

ORDINANCE NO. 19-2005
ORDINANCE OF THE CITY OF ATHENS, ILLINOIS
NUISANCE ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATHENS, MENARD COUNTY, ILLINOIS:

SECTION 1: The presence of the following within the city is declared to be detrimental to the public health, safety, and welfare and constitutes a nuisance:

- (a) Sound, animal, or things which interfere with the peace and comfort or disturb the quiet enjoyment of any person in the city;
- (b) Anything which is made, permitted, used, kept, maintained, operated, or any building or any animal that is kept in a manner which is offensive, nauseous, dangerous to life, limb, or property, or detrimental to the health and/or safety of the persons residing in or traveling through that area;
- (c) Any filthy, foul, or offensive matter or liquid of any kind discharged into any street, alley, or public place, or on any adjacent lot or ground;
- (d) Any lot ground, or premises, with in the city, on which stagnant water may be standing so as to become or likely to become foul, putrid, offensive, harborage for insect and/or rodents or detrimental to the health and comfort of persons residing in the vicinity thereof;
- (e) The emission of dense smoke from the chimney or smokestack of any building or premises or from any garbage or rubbish container.
- (f) Any spoiled, tainted, or diseased perishable agricultural commodity;
- (g) Trees, shrubs, bushes, weeds, plants permitted to grow or accumulate on premises adjacent to any street or alley or other public way in a manner as to obstruct the view and

endanger traffic conditions;

(h) In addition to what is herein declared to be a nuisance, those offenses known to the common law or of the state or federal statutes as nuisance may, in case the same exist within the city, be treated as such and proceeded against as provided in this Ordinance.

SECTION 2: Public nuisances, acts constituting:

(a) To create any condition, through the improper maintenance of a swimming pool or wading pool, or by causing any action which alters the condition of a natural body of water, so that it harbors mosquitoes, flies, or other animal pests that are offensive, injurious or dangerous to the health of individuals or to the public.

SECTION 3: Enumeration not exclusive.

The various nuisance described and enumerated in this chapter shall not deemed to be exclusive, but shall be in addition to all other nuisance described and prohibited by this Ordinance.

SECTION 4: Nuisances to be removed.

Any person causing a nuisance as defined, in this Ordinance or recognized by the common law, and the owner, occupant, or lessee of land on which any nuisance exists, are required to correct the nuisance. The correction shall be made within the time limit enumerated in the notice of violation from the city. In all cases it shall be the ultimate responsibility of the owner of the premises on which a nuisance exists to correct the violation.

SECTION 5: Sound device restrictions.

(a) No person shall play, use, operate or permit to be played, used or operated, any radio, tape, recorder, cassette player or other device for receiving broadcast sound or

reproducing recorded sound if the device is located;

(1) On the public way; or

(2) In any motor vehicle on the public way;

if the sound generated by the device is clearly audible to a person with normal hearing at a distance greater than 75 feet. This section shall not apply to any person participating in a special event for which a permit has been obtained.

(b) Any person who violated this section shall be subject to a fine of not less than \$100 for a first offense and not more than \$750 for each violation, provided that for the second conviction of any violation of this section within one calendar year, the mandatory minimum fine shall be \$250. Each day during which a violation continues beyond the specified time for correction shall constitute a separate punishable offense. If court proceedings are necessary to enforce the fine assessed, then court costs shall be assessed in addition to the fine.

SECTION 6: Chronic nuisances.

(a) Any property within the City of Athens which becomes a chronic nuisance property is in violation of this Section and is subject to its remedies. Any person in charge who permits property under his or her ownership or control to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

(b) Definitions:

(1) ***Chronic nuisance property.*** Chronic nuisance property is property upon which two or more of the following criminal activities have occurred during any sixty-day period, as a result of any two separate factual events that have been independently investigated by any law enforcement agency:

- a. Unlawful use of weapons, 720 ILCS 5/24-1;
- b. Unlawful use or possession of weapons by felons or persons in the custody of the department of corrections facilities, 720 ILCS 5/24-1.1;
- c. Aggravated discharge of a firearm, 720 ILCS 5/24-1.2;
- d. Reckless discharge of a firearm, 720 ILCS 5/24-1.5;
- e. Unlawful sale of firearms, 720 ILCS 5/24-3;
- f. Unlawful possession of firearms and firearm ammunition, 720 ILCS 5/24-3.1;
- g. Controlled substance trafficking, 720 ILCS 570/401.1;
- h. Possession of a controlled substance, 720 ILCS 570/401.1;
- i. Prostitution, 720 ILCS 5/11-14;
- j. Solicitation of a sexual act, 720 ILCS 5/11-14.1;
- k. Soliciting for a prostitute, 720 ILCS 5/11-15;
- l. Soliciting for a juvenile prostitute, 720 ILCS 5/11-15.1;
- m. Pandering, 720 ILCS 5/11-16;
- n. Keeping a place of prostitution, 720 ILCS 5/11-17;
- o. Keeping a place of juvenile prostitution. 720 ILCS 5/11-17.1;
- p. Patronizing a prostitute, 720 ILCS 5/11-18;
- q. Patronizing a juvenile prostitute, 720 ILCS 5/11-18.1;
- r. Pimping, 720 ILCS 5/11-19;
- s. Juvenile pimping, 720 ILCS 5/11-19.1.
- t. Disorderly conduct, 720 ILCS 5/26-1.
- u. Mob action, 720 ILCS 5/25-1.

- v. Public indecency, 720 ILCS 5/11-9.
- w. Assault 720 ILCS 5/12-1; aggravated assault, 720 ILCS 5/12-2.
- x. Battery, 720 ILCS 5/12-3; battery of an unborn child, 720 ILCS 5/12-3.1; domestic battery, 720, 720 ILCS 5/12-3.2; aggravated battery, 720 ILCS 5/12-4; heinous battery, 720 ILCS 5/12-4.1; aggravated battery with a firearm 720 ILCS 5/12-4.2; aggravated battery of a child, 720 ILCS 5/12-4.3; aggravated battery of an unborn child, 720 ILCS 5/12-4.4; aggravated battery of a senior citizen, 720 ILCS 5/12-4.6.
- y. Unlawful possession or consumption of alcohol by a minor, 235 ILCS5/6-20.

SECTION 7: Additional Nuisance.

(1) Accumulation of rubbish or garbage, as defined in section 306.1 of the BOCA National Property Maintenance Code, 1996 edition; disposal of rubbish, section 306.2 of the BOCA National Property Maintenance Code, 1996 edition; rubbish storage facilities, section 306.2.1 of the BOCA National Property Maintenance Code, 1996 edition; disposal of garbage, section 306.3 of the BOCA National Property Maintenance Code, 1996 edition; garbage facilities, section 306.3.1 of the BOCA National Property Maintenance Code, 1996 edition; containers, section 306.3.2 of the BOCA National Property Maintenance Code, 1996 edition.

SECTION 8: Definitions.

(1) *Control.* The ability to regulate, restrain, dominate, counteract or govern conduct

that occurs on property.

- (2) *Owner.* Any person, agent, firm or corporation having any legal or equitable interest in the property. Owner includes, but is not limited to a mortgagee in possession in whom is vested all or part of the legal title to the property or all or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or an occupant who can control what occurs on the property.
- (3) *Permit.* To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
- (4) *Person.* Any natural person, association, partnership or corporation capable of owning or using property in the City of Athens.
- (5) *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.
- (6) *Property.* Any real property, including land which is affixed, incidental or pertinent to the land, including but not limited to any premises, room, house, building, or structure or any separate part or portion thereof.

SECTION 8: Commencement of action.

- (a) When the chief of police receives a report documenting the occurrence of a second 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: the street address or legal description sufficient for identification of

the property; 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; and a demand that the person in charge respond within ten 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 pre-paid, 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 as such address as shown on the tax rolls 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 persons in charge, and shall be made either personally or by first class mail, postage pre-paid.

(4) A copy of the notice shall also be posted at the property after ten days has elapsed from the service or mailing of the notice to the person in charge if 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) 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 nor more than 30 days. 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 30 days, the chief of police shall request authorization for the corporation counsel to commence a legal proceeding to abate the nuisance.

(7) Concurrent with the notification procedures set forth herein, the chief of police shall send copies of the notice, as well as, any other documentation which supports legal proceeding to the corporation counsel.

(8) 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 which is otherwise admissible or offered for any other purpose.

SECTION 9: Abatement of nuisance.

The corporation counsel of the City of Athens, Illinois, may commence an action to abate a public nuisance as described above. Upon being satisfied by affidavit or other sworn evidence that an alleged public nuisance exists, the court may without notice or bond enter a temporary restraining order or preliminary injunction to enjoin any defendant from maintaining such nuisance and may enter and order restraining any defendant from removing or interfering with all property used in connection with the public nuisance.

SECTION 10: Burden of proof.

(1) In an action seeking closure of a chronic nuisance property, the city shall have the

initial burden of showing by a preponderance of the evidence that the property is a chronic nuisance property.

- (2) 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 findings that the property is a chronic nuisance property.
- (3) In establishing the amount of any civil penalty requested, the court may consider any of the following factors and shall state those found applicable:
 - (a) The actions or lack of action taken by the person in charge to mitigate or correct the problem at the property;
 - (b) Whether the problem at the property was repeated or continuous;
 - (c) The magnitude or gravity of the problem;
 - (d) The cooperation of the person in charge with the city; or
 - (e) The cost of the city investigating and correcting or attempting to correct the condition.

SECTION 11: Remedies.

- (1) 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 30 days, but not more than one hundred eighty days (180), or the court may employ any other remedy deemed by it to be appropriate to abate the nuisance.

- (2) In addition to the remedy provided in subsection (1) above, the court may impose upon the owner of the property a civil penalty in the amount of up to \$100.00 per day, payable to the City of Athens, for each day the owner had actual knowledge that the property was a public nuisance property and permitted the property to remain a chronic nuisance property.
- (3) In determining what remedy or remedies shall employ, the court may consider evidence of other conduct which has occurred on the property, including, but not limited to:
 - a. The disturbance of neighbors.
 - b. The recurrence of loud and obnoxious noises.

SECTION 12: Emergency closing procedures.

- (1) 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 8 above need not be complied with however, the city shall make diligent effort to notify the person in charge prior to a court hearing.
- (2) In the event that the court finds the property constitute 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.

- (3) The court may authorize the City of Athens to physically secure the property against use or occupancy in the event the owner fails to do so within the time specified by the court. In the event that the city is authorized to secure property, all reasonable costs incurred by the city to affect a closure shall be made and assessed as a lien against the property. As used herein, costs mean these costs actually incurred by the city for the physical securing of the property, as well as, tenant relocation costs.
- (4) The City of Athens officer affecting the closure shall prepare a statement of cost and the City of Athens 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.
- (5) 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.
- (6) A tenant is entitle to their reasonable relocation costs, as those are determined by the court if, without actual notice, the tenant moved into the property, after either:
- a. The owner or tenant received notice as described herein of the police chief's determination as described above; or
 - b. Unknown owner or other agent received notice of an action brought pursuant to this section.

SECTION 13: Penalty; lien.

- (a) Any person who shall violate any provisions of this chapter shall, on conviction thereof, be punished by a fine not to exceed \$500 for each violation. Each day during which a violation contiues beyond the specified time for correction shall constitute a

separate punishable offense.

(b) If the city corrects the violation itself or causes the violation to be corrected on its behalf, a lien for the amount of time and expense involved in correcting the violation shall be imposed against the land where the violation occurred. A minimum charge of \$100 for each hour, or part of an hour, shall be imposed for any work done by the city, or on behalf of the city, in correcting a violation. This lien shall be recorded with the county recorder of deeds within 60 days after the work is done by the city or on behalf of the city, and suit to collect the cost of the lien shall be filed after the recording of the lien.

(c) Where the city itself corrects the violation or causes the violation to be corrected on its behalf, the violator shall be subject to both subsections (a) and (b) of this section.

SECTION 14: The provisions of this ordinance are severable. If any provision of this ordinance or the application to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application.

SECTION 15: This Ordinance shall take effect and be in full force from and after its passage, approval and publication as provided by law.

PASSED this 14th day of November, A.D. 2005.

AYES: Aldermen: Tony Doellman, Jan Shirley,
Larry Buhr, Harry Nicholas

NAYS: X

ABSENT: Alderman Jeff Lopian

APPROVED: Delro J. Richardson
Mayor