

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2013-6

No. 100

AN ORDINANCE IN AMENDMENT OF CHAPTER 16, ARTICLE I OF THE CODE OF ORDINANCES, ENTITLED: "IN GENERAL," AS AMENDED

Approved March 18, 2013

Be it ordained by the City of Providence:

SECTION 1. Chapter 16, Article 1, Section 16-22 is hereby amended as follows:

Sec. 16-22. – Chronic nuisance properties

(a) Definitions.

- . 1) "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the Chief of Police determines is necessary in the interest of the general health, safety and welfare of the community.
- . 2) "Chief of Police" means the Chief of Police or his or her designees.
- . 3) "Control" means the power or ability to direct or determine conditions, conduct, or events occurring on a property.
- . 4) "Chronic nuisance property" means:
 - i. a property on which two or more Nuisance Activities exist or have occurred during any six month period; or
 - ii. a property on which a search warrant has been issued and/or executed two (2) or more times within a twenty-four (24) month period related to the illegal possession, manufacture or delivery of a controlled substance or related offenses as defined in R.I.G.L. 21-28.
- . 5) "Nuisance activity" includes the following:
 - i. Any homicide pursuant to R.I.G.L. 11-23; or
 - ii. any illegal possession, manufacturing or delivery of a controlled substance or related offense pursuant to R.I.G.L. 21-28; or

- iii. any prostitution, permitting prostitution, or promoting, advancing or profiting from prostitution pursuant to R.I.G.L. 11-34.1; or
 - iv. any weapons violations pursuant to R.I.G.L. 11-47; or
 - v. any organized criminal gambling pursuant to R.I.G.L. 11-51
 - vi. Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a person's household or any guest or other individual under the person's control, shall not be considered "nuisance activity" for the purpose of declaring a property a "chronic nuisance property," if the person or immediate member of the person's family is a victim of that domestic violence, dating violence, or stalking.
- 6) "Owner" means any person who, alone or with others, has title or interest in any property.
 - 7) "Person" means an individual, group of individuals, corporation, partnership, association, club, company, business trust, joint venture, organization, or any other legal or commercial entity or the manager, lessee, agent, officer or employee of any of them.
 - 8) "Person in charge" of a property means the Owner and, if different than the owner, any other person in actual or constructive possession of a property, including but not limited to, a lessee, tenant, occupant, agent, or manager of a property under his or her control.
 - 9) "Property" means any land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof.

(b) Violation. Any property within the City of Providence that is a Chronic Nuisance property is in violation of this Chapter and subject to its remedies. Owners and other Persons in Charge who permit property to be a Chronic Nuisance property shall be in violation of this chapter and subject to its remedies. Any Owner who fails to comply with section (d) is in violation of this chapter and is subject to penalties pursuant to section (f).

(c) Declaration of Chronic Nuisance Property and Procedure.

- 1) The Chief of Police may declare that a property is a Chronic Nuisance property, as defined in this section. The Chief of Police will provide written notice of this declaration to the Person in Charge of the property. The notice shall be sent by first class mail or personally served, and a copy shall be sent by certified mail. The notice will contain the following:
 - i. the street address or a legal description sufficient for identification of the property; and
 - ii. a declaration that the Chief of Police has determined the property has become a Chronic Nuisance property with a concise description of the nuisance activities that exist or that have occurred; and

- iii. a notice that the Persons in Charge of the property are subject to monetary penalties as set forth in section (f); and
- iv. a demand that the Owner and other Persons in Charge respond to the Chief of Police within seven days of service of the notice to discuss a course of action to correct the nuisance; and
- v. a notice that, if the Person in Charge does not respond to the Chief of Police as required in this section, or if the matter is not voluntarily corrected to the satisfaction of the Chief of Police, the City may file an action to abate the property as a chronic nuisance property pursuant to section (g) and/or take other action against the property or person in charge.

- . 2) When a notice is issued pursuant to this section to a Person in Charge, other than an Owner or an Owner's agent, who has permitted a property to become a chronic nuisance property, a copy of such notice shall also be sent by first class mail or personally served on the owner of the property, and a copy shall be sent by certified mail.
- . 3) If the Owner or Person in Charge responds as required by the notice and agrees to a course of action to abate the nuisance activities, a written correction agreement conforming to the requirements of section (e) shall be executed.
- . 4) If the agreed course of action does not result in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of issuance of the notice, or within such longer period as permitted by the Chief of Police in writing or the person in charge fails to respond as required by the notice, the Chief of Police may refer the matter to the City Solicitor's office for initiation of proceedings pursuant to section (g).

(d) Owner Cooperation. An owner who receives a copy of a notice pursuant to section (c) shall promptly take all reasonable steps requested in writing by the Chief of Police to assist in abatement of the nuisance property. Such reasonable steps may include the owner taking all acts and pursuing all remedies, including pursuing eviction of the person in charge, that are (1) available to the owner pursuant to any lease or other agreement, and (2) consistent with state and local laws.

(e) Corrections Agreement. A correction agreement is a contract between the City of Providence and the Owner and/or Person in Charge of the Chronic Nuisance property in which the Owner and/or Person in Charge agree(s) to promptly take all lawful and reasonable actions, which shall be set forth in the agreement to abate the nuisance activities within a specified time and according to specified conditions. The agreement will be signed by the Person in Charge and, if different, the Owner. The agreement will include the following:

- . 1) the name and address of the Owner and/or Person in Charge of the property; and
- . 2) the street address or a description sufficient for identification of the property, building, structure, or land upon or within which the nuisance is occurring; and

- . 3) a description of the nuisance activities; and
- . 4) the necessary corrective action to be taken, and a date or time by which correction must be completed; and
- . 5) an agreement by the Owner and/or Person in Charge that the City may inspect the property as may be necessary to determine compliance with the correction agreement; and
- . 6) an agreement by the Owner and/or Person in Charge that the City may abate the nuisance and recover its costs and expenses and monetary penalties pursuant to this chapter from the person in charge for the nuisance if the terms of the correction agreement are not met; and
- . 7) when a person in charge, other than an owner or an owner's agent, has permitted a property to be a chronic nuisance property, an agreement by the owner to promptly take all acts and pursue all remedies requested by the Chief of Police pursuant to section (d).

(f) Fines. Except as provided in this section, in addition to any other sanction or remedial procedure that may be available, from the time that notice is issued pursuant to section c(1), the Person in Charge will be subject to a penalty for the violation of this ordinance of up to \$500.00. Each and every day subsequent to the notice issued pursuant to section c(1) will constitute a new violation of this ordinance until the Chief of Police confirms that the property is no longer a chronic nuisance. If the agreed course of action results in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of the notice issued pursuant to section c(1), or such longer period allowed by the Chief of Police pursuant to section c(4), the matter will not be referred to the City Solicitor's office and the Person in Charge will not be subject to any penalty pursuant to this Chapter. An owner who fails to comply with section d. is subject to a civil penalty of up to \$25,000. All parties found to be in violation of this section shall be jointly and severally liable for all monetary penalties and/or fines. Proceeds from these fines shall be deposited in a restricted receipts account designated for nuisance abatement in the City.

(g) Enforcement. Upon referral pursuant to section (c). the City Solicitor may initiate an action in any court of competent jurisdiction to abate a Chronic Nuisance property, to impose penalties pursuant to this chapter, to seek alternative remedies under city or state laws and seek any other relief authorized by law.

(h) Burden of Proof. In an action against a Person in Charge to abate a chronic nuisance property or to recover penalties authorized by this chapter, the City will have the burden of proof to show by a preponderance of the evidence that the property is a Chronic Nuisance property pursuant to this chapter. In an action against an Owner or Person in Charge to recover penalties authorized by section f, the City will have the additional burden to prove by a preponderance of the evidence that the owner failed to comply with section d. Copies of police incident reports and reports of other city departments documenting nuisance activities shall be admissible in such actions. Additionally, evidence of a property's general reputation and the reputation of persons residing in or frequenting the property shall be admissible in such actions.

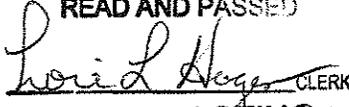
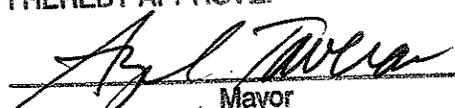
(i) Remedies. If the Court determines a Property is a Chronic Nuisance property pursuant to this chapter the court will order the Person in Charge to immediately abate nuisance activity from occurring on the property. The order may include damages as provided in this section and may include any of the following: Any order that will reasonably abate nuisance activities from occurring on the property, including authorizing the City to take action to abate nuisance activities from occurring upon the property if other court orders are not complied with or do not abate nuisance activity on the property and providing that the costs of such City action are to be paid for by the person in charge of the property; ordering the Owner to make reasonable expenditures upon the property, including the installation of secure locks, hiring private security personnel, increasing lighting in common areas, and using videotaped surveillance of the property and adjacent alleys, sidewalks, or parking lots; ordering all rental income from the property to be placed in an escrow account with the court for up to 90 days or until the Chronic Nuisance is abated; ordering the property transferred to a receiver, to be appointed by the court, who will be empowered to use the rental income to make reasonable expenditures related to the property in order to abate the Chronic Nuisance; ordering the property vacated, sealed, or demolished; ordering that the Chief of Police shall have the right to inspect the property to determine if the court's orders have been complied with; or any other appropriate remedy. The following damages may be included in order to effectuate the equitable remedy of abatement. A penalty for the violation of this ordinance of up to \$500.00 for each and every day subsequent to the notice issued pursuant to section c(1) until the Chief of Police confirms that the property is no longer a chronic nuisance. If the court finds that an owner failed to take all reasonable steps requested in writing pursuant to section (d).the court may impose a civil penalty up to \$25,000. Assessment of reasonable attorney fees and costs to the City of Providence.

(j) Additional Remedies. In addition to the remedies authorized by section (i). if, as part of its order abating a chronic nuisance property, the court orders a person in charge to cease renting or leasing a property, the court may order the person in charge to pay relocation assistance not to exceed \$3,300 to any tenant (1) who must relocate because of the order of abatement, and (2) the court finds not to have caused or participated in nuisance activities at the property.

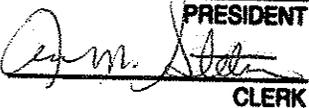
(k) Suspension of business license. In addition to any other remedy that is authorized by this chapter or other laws, upon the finding by a court that a property is a Chronic Nuisance property pursuant to this chapter, the person in charge is subject to the suspension or revocation of a business license or other license at such property issued by the City of Providence.

SECTION 2. Severability. If any section or portion of this ordinance is determined invalid or unconstitutional, that section or portion shall be deemed severable and all remaining sections or portions of this ordinance shall remain in full force and effect.

SECTION 3. Effective date. This ordinance shall take effect upon passage.

IN CITY COUNCIL
 FEB 21 2013
 FIRST READING
 READ AND PASSED

 CLERK
 I HEREBY APPROVE

 Mayor
 Date: 3/18/13

IN CITY
 COUNCIL
 MAR 07 2013
 FINAL READING
 READ AND PASSED

 PRESIDENT

 CLERK