

February 5, 2009

To: Urbana City Council Members Charlie Smyth, David Gehrig, Robert Lewis, Brandon Bowersox, Dennis Roberts, Heather Stevenson, and Lynne Barnes

From: Laurel Prussing

Re: Revisions to Proposed Criminal Nuisance Ordinance

Here is a summary of possible ways to address issues raised by council members and members of the public.

I have also attached a survey of other Illinois cities prepared by Assistant City Attorney Michelle Brooks which compares existing ordinances around the state.

Relocation Costs In response to the concern about whether someone might be displaced if an apartment complex is closed:

- (1) Establish a fund with the fines collected so the city could pay up front for relocation. According to research by Assistant City Attorney Michelle Brooks: "Cities that provide for relocation costs to tenants from owners include Bloomington, Peoria, Springfield, and Evanston."
- (2) Specify that individual units be closed first, and that closing the entire building would be only a last resort.

Other Suggested Revisions

- (1) Spell out the sequence of enforcement in a timetable to make it crystal clear what can be expected at each point in the process
- (2) Establish a training program for landlords (note: we already have provisions for owners to work out a Safety Plan with the Police Chief to get criminal activity under control)
- (3) Require notification to the City Council if the problem has escalated to the point that the city is considering closing an entire building
- (4) Put in a timetable for review of the ordinance after one year

Mayor's Recommendation

I have asked City Attorney Ron O'Neal to revise the ordinance in accordance with the suggested changes. The Neighborhood Safety Task Force will discuss the revised proposal on February 24th and we can bring the revised draft back to council after that.



LEGAL DIVISION
(217) 384-2464
FAX: (217) 384-2460

RONALD D. O'NEAL, JR.
City Attorney
rdoneal@city.urbana.il.us

CURT BORMAN
Assistant City Attorney
E-mail : csborman@city.urbana.il.us

MICHELLE E. BROOKS
Assistant City Attorney
E-mail mebrooks@city.urbana.il.us

JACK WAALER
Special Counsel
jwaaler@city.urbana.il.us

Memorandum

DATE: January 29, 2009
TO: Ron O'Neal
FROM: Michelle Brooks
RE: Proposed Criminal Nuisance Ordinance

Criminal Nuisance Ordinances

A survey of comparably sized municipalities/counties within the state reveals that the following towns have enacted criminal nuisance (alternatively called "chronic nuisance") ordinances similar in intent to the one contemplated in proposed ordinance 11-135:

Champaign, IL
Bloomington, IL
Peoria, IL
Springfield, IL
Evanston, IL
Aurora, IL
Joliet, IL
Kankakee County, IL

Enclosed please find tables illustrating first those crimes/violations that fall under the category "criminal nuisance" in each jurisdiction; the remedies available to/employed by the jurisdictions; a summary of the procedures employed by the jurisdictions and a list of those jurisdictions that have provisions for providing/ensuring financial assistance for relocation to displaced tenants.

Remedies Available

	Urbana	Champaign	Bloomington	Peoria	Springfield	Evanston	Aurora	Joliet	Kankakee Co.		
Fines ranging from \$100-\$1000 per incident per day, or maximum allowed by Ordinance (fine amounts vary by municipality)	X	X			X		X	X			
Entering of Court Order for Actions to Abate Nuisance	X	X						X			
Suspension of Rental License	X						X				
Closing and/or Securing of Nuisance Property	X	X	X	X	X		X	X	X		
Forfeiture of Nuisance Property to the City						X					
Court Supervision or Conditional Discharge for up to 3 yrs.		X									
Court Order for Property Improvements		X					X				
Requirement of Lease Provisions Requiring Eviction for Criminal Activities		X									
Submission of Tenancy Lists to the Police Department		X									
Posting of Cash Bonds for Period of Supervision or Conditional Discharge		X		X							
Any Other Court Ordered Reasonable Remedy		X							X		
Fine of Up to \$100 per day from date of nuisance notification			X	X	X				X		
Court Ordered Eviction of Tenant			X								
Fines of \$750-\$6000 in cases involving certain felonies				X		X					

Process and Procedure

Different jurisdictions meet their due process burden in different ways. All require written notification to the owner that an event (or events) has transpired on their property that fall(s) under criminal nuisance activity. At that point, it is required that the property owner respond (usually within ten days) and work with the city (usually through their police department) to submit or develop a plan to abate the nuisance. If the plan is acceptable to the city and is successfully followed by the owner, no further action is taken. If the owner fails either to respond to the notification, or if a nuisance abatement plan is not agreed upon or acted upon by the owner, the city will proceed to a hearing on the matter. (Note: failure by the owner to receive notification is not considered a defense to a failure to abate the nuisance)

Some jurisdictions employ a hearing officer to evaluate the merits of the criminal nuisance claim. Others proceed directly to their county's circuit court. The cities must prove by a preponderance of the evidence that the property is a criminal nuisance and that the owner failed to abate the nuisance. (Note: It IS a defense to abatement failure if the owner can demonstrate that at the time in question the owner could not, in the exercise of reasonable care or diligence, determine that the property had become a criminal 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 criminal nuisance property) The ordinances do not discuss the process an owner may employ to appeal the decision of the hearing officer or circuit court, but generally in these kinds of cases appeals would go to the next highest reviewing body (the circuit court in the case of hearing officers and the appellate court in the case of the circuit court) and the standard of review would be whether the determinations of the fact finder were against the manifest weight of the evidence.

Several jurisdictions contain provisions that allow for application to the circuit court for the interim relief of emergency closing of premises in the event there is a belief that the property constitutes an immediate threat to the safety of the public.

Cities that provide for relocation costs to tenants from owners include Bloomington, Peoria, Springfield and Evanston. These costs are either court ordered to be paid by the owner to the displaced tenants or a portion of the fines that are paid to the city by the owner are put into a relocation fund.