

DATE: November 5, 2009

TO: Mayor Prussing and Urbana City Council

FROM: David Gehrig and Charlie Smyth

RE: Criminal Trespass Applied to Tenants' Invited Guests

Sixty-three percent of households in Urbana rent their housing. As part of the on-going community discussion of the proposed Chronic Criminal Nuisance Property ordinance, we have become aware that these renters are vulnerable to the potentially capricious use of no-trespass orders that would deny them the freedom to be visited by friends or family members who could be banned entry onto the property for no reason and without due process.

The Illinois state criminal trespass statute explicitly exempts tenants and tenants' invited guests (see Appendix I, subsection (c)).

However, in 1994, the Illinois Supreme Court ruled in Williams v. Nagel, 162 Ill. 2d 542; 643 N.E.2d 816 (1994) that a landlord may ban tenants' invited guests if the lease contract includes a provision allowing the landlord to ban tenants' guests.

Recognizing that tenants have very little power to persuade landlords to remove from leases clauses that are vague or unfair, several cities in Illinois have exercised their home rule powers to prohibit certain lease clauses. A city's right to prohibit certain lease clauses has been upheld in Appellate Court. See Evanston v. Create, Inc., 85 Ill 2d 101, 421 N.E.2d 196 (1981).

In 1994, the Urbana City Council enacted an ordinance regulating landlord-tenant relationships that includes a section prohibiting certain lease clauses. It is now Chapter 12.5 of the Urbana City Code.

To address concerns about capricious banning of tenants' invited guests, we therefore propose amending Chapter 12.5-10 of the City Code as shown in Appendix II to prohibit lease clauses allowing landlords to ban tenants' invited guests for any reason **other than the guest having been arrested for criminal activity on the property.**

This change in the law would allow the landlord to ban tenants' guests **after** they've been arrested for criminal activity on the property, but not for any other reason. Further, any ban would have to be lifted if the guest(s) is acquitted of the crime or the charges are dropped.

Appendix I

Illinois Criminal Trespass State Statute

(720 ILCS 5/21-3) (from Ch. 38, par. 21-3)

Sec. 21-3. Criminal trespass to real property.

(a) Except as provided in subsection (a-5), whoever:

- (1) knowingly and without lawful authority enters or remains within or on a building; or
- (2) enters upon the land of another, after receiving, prior to such entry, notice from the owner or occupant that such entry is forbidden; or
- (3) remains upon the land of another, after receiving notice from the owner or occupant to depart; or
- (3.5) presents false documents or falsely represents his or her identity orally to the owner or occupant of a building or land in order to obtain permission from the owner or occupant to enter or remain in the building or on the land;

commits a Class B misdemeanor.

For purposes of item (1) of this subsection, this Section shall not apply to being in a building which is open to the public while the building is open to the public during its normal hours of operation; nor shall this Section apply to a person who enters a public building under the reasonable belief that the building is still open to the public.

(a-5) Except as otherwise provided in this subsection, whoever enters upon any of the following areas in or on a motor vehicle (including an off-road vehicle, motorcycle, moped, or any other powered two-wheel vehicle) after receiving, prior to that entry, notice from the owner or occupant that the entry is forbidden or remains upon or in the area after receiving notice from the owner or occupant to depart commits a Class A misdemeanor:

- (1) A field that is used for growing crops or that is capable of being used for growing crops.
- (2) An enclosed area containing livestock.
- (3) An orchard.
- (4) A barn or other agricultural building containing livestock.

(b) A person has received notice from the owner or occupant within the meaning of Subsection (a) if he has been notified personally, either orally or in writing including a valid court order as defined by subsection (7) of Section 112A-3 of the Code of Criminal Procedure of 1963 granting remedy (2) of subsection (b) of Section 112A-14 of that Code, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof.

(c) **This Section does not apply to any person, whether a migrant worker or otherwise, living on the land with permission of the owner or of his agent having apparent authority to hire workers on such land and assign them living quarters or a place of accommodations for living thereon, nor to anyone living on such land at the request of, or by occupancy, leasing or other agreement or arrangement with the owner or his agent, nor to anyone invited by such migrant worker or other person so living on such land to visit him at the place he is so living upon the land.**

(d) A person shall be exempt from prosecution under this Section if he beautifies unoccupied and abandoned residential and industrial properties located within any municipality. For the purpose of this subsection, "unoccupied and abandoned residential and industrial property" means any real estate (1) in which the taxes have not been paid for a period of at least 2 years; and (2) which has been left unoccupied and abandoned for a period of at least one year; and "beautifies" means to landscape, clean up litter, or to repair dilapidated conditions on or to board up windows and doors.

(e) No person shall be liable in any civil action for money damages to the owner of unoccupied and abandoned residential and industrial property which that person beautifies pursuant to subsection (d) of this Section.

(f) This Section does not prohibit a person from entering a building or upon the land of another for emergency purposes. For purposes of this subsection (f), "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person to be in imminent danger of serious bodily harm or in which property is or is reasonably believed to be in imminent danger of damage or destruction.

(g) Paragraph (3.5) of subsection (a) does not apply to a peace officer or other official of a unit of government who enters a building or land in the performance of his or her official duties.

(h) A person may be liable in any civil action for money damages to the owner of the land he or she entered upon with a motor vehicle as prohibited under subsection (a-5) of this Section. A person may also be liable to the owner for court costs and reasonable attorney's fees. The measure of damages shall be: (i) the actual damages, but not less than \$250, if the vehicle is operated in a nature preserve or registered area as defined in Sections 3.11 and 3.14 of the Illinois Natural Areas Preservation Act; (ii) twice the actual damages if the owner has previously notified the person to cease trespassing; or (iii) in any other case, the actual damages, but not less than \$50. If the person operating the vehicle is under the age of 16, the owner of the vehicle and the parent or legal guardian of the minor are jointly and severally liable. For the purposes of this subsection (h):

“Land” includes, but is not limited to, land used for crop land, fallow land, orchard, pasture, feed lot, timber land, prairie land, mine spoil nature preserves and registered areas. “Land” does not include driveways or private roadways upon which the owner allows the public to drive.

“Owner” means the person who has the right to possession of the land, including the owner, operator or tenant.

“Vehicle” has the same meaning as provided under Section 1-217 of the Illinois Vehicle Code.

(Source: P.A. 94-263, eff. 1-1-06; 94-509, eff. 8-9-05; 94-512, eff. 1-1-06; 95-331, eff. 8-21-07.)

Appendix II

Recommended Amendment to the Urbana Landlord/Tenant Ordinance

Sec. 12.5-10. Rental agreements--Prohibited provisions.

- (a) Except as otherwise provided by this article, no rental agreement between the landlord and the tenant shall contain any provision:
- (1) Waiving the rights or remedies provided under this article;
 - (2) Waiving any statutory rights or remedies provided under state or federal law;
 - (3) Providing that either the landlord or the tenant confess judgment on a claim arising out of the rental agreement;
 - (4) Providing that either the landlord or the tenant may recover attorney's fees incurred to enforce the rental agreement unless the rental agreement stipulates that both the landlord and the tenant be entitled to recovery of attorney's fees under identical terms and conditions;
 - (5) Limiting the liability of the landlord or the tenant arising under law;
 - (6) Prohibiting the tenant from subletting the rental unit;
 - (7) Requiring a monthly late fee in excess of five (5) percent of the monthly rental payment per month; fees in excess of this amount may be charged if the landlord demonstrates actual costs which are greater;
 - (8) Providing for tenant's payment of lock-out charges, sublet fees, late checkout charges or any other fees or penalties that exceed the landlord's actual costs for services; ~~or~~
 - (9) Automatically renewing the rental agreement by reason of the tenant's failure to provide notice of intent not to renew; or
 - (10) Allowing the landlord to issue a no-trespass notice to or to otherwise ban a tenant's invited guest for any reason other than that
 - (A) the guest had been arrested for engaging in criminal activity on the property, and
 - (B) the charge(s) had not been subsequently dropped, or the person arrested had not subsequently been acquitted of the charge(s).