



**AGENDA ITEM EXECUTIVE SUMMARY**

Title:	Recommendation to Approve Changes to City of St. Charles City Code Title 9 “Public Peace, Morals and Welfare,” Chapter 9.45 “Nuisance Abatement.”
Presenter:	Deputy Chief David Kintz

*Please check appropriate box:*

<input checked="" type="checkbox"/>	Government Operations	X	Government Services 03.23.15
<input type="checkbox"/>	Planning & Development		City Council
<input type="checkbox"/>	Public Hearing		

Estimated Cost:	N/A	Budgeted:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

**Executive Summary:**

With the recent changes to City Code Title 5 “Business Licenses and Regulations,” Chapter 5.20 “Massage Business Licensing,” the Police Department identified an additional need under the definitions for a Chronic Nuisance Property. Many of the businesses that ordinance 5.20 is designed to cover lease the property and do not own their own building. By adding a violation of the Massage Licensing to the definitions for a Chronic Nuisance Property under 9.45, this will allow the City to make sure the property owner is engaged. The massage license deals only with the tenant who runs the business. This will enhance our ability to reduce/eliminate future problems.

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

Cover Memo

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

Recommendation to approve Changes to City of St. Charles City Code Title 9 “Public Peace, Morals and Welfare,” Chapter 9.45 “Nuisance Abatement.”

<i>For office use only:</i>	<i>Agenda Item Number: 7.a</i>
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Chapter 9.45

NUISANCE ABATEMENT

Sections:

9.45.010	Abatement of Chronic Nuisance Properties
9.45.020	Definitions
9.45.030	Remedy
9.45.040	Abatement of Nuisance
9.45.050	Procedure
9.45.060	Commencement of Action, Burden of Proof
9.45.070	Emergency Closing Procedure
9.45.080	Severability

**9.45.010 Abatement of Chronic Nuisance Properties**

- A. Any certain property within the City of St. Charles that becomes a chronic nuisance property is in violation of this chapter and is subject to its remedies.
  - B. Any person in charge who permits property under his or her ownership or control to be a public nuisance property shall be in violation of this chapter and subject to its remedies.
- (Ord. 2007-M-10 § 1.)

**9.45.020 Definitions**

- A. **CHRONIC NUISANCE PROPERTY.** Property upon which two or more of the behaviors listed below have occurred during any 180-day period, as a result of any two (2) separate factual events that have been independently investigated by any law enforcement agency.
  - 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 550/1, 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. 2012-M-9 § 1.)

- 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 or constructive possession of a property including but not 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.

(Ord. 2007-M-10 § 1.)

**9.45.030 Remedy**

- A. In the event a court determines property to be a chronic nuisance property, 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 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 court may impose upon the owner of the property a civil penalty in the amount of up to One Hundred Dollars (\$100) 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 public nuisance property.
- C. In determining what remedy or remedies shall be allowed, 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.

(Ord. 2007-M-10 § 1.)

**9.45.040 Abatement of Nuisance**

The City of St. Charles or the State's Attorney of Kane County may commence an action to abate public nuisance as described above. Upon being satisfied by affidavits or other sworn evidence that an alleged public nuisance exists, the court may without notice or bond, enter a temporary restraining order or a preliminary injunction to enjoin any defendant from maintaining such nuisance and may enter an order restraining any defendant from removing or interfering with all property used in connection with the public nuisance.

(Ord. 2007-M-10 § 1.)

**9.45.050 Procedure**

When the Chief of Police of the City of St. Charles receives two or more police reports documenting the occurrence of nuisance activity on or within a property, the Chief of Police shall

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independently review such reports to determine whether they describe criminal acts. 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. 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. After complying with the notification procedures described herein when the Chief of Police receives a police report documenting the occurrence of a third 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. The street address or legal description sufficient for identification of the property.
    - 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. Demand that the person in charge respond within ten (10) days to the Chief of Police and propose a course of action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.
  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.
  6. If after the notification, 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 (10) nor more than thirty (30) 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.

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7. 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.
- C. 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.
- D. 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.  
(Ord. 2007-M-10 § 1.)

### **9.45.060 Commencement of Action, Burden of Proof**

- 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.  
(Ord. 2007-M-10 § 1.)

### **9.45.070 Emergency Closing Procedure**

- A. In the event that it is determined that the property is an immediate threat to the public safety and welfare, the City may apply to the court for such interim relief as is deemed by the Chief of Police to be appropriate. In such an event, the notification provision set forth in Section 9.45.040 above need not be complied with; however, the City shall make a diligent effort to notify the person in charge prior to a court hearing.
- B. In the event the court finds that the property constitutes a chronic nuisance property as defined in this section, the court may order the remedy set out above. In addition, in the event that it also finds the person in charge had knowledge of activities or conditions of the property constituting or violating this chapter and permitted the activities to occur, the court may assess a civil fine as provided above.
- C. The court may authorize the City of St. Charles to physically secure the property against use or occupancy in the event that the owner fails to do so within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to affect a closure shall be made and assessed as a lien against the property. If used herein, "costs" mean these costs actually incurred by the City for the physical securing of the property, as well as tenant relocation costs.
- D. The City of St. Charles Department of Public Works affecting the closure shall prepare a statement of cost and the City of St. Charles shall thereafter submit said statement to the court of its review. If

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no objection of the statement is made within the period described by the court, a lien in said amount may be recorded against said property.

- E. Any person who is assessed the cost of closure and/or civil penalty by the court shall be personally liable for the payment thereof by the City.
- F. A tenant is entitled to their reasonable relocation costs, as those are determined by the court if without actual notice, the tenant moved in the property, after either:
  - 1. The owner or tenant received notice as described herein of the Police Chief's determination as described above.
  - 2. Unknown owner or other agent received notice of an action brought pursuant to this Section.
  - 3. Any person who is assessed with costs of closure and/or civil penalty by the court shall be personally liable for the payment thereof to the City.

(Ord. 2007-M-10 § 1.)

### **9.45.080 Severability**

If any provision of this ordinance or its application, or any person or circumstances is held to be invalid for any reason, the remainder of said application of its provisions to the other persons or circumstances shall not be in any way affected.

(Ord. 2007-M-10 § 1)