

Chronic Nuisance Property Ordinance

Frequently Asked Questions

1. Why does Cape Girardeau need a chronic nuisance property ordinance?

This ordinance is a tool the City can use to quickly and effectively abate nuisance activity that is occurring on a specific premises. The ordinance places responsibility for abating nuisance activity on the premises owner and holds the premises owner accountable for what happens on, or in association with, his or her property.

2. What are the basic facts of this ordinance?

It allows the City to declare a premise a chronic public nuisance if it has a threshold number of nuisance activities occurring on, or in association with, the premises and it allows the City to recover the cost of Police and/or Inspection's response to repeated occurrences of nuisance activities at the same premises. The ordinance also penalizes premises owners who fail to respond to the chronic public nuisance notice and/or fail to, in good faith, abate the nuisance activity.

3. What are nuisance activities?

- Illegal use, possession, manufacturing, delivery or distribution of drugs or drug paraphernalia;
- Illegal possession, use or sale of firearms or weapons;
- Prostitution or patronizing prostitution;
- Consumption or possession of alcoholic beverages in public places in violation of Sec. 5-14 of this code;
- Offenses against the public order in violation of Chapter 17, Article VII of this code; Which include:
 - Peace disturbance
 - Unlawful assembly
 - Rioting
 - Refusal to disperse
 - Loitering
- Assaults in violation of Sec. 17-26 of the City code;
- Any activity that constitutes a felony or misdemeanor under federal or state law.

4. Will this ordinance apply to other types of premises?

Yes. This ordinance applies to any premises located in the City of Cape Girardeau (motels, businesses, etc.) and it will be applied City wide.

5. Is this ordinance modeled after another City's?

Yes. City staff reviewed similar ordinances from around the country as well as in Missouri. Communities in Missouri that were researched were Maryland Heights, Crystal City, Columbia, and Kansas City. Staff also looked at Seattle, WA; Bermerton, WA; Portland, OR; Milwaukee, WI; Palm Beach, FL; Corvallis, OR;

Madison, WI; Springfield, IL; Janesville, WI; and Green Bay, WI. All the chronic nuisance property ordinances City staff looked at were very similar.

6. Will this ordinance result in hundreds or thousands of premises being declared chronic nuisance properties?

No. The City anticipates having to use this ordinance on a few properties per year. The vast majority of property owners are responsive to, and cooperate with, the City when contacted in regard to nuisance activity on, or associated with, their premises. This ordinance is really targeted property owners who are unresponsive properties that have a negative impact on the quality of life in a neighborhood and/or the community in general.

7. Can't the City do something else to get rid of nuisance activity?

Yes. There are other methods available to the City but those methods involve statutory civil actions filed in Cape Girardeau County Circuit Court. These actions are very labor intensive and slow moving due to the heavy calendaring in Cape County Circuit Court. It is important to be able to effectively address those premises and this ordinance is a helpful tool in that respect. This ordinance is a relatively fast process that allows for timely penalizing a property owner if he or she fails to comply with the ordinance.

8. How does a property get declared a chronic nuisance property?

There are a couple ways in which this could happen:

- (I) If there are three (3) or more complaints in twelve (12) month period for nuisance activities occurring on or in association with a premises;
- (II) If the premises has had one (1) reported incident associated with the premises resulting from the manufacture, distribution or delivery of illegal drugs

9. Why Complaint and not conviction as the standard for considering when a nuisance activity has occurred?

Using complaint as the standard is more objective and it allows for a faster response to chronically occurring nuisance activity. Using conviction as the standard is too unpredictable. Anybody charged with a law violation can contest that charge in court. It is possible that a person charged with a law violation would not be convicted or the case otherwise adjudicated for up to a year, possibly longer. This means the nuisance activity could drag on for as long as the court case and it could mean that the City would be unable to proceed with a chronic nuisance action because all nuisance activity charges would be pending and could remain pending for long periods of time.

10. Does the City's proposed ordinance provide due process for those who receive chronic nuisance complaints?

Yes. The ordinance requires the City attorney to provide the property owner with written notice of the chronic nuisance complaint. The property owner is provided 15 days to contact the City and abate the complaint. If the nuisance is not abated after the 15 day time period, the City Attorney will refer the case to the Abatement Hearing Officer who will then issue a final written determination after the conclusion of the hearing. Each interested party may attend the hearing and shall be given an opportunity to present evidence and may be questioned by the Abatement Hearing Officer. If the Abatement 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 and/or criminal activity, including the closing of any structure or any part thereof on the property for a period not to exceed one year.

11. Why not separate this ordinance into two (2) ordinances – One for Police and One for The Inspections Division?

Chronic nuisance activity is not a one-agency problem. In order to effectively deal with chronic nuisance issues, an interdisciplinary approach is essential. It is rare that a chronic nuisance premises will have only police issues or building inspections issues. Plans to abate nuisance activity frequently include police-related remedies and building inspection-related remedies. It makes sense for these agencies to work together and with the City Prosecutor in an effort to rid properties of nuisance activities.

12. How is a property owner notified that his or her premises is a chronic nuisance property?

Written notice is provided to the premises owner via first class mail or delivered in person. The notice identifies the premises and includes a description of the relevant nuisance activities that support the determination that the premise is a chronic nuisance property.

13. What does the property owner have to do after getting the notice that his or her property is a chronic nuisance property?

The property owner has 15 days to respond with either an appeal of the determination, or to propose a written course of action to abate the nuisance activities. If the property is a non-owner occupied residential premises, the property owner is the party responsible for abating the nuisance.

14. Isn't eviction the only plan a landlord could have to abate nuisance activity?

No. There are times when eviction is the only answer to abating a chronic nuisance. However, there are many, many options available to a landlord to abate nuisance activity. We know that a good portion of nuisance activity occurs when it is supported by certain environmental elements. Thus, if the environmental elements are addressed, we can reduce or eliminate the nuisance activity. For example, overgrown weeds and shrubs provide natural cover to individuals engaging in illegal activities. Abandoned vehicles and poor lighting in parking lots can create a haven for drug dealers. An abatement plan could include trimming back shrubs and trees, increasing lighting in parking lots and at entrances to

buildings, posting a property with no trespass signs, keeping trash and junk off the property, removing abandoned vehicles, having the premises owner establish a presence on the property (either themselves or by way of a property manager or maintenance manager), establishing a permit system for parking, and so on. These types of strategies are commonly referred to as CPTED--Crime Prevention Through Environmental Design.

15. What happens if a property owner submits an abatement plan and does everything the plan requires but the nuisance activity continues?

The City will not penalize a property owner who is working diligently and in good faith with the City. The City will continue to work cooperatively with that property owner in an attempt to develop new strategies for abating nuisance activity.

16. What happens if a property owner does not cooperate and does not take steps to abate the nuisance activity?

If the owner does not obey the order of the Abatement Hearing Officer, the city may take all appropriate steps to undertake and complete the work necessary to abate the criminal 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.

17. Will the ordinance allow the Police too much discretion?

No. Exercising discretion is part of every police officer's job. Every single day they are making discretionary decisions--do they arrest, do they give a warning, do they counsel, do they cite and release or do they arrest. The criteria for this ordinance are as objective as most laws the police and division of Inspections enforce.

18. Are domestic abuse incidents counted as nuisance activities?

There is a special provision in the ordinance regarding domestic abuse. In incidents of domestic abuse or domestic violence the city attorney shall consider the strong public policy in favor of domestic victims reporting alleged abuses, and the ordinance shall not operate to discourage such reports.