

Proposed: 10/19/2015

ORDINANCE NO., 122-2015, *First Reading*

By Council Member

An Ordinance amending Chapter 553, "Nuisance Abatement," of the Codified Ordinances of Cleveland Heights; and declaring an emergency.

WHEREAS, properties that require ongoing attention from housing and fire inspectors, police officers, or other government agencies for complaints, which range from criminal activity to chronic disrepair, fracture neighborhoods, harm quality of life, and drain City resources; and

WHEREAS, Chapter 553, "Nuisance Abatement," of the Codified Ordinances of Cleveland Heights establishes procedures for the City to effectively correct or eliminate issues created by such problem properties; and

WHEREAS, proposed amendments have been made to strength the Nuisance Abatement procedures and Council has determined that said proposed amendments are in the best interests of the City and its residents.

BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. Chapter 553, "Nuisance Abatement," of the Codified Ordinances of Cleveland Heights shall be, and is hereby, enacted and adopted in its entirety to read as Exhibit A attached hereto and incorporated herein. A complete copy of Exhibit A is also on file with the Clerk of Council.

SECTION 2. The existing Chapter 553 shall be, and is hereby, repealed in its entirety.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need to implement said changes as soon as possible to assure that nuisances created by problem properties are abated as soon as possible. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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DENNIS R. WILCOX, Mayor
President of the Council

TOM RAGUZ
Clerk of Council

PASSED:

**CHAPTER 553
ABATEMENT OF NUISANCES**

553.01 DEFINITIONS.

(a) a “Nuisance” means

(1) an unreasonable interference with a right common to the general public. Unreasonable interference includes those acts that significantly interfere with public health, safety, peace, comfort, or convenience conduct that is contrary to a statute, ordinance, or regulation or conduct that is of a continuing nature or conduct which has produced a permanent or long lasting effect upon the public right, an effect of which the actor is aware or should be aware;

(2) any weeds or any grass growing upon a parcel of land and/or any abutting treelawn that is six (6) inches or higher in height or any vegetation that obstructs views compromising safe ingress or egress or otherwise impedes traffic, including pedestrian traffic, on any public right of ways; treelawn means the landscaped area between the sidewalk and the paved portion of a street;

(3) any deterioration of structural materials or lack of repair or maintenance of a building, structure or real estate that is a hazard to the health, safety or welfare of its occupants or the public or is or, if not abated, will become a blighting or deteriorating factor in the neighborhood which impairs or adversely affects the value of neighboring property, including deterioration of sidewalks or vegetation, an unsecured vacant structure, and abandoned, unusable personal property or other debris;

(4) the following activities committed on properties in the City:

- (A) Unreasonable noise and other acts of disorderly conduct in violation of Section 509.03 or substantially equivalent state laws;
- (B) A felony drug activity in violation of Ohio Revised Code Chapter 2925 or substantially equivalent federal laws;
- (C) Any drug abuse offense in violation of Sections 513.03, 513.05, 513.07, or 513.08 or substantially equivalent state laws;
- (D) Assault in violation of Section 537.03 or substantially equivalent state laws;
- (E) Littering and/or maintenance of litter in violation of Sections 527.05, 527.12, 527.13, 1351.29 and/or 1369.07 or substantially equivalent state laws;
- (F) Barking or howling animals in violation of Section 505.04 or substantially equivalent state laws;
- (G) Keeping a vicious dog on the premises, on a permanent or temporary basis, or allowing such a dog to remain on the premises, in violation of Section 505.091 or substantially equivalent city or state laws as amended from time to time; or

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- (H) Any of the following activities, when conducted by a resident or occupant of a premises against a person who resides within 1,000 feet of the resident or occupant or against the property of such a person:
 - i. A theft offense in violation of Sections 545.05 or 545.08 or substantially equivalent state laws;
 - ii. An offense against property in violation of Sections 541.02, 541.03, 541.04, 541.05, 541.051, 541.06 or 541.08 or substantially equivalent state laws;
 - iii. An offense against person in violation of Sections 537.03, 537.04, 537.05, 537.051, 537.06, 537.07, 537.08, 537.09, 537.10 or 537.11 or substantially equivalent state laws; or
 - iv. Littering in violation of Section 527.12 or substantially equivalent state laws.
- (I) Commercial parties in residential districts in violation of Section 509.09 or substantially equivalent state laws.

The above references to sections of the General Offenses Code and state and federal laws should not be interpreted to mean that a prosecution of the specific charge is a necessary prerequisite to an action under this Chapter nor shall it be interpreted to mean that proof of the action beyond a reasonable doubt is required. Nothing in this Chapter shall be construed in a manner to penalize victims of domestic violence or otherwise discourage victims of domestic violence to seek law enforcement assistance.

(5) Actions committed by a juvenile occurring on properties in the City that would constitute an offense listed in Section 553.01(a)(4) if committed by an adult; or

(6) Any designation of a nuisance by city ordinance or resolution, state law, or a court of law; or any ongoing violation of state or city law that unreasonably interferes with a right common to the general public.

(b) “Responsible Party” means the owner of the property. If the property is rented or occupied by another party and the City Manager or designee has determined that the renter or occupant may be creating or otherwise contributing to the Nuisance, then the renter or occupant of the property is also the Responsible Party.

553.02 NUISANCE ABATEMENT BOARD OF REVIEW

There is hereby created a Nuisance Abatement Board of Review (“Board”), consisting of the Chairperson of the Public Safety and Health Committee of Council or a member of that committee, and the City Manager or designee, and a member of the City’s Community Relations Division appointed by the City Manager. The Board shall have jurisdiction to hear appeals from notices and orders issued pursuant to this Chapter. The presence of two (2) members shall constitute a quorum. Any action of the Board shall require two (2) affirmative votes.

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553.03 AUTHORITY OF CITY OFFICIALS

Whenever there shall be done or exist within the City any act, thing, use, or condition of a kind which is defined as a Nuisance pursuant to this Chapter, the City Manager or the designee is authorized and directed promptly to cause its abatement as hereinafter provided.

As set forth herein, should the City Manager or designee determine that razing a property or structure is the best method to abate a Nuisance, Council first shall declare said property or structure a Nuisance prior to the issuance of an order to raze.

As set forth herein, should the City Manager or designee determine that revocation of a Certificate of Occupancy or Certificate of Business Occupancy is the best method to abate a Nuisance, Council first shall declare said property or use of a property a Nuisance prior to the issuance of an order to revoke.

553.04 RELATIONSHIP TO OTHER LAWS

The authority to abate Nuisances granted hereby and the procedures set forth herein shall be in addition to and shall not limit the authority to abate Nuisances or take any other action granted in other city ordinances, resolutions, state law, or courts of law.

553.05 PROCEDURES TO ABATE NUISANCES INVOLVING VEGETATION

The following procedures shall apply to the abatement of a Nuisance as defined by Section 553.01(a)(2):

(a) It shall be the responsibility of each owner of property within the City to maintain their property and abutting treelawns in a manner that prevents any weeds or grass from growing six (6) inches or higher in height and that prevents any vegetation from obstructing views compromising safe ingress or egress or otherwise impeding traffic, including pedestrian traffic, on any public right of ways. If the owner does not cut or destroy, or cause to be cut or destroyed, vegetation as required herein, the City Manager or designee is authorized to cause said Nuisance to be cut. Such abatement may be issued by the City Manager or designee without reporting said Nuisance to Council in the manner provided herein.

(b) The owner of property determined to be in violation of this Section shall be served a written notice upon the first identified violation per calendar year. Such notice shall state that the owner has two (2) calendar days to cut or destroy, or cause to be cut or destroyed, any weeds or grass that is six inches or higher in height or any vegetation that obstructs views compromising safe ingress or egress or otherwise impedes traffic, including pedestrian traffic, on any public right of ways. Further, the notice shall conspicuously state that failure to comply will result in the City causing the work to be done and the costs to be assessed against the property in the manner provided by this Section. The notice shall also conspicuously state that any subsequent violations of this Section concerning the same property during the same calendar year shall require no further notice.

(c) When it is deemed necessary for the City to cut vegetation, in accordance with the provisions of this Section, the owner shall be charged at the rate of two hundred dollars (\$200.00) per hour or portion thereof, or the actual cost of the work, whichever is larger. The

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minimum charge shall be two hundred dollars (\$200.00). Within thirty (30) calendar days after such work is performed, the City shall serve an order to the owner to pay the cost of such cutting, which shall include a statement of the amount of costs incurred and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay within thirty (30) calendar days or timely appeal will result in the charge being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(d) If within thirty (30) calendar days after the mailing of the order, the cost is neither paid nor timely appealed, it may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected or the City may seek recovery of such costs by civil action against the property owner involved.

553.06 PROCEDURES TO ABATE STRUCTURAL OR MAINTENANCE NUISANCES

The following procedures shall apply to the abatement of a Nuisance as defined by Section 553.01(a)(3):

(a) The City Manager or designee, upon finding that a Nuisance as defined by Section 553.01(a)(3) exists, may cause written notice and an order to abate to be served upon the Responsible Party.

(b) This notice and order shall set forth:

- (1) the nature of the Nuisance;
- (2) an order to abate the Nuisance and a statement of the act or acts to be taken to abate it;
- (3) the estimate of the cost of abating the same if done by the City;
- (4) a reasonable time, of at least fourteen (14) calendar days, within which the owner shall abate the Nuisance or pay the estimate cost to the City;
- (5) a statement explaining the procedures of the appeals process, as set forth in Section 553.10 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 Fiscal Officer for collection as other taxes and assessments are collected.

(c) Such notice and order to abate may be issued without reporting same to Council unless the City Manager determines that razing a building or structure is the best method to abatement the Nuisance. In such cases, Council shall first declare a building or structure a Nuisance before it may be ordered to be razed in accordance with Section 553.03 herein.

(d) If said Nuisance is not abated in the manner and/or timeframe established by the notice and order to abate or if the notice and order is not timely appealed, the City Manager or designee has the authority to abate said Nuisance. Within thirty (30) calendar days of the work being performed, the City shall serve the Responsible Party an order to pay costs, which shall include a statement of the amount of costs incurred and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay within thirty

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(30) calendar days or timely appeal will result in the charge being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(e) If within thirty (30) calendar days after the mailing of the order, the cost is neither paid nor timely appealed, it may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected or the City may seek recovery of such costs by civil action against the property owner involved.

553.07 PROCEDURES TO ABATE NUISANCES INVOLVING CRIMINAL ACTIVITY;
COSTS OF ENFORCEMENT.

The following procedures shall apply to the abatement of a Nuisance as defined by Subsections 553.01(a)(4) or (5):

(a) The City Manager or designee shall have full authority to abate Nuisances as defined by Subsections 553.01(a)(4) or (5) in accordance with law including, but not limited to, the use of administrative and law enforcement action.

(b) All administrative and law enforcement costs incurred by the City in abating any such Nuisances may be charged to the Responsible Party under the procedure set forth herein if two (2) or more of the Nuisances, as defined by Subsections 553.01(a)(4) or (5), have occurred on the same property within a twelve (12) month period or one (1) felony drug activity in violation of Ohio R.C. Chapter 2925 or a substantially equivalent federal law has occurred on the property.

(c) Within thirty (30) calendar days of the most recent commitment of an activity listed in Subsections 553.01(a)(4) or (5), the City shall give notice to the Responsible Party to pay such administrative and law enforcement costs, which notice shall be accompanied by an order to pay within thirty (30) calendar days, a statement of the amount of costs incurred, and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay or timely appeal will result in the cost being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.

(d) If within thirty (30) calendar days after the mailing of the notice and order, the cost is neither paid nor timely appealed, it may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected or the City may seek recovery of such costs by civil action against the property owner involved.

(e) If the City Manager or designee finds that a use of a property constitutes a Nuisance due to repeated criminal activities listed in Subsections 553.01(a)(4) or (5), the official shall report such facts to Council which may thereupon declare such use to be a Nuisance. The City Manager or designee shall determine what reasonable activities are necessary to abate such nuisance including, but not limited to, the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy.

Upon such finding and declaration, the City Manager or designee shall proceed in the manner provided in Subsections 553.06 (a), (b), (d) and (e), unless the method of abatement is the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business

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Occupancy. In such event, the City Manager or designee shall cause the service of a written notice and an order to revoke the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy. The order shall set forth an explanation of the appeals process set forth in Section 553.10 herein. If the order is not timely appealed, the certificate shall be revoked.

553.08 PROCEDURES TO ABATE OTHER NUISANCES.

If the City Manager or designee finds the existence of a Nuisance as defined by Section 553.01(a)(1) or Section 553.01(a)(6), such official shall report such facts to Council which may thereupon declare such use, condition, building, or structure to be a Nuisance. The City Manager or designee shall determine what reasonable activities, repairs, or maintenance are necessary to abate such nuisance including, but not limited to, the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy.

Upon such finding and declaration, the City Manager or designee shall proceed in the manner provided in Subsections 553.06 (a), (b), (d) and (e), unless the method of abatement is the revocation of the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy. In such event, the City Manager or designee shall cause the service of a written notice and an order to revoke the Responsible Party's Certificate of Occupancy or Certificate of Business Occupancy. The order shall set forth an explanation of the appeals process set forth in Section 553.10 herein. If the order is not timely appealed, the certificate shall be revoked.

553.09 SERVICE OF NOTICE AND ORDER TO ABATE

Unless otherwise noted, all notices and orders issued pursuant to this Chapter shall be served by delivering it personally to the Responsible Party or leaving it at the Responsible Party's usual place of business or residence, or by posting it in a conspicuous place on the real estate, building, or structure involved, or by first-class mail to the last known address of the Responsible Party, or by publishing it once in a newspaper of general circulation within the City if it cannot be served in any of the other ways above mentioned.

553.10 APPEAL BEFORE THE NUISANCE ABATEMENT BOARD OF REVIEW

(a) Any person issued a notice or order pursuant to this Chapter may appeal by requesting a hearing before the Nuisance Abatement Board of Review to review that notice or order.

(b) An appeal and request for a hearing must be made in writing and received by the Director of Law within fourteen (14) calendar days of the date of the service of the notice or order. Filing of the notice of appeal shall stay the order being appealed during the pendency of the appeal unless immediate abatement of the Nuisance is necessary to protect the health, safety, or welfare of the community. If no timely appeal is received, it will be conclusively presumed that the Nuisance occurred and the order shall be final. Any associated costs shall be certified to the County Fiscal Officer as a lien against the property at issue and any subject Certificates of Occupancy or Certificates of Business Occupancy shall be revoked.

(c) The appeal hearing shall be held within a reasonable time from receipt of the request to appeal. The appellant shall be given at least seven (7) calendar days' notice of the date, time, and location of the hearing and shall have the opportunity to present evidence to the

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Board and cross examine any sworn witnesses presented by the City. The City shall have the burden of proving the existence of Nuisance and/or the reasonableness of the notice or order by a preponderance of the evidence. The hearing shall proceed in a manner prescribed by the Board.

(d) After said hearing, the Board shall render a written decision affirming, modifying, or rejecting the notice or order. The Board is not bound by the original notice or order and may set forth its own remedy. The Board may order the City to revoke a Certificate of Occupancy or a Certificate of Business Occupancy, in addition to any additional remedies. The Board shall notify the appellant of the decision by first-class mail. If the determination includes payment of costs, the decision should include an order to pay said costs within thirty (30) calendar days and statement that failure to timely pay will result in certification of the costs to the County Fiscal Officer for collection as other taxes and assessments are collected. The City shall immediately revoke a Certificate of Occupancy or a Certificate of Business Occupancy after so ordered by the Board.

(e) A written decision shall not be found against an owner of a rental property who establishes by a preponderance of the evidence:

- (1) He or she had no knowledge of the Nuisance activities on the premises and could not, with reasonable care and diligence, have known of the Nuisance activities occurring on the premises; and
- (2) Upon receipt of notice of the occurrence of Nuisance activities on the premises, he or she promptly took all actions necessary to abate the Nuisance including, without limitation, compliance with the requirements of Ohio Revised Code Section 5231.17(C) and Ohio Revised Code Section 5231.04(A)(9).

(f) If within thirty (30) calendar days after the mailing of the Board's order, costs are not paid, said costs may be certified to the County Fiscal Officer for collection as other taxes and assessments are collected or the City may seek recovery of such costs by civil action against the property owner involved.

553.11 EMERGENCY

If it is determined by the City Manager or the Designee that an emergency exists by reason of the continuing presence of a Nuisance, the City may perform any action which may be required under this Chapter or other applicable state or federal law without prior notice or hearing.

Within thirty (30) calendar days of the action being performed, the City shall serve the Responsible Party an order to pay costs, which shall include a statement of the amount of costs incurred and an explanation of the appeals process set forth in Section 553.10 herein. The order shall additionally state that failure to pay within thirty (30) calendar days or timely appeal will result in the charge being certified to the County Fiscal Officer for collection as other taxes and assessments are collected.