

MEMO

TO: Scott Meyer, City Manager

FROM: Nuisance Review Committee

DATE: May 13, 2013

RE: Nuisance Ordinance Recommendations

Pursuant to your request and direction, a review was conducted of the city's nuisance ordinances in order to develop proposed ordinance revisions to address possible improvements to the city's nuisance enforcement efforts. A review committee (hereinafter "Committee") was established to conduct the review. Members of the Committee are:

Steve Cook, Public Works
Mike Tripp, Public Works
Roger Fields, Police Department
Rick Price, Police Department
Ty Metzger, Police Department
Tim Morgan, Development Services Department
Greg Young, Attorney's Office

The Committee endeavors consisted of four elements:

1. Evaluation of the City's current enforcement procedures
2. Examining the existing ordinances relating to nuisance
3. Research of the enforcement procedures and ordinances of other Missouri municipalities.
4. Recommendations

For reference, the Committee researched the procedures and ordinances of the following cities:

Maryland Heights
St. Peters
Springfield
Jefferson City
Columbia
St. Joseph

Additionally, the Committee conducted some outreach, including liaising with the Keep Cape Beautiful citizen group in order to gain some feedback on citizen concerns as it relates to nuisance issues.

The current nuisance enforcement efforts are handled though the Cape Girardeau Police Department. Statistics on the enforcement are attached.

The Committee was able to ascertain certain possibilities for improvements that require no ordinance changes. The following are enforcement procedure changes that are being implemented pursuant to the review:

1. Notice – In most cases, warnings or requests to abate a nuisance violation are generally issued first to the resident or property owner. The notice process has been more streamlined and formalized. A “Notice to Abate Nuisance” form has been created by Office Metzger. The form has check boxes listing violations that can quickly be checked by the enforcement officer. The form includes contact information for the resident, including for special collection by public works. Additionally, the notice period has been printed on the form and has been reduced to demand abatement within five (5) days in most cases.
2. Property Owners – One major concept that was developed is to focus on bringing the owner into the equation. Often, nuisance violations are enforced against tenants only. Tenants seem to come and go, but the problems persist. Owners need to understand they can be, and will be, held accountable for nuisance violations.
3. Direct Results Team – Locations with property violations are also home to persons committing other crimes. After contact for drug, weapon or other crimes, members of the Police Direct Results Team have begun to refer these locations with possible property violations to the Nuisance division and Inspections division.

As was the mandate, the Committee has several recommendations for ordinance revisions that could assist in nuisance issues and in maintaining our neighborhoods and business districts.

1. Graffiti – The purpose of this section is to prevent the spread of graffiti and to require its removal from private property. The spread of graffiti on private buildings, structures, or places causes blight within the city, which results in a deterioration of property and business values for adjacent and surrounding properties, all to the detriment of the city. The Committee determined that graffiti should be considered a public nuisance which must be abated to avoid the detrimental impact of graffiti on the city and to prevent the further spread of graffiti. (See the following draft ordinance language, Ord. 1.)
2. Unlicensed vehicles – Current city ordinances for damaged or disabled vehicles is defined as improperly registered and inoperable vehicles. The Committee would expand the definition in Sec. 13-51 to allow a vehicle which is not displaying proper plates and/or not properly registered to be declared a nuisance. (See the following draft ordinance language, Ord. 2.)
3. Display of certain items prohibited and open storage – In doing outreach, it appears to the Committee that one issue that some believe needs attention is unsightly properties. Open storage is a common source of complaints. By incorporating more strict guidelines, the city can curb some properties that are kept in a manner that causes complaints by neighbors. (See the following draft language, Ord. 3.)
4. Vacant buildings – The Committee has concerns about the presence of vacant buildings or structures and the impact those have on the surrounding areas. Vacant

buildings often are the source of crime and nuisance issues for the city. Vacant buildings create a detrimental impact resulting in deterioration of the surrounding areas. In order to combat the deterioration, the committee recommends creating a vacant building registry. The city would issue permits for any building left vacant for more than a six-month period. The registry would better enable enforcement and hopefully reduce these buildings remaining as a nuisance. (See the following draft language, Ord. 4.)

5. Chronic Nuisance – This is an idea that was developed by the Committee to reduce ongoing crime and nuisance. By state statute, the Attorney General or the County Prosecutor can petition to have a house or building declared a nuisance for selling drugs from a given location. The Committee expands on this concept by adding other violations that impact the community. Shutting these places down will prevent continued problems for the city. (See the following draft language, Ord. 5.)

6. Fines – Nuisance violations are punishable by fines \$1 to \$500. The Committee proposes that the city council raise the minimum fine to \$125.

7. Abatement Hearing – Under city code, abatement of nuisances shall be conducted pursuant to certain hearing procedures. Currently, the city is not utilizing those procedures. The committee recommends utilizing the procedures and focusing enforcement efforts on abatement. Citations are appropriate under some circumstances, however, abatement should be the goal. It is clear from the outreach conducted by the Committee, nuisance abatement is what the city needs to accomplish. If abatement procedures are followed, any abatement costs can be tax billed to the property. As we currently are not using the abatement procedures, the costs can not be tax billed. (See the following draft language, Ord. 6.)

- (a) The city has two abatement procedures in chapter 13, neither of which is utilized. The Committee recommends one abatement procedure for all abatement hearings. The hearings would be upon request only.
- (b) Private contractors are often used by municipalities to abate nuisances, as opposed to using “public works” as is Cape Girardeau’s practice. The Committee recommends the city consider using a private contractor on abatement projects, including the mowing of high weeds and grass.

The Committee hopes these changes can empower those tasked with nuisance enforcement to effectively improve our city.

ORDINANCE 1 – Graffiti

- (a) Graffiti as a nuisance. The existence of graffiti on public or private property is expressly declared to be a public nuisance, and, therefore, is subject to the removal and abatement provisions specified in this section and this chapter.
- (b) Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property, to the extent that the display was not lawfully authorized in advance by the owner or occupant of the property, thus rendering any advance authorization invalid.
- (c) Duty of property owner and occupant.
 - (1) It is the duty of both the owner of the property to which graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all time keep the property clear of graffiti.
 - (2) It is the duty of the property owner to abate, or cause to be abated, graffiti upon notice from the city. Notice can be served personally, by sending notice via U.S. mail or electronic mail, or by posting such notice on the property.
- (d) Removal of graffiti by city. If, after notice to the property owner or other responsible party, that person fails to remove the offending graffiti within fifteen (15) days, the city may commence abatement and the property owner shall be billed for the costs.

ORDINANCE 2 – Unlicensed Vehicles

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Damaged or disabled vehicle means any vehicle which is not registered or which is improperly registered within the state, **or is not displaying proper license plates, or** and is inoperable for more than seventy-two (72) hours ~~or any vehicle which is in a state of repair as to be inoperable, without respect to whether it is improperly registered.~~

Person means any person, firm, partnership, association, corporation or other organization of any kind.

Property means any land owned by the city or located within the city limits, not including streets and highways.

Street or highway means the entire area between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.

Vehicles means any machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides, including but not limited to automobiles, trucks, trailers, motorcycles, tractors, buggies, wagons or any part thereof.

ORDINANCE 3 – Display of Certain Items Prohibited

(a) It shall be unlawful for the owner or occupant of any residence to allow any of the following items to remain outside on such premises, including but not limited to on any porch, deck, carport, driveway, yard, or in any location which can be viewed from a location off the premises:

Bedding, bottles, broken glass, cans, cardboard, cartons, furniture manufactured for indoor use only, jars, lumber and building supply material that are not neatly stacked, machine parts, motor vehicle parts, pallets, paper, plumbing fixtures, inoperable appliances, scrap metal, tire rims, tires, water heaters.

(b) Duty of property owner and occupant. It is the duty of the property owner to abate, or cause to be abated, the display of the prohibited items listed in this section upon notice from the city. Notice can be served personally, by sending notice via U.S. mail or electronic mail, or by posting such notice on the property.

(d) Removal of prohibited items. If, after notice to the property owner or other responsible party, that person fails to remove the offending items within five (5) days, the city may commence abatement and the property owner shall be billed for the costs.

ORDINANCE 4 – Vacant Buildings

- a) A building, house or other structure that remains vacant for a period of six (6) months shall be declared a public nuisance. It shall be unlawful for any building, house, or structure to remain vacant for more than six months without the owner of said location obtaining a vacant building permit.
- b) The owner of any building, house, or other structure that remains vacant for a period of time of greater than six months shall be required to have a permit. Upon proper application and approval, the vacant building permit shall be issued by the building official for an annual permit fee of \$100. The building official shall maintain a registry of all permitted vacant buildings, houses, or other structures.
- c) The owner of any vacant building, house or other structure shall be required to properly secure the vacant location to prevent unauthorized or unlawful entry.

ORDINANCE 5 – Chronic Nuisance

(a) Chronic nuisance unlawful. It shall be unlawful for any owner or occupant of any property, premise, lot, tract or parcel of land to cause, permit, encourage or allow a chronic nuisance to exist upon said property.

(b) Chronic nuisance defined. A chronic nuisance property is any premise, lot, tract or parcel of land, or any structure or portion of structure thereon, that has any of the following activities, behaviors, or conduct occurring on that property or any structure or portion of structure thereon, or that is associated with the property, when it is used in conjunction for the commission of any of the following activities:

- (1) Illegal use, possession or distribution of drugs or drug paraphernalia;
- (2) Illegal possession, use or sale of firearms or weapons;
- (3) Prostitution or patronizing prostitution;
- (4) Consumption or possession of alcoholic beverages in public places in violation of Sec. 5-14 of this code;
- (5) Offenses against the public order in violation of Chapter 17, Article VII of this code.
- (6) Assaults in violation of Sec. 17-26 of this code;
- (7) Any activity that constitutes a felony or misdemeanor under federal or state law.

(c) Administrative procedures.

- (1) Whenever the city police department has responded to a property for any of the activities described in subsection (b) of this section and filed an incident report for said response, the city attorney may declare the property to be a chronic nuisance and cause written notice to the property owner declaring such and which: identifies the property, states that the property may be designated as a chronic nuisance property which may necessitate the closing of the property, and describes the activities that have occurred on the property.
- (2) The written notice may be delivered by hand to the owner of the property by delivery to him or her personally or by U.S. mail, addressed to the owner. Service may also be made upon such person by posting the notice on or about the property described in the notice, or by causing such notice to be published in a newspaper of general circulation. If the owner is a corporation, the notice may be served personally or by U.S. Mail upon an

officer, a person in charge of any local business office, or its registered agent or any other agent authorized by appointment or required by law to receive service of process.

- (3) After a fifteen (15) day period following the notice required in section (c)(1) above, the city attorney shall determine whether the nuisance activities have been abated. If the nuisance activities have not been abated, or the city attorney determines the property owner has not made reasonable efforts toward abatement, the Abatement Hearing Officer shall set a hearing to determine if the property is a chronic nuisance property. Such determinations by the city attorney shall solely be in his or her discretion. Notice shall include the time, date, and location of the hearing and shall be served in the manner prescribed in section (c)(2) above. All mortgagees of record and other interested parties known to the city, including tenants of the property known to the city, shall also be served a copy of the notification.
- (d) Chronic nuisance hearing.
- (1) The hearing shall be heard by the Abatement Hearing Officer to determine whether a property is a chronic nuisance property. Each interested party in attendance at the Hearing shall be given an opportunity to present evidence and may be questioned by the Hearing Officer.
 - (2) Following the hearing, the hearing officer shall make a written determination as to whether the property is a chronic nuisance property and will consider the following in making said determination:
 - a. Knowledge of the property owner of the chronic nuisance or otherwise illegal activities occurring on the property
 - b. Nature and extent of nuisance activity associated with the property.
 - c. Nature and extent of conditions that violate city code or state or federal law.
 - d. Actions taken by the property owner to prevent nuisance activity and to abate existing nuisance activity found to exist on the property.
 - e. The physical characteristics of the property, including the proximity of property to residential property, parks, churches, schools and playgrounds.
 - f. Whether there is harassing or intimidating conduct, as prohibited by law, by the owner, occupant(s) or person(s)

frequenting the property toward persons living in the neighborhood or passing by the place. A person shall be considered to be frequenting the property if he or she lives or works on the property, visits the property, or loiters about the property.

- g. Whether there is street or sidewalk congestion caused by the owner, occupant or persons frequenting the place, as defined in subsection (d)(2)f. above.
 - h. The impact of chronic nuisance determination on innocent parties, such as, but not limited to, tenants of the property.
 - i. Any other evidence deemed relevant by the hearing officer.
- (3) The Abatement Hearing Officer shall issue a final written determination after the conclusion of the hearing. If the hearing officer at his or her discretion determines that the conditions on the property constitute a chronic nuisance, he or she may order the abatement of the nuisance or order any action necessary to abate the nuisance, including the closing of any structure or any part thereof on the property for a period not to exceed one year.
- (4) In determining whether the property or any portion thereof should be ordered closed as a result of the existence of a chronic nuisance, the lack of knowledge of, acquiescence or participation in, or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charge of as agent or otherwise, or having any interest in the property used in conducting or maintaining the public nuisance, shall not be a defense by such persons or entities.
- (5) The order issued by the hearing officer shall include the address of the property, a description of the nuisance(s), the length of time allowed for the property owner to abate the nuisance or, if the structure or any part thereof is ordered closed, the length of time of the closure and, if only a part of the structure is ordered closed, the identification of the area to be closed. Furthermore, the order will require that if the property is ordered closed, the property owner shall submit a plan of action intended to prevent the property from being a chronic nuisance property after the period of closure expires, as further described in section (e)(1) below. The order shall also state that any costs incurred by the city in order to uphold and enforce this order, including closure of the property, will be specially assessed and shall be deemed both a personal debt against the owner as well as a lien on the property until paid.

- (6) The order shall be mailed to the property owner, occupants known to the city, and mortgagees of record of the property. The order shall be posted on the property after the issuance of the decision.
- (e) Enforcement of the order.
- (1) Within 30 days of the closure of the property, the property owner shall submit to the Abatement Hearing Officer for approval a plan of action as described in section (d)(5) above intended to prevent the property from being a chronic nuisance property after the period of closure expires. The plan shall include any lawful method of abatement and remediation. If the property owner, lessor or lessee submits proof satisfactory to the hearing officer that the nuisance(s) has been abated for a period of 30 days, the hearing officer may vacate the provisions of the order directing closure or may modify said order.
 - (2) If a property or a portion thereof is ordered closed, it shall be unlawful to occupy the property ordered closed or allow the property ordered closed to be occupied during the period of closure.
 - (3) Any closure pursuant to this section shall not constitute an act of possession, ownership or control of the closed structure by the city.
 - (4) If the owner does not obey the order of the hearing officer, the city may take all appropriate steps to undertake and complete the work necessary to abate the chronic nuisance and/or close and secure the structure and shall assess the costs to the owner as a special tax bill. The special tax bill from the date of its issuance shall be deemed a personal debt against the owner and shall also be a lien on the property until paid.
 - (5) The owner of the property at the time an order is issued shall be responsible for complying with the order, regardless if he or she conveys his or her interest in the property to any other person or persons after such order was issued and served.
 - (6) No order to close shall relieve the owner or occupant of any property from complying with the building, fire, property maintenance and zoning codes or any other ordinance that regulates the condition or use of the premises.
 - (7) None of the provisions in this section are applicable to cases which are determined to be a dangerous building, as defined in section 7-266 of this code.
- (f) Violations and penalties.

- (1) It shall be unlawful for any owner or occupant of any property, premise, lot, tract or parcel of land to cause, permit, encourage or allow a chronic nuisance to exist upon said property
- (2) It shall be unlawful to use, occupy or permit the use or occupancy of any structure ordered closed through the procedures of this section.
- (3) It shall be unlawful to interfere with any entry into or upon the place by any police officer, agent or employee of the city for the purpose of closure of a structure or otherwise abating the nuisance as ordered pursuant to this section.
- (4) It shall be unlawful to remove an order posted on the property.
- (5) Any violation of this ordinance shall be punishable as provided in section 1-8 of this code.

ORDINANCE 6 – Abatement Procedure for Nuisances and High Weeds/Grass

(a) Abatement notice. When a nuisance exists in violation of Chapter 13 or Sec. 22-111 of this Code, an abatement notice shall be served on the owner of the property where the violation is believed to exist. An abatement notice must be served on the owner of the property upon which the violation is believed to exist only if abatement costs are to be assessed against the property. The abatement notice shall contain the following:

- (1) Description of the location and nature of the alleged violation,
- (2) Statement of the acts necessary to abate the alleged violation,
- (3) A deadline for abating the alleged violation,
- (4) Information on the right and manner of requesting a hearing to contest the violation declaration, and
- (5) A statement that if the violation is not abated as ordered and if no request for hearing is made within the prescribed time, the city or persons under contract with the city may enter upon the property and abate the alleged violation and assess the costs against the owner of the property.

(b) Service of abatement notice.

The notice shall be served by at least one of the following methods:

- (1) Personal service on the property owner or the owner's agent,
- (2) Service by mail addressed to the last known address of the owner or the owner's agent,
- (3) Posting the notice on the property where the violation is alleged to exist.

Notice shall be considered given on the date the notice is personally served, mailed or posted.

(c) Abatement Hearing Officer. The City Manager shall designate a member or members of city staff to serve as an Abatement Hearing Officer.

(d) Request for hearing. The property owner of the property on which the nuisance is alleged to exist may contest the abatement notice by requesting a hearing. The request for hearing must be made in writing and received by the City Clerk within five (5) days of service of the abatement notice. The request for hearing must be either hand-delivered or received by the City Clerk by U.S. mail, facsimile machine or electronic mail. The request for hearing must state the address to which a notice of hearing may be sent.

(d) Notice of hearing. At least five (5) days written notice of the hearing shall be given to the person requesting the hearing except in cases where the public health, safety or

interest shall make a shorter time reasonable. Notice shall be hand-delivered or mailed to the address provided in the request for hearing. Notice shall be presumed received three (3) days after it is mailed.

(e) Hearing and decision. The hearing officer shall conduct the hearing and enter a decision. If the hearing officer determines that a nuisance exists as charged in the abatement notice, the hearing officer may enter an order of abatement directing that the nuisance be abated by the property owner and under such conditions and within such time as the hearing officer deems appropriate under the circumstances, or in the alternative or in addition to, the hearing officer may enter an order for the City to abate the nuisance.

(f) Abatement by the City. Upon an order by the Abatement Hearing Officer, the city or persons under contract with the city may enter upon the property and abate the violation and assess the costs against the property owner.

(g) Collection of abatement costs. The costs to the city for any abatement shall be certified to the city clerk or the director of finance. The costs shall include \$150 in administrative costs as well as the actual costs of the abatement. The city clerk or director of finance shall cause a special tax bill against the property to be prepared in the amount of the abatement and administrative costs. The tax bill from the date of its issuance shall be a lien on the property until paid and shall be prima facie evidence of the recitals therein and of its validity. No clerical error or informality in the tax bill or in the proceedings leading up to the issuance of the tax bill shall be a defense in an action to collect the tax bill. Tax bills issued under this section shall bear interest at the rate of eight percent (8%) per annum. The cost of abatement shall also constitute a personal obligation of the property owner. Unpaid tax bills issued under this chapter shall be a basis to suspend, revoke or deny a license pursuant to Sec. 15-5 of this code or to disconnect service under Sec. 29-88 of this code.