epidemic that directly or indirectly arise from the City of Berlin’s response to a responsible party’s action or inaction.

“Responsible party” means any person or corporation whose negligent, intentional, or otherwise wrongful conduct causes the incident resulting in the City of Berlin incurring costs or who is found liable or made responsible by a court for the costs incurred by the City of Berlin in the form of damages, regardless of the cause of action.

Sec. 10.5 - 3. Governmental function cost recovery.

The City of Berlin may recover the costs of governmental functions related to opioids marketed, sold, manufactured, dispensed, prescribed, and/or distributed by the responsible party. If a responsible party fails to pay the costs demanded, the City of Berlin may initiate and recover costs through administrative, civil, and/or criminal action against the responsible party. In that case, the City of Berlin may also recover attorney’s fees, interest, and any other payment or type of damages the court deems proper.

Sec. 10.5 - 4 Effect of criminal or civil proceedings on governmental function cost recovery.

To the greatest extent allowed by law, the initiation of administrative or civil proceedings for governmental function cost recovery does not bar the criminal prosecution of a responsible party for any associated violation. Similarly, to the greatest extent allowed by law, criminal prosecution does not bar civil collection of costs for the violation giving rise to the criminal prosecution.

Sec. 10.5 - 5 Public nuisance

The City of Berlin hereby finds and declares the following:

1. That addiction to and abuse of opioids is one of the greatest challenges facing the City of Berlin;
2. A cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioid pain pills were sold, distributed and prescribed in the City of Berlin over the past several years which practice continues today;
3. There is evidence showing that approximately four in five heroin users began their addiction by first using and then misusing prescription pain medications containing opioids;
4. The selling, distributing, and prescribing of large amounts of opioid pain pills in the City of Berlin has created a public health and safety hazard affecting the residents of the City of Berlin, resulting in devastation to families, a negative effect on the City of Berlin’s economy, wasted public resources, and a generation of narcotic dependence;
5. That selling, distributing, and prescribing of prescription opioid pain pills is a hazard to public health and safety, which has created a public nuisance to the citizens of the City of Berlin, and said nuisance remains unabated;
6. That, in addition to all other powers and duties now conferred by law upon the City of Berlin, the City of Berlin is authorized to enact ordinances, issue orders, and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance;

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7. That manufacturers of prescription opioids and those in the chain of distribution have wrongfully abused the privilege of selling and/or providing medication to our residents and must be held accountable; and
8. That it is the duty of the City of Berlin to vindicate the rights of the citizens of the City of Berlin and take action to abate this public nuisance.

Sec. 10.5 – 6 Retroactive Application

To the greatest extent allowed by law, this legislation applies retroactively.

Sec. 10.5 – 7 The provisions of this Ordinance are severable. To the extent that any provisions of this Ordinance are determined by the final decision of a Court to be invalid pursuant to any applicable statute or rule of law, such invalidity shall not affect any other provision thereof; and this Ordinance shall be interpreted as if such invalid provision were not a part hereof.

This Ordinance shall be in full force and effect from and after passage.

PASSED: _____
October 15, 2018

APPROVED: _____
Paul Grenier, Mayor

ATTEST: _____
Shelli Fortin, City Clerk