

Passed:
Signed:

ORDINANCE NO. 2010-02-011

**AN ORDINANCE AMENDING CHAPTER 15, ARTICLE IV OF THE URBANA CODE
OF ORDINANCES**

(AGGRAVATED PUBLIC NUISANCE)

WHEREAS, the repeated commission of criminal offenses and violations of the City's Municipal Code substantially annoys and injures the health, comfort, repose and safety of the public; and

WHEREAS, the failure of owners or managers of certain real property to control the activity occurring on their property causes repeated and substantial expenditures of public funds in order to enforce State, Federal and City laws upon or near their property. Among the property management practices that contribute to the existence of activities which disturb neighborhoods are the failure of owners of real property to require tenants to obey laws as a condition of leases, the failure to enforce existing provisions of leases, the failure of owners to respond to or take affirmative steps to address complaints by adjoining property owners, and the overall tolerance by owners of criminal activity on property by tenants or their guests, all of which substantially annoys and injures the health, comfort, repose and safety of the public; and

WHEREAS, the decline in or depression of surrounding property values and the expenditure of public funds results in part from the fact that certain property owners fail to adequately manage and control their property; and

WHEREAS, the provisions of this article will assist the City in the long term to renew certain neighborhoods by lessening the expenditures of public funds, increasing property values, preserving the tranquility of neighborhoods, and deterring property owners from adopting inadequate management practices;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section One

Division Three, to be labeled Nuisances, is hereby created under Article IV, Chapter 15 of the Code of Ordinances. Section 15-80, to be labeled "Aggravated Public Nuisance," is hereby created under the newly created Division Three and shall read as follows:
Section 15-80.

A. Definitions.

1. The following words or phrases shall, when used in this article, have the following meanings:

- (a) *Cannabis* means any substance as defined in Section 3(a) of the Illinois Control Cannabis Control Act, 720 ILCS 550/1 et seq.
- (b) *Commit* or *commission* means knowingly causing, allowing, aiding or concealing the fact of such act or activities.
- (c) *Controlled substance* means any substance as defined in Article II of the Illinois Controlled Substance Act, 720 ILCS 570/201 et seq.
- (d) *Deliver* or *delivery* means the actual, constructive or attempted transfer of possession of a controlled substance, or cannabis, with or without consideration, whether or not there is an agency relationship.
- (e) *Dwelling* means a house, apartment building, mobile home, trailer or other structures used or intended for use for human habitation, and includes common areas within the structure which houses more than one (1) dwelling unit.
- (f) *Dwelling unit* means one (1) or more rooms, designated occupied or intended for occupancy as separate living quarters, for the exclusive use of a person or persons.
- (g) *In or on the premises of any dwelling* means a dwelling or the area within the boundary lines of any real property of the same ownership on which such dwelling is located.
- (h) *Knowledge* means a person knows, or acts knowingly or with knowledge of:
 - (1) The nature or attendant circumstances of his/her conduct, described by the section defining the offense, when he/she is consciously aware that his/her conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.
 - (2) The result of his/her conduct, described by the section defining the offense, when he/she is consciously aware that such result is practically certain to be caused by his/her conduct.
 - (3) Conduct performed knowingly or with knowledge is performed willfully, within the meaning of a section using the latter term, unless the section clearly requires another meaning.
- (i) *Manufacture* shall have the same meaning as set forth in Section 102(z) of the Illinois Controlled Substance Act, 720 ILCS 570/201 et seq.
- (j) Methamphetamine means any substance as defined in Section Methamphetamine Control and Community Protection Act, 720 ILCS 646/1 et. seq.**
- (k) *Negligence* means a person is negligent, or acts negligently, when he/she fails to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, described by the section defining the offense; and such failure constitutes a substantial deviation from the standard of care which a reasonable person would exercise in the situation.
 - (1) *Occupant* means any person who lives in or has possession or holds an occupancy interest in a dwelling, dwelling unit or real property, or any person residing or frequenting the premises of the dwelling with the actual or implied permission of an owner, tenant or lessee. **For purposes of this ordinance the term "occupant" shall also include employees, patrons and clients of a dwelling, dwelling unit or real property.**
- (m) *Owner* means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the

property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

(n) *Recklessness* means a person is reckless or acts recklessly when he/she consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the section defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in that situation. An act performed recklessly is performed wantonly, within the meaning of the section using the latter term, unless the section clearly requires another meaning.

2. Aggravated public nuisance.

(a) *Nuisance defined.* An "aggravated public nuisance" is:

(1) A dwelling, dwelling unit or real property;

(2) Where the owners or occupant of the dwelling, dwelling unit or real property conduct or commit the following activities within a dwelling unit, on the premises of a dwelling or real property, or within one hundred (100) feet of the property line of the premises of the dwelling, dwelling unit or real property of which the owner or occupant has control within a three hundred sixty-five-day period:

a. Two (2) or more forcible felonies (as defined by the Illinois Criminal Code); or

b. **Two (2) or more State of Federal criminal sexual offenses (as defined by the Illinois Criminal Code under 720 ILCS 5/12-13 et. seq. and/or 720 ILCS 5/19); or**

c. Two (2) or more State or Federal criminal offenses related to the illegal sale, possession or manufacture of controlled substances, **methamphetamine**, cannabis or drug paraphernalia; or

d. Two (2) or more violations of 720 ILCS 5/11 et. seq., entitled "Prostitution"; or

e. Two (2) or more violations of 720 ILCS 5/11 et. seq., entitled "Solicitation"; or

f. Two (2) or more violations of 720 ILCS 5/11 et. seq., entitled "Keeping a Place of Prostitution"; or

g. Two (2) or more violations of 720 ILCS 5/28 et. seq., entitled "Illegal Gambling" or "Keeping or Maintaining a place of Illegal Gambling"; or

h. **Two (2) or more violations of 720 ILCS 5/20-1 et. seq. entitled "Arson"; or**

i. Five (5) or more of any combination of the following:

1. Any of the offenses described in paragraphs a., b., c., d., e., f., g., and h. above;

2. Any of the following offenses as defined in the Illinois Criminal Code: disorderly conduct; battery; assault; aggravated assault; criminal damage to property; domestic battery; mob action; unlawful use of weapons; **street gang terrorism; and/or any of the following offenses as defined in the Illinois Criminal Code and/or the City of Urbana Code of Ordinances as animal cruelty;**

or

j. Five (5) or more violations of Chapter 16 of the Code of Ordinances regulating noise within or on the premises of a single dwelling, dwelling unit or real property.

(b) *Violation.* No owner of real property shall recklessly, knowingly, or negligently allow or permit an aggravated public nuisance or allow or permit an aggravated public nuisance to exist upon real property or part thereof, including individual dwelling units, owned by that person.

B. Written notice of aggravated public nuisance.

Before the filing of a complaint alleging a violation of Section A(2)(b), "Violation", above, the City Attorney shall, by certified mail, provide to the owner of the place at which the aggravated public nuisance is located, or the agent of the owner, written notice of the following:

- (1) That an aggravated public nuisance, as defined in this article, exists at the place specified in the notice;
- (2) That the owner of the place at which the aggravated public nuisance is located, or the owner's agent has twenty-one (21) days from the mailing of the notice to schedule and appear at the City Attorney's Office at the address provided in the notice for a nuisance abatement conference with said City Attorney or said attorney's representative and other appropriate City staff to discuss the possibility of entering into a written agreement to take action to abate the nuisance; and
- (3) That failure to appear at the City Attorney's Office for said conference within the time indicated may result in the City Attorney filing a complaint alleging a violation under paragraph (b).

C. Nuisance abatement conference.

At the nuisance abatement conference, the City Attorney or said attorney's representative, any other appropriate City staff members, and the property owner or owner's agent, shall discuss the facts constituting the aggravated public nuisance and shall attempt to agree on specific actions that the property owner or the owner's agent can take to abate said aggravated public nuisance. At said conference, the City Attorney or said attorney's representative shall provide to the property owner or the owner's agent available information from investigations by employees of the City regarding the commission of acts constituting the aggravated public nuisance, including the identity and last known addresses of individuals who have committed or witnessed the commission of said acts.

D. Nuisance abatement agreement.

(a) At the conclusion of the nuisance abatement conference, the City Attorney or said attorney's representative shall submit to the property owner or his or her agent a proposed written nuisance abatement agreement. If at the conclusion of the conference the City Attorney or said attorney's representative needs more time to draft said proposed nuisance abatement agreement, then a follow-up conference shall be scheduled with the property owner or property owner's agent within ten (10) days of the initial conference for submittal and review of the completed proposed nuisance abatement agreement.

(b) Any nuisance abatement agreement under this article shall include a list of specific actions and a specific schedule of deadlines for said actions to abate the aggravated public nuisance. It may also include provisions for a periodic assessment of the agreement's effectiveness, and procedures for modification to the agreement. A nuisance abatement agreement or any written modification to said agreement may impose conditions or requirements on the property owner for a period of up to twenty-four (24) months from the date the original agreement is entered into by the property owner or owner's agent and the City. A nuisance abatement agreement may impose one (1) or more of the following conditions or requirements on the property owner:

(1) Eviction of identified individuals from the dwelling, dwelling unit or real property in question.

(2) Written notification from the property owner to an identified individual or individuals that they are prohibited from entering onto the property that is the location of the aggravated public nuisances.

(3) Utilization of written leases containing a provision or provisions requiring eviction for criminal activity.

(4) The completion of improvements upon the property which have the impact of mitigating crime, including but not limited to the erection of fences, installation of security devices upon the entrances or increased lighting.

(5) Any other reasonable conditions or requirements designed to abate the aggravated public nuisance.

(c) Once a proposed written nuisance abatement plan or written modification to nuisance abatement plan has been submitted to the property owner or the owner's agent, said property owner or owner's agent shall have forty-eight (48) hours to review it and enter into said agreement by signing it and returning it to the office of the City Attorney.

D. Filing a complaint.

The City Attorney may file a complaint alleging a violation of paragraph 2(b) under any of the following circumstances:

(1) The owner or his or her agent does not schedule and attend a conference with the City Attorney or said attorney's representative within the time period prescribed in paragraph B, "Written notice of aggravated public nuisance".

(2) The owner or his or her agent fails to sign a proposed written nuisance abatement agreement or proposed written modification to said agreement within the prescribed time period set forth in paragraph (c) of Section D, "Nuisance abatement agreement".

(3) The owner or the owner's agent subsequently fails to comply with any conditions or requirements set forth in a nuisance abatement agreement, including any prescribed deadlines for taking particular actions.

E. Evidence.

(a) *State of mind.* In any proceeding brought under Section A(2) alleging an aggravated public nuisance, the Court shall consider at least the following in determining whether or not the defendant has recklessly, knowingly or negligently allowed or permitted an aggravated public nuisance to exist:

(1) Evidence of notice by the City or by any person to the defendant, notifying the defendant of the existence of any of the activities set forth in Section A(2).

(2) Actions taken by the owner to mitigate criminal activity or the existence of nuisances upon and in the vicinity of the property.

(3) Actions taken by the owner to remove persons who commit criminal offenses or nuisances from tenancy or occupancy or to prohibit the entry of such persons onto the premises of the dwelling, dwelling unit or real property.

(4) Actions taken by the owner to respond to notices sent by the City or residents.

(b) *Evidence of commission.* Proof the commission of any of the offenses or existence of any of the circumstances set forth in Section A(2) shall be by a preponderance of the evidence.

(c) *Convictions.* The finding of or judgment of guilty in any court against an individual for a crime enumerated in Section A(2) shall be prima facie evidence of the commission.

F. Action to abate; penalties.

In addition to prosecution of the offense defined by Section A(2) or pursuing any other remedies available under this Code, the City Attorney, upon receipt of reliable information that any real property within the corporate limits of the City is being maintained as an aggravated public nuisance, may prosecute an action for equitable relief, in the name of the City, to abate the nuisance and to enjoin any person who shall own, rent, or occupy the real property, dwelling or dwelling unit in question from using or permitting its use contrary to the provisions of Section A(2).

G. Judgment.

No judgment finding a violation under Section A(2)(b), "Violation", shall be entered against an owner if an owner or his or her agent has, in good faith, endeavored to prevent the nuisance. An owner or agent who has complied with all conditions or requirements of a nuisance abatement agreement and any modifications to said agreement, as defined in Section D, "Nuisance abatement agreement", shall be deemed to have endeavored in good faith to prevent the nuisance.

H. Remedies.

(a) Upon a finding of guilt under Section A(2)(b), "Violation", the Court may, in addition to other remedies permitted by this Code, impose a term of court supervision or conditional discharge for a term of up to three (3) years, conditioned on any or all of the following:

(1) The completion of improvements upon the property which have the impact of mitigating crime, including but not limited to the erection of fences, installation of security devices upon the entrances or increased lighting;

(2) Requirement of a written lease for occupants which includes provisions requiring eviction for criminal activity;

*******provision re: requiring tendering of tenancy lists stricken*******

(3) Posting a cash bond of no less than the minimum fine and up to the amount of the maximum fine for the period of court supervision or conditional discharge imposed by the Court, such bond to be retained by the City in an

interest bearing account and conditioned on successful completion of the period of court supervision or conditional discharge;

(5) Any other condition reasonably related to the objective of abating the aggravated public nuisance.

(b) The Court shall, upon a finding of guilt with respect to Section A(2)(b), "Violation", fine the defendant a sum of no less than one hundred dollars (\$100.00) per day that the nuisance existed, beginning on the date that the defendant first received notice of the conditions which constitute an aggravated public nuisance under Section B, "Written notice of aggravated public nuisance".

I. Performance Review.

The Legal Department of the City shall conduct a thorough evaluation of this Ordinance eighteen (18) months after its effective date. The review process shall include public input and comment on the Aggravated Public Nuisance Ordinance's strengths, weaknesses and effectiveness. The Department shall tender a written report to the Mayor and Council summarizing its findings and recommendations. This report shall be tendered in a timely manner but not later than three (3) months after the commencement of the review and evaluation process.

SECTION TWO

Reserved.

PASSED by the City Council this _____ day of _____,
_____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____,
_____.

Laurel Lunt Prussing, Mayor