

Andrew Roberts, Chair of Public Service Committee
J. Rob Sharrer, Chair of Public Safety Committee

ORDINANCE NO. 18-128

ADOPTING CHAPTER 523 OF THE CODIFIED ORDINANCES OF THE CITY OF ZANESVILLE, ENTITLED "PUBLIC NUISANCE ABATEMENT" RELATING TO COMBATTING CRIME, COMBATTING DRUG-RELATED OFFENSES, REMOVING PROBLEM RESIDENTS, AND ABATING OTHER PUBLIC NUISANCES

WHEREAS, the City of Zanesville has been researching additional ways to combat crime and drug-related offenses; and

WHEREAS, the City of Zanesville has determined that adopting a nuisance abatement ordinance is an effective method to combat crime and drug-related offenses; and

WHEREAS, The City of Zanesville has reviewed several other city ordinances regarding the practice of nuisance abatement; and

WHEREAS, the City of Zanesville has drafted a nuisance abatement ordinance attached hereto as Exhibit A that is largely modeled after other Ohio cities' nuisance abatement ordinances that have achieved good success over the last several years to remove problem residents in otherwise good neighborhoods,

NOW, THEREFORE, THE COUNCIL OF THE CITY OF ZANESVILLE, HEREBY ORDAINS:

SECTION 1. Chapter 523, of the Codified Ordinances of the City of Zanesville, Ohio, attached hereto is hereby adopted.

SECTION 2. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED _____, 2018

ATTEST: _____
Susan Culbertson
Clerk of Council

Daniel M. Vincent
President of Council

APPROVED: _____, 2018

This legislation approved as to form:

Jeff Tilton, Mayor

Law Director's Office

CHAPTER 523

523.01 PURPOSE

- (a) Chronic nuisance properties present health, safety, and welfare concerns to the City, and have a negative impact upon the quality of life, safety, and health of the neighborhoods in which they are located. This Chapter is enacted to remedy nuisance activities that occur throughout the City and affect citizens by providing a process for abatement.
- (b) Chronic nuisance properties are a financial burden to the City due to the calls for service for nuisance activities that occur repeatedly on these properties. This Chapter is a means to lessen that burden and hold accountable those persons responsible for such properties.

521.02 DEFINITIONS

(a) **Chronic Nuisance Property.**

- 1. Property on which three or more nuisance activities and/or two felony drug activities have occurred during any six-month period; or
- 2. Property on which any person associated with the property has engaged in three or more nuisance activities within any six-month period.

(b) **Nuisance Activities.** Any of the following activities, behaviors, or criminal conduct:

- 1. Any Falsification violation under Section 525.02, Obstruction of Official Business violation under Section 525.07, Obstructing Justice violation under Section 525.08, Resisting Arrest violation under Section 525.09, Compliance with Lawful Order of Police Officer; Fleeing violation under Section 303.01, Misuse of 9-1-1 System violation under Section 537.12, Failure to Disclose Personal Information violation under Section 525.18 of the Codified Ordinances;
- 2. Any alcohol violations under Chapter 529 of the Codified Ordinances;
- 3. Any animal violations under Sections 505.05; 505.06; 505.07; 505.08; 505.11; 505.13; 505.15 or 505.20 of the Codified Ordinances;
- 4. Any drug violation under Chapter 513 of the Codified Ordinances;
- 5. Any gambling violation under Chapter 517 of the Codified Ordinances;
- 6. Any offense against another person under Chapter 537 of the Codified Ordinances, excluding Chapter 537 offenses where the person in charge or person associated with the property is a victim of the offense and not the perpetrator;
- 7. Any violation under Section 537.16, Illegal Distribution of Cigarettes or Other Tobacco Products;

8. Any offense against property under Chapter 541 of the Codified Ordinances, excluding Chapter 541 offenses where the person in charge or person associated with the property is a victim of the offense and not the perpetrator;
 9. Any disorderly conduct, disturbance of the peace, or other violation under Chapter 509 of the Codified Ordinances;
 - ~~10. Any health, safety, or sanitation violation under Chapter 521 of the Codified Ordinances;~~
 10. Any sex offense under Chapter 533 of the Codified Ordinances;
 11. Any weapons, explosives, firearm, or handgun violation under Chapter 549 of the Codified Ordinances;
 12. Any activity or violation indicated to be a public nuisance anywhere in the Codified Ordinances or the Ohio Revised Code;
 13. Any activity or violation listed above under the corresponding sections of the Ohio Revised Code.
 14. Any activity in violation of Section 3719.10 or Section 3767 of the Ohio Revised Code;
 15. Any drug paraphernalia violation under Chapter 514 of the Codified Ordinances;
 16. Any property that has had a medical response to drug related activity, including, but not limited to: an overdose, or where overdose reversing drugs were administered;
 17. Any condition in or around the Property that endangers the life, health, property, safety, or welfare of the public, or of any current or prospective occupants, regardless of whether there has been a conviction for said violation.
- (c) **Permit**. To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
- (d) **Person**. Any natural person, agent, association, firm, partnership, limited liability company, or corporation capable of owning, occupying, or using property.
- (e) **Person in Charge**. Any Person, in actual or constructive possession of a property, including but not limited to an owner or occupant of a property under his or her dominion, ownership, or control.
- (f) **Person Associated With**. Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize, or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner thereof.
- (g) **Property or Premises**. These terms may be used interchangeably in this chapter. Any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as a residential or commercial property. Property consisting of more than one unit shall be limited to the unit or portion of the property on which any nuisance activity occurs.

- (h) **Felony Drug Activity**. Any violation charged under Chapters 2925 or 3917 of the Ohio Revised Code, the penalty for which includes the possibility of incarceration in a local jail, or a state or federal penitentiary. This includes, but is not limited to, possession of a controlled substance, permitting drug abuse, trafficking drugs, corrupting another with drugs, illegal manufacture of drugs, and illegal assembly of chemicals.

521.03 VIOLATION

- (a) Any property which is a chronic nuisance property is in violation of this Section of the Codified Ordinances and subject to its remedies;
- (b) Any person in charge who permits property to be a chronic nuisance property shall be in violation of this Section of the Codified Ordinances and subject to its remedies.

521.04 PROCEDURE

- (a) The Chief of Police or his designee, upon finding that two or more nuisance activities, or one felony drug activity, declared in this section have occurred within any six-month period, may cause a written notice and order to be served on the owner of the property declaring that such property is a nuisance property. The notice shall contain the following information:
1. The street address or a legal description sufficient to identify the Property.
 2. A statement detailing the nature of the nuisances, the estimated costs to abate any future nuisances, and that the owner may avoid being charged the costs of abatement by taking steps to prevent any further nuisance activity as set forth in this section.
 3. A statement that if a third or subsequent nuisance activity or second felony drug activity as declared in this section occurs within six months of the dates of the first two nuisance activities or first felony drug activity, the City may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property.
- (b) Notice shall be deemed properly served by the following methods:
1. Sent by first class mail to the address of the owner as listed in the County Auditor's office; AND
 2. Posted on the front door or other conspicuous location of the property that is subject to the notice; OR
 3. Delivered in person to the owner.
- (c) Return of service shall be made by affidavit of the person serving, mailing or posting such notice, and when notice is given by mail, such affidavit shall identify the property by County Auditor's parcel number and shall show the name and address of the person to whom the notice was mailed and the date of mailing.
- (d) If within six months after two nuisances or the first felony drug activity referred to in this Chapter has occurred, a third nuisance activity or second felony drug activity as declared in

this Chapter occurs, the City shall notify the owner that the property has been deemed a chronic nuisance property and direct the owner to abate the nuisance. If the owner has not done so within thirty (30) days, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions.

1. Notice shall be posted on the premises or at the site of the nuisance directing the responsible party to abate the nuisance, a copy of the notice shall be forwarded by first class mail to the address of the owner as listed in the County Auditor's office. Personal service may be used in lieu of posting and mailing.
2. The notice to abate shall contain:
 - A. The street address or a legal description sufficient to identify the Property.
 - B. A direction to abate the nuisance within thirty (30) calendar days from the date of the notice.
 - C. A description of the nuisance.
 - D. A statement that, unless the nuisance is removed, the City may abate the nuisance and the cost of abatement shall be charged to the owner or assessed against the property, or both.
 - E. The owner of a nuisance property who receives a notice from the Chief of Police or his designee pursuant to this section may appeal such notice by submitting a written request for reconsideration to the Director of Public Safety within thirty (30) days of the date of the notice. If the Director finds that the facts presented do not support the declaration of a nuisance, the Director shall rescind the notice. Otherwise, the Director shall deny the request and refer the appeal for hearing ~~by the Director of Public Safety~~ under Chapter 2506 of the Ohio Revised Code. Any such appeal shall not stay any actions by the City to abate any subsequent nuisance activity.

521.05. BURDEN OF PROOF; AFFIRMATIVE DEFENSES

- (a) In an action under this section of the Codified Ordinances, the City shall have the initial burden of proof to show by a preponderance of the evidence that a violation under that section has occurred.
- (b) The City shall be deemed to have failed to have met this standard if the owner demonstrates by a preponderance of the evidence that:
 1. He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or
 2. He or she has knowledge of the nuisance activity, but has promptly and vigorously taken all actions necessary to abate each nuisance including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9); or
 3. He or she had no knowledge of the nuisance activity and could not, with reasonable care and diligence, have known of the nuisance activity; and upon receipt of the

notice of the declaration of the property as a nuisance property, he or she promptly took all actions necessary to abate the nuisance including, without limitation, compliance with the requirements of Ohio R.C.5321.17(C) and 5321.04(A)(9).

- (c) If the owner provides proof of having performed a background check prior to leasing and is in the process of eviction, either at the time of the third nuisance/second felony drug activity or as a result of the third nuisance/second felony drug activity, the City shall not deem the property a chronic nuisance.

521.06. IMPACT

- (a) Once a property has been determined to be a chronic nuisance property, the owner of that property shall be charged for the actual cost of each subsequent service by the City of Zanesville for a nuisance or felony drug activity for that property.
- (b) The Chief of Police or his or her designee shall also assess a civil penalty against an owner who violates any provision of this Chapter or fails to obey any order to abate a chronic nuisance. Assessments for nuisance activities shall be imposed based on the number of nuisance or felony drug activities that occur on that property ~~after~~ **once** it has been deemed a chronic nuisance property. The assessment shall be issued as follows:
1. For the ~~first~~ **third** nuisance activity **or second felony drug activity (that activity designating the property as a chronic nuisance property)**, a civil penalty against the owner of one hundred and fifty dollars (\$150.00) shall be imposed;
 2. For the ~~second~~ **first** nuisance or felony drug activity **after being declared a chronic nuisance property**, a civil penalty against the owner of two hundred and fifty dollars (\$250.00) shall be imposed;
 3. For the ~~third~~ **second** nuisance or felony drug activity **after being declared a chronic nuisance property**, a civil penalty against the owner of five hundred dollars (\$500.00) shall be imposed;
 4. For the ~~fourth~~ **third** nuisance or felony drug activity **after being declared a chronic nuisance property**, a civil penalty against the owner of seven hundred and fifty dollars (\$750.00) shall be imposed;
 5. For each nuisance or felony drug activity after the ~~fourth~~ **third, set forth directly above**, a civil penalty against the owner of one thousand dollars (1,000.00) shall be imposed.
- (c) The determination that a premises is a chronic nuisance subject to remittance for the cost of enforcement pursuant to this section and subject to civil penalties or criminal prosecution pursuant to this Chapter shall be effective for a two year period beginning with the date the property is declared to be a chronic nuisance property.

If at any point during that two-year period another nuisance activity or felony drug activity occurs at the property, the two year period shall restart from the date of that activity. The two-year period shall restart for any subsequent nuisance or felony drug activity.

- (d) In addition to other relief ordered, a court of competent jurisdiction may authorize the City to physically secure the property against all access, 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 physically secure the property shall be paid to the City by the owner and may be included in the City's money judgment, including court costs. The court may in its discretion, award attorney fees to the prevailing party.

521.07. OTHER PENALTIES

- (a) In addition to any other civil penalties contained herein, whoever ~~violates the provisions is~~ **assessed a civil penalty under the terms and conditions set forth in Section 521.06 above may also of this Chapter shall** be charged with a minor misdemeanor and shall be fined up to one hundred and fifty dollars (\$150.00). No culpable mental state is required to commit an offense; it being the express intent of this Chapter to impose strict criminal liability for each offense.
- (b) A separate offense shall be deemed committed each day on which a violation occurs or continues.
- (c) Permits, including those for occupancy, health, etc., granted to the owner may be subject to revocation based on the declaration that a property is a chronic nuisance property.
- (d) The declaration of a nuisance property, an order to abate a nuisance, or the assessment of costs by the City on a property do not affect or limit the City's right or authority to bring a criminal prosecution or other legal action against any person for violation of the City's ordinances or the Ohio Revised Code, including those provided for in ORC 3767.06.
- (e) The cost of abating or lessening the severity of such public nuisance, or of such other action taken by the city pursuant to this Chapter, shall be recovered in the following manner:
 - (1) The owner shall be billed directly by certified mail for the cost of abating or lessening the severity of such public nuisance. The bill for the costs thereof shall be paid within 60 days after receipt of the bill.
 - (2) If the costs are not so recovered, the City may collect the costs by any of the following methods:
 - (A) The City may cause of abating or lessening the severity of such public nuisance to be levied as an assessment and recovered in accordance with Ohio Revised Code Section 715.261.
 - (B) The City may commence a civil action to recover the costs from the owner as provided in Ohio Revised Code Section 715.216.

~~521.08. PRIVATE CAUSE OF ACTION~~

~~For a violation of this Section, a resident has a private cause of action and is entitled to relief as follows:~~

- ~~(a) Where a person in charge of property or premises located within 1,000 feet of a chronic nuisance property as established by this section brings suit for civil damages, they may~~

~~recover the person's actual economic damages caused by the chronic nuisance property plus an amount not exceeding one thousand dollars in noneconomic damages.~~

~~(1) In a civil action under this section, the plaintiff must establish that the person in charge of the chronic nuisance property has been provided notice of the nuisance activity in the manner specified by this chapter, either by the plaintiff, or by the Chief of Police or his delegate.~~

~~(2) The plaintiff in a private cause of action must prove all the elements of the chronic nuisance to the same standard as set forth in this Chapter.~~

~~(3) For purposes of proving that the plaintiff is a person in charge of property or premises within 1,000 feet of a chronic nuisance property, a county GIS map certifying the distance from the edge of one property to another shall be prima facie evidence of distance.~~

~~(b) Where the violation was an activity committed after a determination that the property was a chronic nuisance property subject to abatement under this Chapter, and after the time period for abatement has passed, a person in charge of property or premises located within 1,000 feet of the said chronic nuisance property may recover three times the amount of the person's actual economic damages, or three hundred dollars, whichever is greater, plus an amount not exceeding two thousand dollars in noneconomic damages.~~

~~(1) The Plaintiff must establish the existence of the nuisance activity by a preponderance of the evidence.~~

~~(2) The Court may take judicial notice of any prior judicial or administrative findings of chronic nuisance on any property related to a suit under this section.~~

~~(3) For purposes of proving that the plaintiff is a person in charge of property or premises within 1,000 feet of a chronic nuisance property, a county GIS map certifying the distance from the edge of one property to another shall be prima facie evidence of distance.~~

~~(e) Suits under this section are properly venued in the Small Claims division of the Municipal Court, except where damages sought place such suit outside that division.~~

521.08 THIS CHAPTER NOT EXCLUSIVE

(a) This Chapter shall not be deemed to be a limitation or restriction of any department, division, official, or employee of the City, but shall be deemed as an enlargement of any authority existing by virtues of the statutes of the State of Ohio or any ordinance heretofore enacted by Council.

521.09 REPUTATION

(a) In any case in which it is necessary to prove that a property is a public nuisance as defined in this Chapter, evidence as to the reputation of such place shall be admissible on the question of whether the property is or is not a public nuisance, and every owner and every person responsible for the premises shall be presumed to have knowledge of the reputation of the place.