

City of St. Charles, Illinois

Ordinance No. 2007-M-10

**An Ordinance Amending Title 9, "Public Peace, Morals
and Welfare," Chapter 9.45, "Nuisance Abatement," of the
St. Charles Municipal Code**

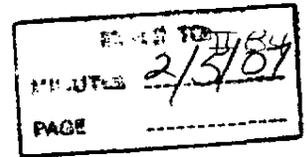
**Adopted by the
City Council
of the
City of St. Charles
February 5, 2007**

**Published in pamphlet form by
authority of the City Council
of the City of St. Charles,
Kane and Du Page Counties,
Illinois, February 9, 2007**

Nancy Garrison

City Clerk





ORDINANCE NO. 2007-M- 10

AN ORDINANCE AMENDING TITLE 9, "PUBLIC PEACE, MORALS AND WELFARE,"
CHAPTER 9.45, "NUISANCE ABATEMENT,"
OF THE ST. CHARLES MUNICIPAL CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES,
KANE AND DU PAGE COUNTIES, ILLINOIS, AS FOLLOWS:

1. That Title 9, "Public Peace, Morals, and Welfare", subsection 9.45, "Nuisance Abatement", of the St. Charles Municipal Code, be and is hereby adopted by adding the following therefore:

Section 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.

Section 9.45.020 Definitions

- A. CHRONIC NUISANCE PROPERTY. Property upon which two or more of the behaviors listed below have occurred during any 180-day period, as a result of any two (2) separate factual events that have been independently investigated by any law enforcement agency.
 - 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.
 - 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. 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.
- 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 whom 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.

Section 9.45.030 Remedy

- A. In the event a court determines property to be a chronic nuisance property, 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 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 court may impose upon the owner of the property a civil penalty in the amount of up to One Hundred Dollars (\$100) 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, 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.

Section 9.45.030 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.

Section 9.45.040 Procedure

When the Chief of Police of the City of St. Charles receives two or more police reports 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 criminal acts. Upon such findings, the Chief may:

- A. 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.

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.
 3. Demand that the person in charge respond to the Chief of Police within ten (10) days to discuss the nuisance activities.
- B. After complying with the notification procedures described herein when the Chief of Police receives a police report documenting the occurrence of a third 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. The street address or legal description sufficient for identification of the property.
 - b. A statement that the Chief of Police has determined the property to be chronic nuisance property with a concise description of the nuisance activities leading to his/her findings.
 - c. Demand that the person in charge respond within ten (10) days to the Chief of Police and propose a course of action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.
 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 ten (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 may be a chronic nuisance property shall not invalidate or otherwise affect the proceedings under this chapter.
 6. If after the notification, 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 ten (10) nor more than thirty (30) 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.
 7. 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.
- C. 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.
- D. 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.

Section 9.45.050 Commencement of Action, Burden of Proof

- A. In an action seeking closure of a chronic nuisance property, the City shall have the initial burden of showing by preponderance of the evidence that the property is a chronic nuisance property.

- B. It is a defense to an action seeking the closure of chronic nuisance property that the owner of the property at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become a public nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the finding that the property is a chronic nuisance property.
- C. In establishing the amount of any civil penalty requested, the court may consider any of the following factors if they need to be found appropriate, and shall cite those found applicable:
 - 1. The actions or lack of action taken by the person in charge to mitigate or correct the problem at the property.
 - 2. Whether the problem at the property was repeated or continuous.
 - 3. The magnitude or gravity of the problem.
 - 4. The cooperation of the person in charge with the City.
 - 5. The cost of the City investigating and correcting or attempting to correct the condition.

Section 9.45.060 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 authorized 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 for 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.

Section 0.45.070 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.

Section 0.45.080 Effective Date of Ordinance

This ordinance shall be in full effect as of the date of final passage and publication.

- 2. That after the adoption and approval hereof the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the city of St. Charles, Illinois, this
5th day of February, 2007.

PASSED by the City Council of the city of St. Charles, Illinois, this
5th day of February, 2007.

APPROVED by the Mayor of the city of St. Charles, Illinois, this
5th day of February, 2007.



Mayor

ATTEST:




City Clerk

APPROVED AS TO FORM:

City Attorney

DATE: _____

COUNCIL VOTE:

Ayes: 10

Nays: -

Absent:

JL:lm/cb

1/18/06

State of Illinois)
) ss.
Counties of Kane and DuPage)

Certificate

I, NANCY GARRISON, certify that I am the duly elected and acting Municipal City Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on February 5, 2007, the Corporate Authorities of such municipality passed and approved Ordinance No. 2007-M-10, entitled

"An Ordinance Amending Title 9, "Public Peace, Morals and Welfare," Chapter 9.45, "Nuisance Abatement," of the St. Charles Municipal Code,"

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2007-M-10, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on February 9, 2007, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 5th day of February 2007.


Municipal Clerk

