

ORDINANCE #68535
Board Bill No. 238

An Ordinance pertaining to public nuisances; repealing Ordinance 67600 and enacting in lieu thereof a new ordinance establishing procedures for the abatement of public nuisances identified by the Public Safety Director; containing definitions, penalties and an emergency clause.

WHEREAS, permitting nuisances is detrimental to the safety, health, morals, or repose of any inhabitants of the City of St. Louis;

BE IT RESOLVED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. DEFINITIONS.

For the Purposes of this Ordinance:

- A. "Premises" includes any parcel of property, residential or commercial and the building or structure, if any, which is situated on the property, and any portion of the public way that abuts the parcel of property when it is used in conjunction with the abutting property for the commission of illegal activity.
- B. A "Nuisance" is a continuing act or physical condition which is made, permitted, allowed or continued by any person or legal entity, their agents or servants or any person or legal entity who aids therein which is detrimental to the safety, welfare or convenience of the inhabitants of the City or a part thereof, or any act or condition so designated by statute or ordinance.
- C. "Owner" is the person or entity whose name is listed on the last deed recorded at the Office of the Recorder of Deeds, on the tax records at the Office of the Assessor, or person in care, custody or control of said premises.

SECTION TWO. PUBLIC NUISANCE

A public nuisance exists when the premises are used for one or more of the following incidents within the previous 12 months:

- A. the illegal sale, manufacture, storing, possession, distribution or use of narcotics or other controlled substances or precursors;
- B. the illegal sale, manufacture, storing, possession, distribution or use of drug paraphernalia or precursors;
- C. illegal sale, storing, possession, use or distribution of a firearm(s), weapons or explosive devices;

A public nuisance exists when the premises are used for two or more of the following incidents within the previous 12 months:

- A. prostitution;
- B. illegal gambling;
- C. the illegal sale, distribution or consumption of alcoholic beverages;
- D. violation of municipal, state or federal business licensing regulations;
- E. commission of any offense which is punishable by imprisonment of ninety days or more;
- F. maintaining or permitting a condition or engaging in an activity which unreasonably annoys, injures, or endangers the safety, health, morals, or repose of any inhabitants of the City of St. Louis or a part thereof;
- G. making a false report of a violation of the law to any police officer or other officer of the law in person, or from any police alarm or call box, or over the telephone or radio, or by improper use of Emergency 911, or by any other means of communication;
- H. any other condition or activity that may constitute a felony, misdemeanor or ordinance violation under federal, state, or municipal law which is detrimental to the safety, welfare or convenience of the inhabitants of the City of St. Louis or a part

thereof.

SECTION THREE. NOTICE

- A. Whenever the Director of Public Safety reasonably believes that any premises constitutes a public nuisance as defined in Sections One and Two herein, the Director or his designee, shall give written notice to the person or entity who owns or controls the premises ("Owner"). The Notice shall state that the Director reasonably believes that a nuisance exists and identifies the activities or conditions which form the basis of the belief. Said Notice shall also set forth reasonable abatement measures which the landlord must take within 30 days of the notice. An owner occupant and/or tenant must immediately cease all nuisance behavior.
- B. A copy of the Notice shall be sent to the Owner of said premises via first class United States mail. A copy of the Notice shall also be posted in a prominent place on the premises by the Neighborhood Stabilization Officer, Problem Property Officer, Project 87 Building Inspector or other designee.

The Notice shall also provide the Owner of said premises a reasonable opportunity to meet with a representative of the City to discuss the allegations in the Notice and the need for abatement measures.

- C. In the event that additional nuisance behavior occurs on said premises which is different from the behavior which was listed in the Notice, the Director or his designee may send an "Amended Notice" to the Owner of said premises. The "Amended Notice" shall be sent via first class United States mail and by posting a copy in a prominent place on the premises. An additional 30 day abatement period shall not exist when an "Amended Notice" is issued.
- D. Any Notice of Public Nuisance that was issued in accordance with City of St. Louis Ordinance 67600 is still in effect and shall be given full faith and credit.

SECTION FOUR. SUMMONS

Any owner occupant, tenant or person who engages in, encourages, permits or otherwise fails to immediately abate the nuisance may be issued a summons for "engaging in a nuisance" or "maintaining a nuisance." Any owner of residential or commercial unit(s), who does not abate the nuisance within the 30 day period shall be issued a summons for "failure to abate a nuisance." A defendant who is found guilty of or pleads guilty to a nuisance offense shall be subject to a fine of not less than \$100.00 and not more than \$500.00, or any other penalty available by law including up to 90 days in jail, for the first offense. A defendant, who is found guilty of or pleads guilty to a second nuisance offense, shall be subject to a fine of not less than \$200.00 and not more than \$500.00, or any other penalty available by law including up to 90 days in jail. A defendant who is found guilty of or pleads guilty to a third or subsequent nuisance offense, shall be subject to a fine of \$500.00, or any other penalty available by law including up to 90 days in jail. Each occurrence of nuisance behavior regardless of proximity in time to any other nuisance violation shall be deemed a separate and distinct offense for which a summons may be issued.

SECTION FIVE. ADMINISTRATIVE HEARINGS

- A. In addition to the issuance of a summons under Section Four, the Director of Public Safety may initiate an Administrative Hearing in order to abate a public nuisance as defined in Sections One and Two herein.
- B. When an Owner of rental residential or commercial property has failed to abate the nuisance within 30 days of the Notice or an owner occupant has failed to immediately abate the nuisance upon receipt of the Notice, the Director of Public Safety or his designee may issue a Hearing Notice to the Owner of the subject premises. The Hearing Notice shall be in writing and either sent by first class United States mail or served in person, not less than twenty (20) days prior to the date of such hearing. A copy of the Hearing Notice shall also be posted in a prominent place on the premises.
- C. An attorney who appears on behalf of any Owner must file a written appearance with the Director of the Department of Public Safety.
- D. The case for the City shall be presented by the City Counselor.
- E. The Administrative Hearing Officer may grant continuances only upon a finding of good cause.

- F. All testimony shall be given under oath or affirmation.
- G. The Administrative Hearing Officer may issue subpoenas to secure the attendance and testimony of relevant witnesses and the production of relevant documents.
- H. RSMo 536.070 shall control the rules of evidence, objections, witnesses, judicial notice, affidavits as evidence, and the transcript requirements of the Administrative Hearing.
- I. No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a violation Notice, or a copy thereof, issued and signed in accordance with Section Three herein shall be prima facie evidence of the correctness of the facts specified therein.
- J. Upon conclusion of a hearing, the Administrative Hearing Officer shall issue Findings of Fact, Conclusions of Law and Order of the Hearing Officer ("Order") setting forth the facts and law which support his/her nuisance determination.
- K. In the event that a nuisance is found to exist, the Administrative Hearing Officer shall require that the Owner implement reasonable measures designed to prevent the recurrence of the nuisance activity. Those measures may include but, are not limited to, making security improvements to the premises, hiring of licensed and insured security personnel, appointment of a receiver, the initiation and execution of eviction proceedings against tenants who engage in the nuisance behavior, or the closing and boarding of the premises for a period not to exceed one year.
- L. The Order shall inform the respondent of his or her right to seek judicial review of the Hearing Officer's final determination, as provided in RSMo 536.100 to 536.140.
- M. The record of all hearings before an Administrative Hearing Officer shall include: (i) a record of the testimony presented at the hearing, which may be made by tape recording, digital recording or other appropriate means; (ii) all exhibits submitted as evidence at the hearing; and (iii) a copy of the Order.

SECTION SIX. SUMMONS FOR VIOLATION OF NUISANCE ABATEMENT ORDER

Failure to comply with an order to abate a public safety nuisance under this ordinance shall be a violation of this ordinance and any person who fails to comply with such an order shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each day the court finds such person to be in noncompliance. In addition to a fine, the court may sentence such person to not more than ninety (90) days imprisonment.

SECTION SEVEN. CONDEMNATION, REVOCATION OF PERMITS, LICENSES, AND NULLIFICATION OF EXEMPTIONS

If the Hearing Officer determines that a nuisance exists and orders that the abatement of the nuisance requires closure of the subject premises, the following shall apply:

- A. If the building is at any time occupied during the order of closure the building shall be deemed a "Nuisance" in accordance with the City of St. Louis Property Maintenance Code and "Condemned" in accordance with the laws of the City of St. Louis that apply to Condemned buildings. All the remedies to the City of St. Louis allowed through those Ordinances shall apply to the violation of a Nuisance Abatement Order.
- B. Prior to occupancy of the premises, whether commercial or residential, the property shall be inspected by the appropriate City, State and Federal Inspectors. The subject premises must be in compliance with all applicable city, state and federal, health, safety property maintenance and building codes. No occupancy shall occur unless all code violations are abated.
- C. Any property, commercial or residential which had previously been exempt from or "grandfathered in" and not subject to compliance with current health, safety, zoning, property maintenance and building codes will be deemed to have forfeited that status and must be in total compliance with all applicable City, state and federal, health, safety property maintenance and building codes. The property shall be subject to a Full Occupancy Inspection. No occupancy shall occur unless all code violations are abated.
- D. Any licenses, variances, permits or certificates, whether business, occupancy or building code which pertain to the subject

premises and were in effect at the time of an Order of Closure of the premises are deemed revoked or abandoned.

SECTION EIGHT. SEVERABILITY CLAUSE.

The Sections of this Ordinance shall be severable. In the event any Section of this Ordinance is found by a Court of competent jurisdiction to be unconstitutional, the remaining Sections of this Ordinance are valid unless the Court finds the valid Sections of this Ordinance so essentially and inseparably connected with, and so dependent upon the void Section, that it cannot presume that the legislature would have enacted the valid Sections without the void ones; or unless the Court finds that the valid Sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION NINE. EMERGENCY CLAUSE. This being an ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of St. Louis and therefore shall become effective immediately upon its passage and approval by the Mayor.

Approved: December 15, 2009