

AN ORDINANCE ENACTING A NEW ARTICLE XII OF
CHAPTER 17 OF THE CODE OF ORDINANCES OF THE
CITY OF CAPE GIRARDEAU, MISSOURI, ENTITLED
CHRONIC NUISANCE PROPERTIES

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CAPE
GIRARDEAU, MISSOURI, AS FOLLOWS:

ARTICLE 1. A new Article XII, Section 17-300, entitled,
"Chronic Nuisance Properties", is hereby enacted, in words and
figures, to read as follows:

ARTICLE XII

Sec. 17-300. Chronic Nuisance Properties

(a) Chronic nuisance unlawful. It shall be unlawful
for any owner or occupant of any property, premise,
lot, tract or parcel of land to cause, permit,
encourage or allow a chronic nuisance to exist upon
said property. This section is not intended to
discourage crime victims or a person in legitimate
need of police services from requesting them.

(b) Chronic nuisance defined. A chronic nuisance
property is any premise, lot, tract or parcel of land,
or any structure or portion of structure thereon, that
has any of the following activities, behaviors, or
conduct occurring on that property or any structure or
portion of structure thereon, or that is associated
with the property, when it is used in conjunction for
the commission of any of the following activities:

- (1) Illegal use, possession, manufacturing,
delivery or distribution of drugs or drug
paraphernalia;
- (2) Illegal possession, use or sale of firearms
or weapons;
- (3) Prostitution or patronizing prostitution;
- (4) Consumption or possession of alcoholic
beverages in public places in violation of Sec. 5-14
of this code;

(5) Offenses against the public order in violation of Chapter 17, Article VII of this code;

(6) Assaults in violation of Sec. 17-26 of this code;

(7) Any activity that constitutes a felony or misdemeanor under federal or state law.

(c) Administrative procedures.

(1) Whenever the city police department or other law enforcement agency has responded to a property for any of the activities described in subsection (b) of this section and filed an incident report for said response three (3) times within twelve (12) months, except for the illegal manufacturing, delivery or distribution of drugs which only requires one (1) reported incident, the city attorney may declare the property to be a chronic nuisance and cause written notice to the property owner declaring such and which: identifies the property, states that the property may be designated as a chronic nuisance property which may necessitate the closing of the property, and describes the activities that have occurred on the property.

(2) The written notice may be delivered by hand to the owner of the property by delivery to him or her personally or by U.S. mail, addressed to the owner. If the owner is a corporation, the notice may additionally be served personally or by U.S. Mail 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) After a fifteen (15) day period following the notice required in section (c)(1) above, the city attorney shall determine whether the nuisance activities have been abated. If the nuisance activities have not been abated, or the city attorney determines the property owner has not made reasonable efforts toward abatement, the city attorney may request a hearing and the Abatement Hearing Officer shall set a hearing to determine if the property is a chronic nuisance property. Such determinations by the city attorney shall solely be

in his or her discretion; nonetheless with respect to incidents of domestic abuse or domestic violence the city attorney shall consider the strong public policy in favor of domestic victims reporting alleged abuses, and this section shall not operate to discourage such reports. Notice shall include the time, date, and location of the hearing and shall be served in the manner prescribed in section (c)(2) above. All mortgagees of record and other interested parties known to the city, including tenants of the property known to the city, shall also be served a copy of the notification.

(d) Chronic nuisance hearing.

(1) The hearing shall be heard by the Abatement Hearing Officer to determine whether a property is a chronic nuisance property. Each interested party in attendance at the Hearing shall be given an opportunity to present evidence and may be questioned by the Abatement Hearing Officer.

(2) Following the hearing, the Abatement Hearing Officer 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 the nuisance and/or criminal activity associated with the property.

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

d. Actions taken by the property owner to prevent nuisance and/or criminal activity and to abate existing nuisance and/or criminal 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 he or she lives or works on the property, visits the property, or loiters about the property.

g. Whether there is street or sidewalk congestion caused by the owner, occupant or persons frequenting the place, as defined in subsection (d)(2)(f) above.

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

i. Any other evidence deemed relevant by the Abatement Hearing Officer.

(3) The Abatement Hearing Officer shall issue a final written determination after the conclusion of the hearing. If the Abatement Hearing Officer at his or her discretion determines that the conditions on the property constitute a chronic nuisance, he or she may order the abatement of the nuisance or order any action necessary to abate the nuisance and/or criminal activity, 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 lack of knowledge of, acquiescence or participation in, or responsibility for the nuisance and/or criminal activity 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 nuisance, shall not be a defense by such persons or entities.

(5) The order issued by the Abatement Hearing Officer shall include the address of the property, a description of the nuisance(s) and/or criminal activities, the length of time allowed for the property owner to abate the nuisance and/or criminal

activity 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 criminal nuisance property after the period of closure expires, as further described in section (e)(1) below. The order shall also state that any costs incurred by the city in order to uphold and enforce 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, occupants known to the city, and mortgagees of record of the property. The order shall be posted on the property after the issuance of the decision.

(e) Enforcement of the order.

(1) Within 30 days of the closure of the property, the property owner shall submit to the Abatement Hearing Officer for approval a plan of action as described in section (d)(5) above intended to prevent the property from being a criminal nuisance property after the period of closure expires. The plan shall include any lawful method of abatement and remediation. If the property owner, lessor or lessee submits proof satisfactory to the Abatement Hearing Officer that the nuisance(s) has been abated for a period of 30 days, the Abatement Hearing Officer 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 Abatement Hearing Officer, the city may take all

appropriate steps to undertake and complete the work necessary to abate the criminal 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 owner and shall also be a lien on the property until paid.

(5) If the owner does not obey the order of the Abatement Hearing Officer, the City may suspend any landlord license held by the owner under Chapter 15 of the City Code, until the owner has complied with that order.

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

(7) 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.

(8) None of the provisions in this section are applicable to cases which are determined to be a dangerous building, as defined in section 7-266 of this code.

(f) Violations and penalties.

(1) It shall be unlawful for any owner or occupant 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) 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 that tenant complained to the City regarding the landlord's premises. It shall be unlawful for a landlord or any person acting as an agent for the landlord, to intimidate or actively discourage a tenant and/or persons associated with a Premises. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the 12-month period following receipt of the complaint by the City constitutes unlawful retaliation under this subsection. Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the landlord were based upon good cause. Notwithstanding the foregoing, a tenant's lease agreement or periodic tenancy may be terminated for a failure to pay rent; committing an activity defined under subsection (b) of this Section; for the commission of waste upon the Premises; or for violating the terms and conditions of the lease agreement or periodic tenancy. A landlord's failure to renew a lease agreement or periodic tenancy upon expiration of such lease agreement or periodic tenancy shall not be deemed a violation of this subsection.

(6) Any violation of this ordinance shall be punishable as provided in section 1-8 of this code.

ARTICLE 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

ARTICLE 3. It is the intention of the governing body and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Cape Girardeau, Missouri, and the sections of this Code may be renumbered to accomplish such intention.

ARTICLE 4. This ordinance shall be in full force and effect ten days after its passage and approval.

PASSED AND APPROVED THIS _____ DAY OF _____, 2016.

Harry E. Rediger, Mayor

ATTEST:

Bruce Taylor, Deputy City Clerk