

Council Agenda Item Cover Sheet

Council Meeting Date: January 8, 2013

Submitting Department: Cedar Rapids Police Department

Presenter at meeting: Steven M. O'Konek **Phone Number/Extension:** x5525
E-mail Address: s.okonek@cedar-rapids.org

Alternate Contact Person: Ray Nees **Phone Number/Extension:** x5857
E-mail Address: r.nees@cedar-rapids.org

Description of Agenda Item:

Second and possible third reading of Ordinance amending the Cedar Rapids Municipal Code by adopting a new Chapter 22A, entitled "Nuisance Properties," which defines and prohibits nuisance properties and prescribes administrative processes for imposing charges associated with City services to nuisance properties and assessing costs associated with abatement.
CIP/DID #807542

Background:

Public Hearing was held and First Ordinance Reading was passed on December 18, 2012.

Action / Recommendation:

It is recommended the Cedar Rapids City Council approve the amended Chapter 22, Nuisance Ordinance, to include the new section 22A, the Nuisance Property Abatement Program.

Alternative Recommendation:

Time Sensitivity: Soft implementation is scheduled for March, 2013.

Resolution Date: January 8, 2013

Estimated Presentation Time: -0- minutes

Budget Information (if applicable) NA:

Local Preference Policy: Applies Exempt x

Explanation:

ORDINANCE NO.

AN ORDINANCE AMENDING THE CEDAR RAPIDS MUNICIPAL CODE BY ADOPTING A NEW CHAPTER 22A, ENTITLED "NUISANCE PROPERTIES," WHICH DEFINES AND PROHIBITS NUISANCE PROPERTIES AND PRESCRIBES ADMINISTRATIVE PROCESSES FOR IMPOSING CHARGES ASSOCIATED WITH CITY SERVICES TO NUISANCE PROPERTIES AND ASSESSING COSTS ASSOCIATED WITH ABATEMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR RAPIDS, IOWA, AS FOLLOWS:

Section 1. The Cedar Rapids Municipal Code is hereby amended by creating Chapter 22A consisting of the Nuisance Property Abatement Program, as follows:

Chapter 22A
Nuisance Properties

Sections:

- 22A.01 Statement of Public Policy
- 22A.02 Definitions
- 22A.03 Nuisance Property
- 22A.04 Prohibitions
- 22A.05 Inspection of premises
- 22A.06 Finding of Violation; Nuisance Property Abatement Plan
- 22A.07 Notice of Violation—Contents
- 22A.08 Founded Calls for Service Charged to Nuisance Property
- 22A.09 Emergency Abatement
- 22A.10 Corrective Action by the City; Collection of Costs
- 22A.11 Appeals of Administrative Decisions or Actions
- 22A.12 Alternative Means of Enforcement
- 22A.13 Service of Notice

22A.01 Statement of Public Policy.

The City of Cedar Rapids has an interest in ensuring a higher quality of life for its citizens, the preserving property values and controlling the costs of taxpayer funded services such as police, fire and property code enforcement. In furtherance of that interest, the City seeks to ensure that properties within the City limits are well maintained and are not resorted to for purposes of unlawful conduct or conduct which disturbs the peaceable use of surrounding properties. Accordingly, it is the policy of the City that properties which are shown to be Nuisance Properties as defined by this Chapter shall be subject to the abatement process and charges set forth herein.

22A.02 Definitions.

As used in this Chapter, the following terms shall have the following meanings:

- a. "Abate" means to prevent and/or eliminate.
- b. "City Manager" means that person employed by the City as its City Manager or designee of that person.
- c. "Call for Service" means any occasion on which the City goes to a Property for purposes of suspected Nuisance Activity, regardless of which City Department or Departments respond to the incident.
- d. "Corrective Action" means any action taken with respect to a Nuisance Property for the purpose of Abating Nuisance Activity.
- e. "Health, Environmental or Solid Waste violation" means a violation of Chapter 21, Chapter 24, Chapter 25, or Chapter 29 of the Cedar Rapids Municipal Code.
- f. "Founded Nuisance Activity" means an incident or incidents of Nuisance Activity which the City finds probable cause to have occurred. Incidents of domestic violence, as defined by Iowa Code Chapter 562A, may be categorized as Founded, but they shall not be a factor when determining whether a property meets the criteria for a Nuisance Property designation, or whether a penalty shall be imposed for failing to take Corrective Action.
- g. "Interested Party" means a Property Owner, resident, tenant, occupant or person in possession or control of a property.
- h. "Nuisance Activity" means conduct giving rise to the conditions, events, and/or situations described in section 22A.03.
- i. "Nuisance Property" means a Property which meets the criteria set forth in section 22A.03.
- j. "Nuisance Property Abatement Plan" means that written plan which is developed by a Property Owner, whether or not it is developed in consultation with the Nuisance Property Abatement Coordinator, pursuant to which the Property Owner undertakes Corrective Action at a Nuisance Property.
- k. "Nuisance Property Abatement Coordinator ("NPAC") " is the City official charged with the administration and enforcement of this Chapter, or any duly authorized representative thereof.
- l. "Permittee" means a person present on a particular property where an Interested Party has allowed, consented to, or otherwise acquiesced in that person's presence, and shall include a person whose presence the Interested Party has failed to prevent or remove.

- m.. "Property" means any real estate, including land, and that which is affixed, incidental, or appurtenant to the real estate. For Property consisting of more than one dwelling unit, the term Property may refer to a particular unit or to the portion of the Property on which Nuisance Activity has occurred or is occurring. Property may also include areas used in common by all units of the Property, including without limitation, other structures erected on the Property and areas used for parking, loading, and landscaping.
- n. "Property Owner" means the legal titleholder as shown by the records of the Linn County Auditor, unless there is a recorded contract for sale of the Property, in which case it means the contract purchaser.
- o. The phrase "within one thousand feet of the Property" means the distance measured from the central point of any Nuisance Activity to the nearest point along the parcel line for the Property with which the Interested Party or Permittee is associated. For purposes of this Chapter, the Property of an Interested Party or Permittee who is not responsible for the Founded Nuisance Activity shall not be subject to Section 22A.03.

22A.03 Nuisance Property. Property shall be deemed Nuisance Property upon a determination by the NPAC that any one or more of the following subsections is true with respect to the Property:

a. One or more of the following Founded Nuisance Activities have occurred upon the Property or within one thousand feet of the Property within a period of twelve consecutive months, whether committed by an Interested Party or Permittee(s) of an Interested Party

1. Manufacture or delivery of a controlled substance in violation of Iowa Code Chapter 124;
2. Kidnapping as defined in Iowa Code Chapter 710;
3. Arson as defined in Iowa Code Chapter 712;
4. Burglary as defined in Iowa Code Chapter 713;
5. Robbery as defined in Iowa Code Chapter 711;
6. Sex abuse as defined in Iowa Code Chapter 709;
7. Intimidation with a Dangerous Weapon as defined in Iowa Code Section 708.6;
8. Willful injury as defined in Iowa Code Section 708.4;
9. Sexual exploitation of a minor in violation of Iowa Code Section 728.12;
10. Felony gambling in violation of Iowa Code Chapter 725;

11. Felony criminal mischief as defined in Iowa Code Chapter 716;
12. Animal contests in violation of Iowa Code Chapter 717D; and
13. Violation of Cedar Rapids Municipal Code section 22.01(a)(2), concerning certain nuisances.

14. Violation of Cedar Rapids Municipal Code section 23.21 concerning Dangerous Animals.

b. Two or more of the following Founded Nuisance Activities have occurred upon the Property or within one thousand feet of the Property within a period of twelve consecutive months, whether committed by an Interested Party or Permittee(s) of an Interested Party:

1. Possession of a controlled substance in violation of Iowa Code Chapter 124;
2. Possessing or carrying a dangerous weapon as defined in Iowa Code Section 724;
3. Riot as defined in Iowa Code Section 723.1;
4. Serious or aggravated misdemeanor criminal mischief as defined in Iowa Code Chapter 716;
5. Prostitution as defined in Iowa Code Section 725.1;
6. Serious or aggravated misdemeanor assault as defined in Iowa Code Chapter 708;
7. Serious or aggravated misdemeanor theft as defined in Iowa Code Chapter 714;
8. Misdemeanor gambling as defined in Iowa Code Chapter 725;
9. False imprisonment as defined in Iowa Code Section 710.7;
10. Failing to secure or keep secure a structure in accordance with Chapter 29 of the Cedar Rapids Municipal Code and this code;
11. An unpermitted or illegal use under Chapter 32 of the Cedar Rapids Municipal Code;
12. Unlawful discharge of any device in violation of Section 63.10A (c), of the Cedar Rapids Municipal Code;

13. A violation of Section 62.33 of the Cedar Rapids Municipal Code concerning Disorderly Houses;

14. Failure to disperse from an unlawful assembly as defined in Iowa Code Section 723.3.

c. Three or more of the following Founded Nuisance Activities have occurred upon the Property or within one thousand feet of the Property within a period of twelve consecutive months, whether committed by an Interested Party or Permittee(s) of an Interested Party:

1. A Health, Environmental, or Solid Waste violation as defined herein;
2. Unlawful assembly in violation of Iowa Code Section 723.2;
3. Defacing City Property and Graffiti as prohibited by Section 64.01, and/or Section 64.14, and/or Chapter 29 of the Cedar Rapids Municipal Code;
4. Simple misdemeanor assault in violation of Iowa Code Chapter 708;
5. Violation of Section 23.06, of the Cedar Rapids Municipal Code regarding Animal Noise.

d. When any of the following occur upon the Property or within one thousand feet of the Property within a period of twelve consecutive months, except as otherwise specified, whether caused by an Interested Party or Permittee(s) of an Interested Party:

1. The property is placarded pursuant to Chapter 29 Housing Code of the Cedar Rapids Municipal Code, except when such placard is due solely to utility discontinuance for nonpayment of utility bill(s) by a tenant.
2. A second "no show" trip charge has been imposed in accordance with Chapter 29 Housing Code of the Cedar Rapids Municipal Code.
3. The City mows the property two or more times in a calendar year for an owner in violation of Chapter 21 and / or Chapter 29 of the Cedar Rapids Municipal Code.
4. The City removes snow from the sidewalk two or more times in a six month period for an owner in violation of Chapter 9 of the Cedar Rapids Municipal Code.
5. The City removes junk, debris, and/or solid waste from the property two or more times in a twelve month period for an owner in violation of Chapter 22 and/or Chapter 29 of the Cedar Rapids Municipal Code.
6. A violation of Chapter 29 of the Cedar Rapids Municipal Code(s) is prosecuted in Court and the Court rules in favor of the City.

7. A violation of Cedar Rapids Municipal Code Chapter 22 is prosecuted in Court and the Court rules in favor of the City.

Except where otherwise specified, the references in this section 22A.03 to provisions of the Iowa Code or the Cedar Rapids Municipal Code shall not be construed to mean that prosecution of the specific charge is required to proceed under this Chapter, nor shall it be construed to mean the Nuisance Activity must be proven beyond a reasonable doubt. Rather, in determining whether a Property is a Nuisance Property, the Nuisance Property Abatement Coordinator shall apply the criteria of this section using a preponderance of evidence as the standard of proof. Any determination pursuant to this section shall be subject to administrative appeal and judicial review as set forth in this Chapter.

22A.04 Prohibitions

The following are hereby prohibited by this Chapter:

- a. The creation or maintenance of or the failure to Abate a Nuisance Property.
- b. Interference, delay or hindrance of enforcement of this Chapter except to pursue appeal and/or review of administrative actions by the City Manager or NPAC.
- c. The termination of a lease agreement with a tenant or other retaliation against a tenant because that tenant notified or otherwise complained to law enforcement or other city officials that Nuisance Activity was occurring at the Property.

22A.05 Inspection of premises.

The City Manager is authorized to enter and remain upon private property to the extent reasonably necessary for the purpose of locating, identifying, investigating and documenting any Nuisance Activity as defined by this Chapter and, further, for the purpose of administering this Chapter, subject in any event to the limitations on that authority under other applicable law.

22A.06 Finding of Violation; Nuisance Property Abatement Plan

- a. Upon a threshold determination by the NPAC that a Property meets the criteria of section 22A.03 herein, the City shall cause a Notice of Violation to be served upon the Property Owner in the manner provided by this Chapter.
- b. Upon the issuance of a Notice of Violation, the Property Owner may submit a Nuisance Property Abatement Plan specifying the Corrective Action the Owner will take, including dates by which each Corrective Action shall be completed.
- c. The NPAC shall meet with any Property Owner who has submitted a Nuisance Property Abatement Plan to review the facts of the case and Corrective Action contemplated by the Plan.

- d. The submission of a Nuisance Property Abatement Plan may be the basis in for the NPAC, pursuant to section 22A.07, to postpone by 15 days the imposition of charges otherwise due under section 22A.08.

22A.07 Notice of Violation—Contents.

The Notice of Violation required by this Chapter shall contain:

- a. The location of the Nuisance Property in question;
- b. A description of what constitutes the violation of this Chapter;
- c. A statement that within 15 days following service of the Notice of Violation, the Property Owner shall be charged for future Founded Calls for Service to the Nuisance Property; provided, however, that if the Property Owner submits a Nuisance Property Abatement Plan, then the NPAC may postpone by 15 days the date that Founded Calls for Service will be billed to the Property Owner.
- d. A statement that pursuant to section 22A.11 of this Chapter, the Property Owner may seek administrative appeal and/or judicial review of the NPAC's determinations that the Property is a Nuisance Property and the Notice of Violation.

22A.08 Founded Calls for Service Charged to Nuisance Property

With respect to a Property for which a Notice of Violation has been duly served, the NPAC shall cause to be charged to the Property Owner all costs associated with Founded Calls for Service to the Property, beginning on the date specified in the Notice of Violation and continuing thereafter until the expiration of one year from the date on the Notice of Violation. This provision shall not be construed so as to preclude an additional determination under section 22A.03 that the Property is a Nuisance Property due to additional Nuisance Activity. In the event of such an additional finding under section 22A.03, the twelve month period shall run from date of the most recent Notice of Violation.

Notwithstanding the foregoing, the charges otherwise due under this section may be postponed by the NPAC in accordance with 22A.06(d) and 22A.07(c).

22A.09 Emergency Abatement.

If it is determined by the City Manager that an emergency exists by reason of the continuing presence or repeated occurrence of Nuisance Activity, the City may perform any action required under this Chapter to the extent reasonably necessary to Abate the Nuisance Activity constituting the emergency. This provision shall not be construed so as to impose any duty upon the City to take such action. Emergency action pursuant to this section may be taken without prior notice or hearing. Notice of emergency action shall be provided to the Property Owner, along with an opportunity for hearing as provided in this Chapter. Subject to the provisions of this Chapter concerning Appeals of Administrative Actions or Decisions, if the

amount shown by the statement has not been paid by the person within thirty days, it shall then be collected with, and in the same manner, as special taxes.

Section 22A.10 Corrective Action by the City; Collection of Costs.

- a. If a Property Owner who has been served with a Notice of Violation fails or refuses to prevent the recurrence of Nuisance Activity, and the City is capable of correcting or eliminating the Nuisance Activity, the City may take such lawful steps as are necessary and proper to Abate the Nuisance Activity upon 30 days' notice to the Property Owner. This provision shall not be construed so as to impose any duty upon the City to take such corrective action. In so doing, the City shall keep an accurate account of the costs incurred in correcting or eliminating the Nuisance Activity. The NPAC shall keep an itemized account of such costs. The salvage value, if any, of any item or items collected in connection with such action by the City shall be retained by the City and shall be applied as an offset against costs. In the event the salvage proceeds exceed the costs, any such excess shall be paid promptly to the Property Owner.
- b. In the event action is taken pursuant to this section, the NPAC shall mail to the Property Owner an itemized statement of the expenses incurred, minus any salvage value, to the Property Owner demanding payment of the expense. Subject to the provisions of this Chapter concerning Appeals of Administrative Actions or Decisions, if the amount shown by the statement has not been paid by the person within thirty days, it shall then be collected with, and in the same manner, as special taxes.

22A.11 Appeals of Administrative Decisions or Actions.

- a. Any person aggrieved by a decision or act of the City Manager or NPAC shall have the opportunity for hearing before a duly appointed hearing officer. Any aggrieved party may submit a request for a hearing which shall be in writing delivered to the NPAC. If said request is received within the time stated in the notice of the action or decision in question, the hearing shall be held pursuant to this section; any request for hearing received thereafter shall not entitle the requesting party to a hearing.
- b. Upon receipt of a timely request for hearing, the NPAC shall set a hearing to be held within 30 days from said receipt and, further, shall give at least 10 days' Notice to the requesting party of the time, date and location of said hearing. The hearing may be reset by agreement of the requesting party, the City and the hearing officer, as confirmed in writing, but in no event shall the hearing be held any later than 60 days after the date of the action or decision being appealed.
- c. At the time of hearing, the requesting party and NPAC shall be afforded the opportunity to present evidence and arguments. The formal rules of evidence and procedure shall not apply. Legal counsel shall not be required but shall be permitted.
- d. Within thirty days after the conclusion of an administrative hearing held pursuant to this section, the hearing officer shall make the following written findings which shall be

based on a preponderance of the evidence as the standard of proof, and the City shall serve Notice thereof upon the appealing party:

- i. Whether the determination under 22A.03 was correct; and
 - ii. Whether the action taken upon that determination was in accordance with all applicable law.
- e. Any decision rendered pursuant to this section shall be deemed a final agency action and subject to judicial review in accordance with Iowa law.
- f. Where there has been a request for an administrative hearing pursuant to this section or a petition for judicial review as provided by Iowa law, charges for calls for service and any other administrative fees imposed pursuant to this Chapter shall be recorded, but the due date therefor and collection thereof shall be suspended pending the final outcome of any administrative hearing and/or judicial review.

22A.12 Alternative Means of Enforcement.

Without negating, restricting or otherwise limiting any conditions or sanctions imposed pursuant to this Chapter, this Chapter may also be enforced by any lawful means including but not limited to the following:

- a. Prosecution as a simple misdemeanor in accordance with Chapter 1 of the Cedar Rapids Municipal Code and Chapter 364 of the Iowa Code.
- b. The filing of a Municipal Infraction in accordance with Chapter 1 of the Cedar Rapids Municipal and Chapter 364 of the Iowa Code.

22A.13 Service of Notice.

Except where expressly provided otherwise, the service of notice required under this Chapter shall be deemed effective at such time as the Notice is:

- a. Delivered personally to the Owner; or
- b. Delivered personally to an individual residing at the same address as the Owner provided that said individual is at least 18 years of age;
- c. Sent by certified or first-class mail addressed to the last known address of the Owner;
or
- d. Posted in a conspicuous place on the Property in question, but only in cases where the notice is returned showing that the letter was not delivered.

Section 2. Severability

If any section, subsection, sentence, clause or phrase of this ordinance or chapter as codified is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or chapter. The City Council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion hereof would be subsequently declared invalid or unconstitutional

Section 3. Code on File.

An official copy of the Nuisance Code hereby adopted, including a certificate by the City Clerk as to its adoption and the effective date thereof, is on file in the office of the City Clerk in City Hall, and shall be kept there on file and copies shall be available for public inspection.

Section 4. Effective Date this ordinance shall take effect after passage and publication as provided by law.

Introduced this 18th day of December, 2012.

Passed this ____ day of _____, 2013.