

**ORDINANCE NO. 02-2023**

**AN ORDINANCE ENACTING CHAPTER 139 OF THE CODIFIED ORDINANCES OF THE CITY OF SPRINGDALE, OHIO REGULATING THE ABATEMENT OF CHRONIC PROPERTY NUISANCES AND DECLARING AN EMERGENCY**

WHEREAS, chronic nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition; and

WHEREAS, chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located; and

WHEREAS, the City is recommending that this ordinance be enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties by providing a process for abatement; and

WHEREAS, this proposed ordinance is not an exclusive remedy under any state or local laws and may be used in conjunction with such other laws; and

WHEREAS, chronic nuisance properties are a financial burden to the City because of repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property; and

WHEREAS, this proposed ordinance is intended to provide a means to ameliorate those conditions and hold accountable those persons responsible for such property or business owners; and

WHEREAS, the City is pursuing additional measures to expand housing and business enforcement tools to eliminate conditions of deterioration, as well as criminal and nuisance behavior, in order to protect the health, safety and welfare of occupants, neighbors, police officers and firefighters; and

WHEREAS, this Council believes that the Springdale Police Department should be authorized to include criminal activities occurring near a person's residence and considered against the owner of the residence under the Chronic Property Nuisance Ordinance, which would cover the right of way, street and homes located near the property where the person committing the criminal activity lives; and

WHEREAS, this Council believes that criminal activities occurring near a business or within its parking lot and adjacent areas where patrons park or congregate should be considered against a business owner, operator or employee under the Chronic Nuisance Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Springdale, Ohio, \_\_\_\_\_ members elected thereto concurring:

SECTION 1. Chapter 139 of the Codified Ordinances of the City of Springdale shall be enacted to read as provided in the attached Exhibit A which is incorporated herein by reference.

SECTION 2. That this Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II(D)(3)(d) of the Charter, be effective immediately. The reason for the emergency is the need to begin enforcement of these regulations at the soonest date possible.

Passed this \_\_\_\_ day of January, 2023.

\_\_\_\_\_  
President of Council

Attest:

\_\_\_\_\_  
Clerk of Council/Finance Director

Approved:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

## EXHIBIT A

### CHAPTER 139 ABATEMENT OF CHRONIC NUISANCE ACTIVITY

The following activities occurring on, or near, residential or commercial property within the City of Springdale, and engaged in by an owner, occupant or invitee of the owner, occupant or person in charge of commercial (including retail, restaurant and liquor establishments) or residential property (including individual apartment, townhome, and condominium units), are declared to be public nuisances:

#### **139.01 DECLARATION OF NUISANCE VIOLATIONS.**

- (a) Any animal violations under Section 90 of the Codified Ordinances to include; dogs running at large, biting, and noise, wild or dangerous animals, vicious dogs, killing or injuring animals, cruelty to animals of the Codified Ordinances, or similar state offense;
- (b) Any disorderly conduct, disturbance of the peace, public intoxication, or other violation of Chapter 133 of the Codified Ordinances, or similar state offense;
- (c) Any drug abuse violation under Chapter 138 of the Codified Ordinances, or similar state offense, although nothing in this ordinance shall be used to discourage an owner, operator, employee or tenant from reporting a drug overdose;
- (d) Any gambling violation under Chapter 136 of the Codified Ordinances, or similar state offense;
- (e) Any health, safety, or sanitation violation under Chapter 95 of the Codified Ordinances, or similar state offense;
- (f) Any obstruction of official business violation under Section 130 of the Codified Ordinances, or similar state offense;
- (g) Any alcohol violations under Chapter 92 of the Codified Ordinances, or similar state offense;
- (h) Any sex offenses under Sections 134 to include; public indecency, displaying or disseminating harmful materials to juveniles, procuring, soliciting, or prostitution of the Codified Ordinances, or similar state offense;
- (i) Any offense against another person under Sections 131 to include assault, negligent assault, aggravated menacing, menacing, menacing by stalking, telecommunications harassment, and Section 137 to include; endangering children, contributing to the unruliness and delinquency and Section 128 (misuse of 9-1-1) of the Codified Ordinances or similar state offense; (This does NOT include domestic violence or incidents under similar ordinance, as its intention is not to penalize the victim of such acts.)
- (j) Any littering or deposition of waste under Section 155 of the Codified Ordinances;
- (k) Any theft violation under Section 132 of the Codified Ordinances involving criminal damaging or endangering or criminal mischief, petty theft, unauthorized use of property, receiving stolen property, or similar state offense;
- (l) Any weapons, explosives, firearm or handgun violation under Chapters 135 of the Codified Ordinances, or similar state offense;
- (m) Any violation under Chapter 91 of the Codified Ordinances, or similar state offense;
- (n) the issuance of any violation of the Ohio Fire Code;
- (o) Any offenses for operating an illegal or unlicensed business;
- (p) the issuance of any violation of the zoning, building, or property maintenance regulations contained in Chapters 152, 153 or 155 of the Codified Ordinances; and
- (q) the issuance of any violation of a regulation implemented and enforced by the Springdale Board of Health.

## 139.02 CALCULATION OF PROHIBITED VIOLATIONS

(a) The following shall be used to determine the number of prohibited nuisance violations identified in Section 139.01 in order to determine a violation of this ordinance has occurred on any property with any rental units, housing units, or any commercial units, located on the property:

Property with 1 to 3 units:	7 nuisance violations
Property with 4 to 19 units:	15 nuisance violations
Property with 20 to 39 units:	19 nuisance violations
Property with 40 to 199 units:	27 nuisance violations
Property with over 200 units:	31 nuisance violations

(b) An initial violation of any fire, zoning, building, or property maintenance regulation shall not be considered when calculating a prohibited violation under this Section, however, after the issuance of an initial violation, upon re-inspection each unabated fire, zoning, building, or property maintenance violation shall be counted as a prohibited violation for purposes of this Section.

### 139.03 FINDING AND NOTICE OF NUISANCE.

(a) The Chief of Police, or their designee, upon finding that less than the prohibited number of nuisance activities have occurred within any twelve (12) month period at or near a property or rental unit, as defined in the Code of Ordinances, or within the defined confines of any business establishment within the City limits may serve a written warning letter to the residential property owner, business property owner and/or lessee, and/or business operator of the property/business declaring that such property/business may be declared a nuisance property.

(b) The Chief of Police or his designee, upon finding that the prohibited number of nuisance activities declared in this Chapter have occurred within any twelve (12) month period at or near any residential property/business, shall cause a written notice and order to be served on the residential property owner, business property owner and/or lessee, and/or business operator of the property/business declaring that such property/business is a nuisance property.

(c) The notice or warning letters shall be served by delivering it personally, leaving it at the person's usual place of business or residence, by posting it in a conspicuous place on the property involved, or by mailing it to the person by certified mail.

(d) The notice and order to be delivered under this Section shall set forth:

- (1) The nuisances identified in Section 139.01 that constitute violations under this Chapter.
- (2) An order to abate the nuisances and a statement of the act or acts that need to be taken by the residential property owner, business property owner and/or lessee, and/or business operator of the property/business to abate it;
- (3) The estimate of the cost of abating the nuisance plus any material or equipment costs if done by the City, or a third party or contractor as otherwise provided herein;
- (4) A reasonable time, of at least fourteen (14) calendar days, within which the residential property owner, business property owner and/or lessee, and/or business operator of the property/business shall abate the nuisance or pay the estimated cost to the City;
- (5) A statement explaining the procedures of the appeals process, as set forth in Section 139.07 herein.
- (6) A statement that failure to abate the nuisance as ordered, pay the estimated cost, or timely appeal will result in the charge being certified to the County Auditor for collection as other taxes and assessments against the property.

#### **139.04 ENFORCEMENT**

(a) On regulatory violations such as fire code, health code, zoning code, property maintenance code, building or electrical codes that are required to be corrected within the time period specified on the notice or be considered a violation, if the owner or operator is determined to have begun the corrective process in a timely manner and provide supply or repair options that requires additional time to be repaired or remediated, additional time may be granted for the completion of such measures.

(b) Any violation investigated as a nuisance activity will not count as a nuisance activity under this ordinance if the owner can demonstrate the call for service is proactively made by the owner, operator, employee, or tenant provided that it either occurred in the presence or view of the owner.

#### **139.05 ABATEMENT OF NUISANCE AND COLLECTION OF COSTS.**

(a) If no abatement occurs by the owner, operator, employee, or tenant after the designated time period for remediation following the service of a notice as provided for in Section 139.03, the City may enter the property and remediate the nuisance and the residential property owner, business property owner and/or lessee, and/or business operator of the property/business will be assessed the costs of abatement. If more than one person received a notice declaring a property a nuisance, the costs of abatement will be divided equally.

(b) The costs of abatement will be calculated based on the hourly wage of each participating City employee multiplied by the number of hours it is estimated will be required to abate the nuisance. The minimum charge shall be two (2) hours for each participating City employee.

(c) If the abatement is not to be performed by a City employee, the cost of abatement by any third party or contractor hired by the City shall be used to determine the cost of abatement plus a ten (10) percent City administrative cost.

(d) If the party noticed fails to abate the nuisance, pay the costs of abatement, or file an appeal within the time period designated in the notice, the City may assess the cost of abatement against the property. Should the City elect this option, 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 Auditor 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. Any election of the City under this subsection does not affect or limit the City's right or authority to bring criminal prosecution under this ordinance.

#### **139.06 RETALIATION**

If an occupant or person associated with the occupant feels that they have been intimidated or discouraged from in good faith reporting crime, disorder or regulatory violations to the City of Springdale they should file a complaint with the City. Such complaint will be investigated and a written report of the findings will be submitted to the City Administrator.

An investigation by the City can look for the following actions which may be indicative of potential harassment, intimidation, or discouragement of reporting a crime, disorder or regulatory violation:

- (a) The specific raising of their rent after a potential violation is reported by them to the City;
- (b) Discipline or termination after a violation is reported to the City;
- (c) Reducing or denying of their services after a potential violation is reported to the City;
- (d) Verbal harassment or threats;
- (e) Ordering a person to not call the police, fire or other City services without calling management first.

Such presumption can be rebutted by the preponderance of the evidence that the actions taken by the owner, landlord or operator was based upon good cause. "Good cause" as used in this subsection means that an owner, landlord or operator must show good cause for his or her actions, other than one related to or caused by the operation of this section.

#### **139.07 RIGHT OF APPEAL.**

(a) A person who receives notice and order referred to in Section 139.03(b) may appeal such notice and order by submitting a written request for reconsideration to the Chief of Police within ten (10) days of receiving the notice and order. Such written request shall include the reasons the person feels that warning, notice or order is not justified or that the person should not be named in the notice and any mitigating circumstances.

(b) If the Chief of Police finds that the facts do not support the notice and order based on the information provided he shall rescind the notice and order. Otherwise, the Chief of Police shall advise the person in writing that the request for reconsideration has been denied and that the person may appeal to the Board of Zoning Appeals. The person may appeal the denial of the request for reconsideration by submitting a letter to the Board of Zoning Appeals setting forth the reasons for appeal. The Board of Zoning Appeals shall conduct their meeting consistent with the procedural processes outlined in Section 153 of the Code of Ordinances. The Board of Zoning Appeals after reviewing the facts, shall render a decision as to whether the notice and order shall stand and notify the parties in writing.

(c) During the appeal process, the City has the right to abate further nuisances and to assess the costs providing the City ultimately prevails in the appeal process.

(d) If a person appeals the Chief of Police's decision, the requirement to pay the costs of abatement is stayed until a final decision is rendered.

#### **139.08 FAILURE TO PAY ABATEMENT COSTS.**

(a) No person shall fail to abate the property or pay the abatement costs assessed under Section 139.03 within the prescribed period of time described therein unless a proper appeal is filed. Each thirty (30) day period a person fails to abate the property or pay the abatement costs is a separate violation. A person found guilty under this section is not relieved of the duty to abate the property or pay the abatement costs.

(b) Whoever violates this Section is guilty of failure to abate or pay the abatement costs, a misdemeanor of the first degree and shall receive a fine in an amount not less than \$100.00 per violation.

(c) The City is permitted to abate the property, or take action to assess the abatement costs against the property regardless of whether the City pursues a criminal action under this section.

#### **139.09 EFFECT ON CITY AUTHORITY.**

(a) 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.