

ORDINANCE No: 2008-11-135

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

(CHRONIC CRIMINAL NUISANCE PROPERTY)

WHEREAS, the City of Urbana has a population of more than 25,000 and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970 and 65 ILCS 5/1-1-10; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the effective control and elimination of criminal nuisance activity are essential to the health, safety, welfare and repose of the City of Urbana's inhabitants and visitors, as well as essential to the peace and quiet enjoyment of the City's neighborhoods; and

WHEREAS, the presence of property which exhibits a chronic pattern of criminal nuisance activity can exert a negative and blighting influence upon the stability and economic well-being of an entire neighborhood to the detriment of other property owners and residents and may result in the decline of surrounding property values; and

WHEREAS, a demonstrated indifference to or tolerance of criminal activity occurring on a property by the owner of that property compromises the health, safety, welfare and repose of all residents, tenants, visitors and guests to the property, as well as residents, tenants, visitors and guests to any adjacent and nearby properties and to the City as a whole; and

WHEREAS, the failure or refusal of property owners to maintain their properties in a safe and orderly fashion and to make efforts to control criminal activity occurring on their property can create an unsafe environment for residents, tenants, visitors and guests to the property and also causes expenditure of public funds in order to enforce Federal, State and City laws; and

WHEREAS, the Illinois Legislature has, for a number of years, criminalized, as enumerated in 720 ILCS 5/37-1 *et seq.*, the maintenance of nuisance properties, said properties having been used to facilitate criminal activity unabated;

WHEREAS, the City of Urbana has an interest in encouraging the prompt and effective abatement of chronic criminal nuisance behavior by property owners and occupants;

WHEREAS, the City of Urbana wishes to create an Ordinance that prohibits the facilitation of, or acquiescence to, criminal nuisance activity on any property over which the City has jurisdiction; and

WHEREAS, this Ordinance will assist the City in ensuring the health, comfort, safety and repose of the general public in protecting the stability of neighborhoods and the value of properties within neighborhoods, in lessening the expenditure of public funds, and in encouraging property owners to adopt safe and responsible 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 "Chronic Criminal Nuisance Property", is hereby created under the newly created Division Three and shall read as follows:

Section 15-80.

A. Definitions

Criminal Nuisance activities mean any of the following activities, behaviors, or conduct, as defined by federal or state statutes, as well as municipal ordinances:

- (1) Mob action.
- (2) Assault.
- (3) Battery.
- (4) Unlawful use of weapons or firearms.

- (5) Unlawful discharge of a firearm.
- (6) Prostitution.
- (7) Soliciting or patronizing a prostitute.
- (8) Keeping a house of prostitution.
- (9) Pandering.
- (10) Animal Cruelty or animal fighting
- (11) Sexual assault and sexual abuse.
- (12) Public indecency.
- (13) Unlawful manufacture, sale, distribution, possession, or use of controlled substances.
- (14) Unlawful, production, sale, distribution, possession, or use of cannabis.
- (15) Illegal gambling.
- (16) Keeping or maintaining a place of illegal gambling.
- (17) Unlawful possession of gambling devices.
- (18) Arson.
- (19) Violation of the Methamphetamine Control and Community Protection Act.
- (20) Violation of the Illinois Street Gang Terrorism Omnibus Prevention Act

NuisanceCriminal nuisance property means any property on which the police department has three (3) or more official police reports of nuisancecriminal nuisance activity which has occurred within a twelve-month period.

Person means any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying, or using property in the City of Urbana.

Person in charge means any person, in actual or constructive possession of a property, including, but not limited to, an owner, local agent or occupant of property under his ownership or control.

Police chief means the Chief of Police of the City of Urbana or his/her designee.

Property means any property, including land and that which is affixed, incidental, or appurtenant to land, including, but not limited to, any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit, or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property may be limited to the unit or the portion of the property on which any nuisancecriminal nuisance activity has occurred or is occurring, but includes areas of the property

used in common by all units of property, including, without limitation, other structures erected on the property and areas used for parking, loading, recreational activities, and landscaping.

B. Violations

(1) Any property on which criminal nuisance activity occurs may be declared a criminal nuisance property. No property shall be declared a criminal nuisance property unless it is proven by a preponderance of the evidence that there have been three (3) or more instances of ~~nuisance~~criminal nuisance activity within a twelve-month period of time.

(2) Any person or person in charge who (a) encourages or permits a property to become a ~~nuisance~~criminal nuisance property as defined in Subsection A.; (b) allows a property to continue as a ~~nuisance~~criminal nuisance property; (c) fails to implement reasonable and warranted measures, as specified by the police chief, shall be in violation of this section. In determining whether any person or person in charge implemented reasonable and warranted measures, the trier of fact shall consider, at least, the same factors enumerated in subsections (3)(a) through (3)(f).

(3) Each day that a violation of this section continues shall be considered a separate and distinct offense. The fine for violation of this Section shall be no less than \$300.00 per incident per day and no more than \$750.00 per incident per day or the maximum per incident allowed by the Code of Ordinances, whichever is greater. Such fine shall be a judgment against the guilty person(s), owner(s), occupant(s), or person(s) in charge jointly and severally. In establishing the amount of any fine, the court may consider any of the following factors:

a. The actions taken by the person in charge/owner/occupant to mitigate or correct the ~~nuisance~~criminal nuisance activities at the property.

b. The repeated or continuous nature of the problem.

c. The magnitude or gravity of the problem.

d. How cooperative the person in charge/owner/occupant is with the City of Urbana in abating the ~~nuisance~~criminal nuisance activities.

e. The cost to the city of investigating, correcting, or attempting to correct the ~~nuisance~~criminal nuisance activities.

f. Any other factor deemed relevant by the trier of fact. Evidence of a property's general reputation and/or the

reputation of the persons in it, or frequenting it, shall be admissible.

(4) If a person or person in charge is found guilty of a violation of this section, the court shall, in addition to fining the party or parties, order the person(s) in charge/owner/occupant to take reasonable, timely, and lawful measures to abate the ~~nuisance~~criminal nuisance activity, including specifying deadlines for the same. The court shall further order the person or persons in charge to pay the reasonable and necessary moving costs for persons displaced due to the closing of a criminal nuisance property. However, no costs shall be granted to persons whom the court finds were involved in creating or allowing the criminal nuisance activity at that property.

(5) In addition to the penalties above, the City of Urbana may, at its discretion, take the following actions:

Suspend the rental registration at a criminal nuisance property, if such property is rented or leased. If such registration is suspended, the owner(s) of the property shall close and secure said property against all unauthorized access, use, and occupancy for a period of not less than thirty (30) days, or more than 180 days. If the City suspends the rental registration of a property, the person in charge, or the owner/occupant of the property, if those persons are different than the person in charge, shall receive written notice from the City's Finance Department that his/her rental registration for the property deemed a criminal nuisance property is suspended. The suspension of any registration shall not release or discharge the license holder from paying fees or fines under this Code, nor shall such registration holder be released from criminal prosecution or further civil proceedings.

Suspend or revoke any liquor license(s) authorizing the sales or consumption of alcohol on any property found to be a chronic criminal nuisance for the duration of the license. Future licenses may be applied for but the Liquor Commissioner may decline to issue said license absent a showing that the ~~nuisance~~criminal nuisance nature of the property has been abated.

C. Remediation Measures

Notification: In the event that the Urbana Police Department receives two official police reports within a twelve month period of ~~nuisance~~criminal nuisance activity as defined in

Section A of this Ordinance on a particular property and the Urbana Police Department, in conjunction with the City of Urbana Legal Division, has made a determination that said property is at risk for becoming a chronic criminal nuisance property, a notification letter shall be sent to the registered owner of said property, notifying the owner that his/her property is in jeopardy of violating this Ordinance and requesting that said owner and/or his/her designee arrange to meet with representatives of the City in order to address the issue. Said letter shall advise of the possible penalties as defined in Section B of this Ordinance.

Abatement Agreement: Should the property owner or his/her designee agree to meet with representatives of the City, a member of the Police Department shall work, in conjunction with the Legal Division, with the property owner or his/her designee to reach an abatement agreement aimed at addressing those issues and/or tenants contributing to or participating in nuisancecriminal nuisance activities on the property. Said agreement may contain provisions suggesting the property owner consider evicting or banning persons directly engaged in the underlying nuisancecriminal nuisance activities who have been arrested in conjunction with those activities and whose resolution of any related charges have not resulted in dismissal or acquittal. The agreement may also require the property owner to make improvements to the property including, but not limited to, improved lighting and security measures.

~~Model Leases: In an attempt to empower landlords to deal with problem tenants and to act preemptively against nuisance activities occurring on their properties, use of model leases provided by the City may be encouraged.~~

D. Good Faith Efforts:

While it is the intent of this Ordinance to ensure the safety of the residents, visitors and guests to the City of Urbana, the Council recognizes that in certain circumstances all problems occurring on a property may not be anticipated, avoided or ameliorated despite the best efforts of the property owner. The penalties enumerated in this Ordinance shall not be pursued in the event that the property owner has made all good faith efforts to cooperate with the City of Urbana in addressing nuisancecriminal nuisance activities on his/her property.

Section Two.

This Ordinance, as amended, shall be in full force and effect, and shall be controlling, immediately upon its passage and approval.

Section Three.

All ordinances, or parts of ordinances thereof, which are in conflict with the provisions of any portion of this Ordinance, as amended, are hereby repealed to the extent of any conflict.

Section Four.

A prosecution which is pending on the effective date of this article and which arose from a violation of an ordinance repealed by this article, or a prosecution which is started within six (6) months after the effective date of this article, arising from a violation of an ordinance repealed by this article, shall be tried and determined exactly as if the ordinance had not been repealed.

Section Five.

This article applies to all properties within the corporate or jurisdictional limits of the City of Urbana.

Section Six.

All fines collected by the City for violations of this Section shall be placed in a fund, ~~up to a limit of \$10,000.00,~~ to be used to help defray the reasonable and necessary moving and relocation costs of persons displaced by the closing of a criminal nuisance property when such persons shall not be found to have created or allowed the criminal nuisance activity to occur or continue. Said persons may make application for a grant from this fund when so displaced. Any such funds disbursed shall be repaid to the City, jointly and severally, by the persons(s)/person(s) in charge/owner of the criminal nuisance property found by the Court to be guilty of violation(s) of this Section. Nothing in this ordinance precludes a displaced tenant from seeking and/or entitlement of damages for a landlord's breach of lease that results from termination of the right to possession caused by the landlord's violation of this ordinance before the lease ends, including, but not limited to, refund of all pre-paid rent and utility payments and deposits, moving costs and the rent differential for alternative housing for the remainder of the lease period.

Section Seven.

If any subsection or part of this Ordinance shall be found unlawful or invalid by a court of competent jurisdiction, the remaining parts shall remain in full force and effect.

Section Eight.

This Ordinance shall be subject to review and reauthorization eighteen (18) months of its effective date. The review shall include opportunities for public hearings, written comment from the Urbana community as well as the Police Department, the City Attorney, and the City Council itself. The purpose of the review is to evaluate the strengths and weaknesses of the present ordinance, and determine what changes, if any, are appropriate to the ordinance in furtherance of the purpose and intent of this Ordinance.

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