Legislation Text

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[COMMITTEE SUBSTITUTE FOR]ORDINANCE NO. 250438

..title
Sponsor: Councilmember Crispin Rea
COMMITTEE SUBSTITUTE

Amending Chapter 48, Code of Ordinances, by repealing Section 48-51, Chronic nuisance, and enacting in lieu thereof a new section of like number and subject matter.

..body
WHEREAS, the proliferation of all-terrain vehicles or other motor vehicles not lawfully registered or otherwise permitted by law to operate on highways, City streets or private property presents a threat to public safety; and

WHEREAS, the procedures available in Section 48-51 to address chronic nuisance properties provide an opportunity to address with property owners various solutions for abating these and other repeated instances of unlawful motor vehicle operations that occur on, or are significantly connected with, their properties; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 48, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Section 48-51, Chronic nuisance, and enacting in lieu thereof a new section of like number and subject matter, to read as follows:

Sec. 48-51. Chronic nuisance.

(a) Chronic nuisance unlawful. It shall be unlawful for any owner or occupant, as defined in section 48-1, of any property, premise, lot, tract or parcel of land to cause, permit, encourage or allow a chronic nuisance to exist upon said property.

(b) Definitions.

(1) Chronic nuisance. A chronic nuisance is the use of any property, premise, lot, tract or parcel of land, or any structure or portion of structure thereon, for any of the following repeated activities, behaviors, or conduct occurring on that property or any structure or portion of structure thereon, or that is associated with the property:

a. Illegal use, possession or distribution of drug or drug paraphernalia as defined in section 50-201 or otherwise by the laws of the city or the state; or

b. Illegal use of marijuana as defined by the laws of the city or the state; or

c. Illegal possession, use or sale of firearms or weapons as defined in article VIII of chapter 50 or otherwise by the laws of the city or the state; or

d. Prostitution or patronizing prostitution, as defined in section 50-72 or otherwise by the laws of the city or the state; or

e. Drinking alcoholic beverages in public places as defined in section 50-152 or otherwise by the laws of the city or the state; or

f. Disorderly conduct defined in section 50-164 or otherwise by the laws of the city or the state; or

g. Attempting bodily injury as defined in section 50-168 or otherwise by the laws of the city or the state; or

h. Engaging in, or aiding or abetting, a drag race, speed competition or exhibition of speed or acceleration, sideshow or burnout as defined in section 70-365 or otherwise by the laws of the city or the state; or

i. Raising wheels while operating a motor vehicle in violation of section 70-308 or as otherwise prohibited by the laws of the city or the state; or

j. Operating a motor vehicle that is not manufactured for operation on public streets and highways and is not lawfully registered or otherwise permitted by law to operate on a public street or highway, including any all-terrain vehicle operating in violation of section 70-749 and any motorcycle designed for off-road use and not licensed for operation on a public street or highway; or

k. Any other activity that constitutes a felony or misdemeanor under federal or state law.

l. Provided, however, that the grounds for determining a chronic nuisance violation for the purposes of this section do not include any request for police protection or any police intervention in the face of a threat or a perceived threat to person or property, or any request for the assistance of the police to enforce a court order, including, but not limited to, circumstances in which the conviction, request for assistance or other police intervention arises from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the premises.

(2) Repeated. Whenever the City Police Department has responded three or more times during a 30-day period or seven or more times within a 180-day period to the same property for any of the activities described in paragraph (b)(1) of this section.

(c) Administrative procedures.

(1) Whenever the City Police Department has responded and provides documentation for said repeated responses and the director of the neighborhood services department becomes aware of such reports, the Director of the Neighborhood Services Department shall provide written notice to the property owner and occupants that:

a. Identifies the property by legal and street address;

b. States that the property may be designated as a chronic nuisance property which may necessitate actions to abate or remove such chronic nuisance;

c. Describes the nuisance activities that have occurred on the property;

d. Orders that an agreed abatement plan must be reached with the Director of the Neighborhood Services Department within 30 days of the notice; and

e. Orders that abatement measures must be taken by the owner within 30 days of the notice.

(2) The written notice shall be delivered to the owner and the occupant(s) of the property by delivery to them personally, or by leaving notice at their usual place of abode with a member of the family over the age of 15 years, or by mail, addressed to the owner or agent and the occupant(s). If a person to whom such notice is addressed cannot be found after diligent effort to do so, service may be made upon such person by posting the notice on or about the property described in the notice, or by causing such notice to be published in a newspaper of general circulation. If the owner or occupant is a corporation, the notice shall be served upon an officer, a person in charge of any local business office, or its registered agent or any other agent authorized by appointment or required by law to receive service of process.

(3) Upon the expiration of the 30-day abatement period in paragraph (c)(1) of this section, the Director of the Neighborhood Services Department shall determine whether the nuisance activities have been abated. If the nuisance activities have been abated, or the property owner is making reasonable efforts toward abatement as determined by the

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Director of the Neighborhood Services Department, the property owner may continue to work with the Director of the Neighborhood Services Department to abate the nuisance. If the nuisance activities have not been abated or an agreed abatement plan has not been reached, the Director of the Neighborhood Services department shall set a hearing to determine if the property is a chronic nuisance property. Notice shall be served upon the property owner and shall include the time, date, and location of the hearing and shall be served upon the property owner in the manner prescribed in paragraph (c)(2) of this section. All mortgagees of record and other interested parties known to the city, including tenants of the property known to the city, shall receive a copy of the notification.

(d) Chronic nuisance board.

(1) Membership of chronic nuisance board.

a. There is hereby established a Chronic Nuisance Board, comprised of seven members serving a four-year term. The mayor shall appoint six members to the board, five of whom shall be employees of the city representing each of the following departments: City Planning and Development, Finance, Fire, Health and Neighborhood Services. The sixth member of the board appointed by the mayor shall be an employee of the city. The seventh member of the board shall be an employee representative within the City Police Department and recommended by the Chief of Police.

b. The Director of the Neighborhood Services Department shall act as secretary of the board.

c. A representative of the City Attorney's Office shall attend all meetings held by the board.

(2) Powers and duties of Chronic Nuisance Board.

a. To interpret the provisions of section 48-51.

b. To determine if a property is a chronic nuisance and, if it is, order abatement that may include but is not limited to ordering the property closed, making a complaint to Regulated Industries Division, ordering appropriate security measures, closing and boarding the property, and/or causing special tax bills to be generated for any future calls for service described in paragraph (b)(1) of this section, excluding any call as described in subparagraph (b)(1)i. of this section.

c. To adopt reasonable rules and regulations governing the form, method and procedures used in the filing, hearing and disposition of appeals, and for the conduct of its own business.

d. To hear cases pertaining to chronic nuisance as defined in this section. At the hearing on the record, the party contesting the notice or the determination that the property is a chronic nuisance property shall be given the opportunity to testify and to present evidence concerning the issue. The chronic nuisance property notice, property record, and related documentation in the proper form pursuant to paragraph (c)(1) of this section shall be prima facie evidence that the property is a chronic nuisance. An issued notice of violation need not be present. The board may continue the hearing to a later date to request that additional information from the Neighborhood Services Department or the recipient of the notice be presented by the appropriate parties prior to issuing a written decision.

e. For good cause shown, to grant extensions of time in which to comply with the provisions of this section.

f. To grant continuances.

g. To issue subpoenas compelling attendance of witnesses and production of evidence.

h. To administer oaths and affirmations.

i. To cause all hearings to be suitably recorded.

j. To render its decision in writing with copies to the property owner and other party(ies) entitled to notice pursuant to paragraph (c)(3) of this section, and to the director and city attorney.

k. The board shall have all other powers or duties which are now or may hereafter be granted to or imposed upon it

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by ordinance, statute or final decision of a court.

(3) Judicial review of decisions of chronic nuisance board. For any decision of the Chronic Nuisance Board upon an order or action taken pursuant to this section, the occupant, owner, or the director may seek judicial review in a manner provided by law. The method of judicial review of any decision of the board shall be as provided in RSMo. chapter 536.

(e) Chronic nuisance hearing.

(1) The hearing shall be conducted by the Chronic Nuisance Board as defined in this section and in the manner prescribed in paragraph (d)(2) of this section and as further detailed in paragraph (e)(2) of this section in order to determine whether a property is a chronic nuisance property. Each interested party shall be given an opportunity to present evidence under oath and to be represented by counsel.

(2) Following the hearing and considering all of the testimony and evidence submitted at the hearing, the Chronic Nuisance Board shall make a written determination as to whether the property is a chronic nuisance property and will consider the following in making said determination:

a. Knowledge of the property owner of the chronic nuisance or otherwise illegal activities occurring on the property.

b. Nature and extent of nuisance activity associated with the property.

c. Nature and extent of conditions that violate city code or federal or state law.

d. Actions taken by the property owner to prevent nuisance activity and to abate existing nuisance activity found to exist on the property.

e. The physical characteristics of the property, including the proximity of property to residential property, parks, churches, schools and playgrounds.

f. Whether there is harassing or intimidating conduct, as prohibited by law, by the owner, occupant(s) or person(s) frequenting the property toward persons living in the neighborhood or passing by the place. A person shall be considered to be frequenting the property if the person lives or works on the property or repeatedly visits the property.

g. Whether there is street or sidewalk congestion caused by the owner, occupant or persons frequenting the place, as defined in subparagraph (e)(2)f. of this section.

h. The impact of a chronic nuisance determination on innocent parties, such as, but not limited to, tenants of the property.

i. Any other evidence deemed relevant by the chronic nuisance board.

(3) The board shall issue a final written determination within ten days of the conclusion of the hearing. If the board determines that the property owner is working to remedy the matter, the board may continue the hearing for up to 60 days before making a final determination. If the board determines that the conditions on the property constitute a chronic nuisance, the board may order the abatement of the nuisance or order any action necessary to abate the nuisance, including the closing of any structure or any part thereof on the property for a period not to exceed one year.

(4) In determining whether the property or any portion thereof should be ordered closed as a result of the existence of a chronic nuisance, the board shall consider, in addition to all other relevant factors, the impact of the closure on innocent parties; however, the lack of knowledge of, acquiescence or participation in, or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charge of as agent or otherwise, or having any interest in the property used in conducting or maintaining the public nuisance, shall not necessarily preclude closure of the property.

(5) The order issued by the board shall include the address of the property, a description of the nuisance(s), the length of time allowed for the property owner to abate the nuisance or, if the structure or any part thereof is ordered closed, the length of time of the closure and, if only a part of the structure is ordered closed, the identification of the area

to be closed. Furthermore, the order will require that if the property is ordered closed, the property owner shall submit a plan of action intended to prevent the property from being a chronic nuisance property after the period of closure expires, as further described in paragraph (f)(1) of this section. The order shall also state that any costs incurred by the city in order to uphold this order, including closure of the property, will be specially assessed and shall be deemed both a personal debt against the owner as well as a lien on the property until paid.

(6) The order shall be mailed to the property owner and any other party(ies) entitled to notice pursuant to paragraph (c)(3) of this section. The order shall be posted on the property within 48 hours of the decision.

(f) Enforcement of the order.

(1) Within 30 days of the closure of the property, the property owner shall submit to the Director of the Neighborhood Services Department for approval a plan of action as described in paragraph (e)(5) of this section intended to prevent the property from being a chronic nuisance property after the period of closure expires. The plan shall include any lawful method of abatement and remediation as deemed applicable by the Director of the Neighborhood Services Department. If the property owner, lessor or lessee submits proof satisfactory to the board that the nuisance(s) has been abated for a period of 30 days, the board may vacate the provisions of the order directing closure or may modify said order.

(2) If a property or a portion thereof is ordered closed, it shall be unlawful to occupy the property ordered closed or allow the property ordered closed to be occupied during the period of closure.

(3) Any closure pursuant to this section shall not constitute an act of possession, ownership or control of the closed structure by the city.

(4) If the owner does not obey the order of the board, the city shall take all appropriate steps to undertake and complete the work necessary to abate the chronic nuisance and/or close and secure the structure and shall assess the costs to the owner as a special tax bill. The special tax bill from the date of its issuance shall be deemed a personal debt against the person or persons who were the owners of record of the property at the time the city caused the nuisance thereon to be abated. If there was more than one owner of record of the property at the time the city caused the nuisance thereon to be abated, they shall be jointly and severally liable for the personal debt paid as provided in section 2-1722 of this Code. The city may initiate actions against such owner(s) to collect the personal debt if payment in full is not received before the bill becomes delinquent. The special tax bill from the date of its issuance shall also be a lien on the property until paid. Such lien may be enforced by any method appropriate for the enforcement of special assessments generally.

(5) The owner of the property at the time an order is issued shall be responsible for complying with the order, regardless if the owner conveys the owner's interest in the property to any other person or persons after such order was issued and served.

(6) No order to close shall relieve the owner or occupant of any property from complying with the building, fire, property maintenance and zoning codes or any other ordinance that regulates the condition or use of the premises.

(7) In situations which are determined to be emergencies, as defined in section 48-68 of this code, the city may proceed pursuant to the emergency procedures as necessary.

(g) Retaliation prohibited.

(1) It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy of any tenant or otherwise retaliate against any tenant because the tenant complained to the city about nuisance activities on the landlord's premises. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the twelve-month period following receipt of the complaint by the city constitutes unlawful retaliation under this section. Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the landlord were based upon good cause, such as but not limited to failure to pay rent, committing a nuisance activity as defined by this chapter, violating the terms and conditions of the lease agreement or periodic tenancy, or the necessity of closing the building in an effort to abate the chronic nuisance(s). A landlord's failure to renew a lease agreement upon expiration of such lease agreement shall not be deemed a violation of this section.

(2) It shall be unlawful for a tenant or any other person to submit or cause to be submitted a false report(s) as

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defined in section 50-42 to the City Police Department alleging incidents of any of the activities identified in section 48-51 (b).

(h) Additional violations and penalties.

(1) It shall be unlawful for any owner or occupant, as defined in section 48-1, of any property, premise, lot, tract or parcel of land to cause, permit, encourage or allow a chronic nuisance to exist upon said property.

(2) It shall be unlawful to use, occupy or permit the use or occupancy of any structure ordered closed through the procedures of this section.

(3) It shall be unlawful to interfere with any entry into or upon the place by any police officer, agent or employee of the city for the purpose of closure of a structure or otherwise abating the nuisance as ordered pursuant to this section.

(4) It shall be unlawful to remove an order posted on the property.

(5) Any violation of this section shall be punishable as provided in section 48-72.

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Approved as to form:

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Bret Kassen
Associate City Attorney

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