

ORDINANCE NO. _____

AN ORDINANCE AMENDING AND SUPPLEMENTING THE CODIFIED ORDINANCES OF THE CITY OF HAMILTON, OHIO BY ENACTING CHAPTER 543, RELATIVE TO CHRONIC NUISANCE PREMISES.

WHEREAS, the City of Hamilton has experienced issues with persistent and chronic criminal activity at specific properties located within the City of Hamilton; and

WHEREAS, there is currently no ordinance in place to regulate the impact of chronic nuisance activity within the City; and

WHEREAS, City Administration recommends that the City adopt proposed legislation to authorize the City to impose civil penalties on property owners whose property has been deemed a chronic nuisance; and

WHEREAS, allowing persistent and chronic criminal activity to continue within the City will deter safety, put the well-being of the City's residents at risk, cause a decline in property value and hinder reinvestment in the City; and

WHEREAS, in order to achieve the foregoing, it is necessary to amend and supplement the Codified Ordinances of the City of Hamilton by enacting Chapter 543; and

WHEREAS, Council desires to amend and supplement the Codified Ordinances of the City of Hamilton by enacting Chapter 543 for said purposes as described herein; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Hamilton, Ohio:

SECTION I: That the Codified Ordinances of the City of Hamilton, Ohio, be and hereby are amended and supplemented to enact Chapter 543 relative to Chronic Nuisance Premises, to be read as set forth in Exhibit No. 1 attached hereto, incorporated herein by reference and made a part hereof.

SECTION II: This ordinance shall take effect and be in full force from and after the earliest period allowed by law after its passage.

PASSED: _____

Mayor

Effective Date: _____

ATTEST: _____

City Clerk

CERTIFICATE

I, Nicholas Garuckas, City Clerk of the City of Hamilton, Ohio, State of Ohio, hereby certify that the foregoing Ordinance No. _____ was duly published as provided by Section 113.01 of the Codified Ordinances of the City of Hamilton, Ohio, by posting ten days after passage, a copy thereof in each fire station within the City for a period of ten days. POSTED: _____.

Nicholas Garuckas, City Clerk
CITY OF HAMILTON, OHIO

Exhibit No. 1

PART FIVE – GENERAL OFFENSES CODE

CHAPTER 543 – CHRONIC NUISANCE PREMISES

Sec. 543.01: Definitions.

For the purpose of this Chapter the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(a) "Codified Ordinances" shall mean the Codified Ordinances of the City of Hamilton, Ohio.

(b) "Chronic Nuisance" shall mean a premises or property that is in violation of Section 543.03 of the Codified Ordinances.

(c) "Chronic Nuisance Activity" shall mean any of the following activities, conduct, or behavior whenever engaged in by owners, operators, occupants, or persons associated with a property, premises, or unit:

(1) Assault, as defined in Section 537.03 of the Codified Ordinances or assault, aggravated assault, or felonious assault as defined in Ohio Revised Code Sections 2903.11, 2903.12, or 2903.13 or any offense of violence as defined in Ohio Revised Code Section 2901.01;

(2) Menacing, aggravated menacing, or menacing by stalking as defined in Section 537.06, 537.05, or 537.051 of the Codified Ordinances or as defined in Ohio Revised Code Sections 2903.21, 2903.22, or 2903.211;

(3) Inducing panic or making a false alarm as defined in Section 509.06 or 509.07 of the Codified Ordinances or Ohio Revised Code Sections 2917.31 or 2917.32;

(4) Unlawful possession or use of a hoax weapon of mass destruction as defined in Ohio Revised Code Section 2917.33;

(5) Disrupting public services as defined in Ohio Revised Code Section 2909.04;

(6) Curfew violation as defined in Chapter 531 of the Codified Ordinances;

(7) Disorderly conduct as defined in Ohio Revised Code Section 2917.11;

(8) Discharging firearms in violation of Section 549.12 of the Codified Ordinances;

(9) Commission of any drug offense under Chapter 2925 or 3719 of the Ohio Revised Code or soliciting a controlled substance transaction as defined in Section 513.15 of the Codified Ordinances;

(10) Compelling or promoting prostitution, procuring, soliciting, or loitering to engage in solicitation, or prostitution as defined Ohio Revised Code Sections 2907.21 through 2907.25, inclusive;

(11) Public gaming as defined in Section 517.04 of the Codified Ordinances or in Ohio Revised Code Section 2915.04;

(12) Loud noises or excessive sound from a motor vehicle as defined by Section 337.271 of the Codified Ordinances;

(13) Felony violation of Chapter 2925 or 3719 of the Ohio Revised Code, regardless of whether there has been a conviction for said violation.

(14) Nuisances as defined in Section 3767.01(C) of the Ohio Revised Code.

(d) "Occupant" shall mean any person over one year of age, living, sleeping, cooking, or eating in, or who has actual or constructive possession of, property, including, without limitation, a lessee, sub-lessee, assignee, licensee, or permittee.

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(e) "Operator" shall mean any person, firm, partnership, company, corporation or association, including their employees, agents, or contractors, that controls, operates, or manages a premise(s).

(f) "Owner" shall mean any person, partnership, firm, company, a mortgagee, vendee in possession, land contract purchaser, assignee of the rents, receiver, executor, administrator, trustee, or lessee association, trust or corporation, who alone or jointly with others, shall be in possession of or have any control of any premises, or is listed as the owner of a premises on the records of the Butler County Auditor.

(g) "Person associated with" shall mean any person who, whenever engaged in a Chronic Nuisance Activity, enters, patronizes, visits; attempts to enter, patronize or visit; or waits to enter, patronize, or visit, a premises or person present on a premises, including any officer, director, customer, agent, employee, or independent contractor of a premises owner.

(h) "Property" or "premises" shall mean a platted lot or part thereof, or unplatted lot or parcel of land, or plot of land either occupied or unoccupied by any building or structure, equipment, or property of any kind.

(i) "Unit" shall mean an individual residential dwelling in which the occupant(s) have a right to exclusive possession, including but not limited to an individual apartment within an apartment complex or an individual dwelling within a multi-family home.

(j) "Abated" shall mean that no Chronic Nuisance Activities have occurred for a period of two (2) years at a property, premises, or unit that has been determined to be a Chronic Nuisance.

Sec. 543.02: Notification That Premises May Be A Chronic Nuisance.

(a) The Chief of Police, or his or her designee, shall notify the Law Director, City Manager, or a designee of either, when either of the following circumstances have occurred at a property, premises, or unit:

(1) When three or more Chronic Nuisance Activities have occurred at the property, premises, or unit, where each activity occurs on a separate day during a thirty-day period; or

(2) The commission of a felony drug offense under any provision of Chapter 2925 or 3719 of the Ohio Revised Code has occurred at the property, premises, or unit.

(b) Upon receipt of the notification provided for in Section 543.02(a), the Law Director, City Manager, or a designee of either, shall notify the owner in writing that the subject property, premises, or unit is in danger of being determined to be a Chronic Nuisance.

(c) The notice provided for in Section 543.02(b) shall be deemed properly delivered if sent by first class mail to the address for the owner listed on the records of the Butler County Auditor. If the notice is returned as undeliverable, the notice shall be deemed properly delivered if it is either posted on the front door of the property, premises, or unit that is the subject of the notice and order, or if it is delivered in person to the owner. The notice shall contain the following information:

(1) The street address or legal description sufficient for identification of the property, premises, or unit;

(2) A factual description of the Chronic Nuisance Activities that have occurred at the property, premises, or unit, including the dates of the Chronic Nuisance Activities;

(3) A statement that the owner shall respond to the Law Director, City Manager, or a designee of either identified in the notice, within 15 days of the date of the owner's receipt of the notice with a written plan to abate the Chronic Nuisance Activities;

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(4) A statement that the requirement that the owner provide a written plan to abate the Chronic Nuisance is a lawful order, and that failure to provide a written plan could subject the owner to penalties pursuant to Section 543.04 of the Codified Ordinances; and

(5) A statement that future enforcement at the property, premises, or unit as a result of Chronic Nuisance Activities may result in a determination that the property, premises, or unit is a Chronic Nuisance pursuant to Section 543.03 of the Codified Ordinances.

(d) The notice provided for in Section 543.02(b) is a lawful order. Each directive contained in the notice is a separate lawful order, and failure to obey any directive is subject to penalties pursuant to Section 543.04 of the Codified Ordinances.

Sec. 543.03: Determination That Premises Is A Chronic Nuisance.

(a) After the Chief of Police, or his or her designee, has notified the Law Director, City Manager, or a designee of either, as provided in Section 543.02(a), the Chief of Police, or his or her designee shall thereafter notify the Law Director, City Manager, or a designee of either, whenever an additional Chronic Nuisance Activity has occurred at the subject property, premises, or unit. The Chief of Police, or his or her designee, shall calculate the cost of enforcement for each such Chronic Nuisance Activity, and include such calculation in the notice. Such notification shall be made upon each occurrence of a Chronic Nuisance Activity at the subject property, premises, or unit until the Chief of Police, or his or her designee, is notified by the Law Director, City Manager, or a designee of either, that the Chronic Nuisance at that property, premises, or unit has been abated.

(b) Following receipt of the notification provided for in Section 543.03(a), the Law Director, City Manager, or a designee of either, shall determine whether such additional Chronic Nuisance Activity has occurred more than 18 days after a notice has been issued pursuant to Section 543.02(b). If the notice made pursuant to Section 543.02(a) is received more than 18 days after a notice has been issued pursuant to Section 543.02(b), and if the owner of the subject property, premises, or unit has not responded to the Law Director, City Manager, or a designee of either, as required pursuant to Section 543.02(c)(3), the Law Director, City Manager, or the designee of either may determine that the property, premises, or unit is a Chronic Nuisance.

(c) Upon determination that a property, premises, or unit is a Chronic Nuisance, the Law Director, City Manager, or a designee of either, shall issue a lawful order to the owner to abate the Chronic Nuisance, notify the owner that the owner is being billed for the cost of this and any subsequent Chronic Nuisance Activity, and bill the owner for the cost of enforcement. Failure to abate the Chronic Nuisance shall be deemed a violation of this chapter.

(d) The notice and order provided for in Section 543.03(c) shall be deemed properly delivered if sent by first class mail to the address for the owner listed on the records of the Butler County auditor. If the notice and order are returned as undeliverable, the notice and order shall be deemed properly delivered if they are either posted on the front door of the premises that is the subject of the notice and order or if they are delivered in person to the owner. The notice shall contain the following information:

(1) The street address or legal description sufficient for identification of the property, premises, or unit;

(2) A description of the Chronic Nuisance Activity or Activities for which the owner is being billed, including the dates of the Chronic Nuisance Activity or Activities;

(3) An order that the Chronic Nuisance be abated; and

(4) A statement that the owner may appeal the determination that the property, premises, or unit is a Chronic Nuisance, or may appeal the amount of the bill as provided in Section 543.05.

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(e) A determination that a property, premises, or unit is a Chronic Nuisance shall be effective against the owner until such determination is reversed on an appeal or until the Chronic Nuisance is abated.

Sec. 543.04: Charges For Enforcement And Civil Penalties To Owners For Chronic Nuisance Activities.

(a) Once a property, premises, or unit has been determined to be a Chronic Nuisance, the owner of that property shall be charged for the actual cost the cost of each enforcement activity by the City to address Chronic Nuisance Activity at the property, premises, or unit.

(b) A civil penalty shall also be assessed against the owner. The civil penalty shall be imposed based on the number of bills issued to the owner for the cost of each enforcement activity by the City to address Chronic Nuisance Activity at the property, premises, or unit. Civil penalties shall be assessed as follows:

(1) For each of the first, second and third bill within a two-year period, a civil penalty of \$150.00 shall be imposed;

(2) For the fourth bill within a two-year period, a civil penalty of \$500.00 shall be imposed;

(3) For the fifth bill within a two-year period, a civil penalty of \$1,000.00 shall be imposed;

(4) For the sixth bill within a two-year period, a civil penalty of \$1,500.00 shall be imposed;

(5) For the seventh bill within a two-year period, a civil penalty of \$5,000.00 shall be imposed;

(6) For each bill after the seventh bill within a two-year period, a civil penalty of \$10,000 shall be imposed.

(c) Notwithstanding the requirements of this Chapter 543, the Law Director is authorized to file suit under state and local law to abate nuisances existing at property or premises, including seeking injunctive relief.

(d) Notwithstanding the requirements of this chapter, the Commissioner of Health is authorized to act to abate nuisances as provided under Chapter 1767 of the Codified Ordinances.

(e) Notwithstanding subsections (a) and (b) of this Section 543.04, or Section 543.03(b), no bills or civil penalty shall be issued or imposed under this Chapter 543 if the owner submits a written plan to abate the Chronic Nuisance Activities pursuant to Section 543.02(c) of the Codified Ordinances, but the premises shall remain subject to abatement under Ohio Revised Code Chapter 3767 or Chapter 1767 of the Codified Ordinances.

Sec. 543.05: Appeals.

(a) An owner may appeal: (1) the determination of the Law Director, City Manager, or the designee of either, that a property, premises, or unit is a Chronic Nuisance; (2) the amount of the bill for enforcement activity related to Chronic Nuisance Activities at the property, premises, or unit; or, (3) a civil penalty imposed pursuant to Section 543.04(b).

(b) To appeal, an owner must file a written appeal with the office of City Manager within thirty (30) days: (1) from the date of the notification issued pursuant to Section 543.03(c); (2) from the date the bill for enforcement activity related to Chronic Nuisance Activities at the property, premises, or unit; or, (3) from the date the civil penalty is imposed.

(c) The written appeal must set forth:

(1) The complete name, address, and telephone number of the petitioner;

(2) The address of the property, premises, or unit that has been designated a

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Chronic Nuisance; and

(3) A brief statement of the grounds for the appeal.

(d) An owner that files an appeal pursuant to Section 543.05(b) shall be granted a hearing on the appeal before an administrative hearing officer no later than thirty (30) days after receipt of the appeal.

(e) At such hearing, the owner shall be given an opportunity to be heard and show cause why: (1) the determination that the property, premises, or unit is a Chronic Nuisance should be reversed; (2) the amount of the bill for enforcement related to Chronic Nuisance Activities at the property, premises, or unit should be modified; or, (3) civil penalty issued pursuant to Section 543.04(b) should be revoked.

(f) The failure of the owner or his or her representative to appear and state his case at such hearing shall have the same effect as if no appeal had been filed.

(g) After a hearing, the administrative hearing officer shall sustain, modify, or withdraw the matter before the hearing officer on the appeal. The administrative hearing officer shall issue his or her findings and decision, in writing, within ten (10) business days to owner and the Director of Public Safety. The findings and decision of the administrative hearing officer shall constitute a final order to the owner.

Sec. 543.06: Liens.

Bills for enforcement and citations that are not paid will become liens on the premises to the extent permitted under applicable law.

Sec. 543.07: Rules And Regulations.

The Law Director, City Manager, or the designee of either, shall establish rules, regulations, and policies for the maintenance of information, notification of violations, determination of when calls for service are counted for purposes of this ordinance, appeals of decisions made, training for police officers or other city personnel, and all other relevant issues necessary for implementation of this Chapter 543.

Sec. 543.08: Eviction Or Retaliation Prohibited.

It shall be unlawful for an owner or operator to terminate the lease agreement or periodic tenancy of any occupant without good cause or otherwise retaliate against any occupant because that occupant complained to the police or other city official or employee about criminal activities or Chronic Nuisance Activities at a property, premises, or unit, premises or made calls for service to the police related to criminal activities or Chronic Nuisance Activities at a property, premises, or unit. It shall be unlawful for an owner or operator to intimidate or actively discourage an occupant and/or persons associated with an occupant from calling the police to report Chronic Nuisance Activities associated with a property, premises, or unit. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against an occupant during the 12-month period following receipt of a notice issued pursuant to Section 543.02 constitutes unlawful retaliation under this section. Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the owner or operator were based upon good cause. "Good cause" as used in this subsection means that an owner or operator must show good cause for his or her actions, other than one related to or caused by the operation of this Chapter 543. Notwithstanding the foregoing, an occupant's lease agreement or periodic tenancy may be terminated as otherwise provided in Ohio Revised Code Chapter 5321. An owner's or operator's failure to renew a lease agreement

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or periodic tenancy upon expiration of such lease agreement or periodic tenancy shall not be deemed a violation of this subsection.

Sec. 543.09: Severability.

The provisions of any part of this Chapter are severable. If any provision or subsection hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsection, and applications of such ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this section that the same would have been adopted had such invalid provisions, if any, not been included herein.