

**AGENDA ITEM EXECUTIVE SUMMARY**Agenda Item number: **7a**

Title:	Recommendation to Approve an Ordinance Amending Several Sections of Title 9 – Public Peace, Morals and Welfare; Chapter 9.45 -Nuisance Abatement
Presenter:	Chief Keegan

Meeting: Government Operations Committee

Date: December 5, 2016

Proposed Cost: \$N/A

Budgeted Amount: \$N/A

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

This agenda item returns to Government Operations after it was presented as a concept and advanced forward from the October Planning and Development Meeting. Highlights of the ordinance modifications now presented for consideration include:

- Review period advances from 6-months to 1-year.
- After two qualifying offenses, a warning letter is sent to the owner and tenant.
- A third qualifying offense mandates a sit-down meeting and an abatement plan.
- Failure to meet and construct an abatement plan or a fourth qualifying offense allows the City to cite and advance a violation to either the circuit court or local adjudication. Fines can be levied at \$750.00 per occurrence.
- We reserve the right to ask for an eviction or petition the court for a temporary injunction on the subject property.
- Numerous building code type violations were added to the list of qualifying offenses (uninhabitable property, structural issues, etc.)

**Attachments** *(please list):*

Ordinance

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve an Ordinance amending several sections of Title 9 – Public Peace, Morals and Welfare; Chapter 9.45 -Nuisance Abatement.

**City of St. Charles, Illinois**  
**Ordinance No. 2016-M- \_\_\_\_\_**

**An Ordinance Amending Title 9 “Public Peace, Morals and Welfare”,  
Chapter 9.45 “Nuisance Abatement”, Section 9.45.020 “Definitions”, Section  
9.45.030 “Remedy”, Section 9.45.050 “Procedure”, Section 9.45.060  
“Commencement of Action – Burden of Proof”, of the St. Charles Municipal  
Code**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES,  
KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:**

SECTION ONE: That Title 9 “Public Peace, Morals and Welfare” Chapter 9.45 “Nuisance Abatement” Section 9.45.020 “Definitions”, of the St. Charles Municipal Code, be and is hereby amended as follows:

- A. Chronic Nuisance Property: *Any P*roperty upon which ~~two-three~~ *(3)* or more of the behaviors listed below have occurred during any ~~180-day~~ *12-month* period, as a result of any ~~two-three~~ *(23)* separate factual events that have been independently investigated by any law enforcement agency *or community development department, or three (3) or more citations of nuisance activity within a twelve (12) month period, which have been adjudicated and findings of liable or guilty have been entered either by the City administrative hearing officer or court of competent jurisdiction.*
1. Disorderly Conduct as defined in 720 ILCS 5/26-1.
  2. Unlawful Use of Weapons as defined in 720 ILCS 5/24-1, et seq.
  3. Mob Action as defined in 720 ILCS 5/25.1.
  4. Discharge of a Firearm as defined in 720 ILCS 5/24-1 .2 and 1.5.
  5. Gambling as defined in 720 ILCS 5/28-1.
  6. Possession, Manufacture or Delivery of Controlled Substances as defined in 720 ILCS 570/40, et seq.
  7. Assault or Battery or Any Related Offense as defined in 720 ILCS 5/12-1, et seq.
  8. Sexual Abuse or Related Offenses as defined in 720 ILCS 5/ 12-15, et seq.
  9. Public Indecency as defined in 720 ILCS 5/ 11-9, et seq.
  10. Prostitution as defined in 720 ILCS 5/11-14, et seq.
  11. Criminal Damage to Property as defined in 720 ILCS 5/21-1, et seq.
  12. Possession, Cultivation, Manufacture or Delivery of Cannabis as defined in 720 ILCS 55011, et seq.
  13. Illegal consumption or Possession of Alcohol as defined in 235 ILCS 5/ 1, et seq.
  14. Violation of any City of St. Charles ordinance or State of Illinois statute controlling or regulating the sale or use of alcoholic beverages.
  15. Violation of City of St. Charles property maintenance code section 305, or any successor code section, relative to rubbish and garbage.
  16. Violation of chapter 8.28 of this code relative to plants and weeds.
  17. Violation of chapter 5. 20 of this code relative to massage licensing.  
(Ord. 2015-M-27 § 1; Ord. 2012-M-9 § 1.)

18. *Structure unfit for human occupancy or unsafe structure as defined in the international building code or international property maintenance code as adopted by title 15 of this code.*

19. *Unlawful structure as defined in the international building code or international property maintenance code as adopted by title 15 of this code.*

17-20. *Three (3) or more separate violations of the City's property maintenance code continuing after disposition or finding of guilty by the Circuit Court of Kane County, or finding of liable for such violations by the City administrative hearing officer at an administrative hearing, for those violations.*

- B. Control: the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.
- C. Owner: any person, agent, firm or corporation having any legal or equitable interest in the property. Owner includes but is not limited to: (1) a mortgagee in possession in who is vested (a) all or part of the legal title to the property or (b) all or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or (2) an occupant who can control what occurs on the property.
- D. Permit: to suffer, allow, consent to, acquiesce by failure to prevent, or expressly ascent or agree to the doing of an act.
- E. Person: any natural person, association, partnership or corporation capable of owning or using property in the City of St. Charles.
- F. Person in charge: any person ~~in actual~~ *in actual* or constructive possession of a property including but not ~~limited~~ *limited* to an owner, occupant of property under his or her domain, ownership, or control.
- G. Property: any real property, including land in that which is affixed, incidental or pertinent to land, including but not limited to any premises, room, house, building, or structure or any separate part or portion thereof whether permitted or not. (2015-M-27: § 1; 2007-M-10: § 1)

SECTION TWO: That Title 9 “Public Peace, Morals and Welfare” Chapter 9.45 “Nuisance Abatement” Section 9.45.030 “Remedy”, of the St. Charles Municipal Code, be and is hereby amended as follows:

- A. In the event *the City administrative hearing officer or the a*-court determines *the* property to be a chronic nuisance property, the *City hearing officer or the* court may order that the property be closed and secured against all use and occupancy for a period of not less than thirty (30) days, but not more than one hundred and eighty (180) days, or the *hearing officer or* court may employ any other remedy deemed by it to be appropriate to abate the nuisance.
- B. In addition to the remedy provided in paragraph A above, *the City hearing officer or the* court may impose upon the owner of the property a civil penalty in the amount of up to ~~One Seven Hundred and Fifty Dollars (\$100750.00)~~ *One Seven Hundred and Fifty Dollars (\$100750.00)* per day, payable to the City of St. Charles, for each day the owner had actual knowledge that the property was a public nuisance property and permitted the property to remain *a* public nuisance property.

- C. In determining what remedy or remedies shall be allowed, *the City hearing officer or the court* may consider evidence of other conduct that has occurred on the property, including but not limited to:
1. The disturbance of neighbors.
  2. The recurrence of loud and obnoxious noises.
  3. Repeated consumption of alcohol in public.
  4. The repeated sale or possession of controlled substances on the premises.

**SECTION THREE:** That Title 9 “Public Peace, Morals and Welfare” Chapter 9.45 “Nuisance Abatement” Section 9.45.050 “Procedure”, of the St. Charles Municipal Code, be and is hereby amended as follows:

When the Chief of Police of the City of St. Charles receives two (2) or more police reports, *community development inspection reports, or any other City data* documenting the occurrence of nuisance activity on or within a property, the Chief of Police shall independently review such reports to determine whether they describe ~~criminal~~ *acts that meet the definition of nuisance activity*. Upon such findings, the Chief may:

- A. ~~Notify the person in charge in writing that the property has been determined to be a chronic nuisance property.~~ *Notify the owner, person(s) in charge, tenant, or any local property manager, in the event the property is a rental residential property, in writing, that the property is a potential chronic nuisance property. Such notice shall be provided by either personal delivery or by certified mail, return receipt requested. The Chief of Police shall also send notice by personal service or certified mail, return receipt requested, to the tenant in possession in the event the property is a residential rental property, at the address of the property.* The notice shall contain the following information.
1. The street address or a legal description sufficient for identification of the property.
  2. A statement that the Chief of Police has information that the property may be a chronic nuisance property, with a concise description of the nuisance activities that may exist, or that have occurred. The Chief of Police shall offer the person in charge an opportunity to propose a course of action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.
  3. ~~Demand that the person in charge respond to the Chief of Police within ten (10) days to discuss the nuisance activities.~~
- B. *If* ~~After~~ complying with the notification procedures described herein when the Chief of Police receives a police report, *community development inspection report, or any other City data* documenting the occurrence of a third (3<sup>rd</sup>) nuisance activity at or within a property and determines that the property has become a chronic nuisance property, the chief of Police shall:
1. Notify the person in charge in writing that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:
    - a. Demand that the person in charge respond within ten (10) days to the Chief of Police *to discuss the nuisance activities* and propose a course of

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- action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.
- b. A statement that the Chief of Police has determined the property to be chronic nuisance property with a concise description of the nuisance activities leading to his/her findings.
  - c. The street address or legal description sufficient for identification of the property.
2. Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property believed to be a chronic nuisance property, or such other place which is likely to give the person in charge notice of the determination by the Chief of Police.
  3. A copy of the notice shall be served on the owner at such address as shown on the tax records of the county in which the property is located, and/or the occupant, at the address of the property, if these persons are different than the person in charge and shall be made either personally or by first class mail, postage prepaid.
  4. A copy of the notice shall also be posted at the property after then (10) days has elapsed from the service or mailing of the notice to the person in charge, and the person in charge has not contacted the Chief of Police.
  5. The failure of any person to receive notice that the property maybe a chronic nuisance property shall not invalidate or otherwise affect the proceedings under this chapter.
- C. *At the meeting between the Chief of Police and the parties notified, the Chief of Police may request that the owner, person in charge, or the tenant(s), and property manager (in the case of a residential rental property), implement a reasonable abatement plan designed to alleviate and prevent future occurrences of the nuisance activity upon the property. The mitigation or abatement plan shall be reasonable under the circumstances in its objective, cost, and scope, and shall be implemented within ten (10) days of the meeting with the Chief of Police or such longer period if not practically feasible to do so within ten (10) days.*
- D. *If after the notification and the abatement meeting, but prior to the commencement of legal proceedings by the City pursuant to this chapter, a person in charge stipulates with the Chief of Police that the person in charge will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation , the Chief of Police may agree to postpone legal proceedings for a period of not less than ~~ten-thirty~~ (34) days nor more than ~~thirty-ninety~~ (930) days, except in the case of a nuisance activity where a search warrant was executed at the property. If the agreed course of action does not result in the abatement of the nuisance activity or if no agreement concerning abatement is reached within thirty (30) days, the Chief of Police shall commence a legal proceeding to abate the nuisance.*
- E. *It shall be a violation of this chapter for:*
1. *The owner or person(s) in charge of the property, within thirty (3) days of the meeting or such other reasonable amount of time under the circumstances, fail to cause the implementation of a reasonable mitigation or abatement plan as requested by the Chief of Police, or*

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2. *The owner or person(s) in charge fail to respond and meet with the Chief of Police within the ten (10) day period without good cause.*
- 6.F. *If the nuisance activity complained of has or is being conducted by a tenant residing in or on the property, the Chief of Police may request that the owner evict the tenant. If eviction is requested, the owner shall proceed with such an action in good faith. The City shall assist in the eviction action by reasonably cooperating with the owner, person(s) in charge, or property maintenance company, including, but not limited to, providing law enforcement officers or other municipal employees as witnesses regarding the nuisance activity, if relevant.*
- 7.G. Concurrent with the notification procedures set forth herein, the Chief of Police shall maintain copies of the notice, as well as any other documentation, which supports legal proceedings.
- 6.H. When a person in charge makes a response to the Chief of Police as required above, any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have or are occurring. This subsection does not require the exclusion of any evidence that is otherwise admissible or offered for any other purpose.
- I. The Chief of Police shall have the authority to delegate procedural responsibilities to enforce this ordinance to another member of the Police Department, while maintaining oversight of the process. (2015-M-27: § 1; 2007-M-10: § 1)
- D.J. *If, after complying with the procedures of this section, within one year from the date of the first report of nuisance activity after the meeting, the Chief of Police receives a report documenting the occurrence of a subsequent instance of nuisance activity upon the property; the property may be declared a chronic nuisance property. Subsequent violations will be cited accordingly and brought without delay to either local adjudication or the Circuit Court of Kane County.*

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**SECTION FOUR:** That Title 9 “Public Peace, Morals and Welfare” Chapter 9.45 “Nuisance Abatement” Section 9.45.060 “Commencement of action – Burden of proof”, of the St. Charles Municipal Code, be and is hereby amended as follows:

- ~~A. In an action seeking closure of a chronic nuisance property, the City shall have the initial burden of showing the preponderance of the evidence that the property is a chronic nuisance property.~~
- ~~B. It is a defense to an action seeking the closure of chronic nuisance property that the owner of the property at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become a public nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the finding that the property is a chronic nuisance property.~~
- ~~C. In establishing the amount of any civil penalty requested, the court may consider any of the following factors if they need to be found appropriate, and shall cite those found applicable:~~
- ~~1. The actions or lack of action taken by the person in charge to mitigate or correct the problem at the property.~~
  - ~~2. Whether the problem at the property was repeated or continuous.~~
  - ~~3. The magnitude or gravity of the problem.~~

~~4. The cooperation of the person in charge with the City.~~

~~5. The cost of the City investigating and correcting or attempting to correct the condition.~~

- A. *At any hearing before the City's administrative hearing officer to determine whether the property in question is a chronic nuisance property, such hearing shall be conducted pursuant to provisions of this code, the City shall have the initial burden of proof to show, by a preponderance of evidence, that the property in question is a chronic nuisance property.*
- B. *The City's representative shall present evidence in support of its claim that the property is a chronic nuisance property. The property owner, person(s) in charge, or the person in charge's local representative, or an attorney on behalf of the responding party, shall be permitted to rebut such evidence.*
- C. *No continuances shall be authorized by the hearing officer in proceedings under this chapter unless for good cause shown or except where a continuance is absolutely necessary to protect the rights of the property owner, person(s) in charge, or tenant (in the event the property is a rental property), or the City. Lack of preparedness shall not be grounds for a continuance.*
- D. *At any time prior to the hearing date, the hearing officer may, at the request of either party, direct witnesses to appear and give testimony at the hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence, including police reports, shall be admissible only if it is the type commonly relied upon by reasonable, prudent persons in the conduct of their affairs.*
- E. *At the conclusion of the hearing, the hearing officer shall make a determination on the basis of the evidence presented at the hearing, whether or not a violation exists and whether or not the property is a chronic nuisance property. The determination shall be in writing and shall be designated as the findings, decisions, and order. The hearing officer's decision shall be final and binding, except that the provisions of the Illinois administrative review law shall apply with respect to judicial review of the hearing officer's findings, decision, and order. The findings, decision, and order shall include the hearing officer's finding of fact, a decision whether or not a violation exists, a determination as to whether the property in question is or is not a chronic nuisance property based upon the findings of fact, and sanctioning the person in charge/owner/tenant or occupant, as specified in subsection F of this section, or dismissing the case in the event a violation is not proved. A copy of the findings, decision, and order shall be served upon the person in charge, owner, or tenant or occupant, within fourteen (14) business days of the date of the hearing.*
- F. *If the hearing officer makes a finding that a property was, or is, a chronic nuisance property, the hearing officer may fine the person in charge and/or the owner, tenant or occupant of the property if those persons are different than the person in charge, an amount not to exceed seven hundred and fifty dollars (\$750.00) for each violation of this section. Each day a nuisance activity occurs or continues shall be considered a separate and distinct violation for purposes of determining a property to be a chronic nuisance property. The hearing officer may, in his or her discretion, impose such a fine for each day the nuisance activity goes unabated. No person shall be found in violation of this section unless the City proves the violation by a preponderance of the evidence.*
- G. *Alternative enforcement:*

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1. *Abatement of Nuisance: the City, as an alternative to administrative adjudication, may commence an action in the Circuit Court of Kane County for a determination that the property is a chronic nuisance property and/or to abate a chronic nuisance property as described above.*
2. *Upon being satisfied by affidavits or other sworn evidence that an alleged chronic nuisance property exists, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction to enjoin any defendant from maintaining such chronic nuisance property and may enter an order restraining any defendant from occupying, using, or interfering with all property used in connection with the chronic nuisance property.*

(2015-M-27: § 1; 2007-M-10: § 1)

**SECTION FIVE:**

That, after the adoption and approval hereof, this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the City Council of the City of St. Charles, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

**SECTION SIX:** This Ordinance shall be in full force and effect ten (10) days from and after its passage by a vote of the majority of the corporate authorities now holding office, approval and publication in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2016.

PASSED by the City Council of the City of St. Charles, Illinois this \_\_\_\_ day of \_\_\_\_\_, 2016.

APPROVED by the Mayor of the City of St. Charles, Illinois, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Raymond P. Rogina, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

COUNCIL VOTE:

Ayes : \_\_\_\_\_

Nays : \_\_\_\_\_

Absent : \_\_\_\_\_