

Effective date: October 23, 2007

10/8/2007
9/7/2007
5/3/2007

52-O-07

AN ORDINANCE

**Amending Section 9-5-4 of the Evanston City Code,
"Nuisance Premises"**

WHEREAS, 65 ILCS 5/11-5-3 of the Illinois Compiled Statutes authorizes municipalities to prevent intoxication, fighting, dog fights, and all other disorderly conduct; and

WHEREAS, the City, as a home rule municipality, is authorized by Article VII, Section 6 of the 1970 Illinois Constitution to enact ordinances pertaining to the public health, welfare, and safety of its residents; and

WHEREAS, ordinances designed to curb the effect of disruptive behaviors on persons in their homes, businesses and on the public way pertain to the public health, welfare, and safety of Evanston residents; and

WHEREAS, the City Council has found that certain offenses committed on private property, in particular, felonies and misdemeanors, and those violations of the City Code relating to alcoholic liquor, illegal drugs, drug paraphernalia, animal fighting, gambling, resisting lawful actions of the police, noise, curfew, weapons, property maintenance, overcrowding, are extremely disturbing and disruptive to the public health, welfare, and safety; and

WHEREAS, conditions relating to the maintenance and upkeep of property, including, but not limited to, garbage accumulation, graffiti,

overcrowding, abandoned vehicles, overgrown weeds, further contribute to neighborhood nuisance; and

WHEREAS, the City Council has found that the aforementioned behaviors and offenses are inimical to the enjoyment of life on neighboring premises and threaten the stability of neighborhoods; and

WHEREAS, the City Council has found that the aforementioned offenses contribute to an enhanced sense of fear, intimidation, and disorder by persons on neighboring premises; and

WHEREAS, said offenses are nuisances and constitute threats to both persons and the peaceful enjoyment of property; and

WHEREAS, the City Council has found that the public interest is served by requiring owners of nuisance premises to adhere to a plan of correction designed to reduce or prevent future unlawful activity; and

WHEREAS, in view of the foregoing, the City Council deemed it in the public interest, as a means of promoting the peaceful co-existence of neighborhood residents, and for the protection of the public health, welfare, and safety, to enact Section 9-5-4, "Nuisance Premises," of the Evanston City Code, 1979, as amended ("City Code"), by passing Ordinance 111-O-02; and

WHEREAS, since its inception, certain sections of the Nuisance Premises Ordinance have proven susceptible to various interpretations; and

WHEREAS, certain interpretations of the Nuisance Premises Ordinance have lead to fewer successful prosecutions of the Ordinance; and

WHEREAS, even when prosecutions pursuant to the Nuisance Premises Ordinance have been successful, the fines associated therewith frequently have failed to provide an insufficient deterrent to repeat violations,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Section 9-5-4, "Nuisance Premises," of the City Code be and hereby is further amended to read as follows:

9-5-4: NUISANCE PREMISES:

(A) Definitions:

ENCOURAGES OR PERMITS: Acquiesces, by failure to prevent or expressly consent to an act.

NUISANCE PREMISES: Any premises, as defined herein, used for any offense, as defined below, is hereby declared a public nuisance; provided however that no public nuisance or violation of this Section shall be deemed to exist unless:

1. the offense for which the premises is used is punishable by imprisonment for one (1) year or more or the premises is used for two (2) or more such offenses within any six (6)- month period; or
2. in any six (6) month period, the premises is the site of two (2) or more offenses which are misdemeanors under state or federal law or a violation of the Evanston City Code, as amended, including, but not limited to, the following provisions:
 - a. Subsection 3-5-3(A)1 of this code, liquor license required.
 - b. Section 3-5-11, "Sales To Minors, Certain Persons Restricted," of this code.
 - c. Section 3-5-13, "Responsibility Of Parents And Others For Alcohol Consumption By Minors, " of this code.
 - d. Section 3-5-14, (liquor) "Age Restrictions; Identification Cards," of this code.
 - e. Title 8, chapter 16, "Marijuana," of this code.

- f. Title 8, chapter 17, "Drug Paraphernalia Control," of this code.
- g. Section 9-4-3-2, "Limitation On Number Of Dogs," of this title.
- h. Section 9-4-14, "Cruelty To Animals," of this title (includes animal fighting).
- i. Section 9-4-17, "Dangerous Dogs," of this title.
- j. Section 9-5-3, "Disorderly Conduct", of this chapter.
- k. Section 9-5-6, "Disturb The Peace," of this chapter.
- l. Section 9-5-8-1, "Gambling House, Establishments," of this chapter.
- m. Section 9-5-8-4, "Gambling Acts," of this chapter.
- n. Subsection 9-5-10(C)1 of this chapter, alcoholic beverages, consumption/possession public property (sidewalks and parkways).
- o. Section 9-5-20-1, "Obedience To Police In Public Places," of this chapter.
- p. Section 9-5-20-4, "Resisting Or Interfering With Police," of this chapter.
- q. Section 9-5-23, "Noises Prohibited," of this chapter.
- r. Subsection 9-6-1 of this title, curfew.
- s. Chapter 8, "Weapons," of this title.
- t. 720 Illinois Compiled Statutes 5/11-14, prostitution.
- u. 2003 international fire code, section 107.6 and 202, overcrowding.
- v. 2003 international property maintenance code.
- w. Title 6, the Zoning Ordinance.

PREMISES: Any parcel of property or part thereof 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.

REASONABLY BELIEVES: "Reasonably believes" or "reasonable belief" means that the person concerned, acting as a reasonable person, believes that the described facts exist.

(B) Maintaining Nuisance Premises Prohibited:

1. Any person who owns, manages, or controls a premises and who encourages or permits an illegal activity described in Subsection (A) to occur or continue on said premises shall be guilty of maintaining a nuisance premises.
2. Any person who owns, manages, or controls any premises and who fails to implement, within the thirty (30)- day period following the notice required in Subsection (D) of this Section, or within any other period agreed upon by the person and the City, reasonable and warranted abatement measures identified in the notice issued pursuant to Subsection (D), or such measures agreed to by the person and the City subsequent to the issuance of said notice, or other abatement measures which successfully abate the public nuisance on the premises, shall be liable for maintaining a nuisance premises. No person shall be found in violation of this Subsection (B)(2) unless the City proves, in a court of competent jurisdiction or in the City's Division of Administrative Hearings, by a preponderance of the evidence, that the abatement measures were reasonable and warranted, and that he/she knowingly failed to implement them.
3. Each day that a violation of this section continues shall be considered a separate and distinct offense.

(C) Order of Abatement: Whenever the City Manager or his/her designee reasonably believes that any premises constitutes a public nuisance as described in this Section, he/she may bring an action to abate the nuisance in a court of competent jurisdiction or in the City's Division of Administrative Hearings. The presiding authority shall issue an order of abatement upon a finding of liability pursuant to this Section. The order of abatement shall require the respondent to take measures reasonably calculated to prevent the recurrence of the illegal activity. In ordering these measures, the presiding authority shall consider the magnitude of the harm caused by the nuisance, the value of the property, and the extent to which the respondent has failed to take effective measures to abate the nuisance. Those measures may include, but are not limited to, making improvements to real estate and installing lighting to enhance security, the hiring of licensed and insured security personnel, the hiring of a receiver, the initiation and execution of eviction proceedings against tenants engaged in illegal activity, or, at the request of the City Manager or his/her designee, the assignment or forfeiture to the City of all of the respondent's

rights, title and interest in the real estate. Assignment or forfeiture of the respondent's rights, title and interest in the real estate shall be considered as an abatement measure only when the respondent has failed to abate a nuisance following an order issued pursuant to this paragraph, or has failed to abate a nuisance within thirty (30) days of a notice issued pursuant to Subsection (D) of this Section, and: (i) a forcible felony as defined in Section 2-8 of the Criminal Code (720 ILCS 5/2-8), as amended, is committed on the premises, or (ii) two or more violations of the Illinois Controlled Substances Act or the Cannabis Control Act occur on the premises on separate days within a one year period. The order of abatement may also authorize the issuance of *ex parte* administrative search warrants reasonably calculated to determine whether the nuisance has been abated or whether the order of the court or hearing officer has been obeyed. Any order of abatement issued by an Administrative Hearing Officer pursuant to this ordinance is subject to enforcement pursuant to Section 11-1-17 of the City Code. Actions brought pursuant to this Section may also be accompanied by the recording of a *lis pendens* notice against the property.

- (D) Notice of Violation: Whenever the City Manager or his/her designee reasonably believes that any premises constitutes a public nuisance as described in this Section and that the person who owns or controls the premises does not have actual or constructive knowledge of the illegal activity occurring thereon, he/she shall give written notice to the person who owns or controls the premises. Such notice shall include, but not be limited to, stating that a public nuisance exists and identifying reasonable abatement measures that must be taken within thirty (30) days of the notice. The notice shall be in writing and may be served in person or sent by certified mail, return receipt requested. The notice shall provide the recipient a reasonable opportunity to meet with a representative of the City to discuss the allegations in the notice and the need for abatement measures. Failure to respond to the notice or implement the abatement measures requested therein or those subsequently agreed to by the recipient and the City within the thirty (30)-day period following the notice, or within any period subsequently agreed upon by said parties, comprises a violation of Subsection (B)(2) of this Section. The notice shall not be a prerequisite to the issuance of a citation for violation of subsection (B)1, of this Section.

- (E) Penalties:

Upon a finding of liability pursuant to this ordinance, in a court of competent jurisdiction or in the City's Division of Administrative Hearings, by a preponderance of the evidence, the respondent shall be fined:

1. Not less than three thousand dollars (\$3,000.00) and not more than six thousand dollars (\$6,000.00) for any offense on the premises defined as a Class X felony by the Criminal Code of 1961, 720 ILCS 5, as amended (hereinafter, "Criminal Code");
2. Not less than one thousand five hundred dollars (\$1,500.00) and not more than three thousand dollars (\$3,000.00) for any offense on the premises defined as a Class 1 felony by the Criminal Code;
3. Not less than seven hundred dollars (\$700.00) and not more than one thousand four hundred dollars (\$1,400.00) for any offense on the premises defined as a Class 2 felony by the Criminal Code;
4. not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) for any offense on the premises defined as a Class 3 felony by the Criminal Code;
5. Not less than three hundred dollars (\$300.00) and not more than one thousand dollars (\$1,000.00) for any offense on the premises defined as a Class 4 felony by the Criminal Code; and
6. Not less than two hundred dollars (\$200.00) and not more than one thousand dollars (\$1,000.00) for all offenses on the premises not otherwise specified.

(F) Evictions:

No person evicted due to a notice of violation or nuisance abatement order issued or agreed to, pursuant to the terms of this ordinance, shall be eligible to receive City-funded relocation assistance.

(G) Disposition of Property:

Any property assigned or forfeited to the City pursuant to this Section may be disposed of as authorized by the City Council.

(H) Severability:

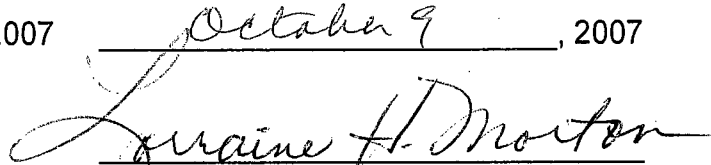
If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or applications thereof.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

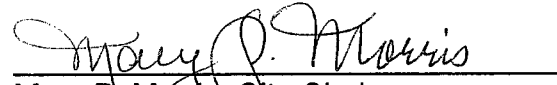
Introduced: September 27, 2007 Approved:

Adopted: October 8, 2007 October 9, 2007

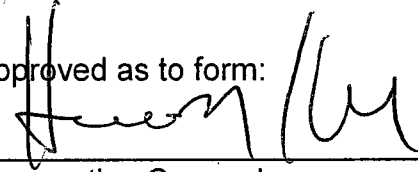


Lorraine H. Morton, Mayor

Attest:



Mary P. Morris, City Clerk

Approved as to form: 

Corporation Counsel