

CITY OF COLUMBIA, ILLINOIS

ORDINANCE NO. 2518

**AN ORDINANCE TO ENACT A CHRONIC NUISANCE
PROPERTY ORDINANCE TO PROTECT AND PROMOTE
THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE
CITIZENS OF THE CITY OF COLUMBIA, ILLINOIS**

**Adopted by the
City Council
of the
City of Columbia, Illinois
this 20th day of November, 2006**

**Published in pamphlet form by
authority of the City Council
of the City of Columbia,
Illinois, this 21st day
of November, 2006.**

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Wally J. Hoffmann
City Clerk

WHEREAS, Section 37-1 of the Illinois Criminal Code makes it a public nuisance for any building to be used to commit specific narcotics violations or other specified criminal offenses and prohibits the maintaining of such public nuisance (729 ILCS 5/37-1);

WHEREAS, the Illinois Controlled Substance Act and Cannabis Nuisance Act defines nuisance to include any place where controlled substances (as controlled substances are defined in the Illinois Controlled Substance Act and Cannabis Nuisance Act) are sold, served, stored, delivered, manufactured, cultivated, given away or used (740 ILCS 40/2);

WHEREAS, the Illinois Forcible Entry and Detainer Act allows and provides that any tenant or occupant of rental property who uses or permits the same to be used in the commission of a Class "A" Misdemeanor or a Felony offense is subject to having their lease voided and to being evicted from the leasehold premises, at the discretion of their landlord (765 ILCS 705/5(a));

WHEREAS, it is the purpose of this ordinance and policy of the City of Columbia, Illinois (the "City"), in order to protect and promote the public health, safety and welfare of the citizens of City, to prohibit the use of property for criminal activity and thereby encourage the owners and occupants of real property in the City to maintain and improve the quality of housing in the City; and,

WHEREAS, for the use and purpose aforesaid, the City Council of the City has found and determined and does hereby declare that it is necessary and appropriate that this ordinance be enacted to prohibit properties in the City from becoming chronic nuisance properties.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Columbia, Illinois, as follows:

Section 1. The recitals contained above in the preamble of this Ordinance are hereby incorporated herein by reference, the same as if set forth in this Section of this Ordinance verbatim, as findings of the City Council of the City of Columbia, Illinois.

Section 2. The City of Columbia, Illinois Municipal Code is hereby changed and amended to add thereto Chapter 8.26, to be entitled "CHRONIC NUISANCE PROPERTY", to read as follows:

“CHAPTER 8.26 CHRONIC NUISANCE PROPERTY

Sections:

- 8.26.010 Nuisance properties.**
- 8.26.020 Definitions.**
- 8.26.030 Remedy.**
- 8.26.040 Abatement of nuisance.**
- 8.26.050 Procedure.**
- 8.26.060 Commencement of action, burden of proof.**
- 8.26.070 Emergency closure procedures.**
- 8.26.080 Severability.**
- 8.26.090 Conflicts; applicability.**

Section 8.26.010 Nuisance properties.

A. Any certain property within the city which becomes a chronic nuisance property is in violation of this chapter and subject to its remedies.

B. Any person in charge who permits property under his or her ownership or control to become and be a public nuisance property shall be in violation of this chapter and shall be subject to its remedies.

Section 8.26.020 Definitions.

“Chief of Police” means the chief of police of the City of Columbia, Illinois or any officer designated by the Columbia police chief.

“Chronic nuisance property” means property on which two (2) or more of the activities or behaviors listed below have occurred during any three hundred sixty five (365) day period, as a result of the concurrence of any two (2), separate factual events constituting violations that have been independently investigated and determined to have occurred by any law enforcement agency:

A. The commission of any of the following Illinois Criminal Code violations as specified in 720 ILCS 5/37-1, to wit: murder as defined in 720 ILCS 5/9-1; kidnapping or aggravated kidnapping as defined in 720 ILCS 5/10-1 & 720 ILCS 5/10-2, respectively; prostitution or solicitation of prostitution as defined in 720 ILCS 5/11-14 & 720 ICS 5/11-15, respectively; pandering as defined in 720 ILCS 5/11-16; keeping a place of prostitution as defined in 720 ILCS 5/11-17; obscenity and child pornography as defined in 720 ILCS 5/11-20 & 720 ILCS 5/11-20.1, respectively; distribution of harmful material to a child or distribution of obscene publications as defined in 720 ILCS 5/11-21 & 720 ILCS 5/11-22, respectively; criminal housing management as defined in 720 ILCS 5/12-5.1; theft as defined in 720 ILCS 5/16-1; possession of explosives or

explosive or incendiary device as defined in 720 ILCS 5/20-2; selling, manufacturing, purchasing or carrying a machine gun as defined in 720 ILCS 5/24-1, A-7; unlawful sale of firearms as defined in 720 ILCS 5/24-3; gambling or keeping a gambling place as defined in 720 ILCS 5/28-1 & 720 ILCS 5/28-3, respectively; and concealing or aiding a fugitive as defined in 720 ILCS 5/31-5.

- B. Unlawful use of a weapon as defined in 720 ILCS 5/24-1, et. seq.
- C. Mob action as defined in 720 ILCS 5/25-1.
- D. Discharge of a firearm as defined in 720 ILCS 5/24-1.2 & 1.5.
- E. Selling, serving, storing, delivering, manufacturing, cultivating, giving away, or using controlled substances as controlled substances are defined in 720 ILCS 550/1, et. seq.
- F. Sexual abuse or related offenses as defined in 720 ILCS 5/12-15, et. seq.
- G. Public indecency as defined in 720 ILCS 5/11-9.
- H. Selling, serving, storing, delivering, manufacturing, cultivating, giving away or using cannabis as prohibited by 740 ILCS 40/2 and as cannabis is defined in 720 ILCS 570/201, et. seq.
- I. Illegal consumption or possession of alcohol as defined in 235 ILCS 5/1, et. seq.
- J. Battery as defined in 720 ILCS 5/12-3.
- K. Domestic battery as defined 720 ILCS 5/12-3.2.

“Control” means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on the subject property.

“Owner” means any person, firm, corporation, trust, other legal entity, or agent thereof, having a legal or equitable interest in the property. Owner includes, but is not limited to: (a) mortgagee in possession of property, (b) occupant who can control what occurs on the property, and, (c) a property manager.

“Permit” means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the commission of an act that is a nuisance violation under this chapter.

“Person” means any natural person, association, partnership, corporation, trust or other legal entity capable of owning or using property in the city.

“Person in charge” means any person in actual or constructive possession of a property, including but not limited to, an owner, agent of owner, property manager, or occupant of property in possession and control of the property.

“Property” means any real estate, including land and land improvements and appurtenances, including but not limited to, any premises, rooming house, building or structure, or part or portion thereof.

Section 8.26.030 Remedy.

A. In the event a court of competent jurisdiction determines property to be a chronic nuisance property as defined in this chapter, 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, nor more than three hundred and sixth five (365) days, or the court may employ any other remedy deemed by the court to be appropriate to abate the nuisance.

B. In addition to the remedy provided in subsection A of this section, the court may impose upon the owner of the property a civil penalty in the amount of up to one hundred fifty dollars (\$150) per day, payable to the city for each day the owner had actual knowledge that the property was a chronic nuisance property and permitted the property to remain a chronic nuisance property.

C. In determining what remedy or remedies the court shall employ, the court may consider evidence of other conduct which has occurred on the property, including but not limited to:

1. The disturbance of neighbors.
2. The reoccurrence of loud and obnoxious noises disturbing the peace of the neighborhood.
3. Repeated consumption of alcohol in public.

Section 8.26.040 Abatement of nuisance.

The corporate legal counsel of the city may commence an action to abate a public nuisance as defined in this chapter. 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 preliminary injunction to enjoin any defendant from maintaining such nuisance and may enter an order restraining any defendant from removing or interfering with real or personal property used in connection with the public nuisance.

Section 8.26.050 Procedure.

A. When the chief of police or assistant police chief of the city receives one (1) or more police reports documenting the occurrence of nuisance activity as nuisance activity is defined in Section 8.26.020 above on or within a property in the city, the police chief or assistant police chief shall independently review each report to determine whether the report describes acts prohibited by this chapter. Upon a finding by the police chief or assistant police chief that one (1) or more police reports do describe such acts, they may:

1. Notify the person in charge of the property in writing that the property is in danger of becoming a chronic public nuisance. 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 police chief or assistant police chief has information that the property may be or is in danger of becoming a chronic nuisance property, with a concise description of the nuisance activities that may exist, or that have occurred. The police chief or assistant police chief shall offer the person in charge an opportunity to propose or agree upon a course of action that the police chief or assistant police chief agrees will abate the nuisance activities giving rise to the violations.

c. Demand that the person in charge respond to the police chief or assistant police chief within ten (10) days to discuss the nuisance activity.

B. After complying with the notification procedures described in subsection A of this section, when the chief of police or assistant chief of police receives a police report documenting the occurrence of a second (2nd) nuisance activity violation at or within a property and determines that the property has become a chronic nuisance property, the police chief or assistant police chief shall:

1. Notify the person in charge of the property 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 to identify the property.

b. A statement that the police chief or assistant police chief has determined the property to be a chronic nuisance property, with a concise description of the nuisance activity violation leading to his or her findings.

c. Demand that the person in charge respond within ten (10) days to said police chief or assistant police chief to propose or agree upon a course of action that said police chief or assistant police chief agrees will abate the nuisance activity giving rise to the violation.

d. Service of the notice shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge of the property at the address of the property believed to be a chronic nuisance property, or such other place as is likely to give the person in charge notice of the determination of said police chief or assistant police chief.

e. A copy of the notice shall be served on the property owner at such address as is shown to be the owner's address on the tax rolls 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.

f. A copy of the notice shall also be posted at the property after ten (10) days have elapsed from the service or mailing of the notice to the person in charge if the person in charge has not contacted said police chief or assistant police chief.

g. The failure of any person to receive notice that the property may be a chronic nuisance property shall not invalidate or otherwise affect the proceedings under this chapter.

2. After the notification, but prior to the commencement of legal proceedings by the city pursuant to this chapter, if a person in charge and/or the property owner stipulates with the police chief or assistant police chief that he, she or they will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, (which may include eviction of a tenant who is causing or contribution to the causing of a chronic nuisance as defined in this chapter, under and pursuant to the Illinois Forcible Entry and Detainer Act, 765 ILCS 705/5(a) said police chief or assistant police chief may agree to postpone legal action for a period of not less than ten (10) days nor more than sixty (60) days. If the agreed course of action does not result in the abatement of the nuisance activity (or if the nuisance activity cannot reasonably be expected to be abated within the period of time aforesaid, [as in cases involving the eviction of a tenant under the Illinois Forcible Entry and Detainer Act as aforesaid], then the initiation of the activity required to abate the nuisance is initiated within that time period) or if no agreement concerning abatement of the nuisance is reached within thirty (30) days, said police chief or assistant police chief, as the case may be, shall request authorization from the city council for the corporate legal counsel of the city to commence legal action to abate the nuisance.

3. Concurrent with the notification procedure set forth herein, the police chief or assistant police chief shall send copies of the notice, as well as other documentation which supports legal proceedings, to the city's corporate legal counsel.

C. When a person in charge of property makes a response to the police chief or assistant police chief as required above, any conduct or statement made by them in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have occurred or are occurring. This subsection does not require the exclusion of any evidence which would be otherwise admissible or offered for any other purpose, (including knowledge and notice on the part of said person in charge that nuisance activity has occurred or is occurring as determined by the city's police department).

Section 8.26.060 Commencement of action, burden of proof.

A. In an action seeking closure of chronic nuisance property, the city shall have the initial burden of showing by a preponderance of the evidence the property is a chronic nuisance property as defined in this chapter.

B. It shall be 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 chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the findings that the property is a chronic nuisance property.

C. In determining the amount of any civil penalty requested, the court may consider any of the following factors and may recite the applicable court finds in the court's order assessing the civil penalty:

1. The actions or lack of action taken by the person in charge to mitigate or correct the problem at the nuisance 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.

Section 8.26.070 Emergency closure procedures.

A. In the event the mayor and/or the city administrator and/or the city council determine that the property is an immediate threat to the public safety and welfare, the city may apply to a court of competent jurisdiction for interim relief, as is deemed by said mayor, city administrator or city council to be appropriate. In such an event, the notification provision set forth in section 8.26.050 of this chapter 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 that the court finds that the subject property constitutes "chronic nuisance property" as defined in this chapter, the court may order the abatement of the nuisance and/or the assessment of a fine as provided in section 8.26.030 of this chapter. In the event that the court finds the person in charge had knowledge of the activities or conditions of property constituting a violation of this chapter and permitted the activities to occur, the court shall assess a civil fine as provided in section 8.26.030 of this chapter.

C. The court may authorize the city to physically secure the property against use or occupancy in the event the owner or person in charge 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 effect a closure shall be made and assessed against the property owner and shall be a lien against the property. As used herein, "costs" means those costs actually incurred by the city for the physical securing of the property.

D. The city's department of public works affecting the closure shall prepare a statement of costs and the city shall thereafter submit said statement to the court and the owner for their review. If no objection to the statement is made within the period required by the court, a judgment for said sum shall be entered against the owner and a lien in that sum may be recorded against said property. Said lien shall be enforced as in the cases of enforcements of Illinois mechanics liens and/or Illinois mortgage foreclosures.

E. Any person who is assessed the cost of closure and/or civil penalties by the court shall be personally liable for the payment thereof to the city.

Section 8.26.080 Severability.

If any provision of this chapter as applied to any person or circumstance is held to be invalid by a court of competent jurisdiction for any reason, the remainder of this chapter in the application of its provisions will remain and be in full force and effect, as changed and amended by said determination of invalidity.

Section 8.26.090 Conflicts; applicability.

All ordinances or resolutions or parts of ordinance or resolutions in conflict herewith, including Chapter 8.24 (NUISANCES) and Sections 8.24.040, 8.24.050, 8.24.060 and 8.24.070 thereof shall remain and be in full force and effect but shall not apply to and shall be preempted by this chapter with regard to defining and prohibiting chronic nuisance property in the city."

Section 3. This Ordinance shall be in full force and effect, from and after its passage, approval and publication, as required by law.

Alderman Agne moved the adoption of the above and foregoing Ordinance; the motion was seconded by Alderman Niemietz, and the roll call vote was as follows:

YEAS: Aldermen Ebersohl, Agne, Niemietz, Unnerstall, Koesterer, Hutch and Mayor

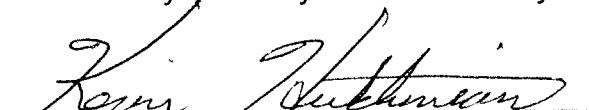
Hutchinson.

NAYS: None.

ABSENT: Aldermen Conrad and Row.

ABSTENTIONS: None.

PASSED by the City Council and APPROVED by the Mayor this 20th day of November, 2006.


KEVIN B. HUTCHINSON, Mayor

ATTEST:


WESLEY J. HOEFFKEN, City Clerk

(SEAL)

STATE OF ILLINOIS)
) SS
COUNTY OF MONROE)

CERTIFICATE OF PUBLICATION

I, Wesley J. Hoeffken, certify that I am the duly elected and acting Municipal Clerk of the City of Columbia, Illinois.

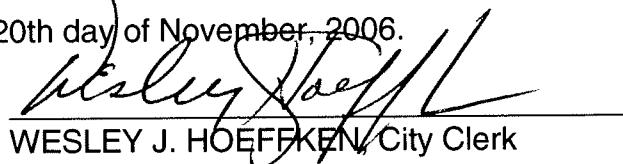
I further certify that on the 20th day of November, 2006, the Corporate Authorities of the City of Columbia, Illinois passed and approved Ordinance No. 2518, entitled:

"AN ORDINANCE TO ENACT A CHRONIC NUISANCE PROPERTY ORDINANCE TO PROTECT AND PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF THE CITY OF COLUMBIA, ILLINOIS"

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2518, including the ordinance and a cover sheet thereof, was prepared and a copy of such ordinance will be posted in the Columbia City Hall, commencing on the 21st day of November, 2006 and continuing for at least ten (10) days thereafter. Copies of such ordinance were also available for public inspection upon request at the office of the City Clerk.

DATED at Columbia, Illinois this 20th day of November, 2006.



WESLEY J. HOEFFKEN, City Clerk

(SEAL)