



Mayor's Neighborhood Safety Task Force
Tuesday, February 24, 2009
5:30 p.m. – 7:00 p.m.
2nd Floor Conference Room
400 S. Vine Street

Agenda

1. Call to Order
2. Approval of Minutes
3. Year End Crime Statistics – Chief Bily
4. Chronic Criminal Nuisance Ordinance – Mayor Prussing
5. Future Goals
6. Announcements
7. Next Meeting Date
8. Adjournment

February 20, 2009

To: Neighborhood Safety Task Force

From: Laurel Prussing

Re: Revisions to Proposed Chronic Criminal Nuisance Ordinance

Here is an interim revision of the Chronic Criminal Nuisance Ordinance. The changes include a name change to add “chronic” to stress that this ordinance seeks to address recurring problems. Also I have substituted “registration” for “license” for consistency with existing Urbana ordinances. In addition the category of Obscenity has been deleted because we think this is an issue that is adequately dealt with by other laws.

Here is a summary of other issues raised by council members and members of the public and potential ways to address them:

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

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

(a) 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.”

(b) Specify that individual units be closed first, and that closing the entire building would be only a last resort.

I have also attached:

- a survey of other Illinois cities prepared by Assistant City Attorney Michelle Brooks which compares existing ordinances around the state.
- a list of definitions prepared by Michelle Brooks

DRAFT 2/19/09

AN ORDINANCE AMENDING CHAPTER 15, ARTICLE IV, DIVISION 1 OF THE URBANA CODE OF ORDINANCES

(Chronic Criminal Nuisance Property)

WHEREAS, the City of Urbana has a population of more than 25,000 and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, both the effective control and elimination of chronic criminal nuisance activity are essential to the health and welfare of the City of Urbana's inhabitants and visitors, as well as essential to the peace and quiet enjoyment of the City's neighborhoods; and

WHEREAS, the Illinois Legislature has, for a number of years, criminalized, as enumerated in 720 ILCS 5/37-1 *et seq.*, the maintenance of nuisance properties, said properties having been used to facilitate criminal activity unabated;

WHEREAS, the City of Urbana has an interest in encouraging the prompt and effective abatement of criminal nuisance behavior by property owners and occupants;

WHEREAS, the City of Urbana wishes create an Ordinance that prohibits the facilitation of, or acquiescence to, criminal nuisance activity on any property over which the City has jurisdiction;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section One:

Section 15-65, to be titled "Chronic Criminal Nuisance Property", is hereby created, and Chapter 15, Article IV, Division 1 of the City of Urbana Code of Ordinances shall be amended, as follows:

Section 15-65.

A. Definitions

Nuisance activities mean any of the following activities, behaviors, or conduct, as defined by federal or state statutes, as well as municipal ordinances:

- (1) Mob action.
- (2) Assault.
- (3) Battery.
- (4) Unlawful use of weapons or firearms.
- (5) Unlawful discharge of a firearm.
- (6) Prostitution.
- (7) Soliciting or patronizing a prostitute.
- (8) Keeping a house of prostitution.
- (9) Pandering.
- (10) Obscenity.

- (11) Sexual assault and sexual abuse.
- (12) Public indecency.
- (13) Unlawful manufacture, sale, distribution, possession, or use of controlled substances.
- (14) Unlawful, production, sale, distribution, possession, or use of cannabis.
- (15) Illegal gambling.
- (16) Keeping or maintaining a place of illegal gambling.
- (17) Unlawful possession of gambling devices.
- (18) Arson.

Chronic Nuisance property means any property on which the police department has two (2) or more official police reports of nuisance activity which has occurred within a six-month period.

Person means any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying, or using property in the City of Urbana.

Person in charge means any person, in actual or constructive possession of a property, including, but not limited to, an owner or occupant of property under his ownership or control.

Police chief means the Chief of Police of the City of Urbana or his designee.

Property means any property, including land and that which is affixed, incidental, or appurtenant to land, including, but not limited to, any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit, or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property may be limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring, but includes areas of the property used in common by all units of property, including, without limitation, other structures erected on the property and areas used for parking, loading, recreational activities, and landscaping.

B. Violations

(1) Any property on which on which criminal nuisance activity occurs may be declared a chronic criminal nuisance

property. No property shall be declared a chronic criminal nuisance property unless it is proven by a preponderance of the evidence that there has been two (2) or more instances of nuisance activity within a six-month period of time.

(2) Any person or person in charge who (a) encourages or permits a property to become a nuisance property as defined in Subsection A.; (b) allows a property to continue as a nuisance property; (c) fails to implement reasonable and warranted measures, as specified by the police chief, shall be in violation of this section. In determining whether any person or person in charge implemented reasonable and warranted measures, the trier of fact shall consider, at least, the following:

(3) Each day that a violation of this section continues shall be considered a separate and distinct offense. The fine for violation of this Section shall be no less than \$300.00 per incident per day and no more than \$750.00 per incident per day or the maximum per incident allowed by the Code of Ordinances, whichever is greater. Such fine shall be a judgment against the guilty person(s), owner(s), occupant(s), or person(s) in charge jointly and severally. In establishing the amount of any fine, the hearing officer may consider any of the following factors:

- a. The actions taken by the person in charge/owner/occupant to mitigate or correct the nuisance activities at the property.
- b. The repeated or continuous nature of the problem.
- c. The magnitude or gravity of the problem.
- d. How cooperative the person in charge/owner/occupant is with the City of Urbana in abating.
- e. The cost to the city of investigating, correcting, or attempting to correct the nuisance activities.
- f. Any other factor deemed relevant by the trier of fact. Evidence of a property's general reputation and/or the reputation of the persons in it, or frequenting it, shall be admissible.

(4) If a person or person in charge is found guilty of a violation of this section, the court shall, in addition to fining the party, order the person in charge/owner/occupant to take reasonable, timely, and lawful measures to abate the nuisance activity, including specifying deadlines for the same.

(5) In addition to the penalties above, the City of Urbana may, at its discretion, take the following actions:
(a) Suspend the rental registration at a chronic criminal nuisance property, if such property is rented or leased. If such license is suspended, the owner of the property shall close and secure said property against all unauthorized access, use, and occupancy for a period of not less than thirty (30) days, or more than 180 days. If the City suspends the rental registration of a property, the person in charge, or the owner/occupant of the property, if those persons are different than the person in charge, shall receive written notice from the Community Development Department that his/her registration to operate rental property within the corporate/jurisdictional limits of the City is suspended. The suspension of any registration shall not release or discharge the registration holder from paying fees or fines under this Code, nor shall such registration holder be released from criminal prosecution or further civil proceedings.

Section Two.

This Ordinance, as amended, shall be in full force and effect, and shall be controlling, immediately upon its passage and approval.

Section Three.

All ordinances, or parts of ordinances thereof, which are in conflict with the provisions of any portion of this Ordinance, as amended, are hereby repealed to the extent of any conflict.

Section Four.

A prosecution which is pending on the effective date of this article and which arose from a violation of an ordinance repealed by this article, or a prosecution which is started within six (6) months after the effective date of this article, arising from a violation of an ordinance repealed by this article, shall be tried and determined exactly as if the ordinance had not been repealed. If any portion of the foregoing amendment to Chapter 15 shall be found, by a court of competent jurisdiction, to be unlawful or unconstitutional, the remaining parts of this Ordinance will remain in full force and effect.

Section Five.

This article applies to all properties within the corporate or jurisdictional limits of the City of Urbana.

PASSED by the City Council this _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Laurel Lunt Prussing, Mayor



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Memorandum

DATE: February 20, 2009
TO: Mayor Laurel Prussing; Ron O'Neal
FROM: Michelle Brooks
RE: Triggering Nuisance Elements for Chronic Criminal Nuisances

Below please find definitions of the offenses that are currently included in the draft of the City's Criminal Nuisance Ordinance. We should not intend to limit ourselves to these definitions but merely explain the lowest threshold elements that trigger these offenses. The reasoning behind this is that many of these crimes can be elevated to a higher level of crime by adding additional elements (i.e. use of weapon in commission of crime, severity of injury, relation of the victim to the assailant, prior conviction for same offense). For example, a battery can become a domestic battery or an aggravated battery based upon the status of the victim. Therefore, I suggest we consider adding some language that indicates that "Nuisance Activities" include those listed below as well as any enhanced or elevated versions of those crimes due to additional elements, prior convictions, injury, use of force/weapons or other aggravating factors as enumerated under Chapter 720 of the Illinois Criminal Code.

Please also note that these statutes are quite lengthy. Accordingly, the below definitions are abbreviated in an attempt to describe the basic nature of the offense and the predicate elements. For a comprehensive review of the entire definitions, please refer to the corresponding statutes.

1. Mob Action (720 ILCS 5/25-1) Two or more persons acting in concert to use force or violence to disturb the public, commit an unlawful act or do violence to a person and/or property (either a cls misd. or a cls 4 fel. depending upon the attendant circumstances).
2. Assault (720 ILCS 5/12-1 et. seq.) engaging in conduct which places another in reasonable apprehension of receiving a battery (cls C misd. through a cls 4 felony).
3. Battery (720 ILCS 5/12-3 et seq.) Intentional or knowing contact of an insulting or provoking nature committing without legal justification (cls A misd; can be elevated up to a cls 1 fel. due to prior history, severity of injury or the nature of the victim, i.e. peace officer, unborn child, etc.).
4. Unlawful Use of Weapons or Firearms (720 ILCS 5/24 et. seq.) Sales, manufacture, carrying or possession of certain weapons (enumerated in statute) is prohibited under any circumstance. As for firearms, unauthorized carrying in a concealed fashion on his/her person, carrying within any place of public gathering, bar, carrying with the intent to unlawfully use said device, or possession by a convicted felon (various levels of felonies and can have aggravating factors that elevate the class of crime). There are exceptions for weapons that are not immediately accessible, inoperable or secured in a lock-box by a person carrying a valid FOID card.
5. Unlawful Discharge of a Firearm (720 ILCS 5/24-1.1 et. seq.) Knowing or intentional discharge of a firearm towards a building or vehicle that is known or reasonably should have been known to be occupied or in the direction of a person (varying levels of felonies dependant upon the nature of the circumstances, aggravating factors and/or status of the victim).
6. Prostitution (720 ILCS 5/11-14 et. seq.) Performing, offering, or agreeing to commit any act of sexual penetration or fondling for anything of value (cls A misd unless prior convictions or occurring within 1,000 ft of a school, then a cls 4 fel.).
7. Soliciting or Patronizing a Prostitute (720 ILCS 5/11-18) Engaging in an act of sexual penetration with a prostitute or entering or remaining in a place of prostitution **with the intent** to engage in an act of sexual penetration [emphasis added] (cls A misd, cls 4 felony with prior conviction).
8. Keeping a Place of Prostitution (720 ILCS 5/11-17 et. seq.) The granting or permitting of the use of any place that could offer seclusion/shelter for the practice of prostitution by person who exercises control over said place (cls A misd, cls 4 felony if prior conviction, however, if place is kept for juvenile prostitution, cls X felony).

9. Pandering (720 ILCS 5/11-16) Compelling a person to prostitute or arranging a situation in which prostitution may be practiced (cls 4 felony unless committed within 1,000ft of school, then cls 3 felony).
10. Sexual Offenses (generally) (720 ILCS 5/19.1 et. seq. and 720 ILCS 5/12-13 et. seq.) [PLEASE NOTE: Due to sexual offenses against adults and certain crimes against children being codified under different statutes, I have created a general category and have included those offenses and their corresponding citations] Crimes falling under this umbrella include: Juvenile Pimping; Exploitation of a Child; Production or Possession Child Pornography; Criminal Sexual Assault; Aggravated Criminal Sexual Assault; Predatory Criminal Sexual Assault of a Child; Criminal Sexual Abuse; Aggravated Criminal Sexual Abuse; and Criminal Transmission of HIV (these range from a Class A misdemeanor to a Class X felony).
11. Public Indecency (720 ILCS 5/11-19) Exposure by a person over 17 of the body DONE WITH THE INTENT to arouse or satisfy the sexual desire of that person (breast feeding is NOT indecent) OR an act of sexual penetration or sexual conduct (fondling of breasts or genitals) in a public place (cls A misd; cls 4 felony with prior conviction).
12. Unlawful Manufacture, Sale, Distribution, Possession, or Use of Controlled Substances (720 ILCS 570/100 et. seq.) These sections are extensive and complex but, in short, they deal with all controlled substances excepting those that are able to be grown and ingested for a mood/mind altering effect without any further chemical treatment (ranges from misd through Class X felony).
13. Unlawful Production, Sale, Distribution, Possession, or Use of Cannabis (720 ILCS 550/1) Again, this section is very lengthy and is codified under its own section that is separate and distinct from the Controlled Substances Act as the penalties for possession of certain amounts of cannabis are classified as a lower level of offense than the same amount of a controlled substance. However, in considering whether or not this section should be included in the Nuisance Ordinance, please be advised that large amounts of cannabis have been both produced and trafficked through Urbana. For example, within the last five years, the Street Crimes Unit arrested a person for trafficking an amount of cannabis with a total weight of 50lbs and discovered a property where cannabis was being manufactured for sale where 100 plants were seized.
14. Illegal Gambling (720 ILCS 5/28-1 et. seq.) This section includes traditional gambling, book-making, syndicated gambling and keeping a place of gambling. Moreover, the inclusion of this crime in the nuisance ordinances could be an important tool in addressing those properties that are used for events that bet upon animals [i.e. dog fighting and cock fighting](cls A misd to a cls 3 felony).
15. Keeping or Maintaining a Place of Illegal Gambling (720 ILCS 5/28-1 et. seq.) *see above*

16. Unlawful Possession of Gambling Devices (720 ILCS 5/28-1 et. seq.) see *above*

17. Arson (720 ILCS 5/20-1) Knowingly damaging any real property having a value of \$150 or more without the owner's consent or with the intent to defraud an insurer by means of a fire or explosive (once again, depending upon the kind of property damaged, arson ranges from a cls 2 through a cls X felony).

****Upon further review of statutes, there are perhaps three additional triggering nuisances we might want to consider including in our ordinance:

18. Violation of the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 et. seq) Again, this drug and its production, sale and possession are codified separately than other narcotics (felonies, ranging from cls 4 through cls X);

19. Violation of the Illinois Street Gang Terrorism Omnibus Prevention Act (740 ILCS 147/5 et. seq.) This act actually provides under 720 ILCS 147/45 for the abatement as a public nuisance properties used for the purpose of conducting streetgang related activities;

20. Violations of any animal regulations as codified under Illinois law and/or the City of Urbana Municipal Code (Chapter 510 et. seq. and 720 ILCS 5/26 et. seq.) This would allow for those persons owning or residing in properties who repeatedly allow animals to run at large, commit acts of animal cruelty, fail to maintain animals in a humane and healthy way, fail to register and get appropriate shots for animals, own intact animals and are convicted felons, maintain dangerous animals as pets, and fight dogs to be dealt with under the Chronic Criminal Nuisance Ordinance (petty offense through cls 3 fel).



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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.