

Effective Date: July 21, 2016

6/27/2016
6/22/2016
6/13/2016

75-O-16

AN ORDINANCE

Amending City Code Section 9-5-4 “Nuisance Premise” to Revise the Process and Amend the Qualifying Offenses

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

SECTION 1: Legislative Statement. This ordinance is a legislative tool the City can use to quickly and effectively abate nuisance activity that is occurring on a specific premise within the City of Evanston. The ordinance places responsibility for abating nuisance activity on the premise owner and holds the premises owner accountable for through either a resolution agreement or court mandated abatement order. This Ordinance will enhance the public’s safety, and promote the general welfare of City of Evanston residents and visitors alike.

Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v. City of Des Plaines*, 153 Ill.2d 164). Pursuant to 65 ILCS 5/1-2-1, the City may make all rules and regulations to carry into effect the powers granted to the City, such broad and general grant of authority complementing the City’s home rule powers. At meetings held in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*), the City Council considered this Ordinance, heard public comment, and made findings.

It is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747(1991)) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass'n v. City of Chicago*, 45 F.3d 1124 (1995)).

This Ordinance is not intended to discourage crime victims, including victims of domestic violence and sexual violence, victims of child abuse, persons with disabilities, persons in legitimate need of police services, or a person coming to the aid of an individual in need of police assistance, from obtaining those services. This Ordinance does not affect a premise owner's and the City's duty to comply with the civil rights laws, nor does it affect a premise owner's duty to comply with all other laws governing residential tenancies.

SECTION 2: City Code Section 9-5-4 of the Evanston City Code of 2012, is hereby deleted in its entirety and replaced with the following language:

9-5-4. – NUISANCE PREMISE ORDINANCE.

- (A) **SHORT TITLE:** This Section is known and may be cited as the NUISANCE PREMISE ORDINANCE.
- (B) **PURPOSE:** It is hereby declared to be the purpose of this Section and the policy of the City in the exercise of its police and regulatory powers for the protection of the public safety to safeguard, for the health, morals, safety and welfare of persons in and residing in the City, and to address activities arising from criminal activities, public disturbances and nuisances recurring in the same location. This Section is not intended and must not be interpreted to cover police calls related to domestic violence, sexual violence, crime victims, child abuse or calls from disabled individuals, or calls on behalf of an individual in need of police services.
- (C) **CONSTRUCTION:** This Section is construed according to the fair import of its terms and must be liberally construed to further the purposes and policy stated in this Section.
- (D) **SEVERABILITY:** If any provision of this Section or its application to any person or circumstances is held invalid, the remainder of this Section and the application

of the provision to other persons not similarly situated or to other circumstances is not be affected.

- (E) DEFINITIONS: For purposes of this Section, the following terms have the following meanings:

AGGRAVATED OFFENSE:	One (1) or more of the following criminal offenses supported by underlying proof of the specified activity beyond an arrest listed below occurred at the Premises during any given period:
	1. Homicide, 720 ILCS 5/9-1;
	2. Aggravated assault, 720 ILCS 5/12-2;
	3. Aggravated battery, 720 ILCS 5/12-3.05;
	4. Criminal street gang recruitment, 720 ILCS 5/12-6.4;
	5. Unlawful contact with streetgang member(s), 720 ILCS 5/25-5;
	6. Criminal offense involving a deadly weapon, 720 ILCS 5/24;
	7. Kidnapping and related offenses, 720 ILCS 5/10-1, et. seq.
	8. Armed violence as defined in 720 ILCS 5/33A-2.
	9. Theft, 720 ILCS 5/16-1 et seq.
	10. Mob Action, 720 ILCS 5/25-1, et seq.
	11. Possession of explosives or incendiary devices, 720 ILCS 5/20-2 et seq.
NON-AGGRAVATED OFFENSE:	Two (2) or more of the following offenses supported by underlying proof of the specified activity occurred beyond an arrest or citation issued during any twelve (12) month period, as a result of any two (2) separate and distinct events:
	1. 2012 International Fire Code Section 107.5 and Section 202, "Overcrowding," as adopted and amended by City Code Section 4-4-1;
	2. 2012 International Property Maintenance Code, as adopted and amended by City Code Section 5-1-1;
	3. City Code Section 9-4-3-2, "Limitation On Number Of Dogs";
	4. City Code Section 9-4-14, "Cruelty To Animals," including animal fighting;
	5. City Code Section 6-5-7, "Prohibited Home Occupations" and/or City Code Section 6-5-4 for Home Occupations, "General Requirements and Performance Criteria";
	6. City Code Section 9-4-17, "Dangerous Dogs"
	7. City Code Section 9-5-18-4, "Resisting Or Interfering With Police"
	8. Manufacture or selling controlled substances, 720 ILCS

	570/401
	9. City Code Section 9-5-6, "Disturb The Peace", of this Chapter;
	10. Prostitution, 720 ILCS 5/11-14
	11. City Code Section 9-5-20, "Noises Prohibited"
	12. City Code, Chapter 6, Zoning Code violations
	13. Any other offense that constitutes a felony or Class A misdemeanor under state or federal law
CONTROL:	The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on the property.
ENCOURAGES OR PERMITS:	Acquiesces by failure to prevent or expressly consent to an act. A crime victim, victim of domestic or sexual violence, or innocent third party will not be found to have encouraged, permitted, acquiesced, failed to prevent, or consented to an act.
PREMISE:	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.

- (F) **DUTY TO CONTROL PREMISES:** Any person who is an owner, property manager, occupant, or tenant has rightful possession or possessory control, individually or jointly with others, of any premise, has an affirmative duty to control and not encourage nor permit activity which constitutes a criminal aggravated offense or a non-aggravated offense of the City Code on the premises.
- (G) **NUISANCE PREMISES DECLARED:** Any premise with one or more aggravated offenses at any time or two (2) or more non-aggravated offenses in a twelve (12) month period is hereby declared to be a nuisance premise.
1. Exceptions: A premise shall not be declared a nuisance premise based on:
 - a. Contact made to police or other emergency services, if:
 - i. the contact was made with the intent to prevent or respond to domestic violence or sexual violence;
 - ii. the intervention or emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or
 - iii. the contact was made by, on behalf of, or otherwise concerns an individual with a disability and the purpose of the contact was related to that individual's disability.

- b. An incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit or on the premises; or
 - c. Criminal activity or a local ordinance violation occurring in the dwelling unit or on the premises that is directly relating to domestic violence or sexual violence, engaged in by a tenant, member of a tenant's household, guest, or other party, and against a tenant, household member or guest.
 - 2. Evidence of Qualifying Offense: Evidence of criminal activity or citation issued to constitute a qualifying aggravated offense or non-aggravated offense does not require criminal conviction. An arrest or citation issued, supported by admissible corroborating evidence that activity in violation of the above provisions occurred, for a described violation is sufficient evidence of a violation of this Section.
 - 3. Compliance with Abatement Agreement or Order: As detailed in Section H below, such nuisance premise must be subject to abatement in accordance with the requirements of this section. It must be unlawful for any person:
 - a. To maintain a nuisance premise under this Section or to cause such a nuisance premise to be maintained on any premise under such person's ownership or control; or
 - b. To fail to comply with the terms of any resolution agreement or order of abatement issued under this Section.
- (H) PROCEDURE: The procedure for addressing a nuisance premise under this Section is as follows:
1. *Triggering Event.* Criminal Activity or Violation(s) of the City Code occurs.
 2. *Determination.* The Chief of Police must evaluate the triggering event(s) to make a determination if it meets the requirements set forth in Section G for an aggravated offense or non-aggravated offenses. Following the evaluation, the Chief of Police, in consultation with appropriate City officials, may declare that the property is a nuisance premise as described in Section G.
 3. *Notification.* Within five (5) business days of a nuisance premise declaration, the Chief of Police, or his designee, must send written notice to the owner and, if a rental, send written notice to any tenant(s) of the nuisance premise declaration. Notice must be given by first class mail to the owner using the premise owner's address on file under rental registration with the Health and Human Services Department. If no address is on file with the Health and Human Services Department, the City will utilize the Cook County Treasurer tax payer address. Notice must be given by first class mail to any tenant(s) using the address of the rental premises. The notice must set forth the following information:

- a. Statement that the premises identified in the notice has been determined to be a nuisance premise under this Section; and
 - b. Street address and unit number sufficient to identify the premises; and
 - c. Description of the triggering event(s), date that the offense occurred, and names of any adult individual(s) involved that are tenants or occupants of the premises; and
 - d. Must inform the owner of the necessity and obligation maintain the premises and, if a rental, to take action to maintain fit premises pursuant to Section 5-3-5-3, including addressing relevant violations with the tenant; and
 - e. The notice will be clear that action does not mandate eviction of the tenant or other occupants, that a landlord is forbidden from engaging in retaliatory actions as defined in Section 5-3-9-1, and any eviction action must be conducted in accordance with the statutory requirements stated in the Illinois Forcible Entry and Detainer Act, 735 ILCS 5/9-101 *et seq.*; and
 - f. The notice must reprint the tenant protections in Subsections 5-3-3-1 (G) and (H);
 - g. The notice must provide a specific request and date for the owner to meet with appropriate city officials, which must include the Chief of Police and may include the Corporation Counsel or his designee, to discuss the allegations contained in the notice and the need for abatement measures at the premises; and
 - h. The notice must provide information allowing any tenant(s) to request a meeting with appropriate city officials, including the Chief of Police and/or the Corporation Counsel or his designee, to discuss or correct the allegations contained in the notice and the need for abatement measures at the premises.
4. *Meeting.* At such meeting(s) between the owner and appropriate city officials, the owner may enter into a possible resolution agreement with the city to abate the nuisance activity at the premises identified in the notice. The owner's attorney is allowed to attend such meeting. The parties must work together to address the nuisance activity in a reasonable time frame and agreement terms. The owner is not issued a citation if they cooperate with the City and form a resolution agreement.
 5. *Resolution Agreement.* Following the meeting between the parties, the owner and the Chief of Police must execute a resolution agreement. The agreement must set forth the mandatory abatement measures of the nuisance, enforcement mechanisms if the agreement is violated, expiration date for the agreement, and may include a requirement that the landlord participate in a landlord training course provided by the City. If the agreement expires and compliance with the terms is achieved, the owner will not be subject to a nuisance premise action and the agreement will terminate. If the agreement is breached once, including a new non-aggravated offense occurs, the parties will meet to

address the event and amend the agreement as appropriate. If the agreement is violated at least twice, the City may proceed with a nuisance premise action.

6. *Nuisance Premise Action.* If the owner fails to meet with appropriate city officials in a timely manner or fails to enter into a resolution agreement with the city or otherwise fails to abate the nuisance under this Section, the Corporation Counsel or other appropriate city official may institute an appropriate action in the Division of Administrative Hearings or in a court of competent jurisdiction to abate such nuisance.
7. *Nuisance Premise Action Pleading.* If, after the procedural requirements are met in this section, the Corporation Counsel and the Chief of Police determine that it is necessary or desirable to bring an action in the Division of Administrative Hearings or in a court of competent jurisdiction to abate a nuisance under this section, written notice of such action must be provided to the owner as required by law. If such action is brought in the Division of Administrative Hearings, any evidence on which a reasonably prudent person would rely may be considered without regard to the formal rules of evidence, and the presiding authority may rely on written official reports from the City, affidavits and other business records submitted by police officers, City inspectors, or other authorized city officials and city employees to determine whether a public nuisance under this Section occurred.
8. *Finding of Liability in Nuisance Premise Action.* Upon a finding of liability in the Division of Administrative Hearings or in a court of competent jurisdiction, the presiding authority must issue an order of abatement directing the owner to implement a nuisance abatement plan at the premises. Such nuisance abatement plan must be in writing and provide the following:
 - a. Must provide reasonable assurance that if the plan is implemented at the premises, the nuisance at such premises will be substantially abated or eliminated in its entirety;
 - b. Must include an implementation schedule for each element of the plan;
 - c. Must contain the following elements, unless the presiding authority determines that such element is not required to substantially abate or eliminate the nuisance at the premise:
 - i. install and maintain sufficient lighting at each point of entry to and exit from the premises and in designated common areas;
 - ii. install and maintain sufficient surveillance cameras at each point of entry to and exit from the premises and in designated common areas, illuminated in such a manner so as to identify person entering or exiting the premises; and
 - iii. maintain the recordings from surveillance cameras for a minimum of 30 days after the recording occurs.

- d. The abatement order may contain any other element that the presiding authority, at the request of the city, deems necessary to address the nuisance presented; and
 - e. The abatement order must expire after one year of the issuance date, unless extended due to a default of the abatement order.
8. Nothing in this Section is to be construed (a) to constitute an act of possession, ownership or control by the city over the applicable premises; (b) to deny common law right to anyone to abate a nuisance at such premises; (c) to affect to the status of any ongoing city prosecution or other action related to such premises; (d) to prevent the issuance of a citation to or arrest or prosecution of any person for any violation of the City Code or other applicable law at such premises; or (e) to permit at such premises any activity prohibited by law.

(I) **PENALTIES:**

1. *Nuisance Premise Action Fines.* Upon a finding of liability in the Division of Administrative Hearings or in a court of competent jurisdiction, the owner will be fined five hundred (\$500) for each violation of this Section. The fine imposed under this Section is in addition to any fine imposed for the original citations issued for any non-aggravated offenses listed in Section E above.
2. *Abatement Order Violation.* Any owner that violates a provision of the abatement order entered will be fined two hundred dollars (\$200) for each violation.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

SECTION 5: The findings and recitals herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 6: This ordinance shall be in full force and effect after its passage, approval and publication in the manner provided by law. Any training required per an abatement order or resolution agreement must take place after January 1, 2017.

Introduced: June 20, 2016

Adopted: June 27, 2016

Approved:

July 11, 2016

Elizabeth B Tisdahl
Elizabeth B. Tisdahl, Mayor

Attest:

Rodney Greene
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar
W. Grant Farrar, Corporation Counsel