

ORDINANCE NO. 04-70  
BY: Nancy E. Moore

Amending the Shaker Heights Codified Ordinances to add new Section 107.08 relative to the abatement of criminal activity nuisances and the collection of costs to the Police Department of responding to such nuisances, and declaring an emergency.

WHEREAS, the City has by ordinance declared a number of actions and conditions as nuisances, and the City may abate many of such nuisances and the costs may be assessed on the property on which the nuisance has occurred, or from which the nuisance has originated; and

WHEREAS, the residents of the City have been adversely affected by criminal activity that occurs repeatedly at, or originating from, certain residential properties in the City; and

WHEREAS, repeated violations of law stemming from a single property place an undue burden on the City's safety resources, and therefore, an undue burden on taxpayers; and although most property owners take responsibility for activities on their property, some property owners fail to take aggressive action, or any action at all, to deal with such nuisance activities by people whom they have allowed to live at or to visit their property; and

WHEREAS, such repeated criminal activities greatly interfere with the comfortable enjoyment of life and property for the neighbors of such nuisance properties, and lead to the deterioration of neighborhoods, as responsible homeowners move out of neighborhoods where such activity recurs.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. The Codified Ordinances of the City of Shaker Heights are hereby amended to include the following new Section:

Section 107.08 - Criminal Activity Nuisances

(a) The following activities occurring on residential property, and engaged in by an owner, occupant or invitee of the owner or occupant of residential property, are hereby declared to be public nuisances:

(1) Any animal violations under Sections 705.02 (dogs running at large), 705.03 (animal odors, biting, and noise), 705.06 (dangerous dogs), 705.07 (vicious dogs), 705.11 (killing or injuring animals), 705.12 (cruelty to animals) of the Codified Ordinances;

(2) Any disorderly conduct, disturbance of the peace or other violation of Chapter 709 of the Codified Ordinances;

(3) Any drug abuse violation under Chapter 713 of the Codified Ordinances;

(4) Any gambling violation under Chapter 717 of the Codified Ordinances;

(5) Any health, safety, or sanitation violation under Chapter 721 of the Codified Ordinances;

(6) Any obstruction of official business violation under Section 725.07 of the Codified Ordinances;

(7) Any alcohol violations under Chapter 729 of the Codified Ordinances;

(8) Any sex offenses under Sections 733.07 (public indecency), 733.08 (procuring), 733.09 (soliciting), or 733.10 (prostitution) of the Codified Ordinances;

(9) Any offense against another person under Sections 737.03 (assault), 737.04 (negligent assault), 737.05 (aggravated menacing), 737.06 (menacing), 737.07 (endangering children), 737.12 (misuse of 9-1-1), or 737.18 (unruliness and delinquency) of the Codified Ordinances;

(10) Any offense against property under Sections 741.03 (criminal damaging or endangering) or 741.04 (criminal mischief) of the Codified Ordinances;

(11) Any littering or deposition of waste under Section 743.03 of the Codified Ordinances;

(12) Any theft violation under Sections 745.05 (petty theft), 745.08 (unauthorized use of property), or 745.24 (criminal tools) of the Codified Ordinances;

(13) Any weapons, explosives, firearm or handgun violation under Chapters 749 or 753 of the Codified Ordinances;

(14) Any noise violation under Chapter 755 of the Codified Ordinances;

(15) Any fireworks violation under Section 919.04 of the Codified Ordinances;

(b) The Chief of Police or his designee, upon finding that two or more nuisance activities declared in this Section have occurred within any twelve 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 and order shall set forth the nature of the nuisances, the estimated costs to abate any future nuisance, and state 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. The notice shall further state that if a third or subsequent nuisance activity as declared in this Section occurs within twelve months of the dates of the first two activities, 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. Notice shall be served as set forth in Section 107.03 of the Codified Ordinances.

(c) If within twelve months after the first of the two nuisances referred to in subsection (b) of this Section has occurred, a third nuisance activity as declared in this Section occurs, the City may abate the nuisance by responding to the activity using administrative and law enforcement actions, and the costs of such abatement shall be assessed on the nuisance property in the same manner as in Section 107.04 of the Codified Ordinances, and the costs shall be calculated as set forth in subsection (e) of this Section. The City shall provide notice to the owner of the nuisance property of the City's intent to assess the costs of abatement against the owner's property at least thirty (30) days before such costs are certified to the County for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. Notice shall be served as set forth in Section 107.03 of the Codified Ordinances.

(d) 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 Chief of Police within thirty (30) days of the date of the notice. If the Chief of Police finds that the facts presented do not support the declaration of a nuisance, the Chief shall rescind the notice. Otherwise the Chief shall deny the request and refer the appeal for hearing by the Board of Housing Code Appeals. Any such appeal shall not stay any actions by the City to abate the first or any subsequent nuisance activity. In any such appeal, the City must show by a preponderance of the evidence that each violation stated in the notice being appealed has occurred, and that the declaration of the property as a nuisance property or of the intent of the City to assess the property for abatement costs, whichever is applicable, is justified. The City shall be deemed to have failed to have met this standard if the owner demonstrates by a preponderance of 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 had 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 Revised Code Sections 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 Revised Code Sections 5321.17 (C) and 5321.04 (A) (9).

(e) Costs of abatement shall be assessed based upon the hourly wage of the police officer or officers involved in the abatement of the nuisance activity, plus 75%, multiplied by the number of hours required to abate the nuisance.

(f) 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 criminal prosecution or other legal action against any person for violation of the City's ordinances.

Section 2. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that it is necessary in the current operation of the City and, therefore, this ordinance shall take effect immediately upon its enactment and approval by the Mayor.

Enacted May 24, 2004.

Approved this \_\_\_\_ day of \_\_\_\_\_, 2004.

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JUDITH H. RAWSON, Mayor

Attest:

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JERI E. CHAIKIN  
Clerk of Council