



Office of the City Clerk

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Legislation Details (With Text)

File #: O2016-701
Type: Ordinance **Status:** Failed to Pass
File created: 2/10/2016 **In control:** City Council
Final action:
Title: Amendment of Municipal Code Titles 4 and 8 regarding penalty provisions for businesses declared as or cause of public nuisance
Sponsors: O'Shea, Matthew J., Laurino, Margaret
Indexes: Ch. 4 General Licensing Provisions, Ch. 4 Public Peace & Welfare
Attachments: 1. O2016-701.pdf

Date	Ver.	Action By	Action	Result
5/29/2019	1	City Council	Failed to Pass	
9/27/2017	1	Committee on Public Safety	Held in Committee	Pass
2/10/2016	1	City Council	Referred	

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Chapter 4-4 of the Municipal Code of Chicago is hereby amended by deleting the language stricken, as follows:

(Omitted text is not affected by this ordinance)

~~4-4-312 Businesses-Chronic illegal activities-premises.~~

~~The commissioner shall deny an application for a license when the premises identified in the application was found to be a chronic illegal activities premises under Section 8-4-087 within a three year period prior to the date of the application: provided that the commissioner may approve the application if the applicant agrees to enter into and comply with a plan of corrective action, subjected to the approval of the commissioner, that will abate the conditions that gave rise to the finding of a chronic illegal activities premises. The plan may include conditions upon the licensee's operation of the premises, including, but not limited to: providing security personnel, restricted hours of operation, providing outdoor lighting, the display of signs, providing trash pickup services or any other reasonable restrictions on the licensee's business practices.~~

~~Any licensee who fails to comply with all requirements of the approved plan of corrective action shall be fined not less than \$200.00 nor more than \$1,000.00 or have his license suspended or revoked for the first violation. For any subsequent violation, the license shall be revoked. Each day that such violation exists shall constitute a separate and distinct offense.~~

~~4-4-313 Businesses that are or cause a nuisance.~~

(Omitted text is not affected by this ordinance)

(e) The commissioner shall deny an application for a license when the premises identified in the

application was subject to a license suspension, revocation or a plan of corrective action pursuant to this section ~~or Section 4-4-312~~ within the three-year period prior to the date of the application; provided that the commissioner may approve an application if the applicant agrees to enter into and comply with the plan of action approved by the commissioner to abate any of the conditions which gave rise to undertaking a plan of corrective action, or the finding of a violation of this section; provided further for any premises which is ineligible for a license due to a license being revoked for cause at that location, no license shall be issued during of the term ineligibility provided in the code.

(Omitted text is not affected by this ordinance)

SECTION 2. Chapter 8-4 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

(Omitted text is not affected by this ordinance)

~~8-4-087 Chronic illegal activity premises.~~

{a) ~~Definitions. As used in this section, unless the context indicates otherwise:~~

~~"Chronic illegal activity premises" means any premises that is the subject matter of three or more calls for police service on three different days within any 90-day period resulting in (1) a case report documenting an investigation of illegal activity within the premises; or (2) enforcement action against any tenant or person associated with the premises for illegal activity occurring within the premises or within one block or one thousand feet of the premises. Provided, however, that any illegal activity reported to the police department by the building owner or the building owner's agent via the city's 9-1-1 emergency telephone system and incidents of domestic violence, as defined in the Illinois Domestic Violence Act of 1986, as amended, shall not be counted when determining whether a premises meets the definition of a chronic illegal activity premises.~~

~~"Corporation counsel" means the corporation counsel of the City of Chicago or the corporation counsel's designee.~~

~~"Enforcement action" means (1) the physical arrest of an individual; or (2) the issuance of a citation for a violation of law; or (3) a referral of charges by the police to the corporation counsel or other appropriate authority for prosecution.~~

~~"Executive director" means the executive director of emergency management and communications or the executive director's designee.~~

~~"Illegal activity" means any of the following activities, behaviors or conduct:~~

~~1-r.-Disorderly conduct within the meaning of Section 8-4-010 or any comparable federal, state or local law;~~

~~2. Gang loitering within the meaning of Section 8-4-015 or any comparable federal, state or local law;~~

~~& Narcotics-related loitering within the meaning of Section 8-4-017 or any comparable federal, state or local law;~~

~~4. Aggressive panhandling within the meaning of Section 8-4-025 or any comparable federal, state or local law;~~

~~Drinking in the public way within the meaning of Section 8-4-030 or any comparable federal, state or local law;~~

~~Trespassing within the meaning of Section 8-4-050 or any comparable federal, state or local law;~~

~~7-. Vandalism within the meaning of Section 8-4-060 or any comparable federal, state or local law;~~

~~& Public urination or defecation within the meaning of Section 8-4-081 or any comparable federal, state or local law;~~

~~9. Prostitution within the meaning of the Illinois Criminal Code, as amended, or any comparable federal, state or local law;~~

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~~4& Street solicitation for prostitution in violation of Section 8-8-060 or any comparable federal, state or local law;~~

~~44. Illegal gambling within the meaning of Chapter 8-12 of the Municipal Code of Chicago or any comparable federal, state or local law;~~

~~V2r. Illegal possession, delivery of or trafficking in controlled substance in violation of the Controlled Substances Act, as amended, or any comparable federal, state or local law;~~

~~Any violation of the Cannabis Control Act, as amended, or any comparable federal, state or local law;~~

~~VA-. Firearms, weapons or related offenses in violation of any provision of Chapter 8-20 or Chapter 8-24 of the Municipal Code of Chicago or any comparable federal, state or local law;~~

~~Excessive noise or vibration in violation of any provision of the Chicago Noise Ordinance, Chapter 8-32 of the Municipal Code of Chicago or any comparable federal, state or local law;~~

~~1& Any activity, behavior or conduct that constitutes a public nuisance under any provision of the Municipal Code of Chicago or any federal, state or local law;~~

~~XI-. Any offense set forth in the Illinois Criminal Code of 1961, as amended, or in Chapter 720 of the Illinois Compiled Statutes, as amended; and~~

~~1& The presence of debris, litter, garbage, rubble, abandoned or junk vehicles or junk appliances in violation of the applicable provisions of the Municipal Code of Chicago or any comparable federal, state or local law.~~

~~"Owner" has the meaning ascribed to the term in Section 13-4-010. The term "owner" includes the owner's agent and any person managing, operating or in control of the premises.~~

~~"Person associated with the premises" means any person who engages in any illegal activity while on the premises or within a reasonable period of time before or after entering, attempting to enter, intending to enter or leaving the premises.~~

~~"Premises" means any building, real estate or real property. The term "premises" includes all facilities and appurtenances within a building and all grounds, areas and facilities held out for use by the occupants of a building.~~

~~"Resolution agreement" means an agreement between the owner of a chronic illegal activity premises and the city setting forth specific measures that the owner or manager of the premises shall be required to take by a date certain to abate a nuisance under this section.~~

~~"Superintendent" means the superintendent of the department of police or the superintendent's designee.~~

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~~"Tenant" means any person entitled, by written or oral agreement or by a subtenancy approved by a landlord or by sufferance, to occupy a dwelling unit or other space within a building to the exclusion of others.~~

~~(fe) Chronic illegal activity-Public nuisance declared. Any premises that is a chronic illegal activity premises is hereby declared to be a public nuisance. Such public nuisance shall be subject to abatement in accordance with the requirements of this section. It shall be unlawful for any person (1) to maintain a public nuisance under this section or to cause such a public nuisance to be maintained on any premises under such person's ownership or control; or (2) to fail to comply with the terms of any resolution agreement or order of abatement issued under this section.~~

~~(e) (4) Procedures. If the executive director or superintendent determines that a premises meets the definition of a chronic illegal activity premises and is a nuisance under this section, the executive director or superintendent, as applicable, shall notify the owner of the premises and the corporation counsel in writing of such determination, and shall provide the owner with an opportunity to meet with appropriate city officials, which may include the corporation counsel, (a) to discuss the allegations contained in the notice and the need for nuisance abatement at the premises; and (b) to enter into a possible resolution agreement with the city to abate the nuisance activity at the premises identified in the notice. In addition, a courtesy copy of such notice shall be provided to the alderman of the ward in which the premises is located. The notice required under this subsection (c)(1) shall be served upon such owner (i) by first class mail or express mail or by overnight carrier at the owner's last known residence address or, if the owner is a business entity, at any address identified for its registered agent or at its principal place of business; or (ii) by personal service to the owner, including personal service upon an employee or agent of the owner at the premises identified in the notice or otherwise if such service is reasonably calculated to give the owner actual notice; or (iii) if such service cannot be made by either of (i) or (ii) above, by posting a copy of the notice on the front entrance of the building or other structure meeting the definition of a chronic illegal activity premises or, if there is no front entrance, in any other conspicuous place on the premises. Such notice shall contain the following information:~~

~~(A) a statement that the premises identified in the notice has been determined to be a chronic illegal activity premises and nuisance under this section;~~

~~(B) a street address, parcel number or legal description sufficient to identify the premises;~~

~~(G) a description of the illegal activities supporting the determination that the premises is a nuisance under this section, and the date on which the illegal activities comprising the nuisance occurred;~~

~~(O) the owner's opportunity to request in writing, by the date certain set forth in such notice or by any other agreed upon date, a meeting with appropriate city officials, which may i~~

include the corporation counsel, to discuss the allegations contained in the notice and the need for abatement measures at the premises. At such meeting(s), the owner may enter into a possible resolution agreement with the city to abate the nuisance activity at the premises identified in the notice;

(E) the owner's attorney is allowed to attend such meeting(s);

(F) the name and address of the city official to whom a written request for such meeting should be sent and the date certain by which such written request must be received by such city official;

(G) if the owner fails to meet with appropriate city officials in a timely manner or fails to enter into a resolution agreement with the city or otherwise fails to abate the

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nuisance under this section, the corporation counsel or other appropriate city official may institute an appropriate action in the department of administrative hearings or in a court of competent jurisdiction to abate such nuisance; and

(44) upon a finding of liability in the department of administrative hearings or in a court of competent jurisdiction, the penalties which shall attach for a violation of this ordinance, including, but not limited to, fines and liability to the city for any and all costs incurred by the city or its agents for police service, emergency service or any other city service reasonably related to such violation of this ordinance.

(2) If, after the requirements set forth in paragraph (1) of this subsection (c) have been met, the corporation counsel or any other appropriate city official determines that it is necessary or desirable to bring an action in the department of administrative hearings or in a court of competent jurisdiction to abate a nuisance under this section, written notice of such action shall be provided to the owner as required by law. If such action is brought in the department of administrative hearings, any evidence on which a reasonably prudent person would rely may be considered without regard to the formal or technical rules of evidence, and the presiding authority may rely on written official reports, affidavits and other business records submitted by police officers or other authorized city officials or city employees to determine whether a public nuisance under this section occurred. Upon a finding of liability under this section, the presiding authority shall issue an order of abatement directing the owner to implement a nuisance abatement plan at the premises. Such nuisance abatement plan shall be in writing; shall provide reasonable assurance that if the plan is implemented at the premises, the nuisance at such premises will be substantially abated or eliminated in its entirety; shall include an implementation schedule for each element of the plan; and shall contain the following elements, unless the executive director or superintendent, as applicable, or the presiding authority determines that such element is not required to substantially abate or eliminate in its entirety the nuisance at the premises: (i) installing and maintaining sufficient lighting at each point of entry to and exit from the premises and in designated common areas; (ii) installing and maintaining sufficient surveillance cameras at each point of entry to and exit from the premises and in designated common areas, illuminated in such a manner so as to identify persons entering or exiting the premises; (iii) maintaining the recordings from surveillance cameras for not less than 30 days after such recording occurs; and (iv) hiring sufficient licensed and insured security personnel to patrol the premises. In addition, such nuisance abatement plan may be required to include the following elements: installing metal detectors to screen persons visiting the premises; requiring persons to produce identification upon entering the premises; maintaining a registry of all persons entering the premises; maintaining an internal log or incident reporting system documenting the owner's response to specific incidents of illegal activity on the premises; displaying appropriate signage; providing trash pick-up services; installing soundproofing insulation or taking other steps to control noise; requiring the building owner, operator or a designated representative thereof to attend monthly CAPS meetings; and other reasonable and warranted measures to abate the nuisance at the premises.

(d) Penalties for violation - Cost recovery authorized. Upon a finding of liability in the department of administrative hearings or in a court of competent jurisdiction any person who violates subsection (b) of this section shall be fined not less than \$500.00 nor more than \$1,000.00 for each offense. Any person who violates any provision of this section other than subsection (b), including, but not limited to, any violation

~~on of any provision of a resolution agreement or order of abatement, shall be fined not less than \$200.00 nor more than \$500.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply. In addition to any fine or other penalty provided by law, and pursuant to the requirements of Chapter 1-20 of this Code, any person who violates~~

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~~any provision of this section, including, but not limited to, any violation of any provision of a resolution agreement or order of abatement, shall be liable to the city for any and all costs incurred by the city or its agent⁶ for police service, emergency service or any other city service reasonably related to such person's violation of any provision of this section.~~

~~(e) Construction of section. Nothing in this section shall be construed (1) to constitute an act of possession, ownership or control by the city over the applicable premises; or (2) to deny common law right to anyone to abate a nuisance at such premises; or (3) to affect the status of any ongoing city prosecution or other action related to such premises; or (4) to prevent the issuance of a citation to or arrest or prosecution of any person for any violation of the Municipal Code of Chicago or other applicable law at such premises; or (5) to permit at such premises any activity prohibited by law.~~

~~(f) Regulations. The executive director and superintendent shall have joint authority to promulgate rules and regulations necessary to implement the requirements of this section.~~

8-4-090 Drug and gang houses, houses of prostitution and other disorderly houses.

a) Any premises used for prostitution, illegal gambling, illegal possession^A or delivery of or trafficking in controlled substances, or any other activity that constitutes a felony, misdemeanor, business offense^A or petty offense under federal, state, or municipal law^A is hereby declared to be a public nuisance; provided that no public nuisance or violation of this section shall be deemed to exist unless: (i)(1) the property is used for more than one such offense within any six-month period^A or (ii)(2) the offense for which the property is used is punishable by imprisonment for one year or more.

(a-5) The following shall not provide, in whole or in part, a basis for a declaration under this section that a property is a public nuisance:

- 1) anv contact made to police or other emergency services with the intent of preventing domestic or sexual violence, or seeking an emergency response to domestic or sexual violence;
- 2) anv contact made to police or other emergency services by, on behalf of, or otherwise concerning an individual with a disability, where the purpose of the contact is related to that individual's disability;
- 3) anv incident of actual or threatened domestic or sexual violence against a tenant, a household member, a guest, or any other party that occurs in or on the premises of a dwelling unit: or
- 4) criminal activity or a local ordinance violation occurring in or on the premises of a dwelling unit that is directly relating to domestic violence or sexual violence.

b) Any person who owns, manages or controls any premises and who-ffl-: (1) encourages or permits an illegal activity described in subsection (a) that is not subject to an exception described in subsection (a-5) to occur or continue on such premises; or Wh(2) fails to implement reasonable and warranted abatement measures identified in the notice issued pursuant to subsection (e), or subsequently agreed to, or other abatement measures which successfully abate the nuisance within the 30-day period following the notice, or within any other agreed upon period, shall be subject to a fine according to the schedule set forth in subsection

(c). Each day that a violation of this section continues shall be considered a separate and distinct offense. No person shall be found in violation of (b)(tt)(2) of this section unless the city proves by a preponderance of the evidence that the abatement measures were reasonable and warranted, and that the defendant knowingly failed to implement them. A person may be found in violation of (b){t}{1} or (b){ti}{2} of this section regardless of whether an order of abatement is issued under subsection (d)_A or in violation of (b)ffl(D regardless of whether a notice has been given under subsection (e). A fine in accordance with subsection (c) may be assessed in a court of competent jurisdiction or in the buildings hearings division of the department of administrative hearings.

c) Upon a finding of liability under this ordinance, the defendant shall be fined-ffi: (1) not less than \$3,000.00 ~~and not~~ nor more than \$6,000.00 for any offense defined as a Class X felony by the Criminal Code of 1961, 720 ILCS 5, as amended (for purposes of this section, "Criminal Code"); (h)(2) not less than \$1,500.00 ~~and not~~ nor more than \$3,000.00 for any offense defined as a Class 1 felony by the Criminal Code; (w)(3) not less than \$700.00 ~~and not~~ nor more than \$1,400.00 for any offense defined as a Class 2 felony by the Criminal Code; (tv)(4) not less than \$500.00 ~~and not~~ nor more than \$1,000.00 for any offense defined as a Class 3 felony by the Criminal Code; (v)(5) not less than \$300.00 ~~and not~~ nor more than \$1,000.00 for any offense defined as a Class 4 felony by the Criminal Code; and (vt)(6) not less than \$200.00 ~~and not~~ nor more than \$1,000.00 for all offenses not otherwise specified.

d) The commissioner of buildings or other authorized representative of the city may bring an action to abate a public nuisance described by this section in a court of competent jurisdiction or in the buildings hearings division of the department of administrative hearings. The presiding authority shall issue an order of abatement upon a finding of liability under this section. The order of abatement shall require the defendant to take measures reasonably calculated to prevent the recurrence of the illegal activity. In ordering these measures, the presiding authority shall consider the magnitude of the harm caused by the nuisance, the value of the property, and the extent to which the defendant has failed to take effective measures to abate the nuisance. Those measures may include, but are not limited to, making improvements to real estate and installing lighting to enhance security, the hiring of licensed and insured security personnel, the hiring of a receiver, the initiation and execution of eviction proceedings against tenants engaged in illegal activity, or, at the request of the corporation counsel, the assignment or forfeiture to the city of all of the defendant's rights, title and interest in the real estate. Assignment or forfeiture of the defendant's rights, title and interest in the real estate shall be considered as an abatement measure only when the defendant has failed to abate a nuisance following an order issued pursuant to this paragraph, or has failed to abate a nuisance within 30 days of a notice issued pursuant to paragraph (e) of this section, and: ffl(d) a forcible felony as defined in Section 2-8 of the Criminal Code (720 ILCS 5/2-8) is committed on the premises^{TI} or (U)(2) two or more violations of the Illinois Controlled Substances Act or the Cannabis Control Act occur on the property on separate days within a one year period. The order of abatement may also authorize the issuance of ex parte administrative search warrants reasonably calculated to determine whether the nuisance has been abated or whether the order of the court or hearing officer has been obeyed. Any order of abatement issued by an administrative law officer under this ordinance is subject to enforcement pursuant to Section 2-14-100 of this Code. Actions brought pursuant to this section in the Circuit Court of Cook County may also be accompanied by the recording of a lis pendens notice against the property.

e) Whenever the commissioner of buildings, the superintendent of police^A or other authorized representative of the city reasonably believes that any premises constitutes a public nuisance as described in this section, he or she shall give written notice to the person who owns

or controls the premises. Such notice shall include, but not be limited to, stating that a nuisance exists and identifying reasonable abatement measures that must be taken within 30 days of the notice. The notice shall be in writing and may be served in person or sent by certified mail, return receipt requested. The notice shall

provide the recipient a reasonable opportunity to meet with a representative of the city to discuss the allegations in the notice and the need for abatement measures. Failure to implement the abatement measures requested in the notice, or those subsequently agreed to, within the 30-day period following the notice, or within any period subsequently agreed upon, comprises a violation of subsection (b){tt}(2) of this section.

f) For purposes of this section, "premises" includes any parcel of property and the building or structure, if any, which is situated on the property, and any portion of the public way that abuts the parcel of property when it is used in conjunction with the abutting property for the commission of illegal activity.

g) Any property assigned or forfeited to the city under this section may be disposed of as authorized by the city council.

(Omitted text is not affected by this ordinance)

Alderman, 39th Ward

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SECTION 3. This ordinance shall take effect upon passage and approval.