

ORDINANCE NO. 2015-10-109

AN ORDINANCE AMENDING CHAPTER 15, "MISCELLANEOUS
OFFENSES AND PROVISIONS", ARTICLE IV, "OFFENSES AFFECTING
PUBLIC HEALTH, SAFETY AND DECENCY", DIVISION 3, "NUISANCES",
SECTION 15-80, "AGGRAVATED PUBLIC NUISANCES"

(Amendments to the Aggravated Public Nuisance Ordinance to Reflect Recent Changes
in the Illinois Municipal Code Concerning Police and Emergency Contacts for
Victims of Threatened and/or Committed Sexual Violence or Domestic Violence
or in Connection with Persons with Disabilities)

WHEREAS, the City of Urbana, Illinois is a home-rule unit of local
government pursuant to the Illinois Constitution of 1970, Article VII, Section 6;
and

WHEREAS, the Urbana City Code has been periodically recodified and
republished by the City of Urbana to incorporate amendments thereto duly adopted
by the City of Urbana; and

WHEREAS, the City Council has, heretofore, adopted an ordinance concerning
aggravated public nuisances for the purpose of reducing crime within the City of
Urbana which ordinance was originally adopted as Ordinance No. 2010-02-011 with
the same having been amended by Ordinance No. 2011-10-117; and

WHEREAS, the Illinois General Assembly recently passed and the Governor
signed into law Public Act 99-441; and

WHEREAS, Public Act 99-441, in relevant part, is codified in the Illinois
Compiled Statutes by adding a new section to the Illinois Municipal Code (65 ILCS
5/-1-1 et seq.) being Section 1-2-1.5 which is now codified at 65 ILCS 5/1-2-1.5
(hereinafter, the "Public Act"); and

WHEREAS, the Public Act provides, *inter alia*, as follows:

(1) No municipality shall enact or enforce an ordinance or regulation
that penalizes tenants or landlords based on:

(A) contact made to police or other emergency services, if (i)
the contact was made with the intent to prevent or respond to
domestic violence or sexual violence; (ii) the intervention or

emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or (iii) the contact was made by, on behalf of, or otherwise concerns an individual with a disability and the purpose of the contact was related to that individual's disability;

(B) an incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit or on the premises; or

(C) criminal activity or a local ordinance violation occurring in the dwelling unit or on the premises that is directly relating to domestic violence or sexual violence, engaged in by a tenant, member of a tenant's household, guest, or other party, and against a tenant, household member, guest, or other party.

65 ILCS 5/1-2-1.5(b)(1)(A), (B), (C); and

WHEREAS, Public Act 99-441 shall become effective ninety (90) days after becoming law - i.e., November 19, 2015; and

WHEREAS, by reason of Public Act 99-441, certain parts of the City's Aggravated Public Nuisance Ordinance (UCC § 15-80) must be amended in order to bring that ordinance into compliance with Public Act 99-441 on or before November 19, 2015.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF AND FOR THE CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS, follows:

Section 1. Chapter 15, "Miscellaneous Offenses and Provisions", Article IV, "Offenses Affecting Public Health, Safety and Decency", Division 3, "Nuisances", Section 15-80, "Aggravated Public Nuisances" shall be and hereby is amended by adding (underlined) and/or deleting (strike through) the following language:

(a) *Definitions.*

(1) The following words or phrases shall, when used in this article, have the following meanings:

a. Cannabis means any substance as defined in Section 3(a) of the Illinois Control Cannabis Control Act, 720 ILCS 550/1 et seq.

b. Commit or commission means knowingly causing, allowing, aiding or concealing the fact of such act or activities.

c. Contact means any communication made by a tenant, landlord, guest, neighbor, or other individual to police or other emergency services.

d. Controlled substance means any substance as defined in Article II of the Illinois Controlled Substance Act, 720 ILCS 570/201 et seq.

e. Deliver or delivery means the actual, constructive or attempted transfer of possession of a controlled substance, or cannabis, with or without consideration, whether or not there is an agency relationship.

f. Dwelling means a house, apartment building, mobile home, trailer or other structures used or intended for use for human habitation, and includes common areas within the structure which houses more than one (1) dwelling unit.

g. Dwelling unit means one (1) or more rooms, designated occupied or intended for occupancy as separate living quarters, for the exclusive use of a person or persons.

h. In or on the premises of any dwelling means a dwelling or the area within the boundary lines of any real property of the same ownership on which such dwelling is located.

i. Knowledge means a person knows, or acts knowingly or with knowledge of:

1. The nature or attendant circumstances of his/her conduct, described by the section defining the offense, when he/she is consciously aware that his/her conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.

2. The result of his/her conduct, described by the section defining the offense, when he/she is consciously aware that such result is practically certain to be caused by his/her conduct.

3. Conduct performed knowingly or with knowledge is performed willfully, within the meaning of a section using the latter term, unless the section clearly requires another meaning.

j. Manufacture shall have the same meaning as set forth in Section 102(z) of the Illinois Controlled Substance Act, 720 ILCS 570/201 et seq.

k. Methamphetamine means any substance as defined in Section Methamphetamine Control and Community Protection Act, 720 ILCS 646/1 et seq.

l. Negligence means a person is negligent, or acts negligently, when he/she fails to be aware of a

substantial and unjustifiable risk that circumstances exist or a result will follow, described by the section defining the offense; and such failure constitutes a substantial deviation from the standard of care which a reasonable person would exercise in the situation.

m. Occupant means any person who lives in or has possession or holds an occupancy interest in a dwelling, dwelling unit or real property, or any person residing or frequenting the premises of the dwelling with the actual or implied permission of an owner, tenant or lessee. For purposes of this division, the term "occupant" shall also include employees, patrons and clients of real property.

n. Owner means any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

o. Recklessness means a person is reckless or acts recklessly when he/she consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the section defining the offense; and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in that situation. An act performed recklessly is performed wantonly, within the meaning of the section using the latter term, unless the section clearly requires another meaning.

(2) Aggravated public nuisance.

a. Nuisance defined. An "aggravated public nuisance" is:

1. A dwelling, dwelling unit or real property;
2. Where the owners or occupant of the dwelling, dwelling unit or real property conduct or commit the following activities within a dwelling unit, on the premises of a dwelling or real property, or within one hundred (100) feet of the property line of the premises of the dwelling, dwelling unit or real property of which the owner or occupant has control within a three hundred sixty-five-day period:

(i) Two (2) or more forcible felonies, with the exception of state or federal criminal sexual offenses or crimes of sexual violence; or

(ii) Two (2) or more state or federal criminal offenses related to the illegal

sale, possession or manufacture of controlled substances, methamphetamine, cannabis or drug paraphernalia; or

(iii) Two (2) or more violations of 720 ILCS 5/11 et seq., entitled "Prostitution"; or

(iv) Two (2) or more violations of 720 ILCS 5/11 et seq., entitled "Solicitation"; or

(v) Two (2) or more violations of 720 ILCS 5/11 et seq., entitled "Keeping a Place of Prostitution"; or

(vi) Two (2) or more violations of 720 ILCS 5/28 et seq., entitled "Illegal Gambling" or "Keeping or Maintaining a place of Illegal Gambling"; or

(vii) Two (2) or more violations of 720 ILCS 5/20-1 et seq. entitled "Arson"; or

(viii) Five (5) or more of any combination of the following:

1. Any of the offenses described in paragraphs (i), (ii), (iii), (iv), (v), (vi), and (vii) above;

2. Any of the following offenses as defined in the Illinois Criminal Code: Disorderly conduct; battery; assault; aggravated assault; criminal damage to property; mob action; unlawful use of weapons; street gang terrorism; and/or any offenses as defined in the Illinois Criminal Code and/or the City of Urbana Code of Ordinances as "animal cruelty."

(ix) Five (5) or more violations of Chapter 16 of the Code of Ordinances regulating noise within or on the premises of a single dwelling, dwelling unit or real property.

b. *Violation.* No owner of real property shall recklessly, knowingly, or negligently allow or permit an aggravated public nuisance or allow or permit an aggravated public nuisance to exist upon real property or part thereof, including individual dwelling units, owned by that person.

(b) *Written notice of aggravated public nuisance.* Before the filing of a complaint alleging a violation of subsection (a)(2)b., "violation", above, the city attorney shall, by certified mail, provide to the owner of the place at which the aggravated public nuisance is located, or the agent of the owner, written notice of the following:

(1) That an aggravated public nuisance, as defined in this article, exists at the place specified in the notice;

(2) That the owner of the place at which the aggravated public nuisance is located, or the owner's agent has twenty-one (21) days from the mailing of the notice to schedule and appear at the city attorney's office at the address provided in the notice for a nuisance abatement conference with said city attorney or said attorney's representative and other appropriate city staff to discuss the possibility of entering into a written agreement to take action to abate the nuisance; and

(3) That failure to appear at the city attorney's office for said conference within the time indicated may result in the city attorney filing a complaint alleging a violation under subsection (a)(2)b.

(c) *Nuisance abatement conference.* At the nuisance abatement conference, the city attorney or said attorney's representative, any other appropriate city staff members, and the property owner or owner's agent, shall discuss the facts constituting the aggravated public nuisance and shall attempt to agree on specific actions that the property owner or the owner's agent can take to abate said aggravated public nuisance. At said conference, the city attorney or said attorney's representative shall provide to the property owner or the owner's agent available information from investigations by employees of the city regarding the commission of acts constituting the aggravated public nuisance, including the identity and last known addresses of individuals who have committed or witnessed the commission of said acts.

(d) *Nuisance abatement agreement.*

(1) At the conclusion of the nuisance abatement conference, the city attorney or said attorney's representative shall submit to the property owner or his or her agent a proposed written nuisance abatement agreement. If at the conclusion of the conference the city attorney or said attorney's representative needs more time to draft said proposed nuisance abatement agreement, then a follow-up conference shall be scheduled with the property owner or property owner's agent within ten (10) days of the initial conference for submittal and review of the completed proposed nuisance abatement agreement.

(2) Any nuisance abatement agreement under this division shall include a list of specific actions and a specific schedule of deadlines for said actions to abate the aggravated public nuisance. It may also include provisions for a periodic assessment of the agreement's effectiveness, and procedures for modification to the agreement. A nuisance abatement agreement or any written modification to said agreement may impose conditions or requirements on the property owner for a period of up to twenty-four (24) months from the date the original agreement is entered into by the property owner or owner's agent and the city. A nuisance abatement agreement may impose one (1) or more of the following conditions or requirements on the property owner:

a. Eviction of identified individuals from the dwelling, dwelling unit or real property in question based upon criminal activity identified in Section 15-80(a)(2)(a)(2)(i) through (ix) committed by those identified individuals.

b. Written notification from the property owner to an identified individual or individuals that they are prohibited from entering onto the property that is the location of the aggravated public nuisances based upon the criminal activity identified in Section 15-80(a)(2)(a)(2)(i) through (ix) committed by the particular individual or individuals.

c. Utilization of written leases containing a provision or provisions requiring eviction of a tenant or lessee for the commission of criminal activity identified in Section 15-80(a)(2)(a)(2)(i) through (ix) by that tenant or lessee.

d. The completion of improvements upon the property which have the impact of mitigating crime, including but not limited to the erection of fences, installation of security devices upon the entrances and/or increased lighting.

e. Any other reasonable conditions or requirements designed to abate the aggravated public nuisance.

(3) Once a proposed written nuisance abatement plan or written modification to nuisance abatement plan has been submitted to the property owner or the owner's agent, said property owner or owner's agent shall have three (3) business days to review it and enter into said agreement by signing it and returning it to the office of the city attorney.

(e) *Filing a complaint.* The city attorney may file a complaint alleging a violation of subsection (a)(2)b. under any of the following circumstances:

(1) The owner or his or her agent does not schedule and attend a conference with the city attorney or said attorney's representative within the time period prescribed in subsection (b), "written notice of aggravated public nuisance."

(2) The owner or his or her agent fails to sign a proposed written nuisance abatement agreement or proposed written modification to said agreement within the prescribed time period set forth in subsection (d)(3), "nuisance abatement agreement."

(3) The owner or the owner's agent subsequently fails to comply with any conditions or requirements set forth in a nuisance abatement agreement, including any prescribed deadlines for taking particular actions.

(f) *Evidence.*

(1) State of mind. In any proceeding brought under subsection (a)(2) alleging an aggravated public nuisance, the court shall

consider at least the following in determining whether or not the defendant has recklessly, knowingly or negligently allowed or permitted an aggravated public nuisance to exist:

a. Evidence of notice by the city or by any person to the defendant, notifying the defendant of the existence of any of the activities set forth in subsection (a)(2).

b. Actions taken by the owner to mitigate criminal activity or the existence of nuisances upon and in the vicinity of the property.

c. Actions taken by the owner to remove persons who commit criminal offenses or nuisances from tenancy or occupancy or to prohibit the entry of such persons onto the premises of the dwelling, dwelling unit or real property.

d. Actions taken by the owner to respond to notices sent by the city or residents.

(2) *Evidence of commission.* Proof the commission of any of the offenses or existence of any of the circumstances set forth in subsection (a)(2) shall be by a preponderance of the evidence.

(3) *Convictions.* The finding of or judgment of guilty in any court against an individual for a crime enumerated in subsection (a)(2) shall be prima facie evidence of the commission.

(g) *Action to abate; penalties.* In addition to prosecution of the offense defined by subsection (a)(2) or pursuing any other remedies available under this Code, the city attorney, upon receipt of reliable information that any real property within the corporate limits of the city is being maintained as an aggravated public nuisance, may prosecute an action for equitable relief, in the name of the city, to abate the nuisance and to enjoin any person who shall own, rent, or occupy the real property, dwelling or dwelling unit in question from using or permitting its use contrary to the provisions of subsection (a)(2).

(h) *Judgment.* No judgment finding a violation under subsection (a)(2)b., "violation", shall be entered against an owner if an owner or his or her agent has, in good faith, endeavored to prevent the nuisance. An owner or agent who has complied with all conditions or requirements of a nuisance abatement agreement and any modifications to said agreement, as defined in subsection (d), "nuisance abatement agreement", shall be deemed to have endeavored in good faith to prevent the nuisance.

(i) *Remedies.*

(1) Upon a finding of guilt under subsection (a)(2)b., "violation", the court may, in addition to other remedies permitted by this Code, impose a term of court supervision or conditional discharge for a term of up to three (3) years, conditioned on any or all of the following:

a. The completion of improvements upon the property which have the impact of mitigating crime including, but not limited to, the erection of fences, installation of security devices upon the entrances or increased lighting;

b. Requirement of a written lease for occupants which includes provisions requiring eviction for criminal activity;

c. Posting a cash bond of no less than the minimum fine and up to the amount of the maximum fine for the period of court supervision or conditional discharge imposed by the court, such bond to be retained by the city in an interest bearing account and conditioned on successful completion of the period of court supervision or conditional discharge;

d. Any other condition reasonably related to the objective of abating the aggravated public nuisance.

(2) The court shall, upon a finding of guilt with respect to subsection (a)(2)b., "violation," fine the defendant a sum of no less than one hundred dollars (\$100.00) per day that the nuisance existed, beginning on the date that the defendant first received notice of the conditions which constitute an aggravated public nuisance under subsection (b), "written notice of aggravated public nuisance."

(j) *Performance review.* The legal department of the city shall conduct a thorough evaluation of this division eighteen (18) months after its effective date. The review process shall include public input and comment on the aggravated public nuisance ordinance's strengths, weaknesses and effectiveness. The department shall tender a written report to the mayor and council summarizing its findings and recommendations. This report shall be tendered in a timely manner but not later than three (3) months after the commencement of the review and evaluation process.

(k) *Protection.*

(1) No municipality shall enact or enforce an ordinance or regulation that penalizes tenants or landlords based on:

(A) contact made to police or other emergency services, if (i) the contact was made with the intent to prevent or respond to domestic violence or sexual violence; (ii) the intervention or emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or (iii) the contact was made by, on behalf of, or otherwise concerns an individual with a disability and the purpose of the contact was related to that individual's disability;

(B) an incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling unit or on the premises;
or

(C) criminal activity or a local ordinance violation occurring in the dwelling unit or on the premises that is directly relating to domestic violence or sexual violence, engaged in by a tenant, member of a tenant's household, guest, or other party, and against a tenant, household member, guest, or other party.

(1) Compliance with state law. This ordinance shall not be construed, interpreted or enforced in any manner which conflicts with Illinois Municipal Code Section 1-2-1.5 (65 ILCS 5/1-2-1.5).

Section 2. This Ordinance shall be in full force and effect from and after its passage and publication in accordance with the terms of Chapter 65, Section 1-2-4 of the Illinois Compiled Statutes (65 ILCS 5/1-2-4).

Section 3. The City Clerk is directed to publish this Ordinance and cause the appropriate sections of Chapter 15, "Miscellaneous Offenses and Provisions", Article IV, "Offenses Affecting Public Health, Safety and Decency", Division 3, "Nuisances", Section 15-80, "Aggravated Public Nuisances", of the Urbana City Code to reflect the amendments as hereinabove stated and set forth.

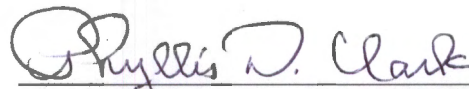
This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the City Council of the City of Urbana, at a regular meeting of said Council on the 2nd of November, 2015 at which a proper quorum was present.

PASSED BY THE CITY COUNCIL of and for the City of Urbana, Illinois this 2nd Day of November, 2015 with the "ayes" and "nays" being recorded as follows:

AYES: Brown, Jakobsson, Madigan, Marlin, Smyth

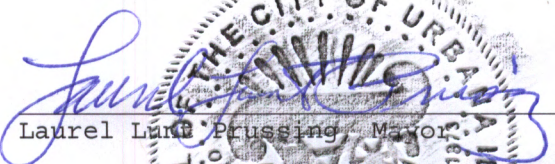
NAYS:

ABSTENTIONS:



Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this 17th Day of November, 2015.



Laurel Lane Prussing, Mayor

