

9.45 – Nuisance Abatement

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9.45.010 – Abatement of chronic nuisance properties

- A. Any certain property within the City of St. Charles that becomes a chronic nuisance property is in violation of this chapter and is subject to its remedies.
- B. Any person in charge who permits property under his or her ownership or control to be a public nuisance property shall be in violation of this chapter and subject to its remedies.

(2015-M-27 : § 1; 2007-M-10 : § 1)

9.45.020 – Definitions

- A. Chronic Nuisance Property: Any property upon which three (3) or more of the behaviors listed below have occurred during any 12-month period, as a result of any three (3) separate factual events that have been independently investigated by any law enforcement agency or community development department, or three (3) or more citations of nuisance activity within a twelve (12) month period, which have been adjudicated and findings of liable or guilty have been entered either by the City administrative hearing officer or court of competent jurisdiction.
1. Disorderly Conduct as defined in 720 ILCS 5/26-1.
 2. Unlawful Use of Weapons as defined in 720 ILCS 5/24-1, et seq.
 3. Mob Action as defined in 720 ILCS 5/25.1.
 4. Discharge of a Firearm as defined in 720 ILCS 5/24-1 .2 and 1.5.
 5. Gambling as defined in 720 ILCS 5/28-1.
 6. Possession, Manufacture or Delivery of Controlled Substances as defined in 720 ILCS 570/40, et seq.
 7. Assault or Battery or Any Related Offense as defined in 720 ILCS 5/12-1, et seq.
 8. Sexual Abuse or Related Offenses as defined in 720 ILCS 5/ 12-15, et seq.
 9. Public Indecency as defined in 720 ILCS 5/ 11-9, et seq.
 10. Prostitution as defined in 720 ILCS 5/11-14, et seq.
 11. Criminal Damage to Property as defined in 720 ILCS 5/21-1, et seq.
 12. Illegal Possession, Cultivation, Manufacture or Delivery of Cannabis as defined in 720 ILCS 550/1 et seq.
 13. Illegal consumption or Possession of Alcohol as defined in 235 ILCS 5/ 1, et seq.
 14. Violation of any City of St. Charles ordinance or State of Illinois statute controlling or regulating the sale or use of alcoholic beverages.
 15. Violation of City of St. Charles property maintenance code section 305, or any successor code section, relative to rubbish and garbage.
 16. Violation of chapter 8.28 of this code relative to plants and weeds.
 17. Violation of chapter 5. 20 of this code relative to massage licensing.
 18. Structure unfit for human occupancy or unsafe structure as defined in the international building code or international property maintenance code as adopted by title 15 of this code.
 19. Unlawful structure as defined in the international building code or international property maintenance code as adopted by Title 15 of this code.
 20. Three (3) or more separate violations of the City's property maintenance code continuing after disposition of finding of liable for such violations by the City administrative hearing officer at an administrative hearing, for those violations.
 21. Violations of Chapter 6.04 and Section 6.12.085 of this code relative to beekeeping.
- B. Control: the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.
- C. Owner: any person, agent, firm or corporation having any legal or equitable interest in the property. Owner includes but is not limited to: (1) a mortgagee in possession in who is vested (a) all or part of the legal title to the property or (b) all or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or (2) an occupant who can control what occurs on the property.
- D. Permit: to suffer, allow, consent to, acquiesce by failure to prevent, or expressly ascent or agree to the doing of an act.
- E. Person: any natural person, association, partnership or corporation capable of owning or using property in the City of St. Charles.
- F. Person in Charge: any person in actual or constructive possession of a property including but not limited to an owner, occupant of property under his or her domain, ownership, or control.
- G. Property: any real property, including land in that which is affixed, incidental or pertinent to land, including but not limited to any premises, room, house, building, or structure or any separate part or portion thereof whether permitted or not.

(2020-M-5 : § 2; 2017-M-13 : § 1; 2016-M-56 : § 1; 2015-M-27 : § 1; 2007-M-10 : § 1; 1984-M-13 : § 1)

9.45.030 – Remedy

- A. In the event a City administrative hearing officer or the court determines the property to be a chronic nuisance property, the City hearing officer or the court may order that the property be closed and secured against all use and occupancy for a period of not less than thirty (30) days, but not more than one hundred and eighty (180) days, or the hearing officer or court may employ any other remedy deemed by it to be appropriate to abate the nuisance.
- B. In addition to the remedy provided in paragraph A above, the City hearing officer or the court may impose upon the owner of the property a civil penalty in the amount of up to Seven Hundred and Fifty Dollars (\$750.00) per day, payable to the City of St. Charles, for each day the owner had actual knowledge that the property was a public nuisance property and permitted the property to remain public nuisance property.
- C. In determining what remedy or remedies shall be allowed, the City hearing officer or the court may consider evidence of other conduct that has occurred on the property, including but not limited to:
 1. The disturbance of neighbors.
 2. The recurrence of loud and obnoxious noises.
 3. Repeated consumption of alcohol in public.
 4. The repeated sale or possession of controlled substances on the premises.

(2016-M-56 : § 2; 2015-M-27 : § 1; 2007-M-10 : § 1)

9.45.040 – Abatement of nuisance

The City of St. Charles or the State's Attorney of Kane County may commence an action to abate public nuisance as described above. Upon being satisfied by affidavits or other sworn evidence that an alleged public nuisance exists, the court may without notice or bond, enter a temporary restraining order or a preliminary injunction to enjoin any defendant from maintaining such nuisance and may enter an order restraining any defendant from removing or interfering with all property used in connection with the public nuisance.

(2015-M-27 : § 1; 2007-M-10 : § 1)

9.45.050 – Procedure

When the Chief of Police of the City of St. Charles receives two (2) or more police reports community development inspection reports, or any other City data documenting the occurrence of nuisance activity on or within a property, the Chief of Police shall independently review such reports to determine whether they describe acts that meet the definition of nuisance activity. Upon such findings, the Chief may:

- A. Notify the owner, person(s) in charge, tenant, or any local property manager, in the event the property is a rental residential property, in writing, that the property is a potential chronic nuisance property. Such notice shall be provided by either personal delivery or by certified mail, return receipt requested. The Chief of Police shall also send notice by personal service or certified mail, return receipt requested, to the tenant in possession in the event the property is a residential rental property, at the address of the property. The notice shall contain the following information:
 1. The street address or a legal description sufficient for identification of the property.
 2. A statement that the Chief of Police has information that the property may be a chronic nuisance property, with a concise description of the nuisance activities that may exist, or that have occurred. The Chief of Police shall offer the person in charge an opportunity to propose a course of action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.
- B. If after complying with the notification procedures described herein when the Chief of Police receives a police report, community development inspection report, or any other City data documenting the occurrence of a third (3rd) nuisance activity at or within a property and determines that the property has become a chronic nuisance property, the chief of Police shall:
 1. Notify the person in charge in writing that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:
 - a. Demand that the person in charge respond within ten (10) days to the Chief of Police to discuss the nuisance activities and propose a course of action that the chief of Police agrees will abate the nuisance activities given rise to the violation.
 - b. A statement that the Chief of Police has determined the property to be a chronic nuisance property with a concise description of the nuisance activities leading to his/her findings.
 - c. The street address or legal description sufficient for identification of the property.

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2. Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property believed to be a chronic nuisance property, or such other place which is likely to give the person in charge notice of the determination by the Chief of Police.
 3. A copy of the notice shall be served on the owner at such address as shown on the tax records of the county in which the property is located, and/or the occupant, at the address of the property, if these persons are different than the person in charge and shall be made either personally or by first class mail, postage prepaid.
 4. A copy of the notice shall also be posted at the property after the (10) days has elapsed from the service or mailing of the notice to the person in charge, and the person in charge has not contacted the Chief of Police.
 5. The failure of any person to receive notice that the property maybe a chronic nuisance property shall not invalidate or otherwise affect the proceedings under this chapter.
- C. At the meeting between the Chief of Police and the parties notified, the Chief of Police may request that the owner, person in charge, or the tenant(s), and property manager (in the case of a residential rental property), implement a reasonable under the circumstances in its objective, cost, and scope, and shall be implemented within ten (10) days of the meeting with the Chief of Police or such longer period if not practically feasible to do so within (10) days.
- D. If after the notification and the abatement meeting, but prior to the commencement of legal proceedings by the City pursuant to this chapter, a person in charge stipulates with the Chief of Police that the person in charge will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation , the Chief of Police may agree to postpone legal proceedings for a period of not less than thirty (30) days nor more than ninety (90) days, except in the case of a nuisance activity where a search warrant was executed at the property. If the agreed course of action does not result in the abatement of the nuisance activity or if no agreement concerning abatement is reached within thirty (30) days, the Chief of Police shall commence a legal proceeding to abate the nuisance.
- E. It shall be a violation of this chapter for:
1. The owner or person(s) in charge of the property, within thirty(30) days of the meeting or such other reasonable amount of time under the circumstance, fail to cause the implementation of a reasonable mitigation or abatement plan as requested by the Chief of Police, or
 2. The owner or person(s) in charge fail to respond and meet with the Chief of Police within the ten (10) day period without good cause.
- F. If the nuisance activity complained of has or is being conducted by a tenant residing in or on the property, the Chief of Police may request that the owner evict the tenant. If eviction is requested, the owner shall proceed with such an action in good faith. The City shall assist in the eviction action by reasonably cooperating with the owner, person(s) in charge, or property Maintenance Company, including, but not limited to, providing law enforcement officers or other municipal employees as witnesses regarding the nuisance activity, if relevant.
- G. Concurrent with the notification procedures set forth herein, the Chief of Police shall maintain copies of the notice, as well as any other documentation, which supports legal proceedings.
- H. When a person in charge makes a response to the Chief of Police as required above, any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have or are occurring. This subsection does not require the exclusion of any evidence that is otherwise admissible or offered for any other purpose.
- I. The Chief of Police shall have the authority to delegate procedural responsibilities to enforce this ordinance to another member of the Police Department, while maintaining oversight of the process.
- J. If, after complying with the procedures of this section, within one year from the date of the first report of nuisance activity after the meeting, the Chief of Police receives a report documenting the occurrence of a subsequent instance of nuisance activity upon the property; the property may be declared a chronic nuisance property. Subsequent violations will be cited accordingly and brought without delay to either local adjudication of the Circuit Court of Kane County.

(2015-M-27 : § 1; 2007-M-10 : § 1; 2016-M-56 : § 3)

9.45.060 – Commencement of action - Burden of proof

- A. At any hearing before the City's administrative hearing officer to determine whether the property in question is a chronic nuisance property, such hearing shall be conducted pursuant to provisions of this code, the City shall have the initial burden of proof to show, by a preponderance of evidence, that the property in question is a chronic nuisance property.
- B. The City's representative shall present evidence in support of its claim that the property is a chronic nuisance property. The property owner, person(s) in charge, or the person in charge's local representative, or an attorney on behalf of the responding party, shall be permitted to rebut such evidence.
- C. No continuances shall be authorized by the hearing officer in proceedings under this chapter unless for good cause shown or except where a continuance is absolutely necessary to protect the rights of the property owner, person(s) in charge, or tenant(in the event the property is a rental property), or the City. Lack of preparedness shall not be grounds for a continuance.
- D. At any time prior to the hearing date, the hearing officer may, at the request of either party, direct witnesses to appear and give testimony at the hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence, including police reports, shall be admissible only if it is the type commonly relied upon by reasonable, prudent persons in the conduct of their affairs.
- E. At the conclusion of the hearing, the hearing officer shall make a determination on the basis of the evidence presented at the hearing, whether or not a violation exists and whether or not the property is a chronic nuisance property. The determination shall be in writing and shall be designated as the findings, decisions, and order. The hearing officer's decision shall be final and binding, except that the provisions of the Illinois administrative review law shall apply with respect to judicial review of the hearing officer's findings, decision, and order. The findings, decision, and order shall include the hearing officer's finding of fact, a decision whether or not a violation exists, a determination as to whether the property in question is or is not a chronic nuisance property based upon the findings of fact, and sanctioning the person in charge/owner/tenant or occupant, as specified in subsection F of this section, or dismissing the case in the event a violation is not proved. A copy of the findings, decision, and order shall be served upon the person in charge, owner, or tenant or occupant, within fourteen(14) business days of the date of the hearing.
- F. If the hearing officer makes a finding that a property was, or is, a chronic nuisance property, the hearing officer may fine the person in charge and/or the owner, tenant or occupant of the property if those persons are different than the person in charge, an amount not to exceed seven hundred and fifty dollars(\$750.00) for each violation of this section. Each day a nuisance activity occurs or continues shall be considered a separate and distinct violation for purposes of determining a property to be a chronic nuisance property. The hearing officer may, in his or her discretion, impose such a fine for each day the nuisance activity goes unabated. No person shall be found in violation of this section unless the City proves the violation by a preponderance of the evidence.
- G. Alternative enforcement:
 1. Abatement of Nuisance: the City, as an alternative to administrative adjudication, may commence an action in the Circuit Court of Kane County for a determination that the property is a chronic nuisance property and/ or to abate a chronic nuisance property as described above.
 2. Upon being satisfied by affidavits or other sworn evidence that an alleged Chronic nuisance property exists, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction to enjoin any defendant from maintaining such chronic nuisance property and may enter an order restraining any defendant from occupying, using, or interfering with all property used in connection with the chronic nuisance property.

(2016-M-56 : § 4; 2015-M-27 : § 1; 2007-M-10 : § 1)

9.45.070 – Emergency closing procedure

- A. In the event that it is determined that the property is an immediate threat to the public safety and welfare, the City may apply to the court for such interim relief as is deemed by the Chief of Police to be appropriate. In such an event, the notification provision set forth in Section 9.45.040 above need not be complied with; however, the City shall make a diligent effort to notify the person in charge prior to a court hearing.
- B. In the event the court finds that the property constitutes a chronic nuisance property as defined in this section, the court may order the remedy set out above. In addition, in the event that it also finds the person in charge had knowledge of activities or conditions of the property constituting or violating this chapter and permitted the activities to occur, the court may assess a civil fine as provided above.
- C. The court may authorize the City of St. Charles to physically secure the property against use or occupancy in the event that the owner fails to do so within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to affect a closure shall be made and assessed as a lien against the property. If used herein, "costs" mean these costs actually incurred by the City for the physical securing of the property, as well as tenant relocation costs.
- D. The City of St. Charles Department of Public Works affecting the closure shall prepare a statement of cost and the City of St. Charles shall thereafter submit said statement to the court of its review. If no objection of the statement is made within the period described by the court, a lien in said amount may be recorded against said property.
- E. Any person who is assessed the cost of closure and/or civil penalty by the court shall be personally liable for the payment thereof by the City.
- F. A tenant is entitled to their reasonable relocation costs, as those are determined by the court if without actual notice, the tenant moved in the property, after either:
 - 1. The owner or tenant received notice as described herein of the Police Chief's determination as described above.
 - 2. Unknown owner or other agent received notice of an action brought pursuant to this Section.
 - 3. Any person who is assessed with costs of closure and/or civil penalty by the court shall be personally liable for the payment thereof to the City.

(2015-M-27 : § 1; 2007-M-10 : § 1)

9.45.080 – Severability

If any provision of this ordinance or its application, or any person or circumstances is held to be invalid for any reason, the remainder of said application of its provisions to the other persons or circumstances shall not be in any way affected.

(2015-M-27 : § 1; 2007-M-10 : § 1)