

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 16 ("NUISANCES"), ARTICLE 3 ("CRIMINAL NUISANCE ABATEMENT") OF THE OAK PARK VILLAGE CODE

WHEREAS, the Village of Oak Park ("Village") as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, Article VII, Section 6(a) of the Illinois Constitution of 1970, provides that the "powers and functions of home rule units shall be construed liberally," and written "with the intention that home rule units be given the broadest powers possible," *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992); and

WHEREAS, Section 11-60-2 of the Illinois Municipal Code, 65 ILCS 5/11-60-2, provides that the Village has the authority to "define, prevent and abate nuisances;" and

WHEREAS, pursuant to said statute and the Village's home rule authority, the Village Board has determined to adopt this Ordinance to expand its criminal nuisance abatement requirements to licensed businesses in the Village and adopt further amendments regarding criminal nuisances.

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

Section 1. Recitals Incorporated. The above recitals are incorporated herein as though fully set forth.

Section 2. Village Code Amended. Chapter 16 ("Nuisances"), Article 3 ("Criminal Nuisance Abatement") of the Oak Park Village Code is amended to delete the overstricken language and add the underlined language to read as follows:

16-3-1: DEFINITIONS:

For the purpose of this article, and the interpretation and enforcement thereof, the following terms, phrases, words and their derivations shall have the meanings given herein, unless the context in which they are used shall indicate otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

BUSINESS: Any business required to obtain a business license from the Village pursuant to

chapter 8 ("Business Licensing") of this Code.

CHIEF OF POLICE: The Chief of Police of the Village or the Chief of Police's designee.

CONTROL: The right to permit or deny entry onto property, the right to direct a person to leave property or the right to govern conduct that occurs on property.

CRIMINAL NUISANCE BUSINESS OR PROPERTY: A business or lot of record or parcel of real property upon which two (2) or more of the criminal activities set forth below in subsections 16-3-1A through S of this definition have occurred within a twelve (12) month period, except for those activities set forth in subsection ~~16-3-1F~~ 16-3-1S of this definition.

- A. Any offense defined and prohibited by article 9 (homicide) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/9-1 et seq.
- B. Any offense defined and prohibited by article 10 (kidnapping and related offenses) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/10-1 et seq.
- C. Any offenses defined and prohibited by article 11 (sex offenses), subdivision 15 (prostitution offenses) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/11-14 et seq.
- D. Any offense defined and prohibited by article 12 (bodily harm) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/12 et seq.
- E. Any offense defined and prohibited by article 16 (theft) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/16-1 et seq.
- F. Any offense defined and prohibited by section 20-2 (possession of explosives or incendiary devices) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/20-2 et seq.
- G. Any offense defined and prohibited by article 21-1 (damage and trespass to property) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/21-1 et seq.
- H. Any offense defined and prohibited by article 24 (deadly weapons) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/24-1 et seq.
- I. Any offense defined and prohibited by article 25 (mob action) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/25-1 et seq.
- J. Any offense defined and prohibited by article 26 (disorderly conduct) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/26-1 et seq.

K. Any offense defined and prohibited by article 28 (gambling) of the criminal code of 2012, 720 Illinois Compiled Statutes 28-1 et seq.

L. Any offense defined and prohibited by article 31 (interference with public officers) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/31-1 et seq.

M. Any offense defined and prohibited by section 37-1 (maintaining public nuisance) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/37-1.

N. Any offense defined and prohibited by section 6-16 (prohibited sales and possession) or section 6-20 (transfer, possession, and consumption of alcoholic liquor; restrictions) of the liquor control act of 1934, 235 Illinois Compiled Statutes 5/6-16 and 5/6-20.

O. Any offense defined and prohibited by the cannabis control act, 720 Illinois Compiled Statutes 550/1 et seq.

P. Any offense defined and prohibited by the Illinois controlled substances act, 720 Illinois Compiled Statutes 570/1 et seq.

Q. Any inchoate offense defined and prohibited by article 8 (inchoate offenses) of the criminal code of 2012, 720 Illinois Compiled Statutes 5/8-1 et seq., which is relative to the commission of any of the aforesaid principal offenses.

~~R. Two (2) or more separate violations of any offense defined and prohibited by chapter 12, article 1, "Housing Code Regulations", of this code which continue after a disposition of a finding of guilty by the circuit court of Cook County for the violation(s) or a similar finding of liability pursuant to the Village's administrative adjudication system.~~

§ R. Any offense that constitutes a felony under state or federal law or class A misdemeanor under state law.

± §. Pursuant to 65 Illinois Compiled Statutes 5/1-2-1.5, as amended, the following shall not constitute criminal activity and no tenant, landlord, guest, neighbor, or other individual shall be penalized for the following:

1. Contact made to the police or other emergency services, if: a) the contact was made with the intent to prevent or respond to domestic violence or sexual violence; b) the intervention of emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or c) the contact was made by, on behalf of, or otherwise concerns an individual with a disability and the purpose of the contact was related to that individual's disability;

2. An incident or incidents of actual or threatened domestic violence or sexual violence against a tenant, household member, or guest occurring in the dwelling

unit or on the premises; or

3. Criminal activity or a violation of this code occurring in the dwelling unit or on the premises that is directly relating to domestic violence or sexual violence, engaged in by a tenant, member of a tenant's household, guest, or other party, and against a tenant, household member, guest, or other party.

HEARING OFFICER: For purposes of this article, a "hearing officer" means either: (1) a Village administrative law judge appointed pursuant to chapter 29 ("Administrative Adjudication"), article 1 ("Administrative Adjudication System") of this Code; or (2) the Village Manager or the Village Manager's designee.

OWNER: Any person holding a legal or equitable interest in real property or owning or operating a business at real property located in the Village. Owner includes, but is not limited to:

A. A mortgagee in possession in whom is vested:

1. All or part of the legal title to the property; or

2. All or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or

B. An occupant in control of property.

PERMIT: To allow, consent to, acquiesce by failure to prevent, suffer, or expressly assent or agree to the doing of the act.

PERSON: Any entity capable of holding a legal or equitable interest in real property or a business.

PERSON IN CHARGE: Any person in, or with the right of, actual or constructive possession of real property with the right to permit or deny entry thereon, the right to direct a person to leave the property or the right to govern conduct that occurs on the property. Property may have more than one person in charge at any given time.

PROPERTY: Real property, including, but not limited to, any lot, parcel, condominium unit or other tract of land.

RENTAL OR LEASE AGREEMENT: All written and oral agreements of whatever duration which embody the terms and conditions of the use and occupancy of a residential dwelling unit or commercial property.

VILLAGE: The Village of Oak Park, Cook County, Illinois.

VILLAGE CODE OR CODE: The Village Code of Oak Park, Illinois, and all codes adopted by reference

as part of the Village Code.

16-3-2: CRIMINAL NUISANCE UNLAWFUL; OTHER REMEDIES:

- A. It is unlawful for any business or property to be a criminal nuisance business or property under this article.
- B. It is unlawful for any person in charge to permit a business or property under his or her control to be a criminal nuisance business or property.
- C. The procedures, rights and remedies set forth herein are in addition to any other right, remedy or claim the Village may have and are not intended to waive or limit the availability of any common law or statutory cause of action.

16-3-3: ~~PROCEDURES~~ PRE-ABATEMENT PROCEDURE:

When the Chief of Police receives a police report documenting the occurrence of a second criminal ~~activity~~ acts or conduct on or at a business or property as described in the definition of "criminal nuisance business or property" in section 16-3-1 of this article, the Chief of Police shall examine such reports ~~to determine whether there is a rational basis to believe that such criminal nuisance activities, if the activities recur, may unreasonably interfere with the use and enjoyment of the property by the residents thereof or the use and enjoyment of adjoining or nearby properties~~ and determine whether the acts or conduct set forth therein constitutes criminal nuisance activity. Upon such a finding, the Chief of Police may in the Chief of Police's discretion:

- A. Notify the owner or person in charge in writing that the business or property is in danger of becoming a criminal nuisance business or property. The notice shall contain the following information:
 - 1. The street address or a legal description sufficient for identification of the business or property;
 - 2. A statement that the Chief of Police has information that the property may be a criminal nuisance property, with a concise description of the criminal nuisance activities that may exist, or that have occurred. The Chief of Police shall offer the person in charge an opportunity to propose a course of action that the Chief of Police agrees will abate the criminal nuisance activities;
 - 3. Demand that the person in charge ~~respond to the Chief of Police~~ meet with the Chief of Police or the Village Manager within ten (10) days after service of the notice to discuss ~~the criminal nuisance activities~~ a voluntary abatement agreement with the Village; and
 - 4. Contact information for the Chief of Police or the Village Manager.

B. After complying with the notification procedures described herein, if the Chief of Police receives a police report documenting the occurrence of additional criminal nuisance activities on or within a business or property within the same one-year period as the acts or conduct for which notice was issued in accordance with subsection A above and the Chief of Police determines that the property has become a "criminal nuisance business or property" as defined in section 16-3-1 of this article, the Chief of Police shall:

1. Notify the owner or person in charge in writing that the business or property has been determined to be a criminal nuisance business or property. The notice shall contain the following information:

a. The street address or legal description sufficient for identification of the business or property;

b. A statement that the Chief of Police has determined that the business or property is a criminal nuisance business or property with a concise description of the nuisance activities leading to the findings supporting the determination;

c. Demand that the person in charge ~~respond within ten (10) days to the Chief of Police and propose a course of action to abate the nuisance activities~~ immediately address the conditions qualifying the business or property as a criminal nuisance business or property;

d. The time and location of a hearing scheduled pursuant to this article if applicable; and

e. Contact information for the Chief of Police or the Village Manager.

~~D~~ 2. Service shall be made either personally or by first class mail addressed to the person in charge or the owner at the address of the business or property believed to be a criminal nuisance property, or such other place which is likely to give the person in charge or the owner notice of the determination by the Chief of Police.

~~e. A copy of the notice shall be served on the owner at such address as shown on the tax rolls of Cook County and/or the occupant, at the address of the property, if these persons are different from the person in charge, and shall be made either personally or by first class mail, postage prepaid.~~

~~f. A copy of the notice shall also be posted at the property after ten (10) days has elapsed from the service or mailing of the notice to the person in charge and the person in charge has not contacted the Chief of Police.~~

g 3. The failure of any person to receive notice that the business or property may be a criminal nuisance business or property shall not invalidate or otherwise affect ~~the~~ proceedings under this article.

~~2. If after notification, but prior to the commencement of legal proceedings by the Village pursuant to this section, a person in charge executes a written stipulation with the Chief of Police that the person in charge will pursue a course of action that the parties agree is reasonably calculated to abate the criminal nuisance activities, the Chief of Police may agree to defer further enforcement measures for a reasonable period of time. If the agreed course of action does not result in the abatement of the criminal nuisance activities or if no agreement concerning abatement is reached, the Chief of Police may cause a notice of violation to be served pursuant to the provisions of section 16-3-5 of this article.~~

C. Statements made by the person in charge or the owner to the Chief of Police or Village Manager regarding the nuisance activities shall not constitute an admission that nuisance activities have occurred or are occurring. This section does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.

16-3-4: EMERGENCY CLOSURE:

If the Chief of Police determines that due to the occurrence of acts or conduct constituting criminal nuisance activity presents an immediate threat to the public safety or welfare, the Chief of Police may order the immediate and summary closure of a business in accordance with the following procedures:

A. The Chief of Police may abate the nuisances and the threat, and summarily close a business by posting a notice at the business and mailing via certified mail a copy thereof to the registered licensee of the business. The notice must include, without limitation:

1. An order that all business activities immediately cease at the business;
2. The reasons for the summary closure;
3. Information concerning the right of the owner to request a hearing concerning the summary closure order pursuant to subsection B below; and
4. Contact information for the Village Manager or Police Chief.

B. The owner of a business summarily closed pursuant to this section may request a hearing before a hearing officer by filing a written request therefor with the Chief of Police not later than five days after the issuance of the summary closure order. The hearing officer must conduct the hearing within five days after the filing by the owner of a hearing request. After receipt of evidence and testimony at the hearing, the hearing

officer may affirm, modify, or terminate the summary closure order, in their discretion, as may be necessary in the determination of the hearing officer to address any immediate threat presented by the operation of the business.

C. Any summary closure order issued pursuant to this section remain in effect until the earlier to occur of: (1) the termination of the order by the Chief of Police upon a determination that the business no longer presents an immediate threat to the public safety and welfare; (2) the termination of the order by a hearing officer pursuant to this section; (3) entry of an order pursuant to Section 16-3-8 of this Code; or (4) 60 days after the date of the order unless the Village commences an action for a declaration that the business is a criminal nuisance business pursuant to Section 16-3-8 of this Code.

16-3-5: VOLUNTARY ABATEMENT AGREEMENTS:

Upon receipt of a notice pursuant to section 16-3-3 of this article, but prior to entry of an order pursuant to section 16-3-8 of this article, the owner may request that the Village and the owner enter into a voluntary abatement agreement providing for the performance of specific actions by the owner or its designee to address any previously occurring criminal nuisance activity and to reasonably prevent the occurrence, and for the agreement by the Village to suspend any proceedings under section 16-3-8 of this article during the term of the agreement, all subject to such terms and conditions as may be mutually agreed by the Village and the owner. The Village Manager in the Village Manager's discretion may execute any voluntary abatement agreement that the Village Manager determines will reasonably prevent and abate criminal nuisance activity.

16-3-4 16-3-6: VIOLATIONS:

A. Any business or property on which criminal nuisance activities occur may be declared a criminal nuisance business or property. No business or property shall be declared a criminal nuisance business or property unless it is proven by a preponderance of the evidence that there has been two (2) or more instances of criminal nuisance activities within a one-year period of time arising out of or arising from the business or property.

B. Every person has the following affirmative duties with respect to any business or property for which they hold a legal or equitable interest:

1. To refrain from encouraging or permitting a business or property to become a criminal nuisance business or property; and
2. To take affirmative actions to prevent, mitigate, control, or otherwise address any conduct or activity which constitutes criminal nuisance activity.

~~B~~ C. Each day that a violation of this article continues shall be considered a separate and

distinct offense.

~~16-3-5~~ 16-3-7: NOTICE OF VIOLATIONS:

A. The service of notice of any violation under this article shall be made either personally or by first class mail, postage prepaid, addressed to the person in charge or the owner at the address of the nuisance property, or such other place which is likely to give the person in charge or the owner notice of the determination of the Chief of Police.

~~B. A copy of the notice shall be served on the owner at the address shown on the tax rolls of Cook County and/or the occupant at the address of the property, if these persons are different than the person in charge, and shall be made either personally or by first class mail, postage prepaid.~~

€ B. The failure of any person to receive notice, as provided above, shall not invalidate or otherwise affect the proceedings under this article.

~~16-3-6~~ 16-3-8: ABATEMENT - ADMINISTRATIVE HEARING; RELIEF; FINES:

A. A notice of violation shall be adjudicated pursuant to the procedures set forth in chapter 29, article 1, "Administrative Adjudication System", of this code, with the exception that section 29-1-12, "Notice Of Violation; Notice Of Hearing; Service", of this code as amended, shall not be applicable.

B. In an action seeking the abatement of a criminal nuisance business or property, the Village shall establish by a preponderance of the evidence that the business or property is a criminal nuisance business or property. The owner or person in charge shall be permitted to rebut such evidence and present any other evidence that is, in the discretion of the hearing officer, relevant and reliable.

C. It shall be an affirmative defense by the owner or person in charge ~~of rental or leased property~~ to an action seeking a determination that a property is a criminal nuisance property that the owner or person in charge at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become a criminal nuisance property, or could not, in spite of the exercise of reasonable care or diligence, control the conduct of tenants or others in possession leading to the finding that the property is a criminal nuisance property, or could not, in spite of the exercise of reasonable care and diligence, obtain an order for possession of the property pursuant to the provisions of the forcible entry and detainer act, 735 Illinois Compiled Statutes 5/9-101 et seq., or that the owner or person in charge was the victim of the crime, including, but not limited to, an act of domestic or sexual violence as those terms are defined in section 10 of the safe homes act, 765 Illinois Compiled Statutes 750/10, or stalking as that term is defined in the criminal code of 2012, 720 Illinois Compiled Statutes 5/12-7.3.

D. At the conclusion of the hearing, the hearing officer shall ~~make a determination~~ determine on the basis of the evidence presented at the hearing, whether or not the property is a criminal nuisance property. The determination shall be in writing and shall be designated as the findings, decisions, and order. The hearing officer's decision shall be final and binding and subject to review under the Illinois administrative review law as set forth in section 29-1-11 of this code, as amended. The findings, decision and order shall include the hearing officer's findings of fact, a decision whether or not the property is a criminal nuisance property based upon the findings of fact, and an order for abatement of the nuisance activities or sanctioning the person in charge or the owner, or entering a finding that a violation is not proved.

1. A copy of the findings, decision, and order shall be served upon the person in charge or the owner if different than the person in charge, within ten (10) business days. Service shall be in the same manner as set forth in section ~~16-3-5~~ 16-3-7 of this article.

2. In the event that the order provides for the abatement of criminal nuisance activities, the hearing officer shall establish a status date after the date established for the abatement of the criminal nuisance activities in order to determine whether there has been compliance with the order. At such time, the hearing officer shall hear testimony and accept any evidence relevant to the compliance with the order and continued abatement of the nuisance activities.

E. If the hearing officer makes a finding that a property was, or is, a criminal nuisance property, the hearing officer may impose any or all of the following remedies:

1. Fine: ~~The hearing officer may fine~~ fine the person in charge or the owner if that person is different than the person in charge, not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) for each violation of this article. Each day a criminal nuisance activity occurs or continues it shall be considered a separate and distinct violation. The hearing officer may at his or her discretion impose such a fine for each day the criminal nuisance activity goes unabated.

2. Aggravating Factors: In establishing the amount of any fine and any other remedies, the hearing officer may consider any of the following factors:

- a. The actions taken by the person in charge or the owner to mitigate or correct the criminal nuisance activities at the property.
- b. The repeated or continuous nature of the activities.
- c. The magnitude or gravity of the activities.

- d. The cooperation of the person in charge or the owner with the Village.
- e. The cost to the Village of investigating, correcting, or attempting to correct the criminal nuisance activities.
- f. The disturbance of neighbors.
- g. The recurrence of loud and obnoxious noises.
- h. Any other factor deemed relevant by the hearing officer.

3. Abatement and Security Measures: ~~The hearing officer may~~ Order order the person in charge and/or the owner to take reasonable, timely and lawful measures to abate the criminal nuisance activities or take certain security measures, including specifying deadlines for the same, and in furtherance thereof, may order a period of continued compliance wherein the matter will be returned before the hearing officer to inform the hearing officer as to the continued nuisance free status of the property for a period of up to one year. Security measures may include enhanced lighting, surveillance cameras, fences or barriers to entry and the hiring of security personnel.

4. Suspension or Revocation of Residential Rental License: ~~The hearing officer may Suspend suspend~~ or revoke the residential rental license for the rental unit(s) involved in the nuisance if the property is subject to such a license.

5. Closure and Securing of Rental Unit: ~~The hearing officer may~~ Order order that a rental unit(s) be closed and secured against all unauthorized access, use, and occupancy for a period of up to one year. The suspension or revocation of any license, or any right to lease unit(s), shall not release or discharge the license holder from paying fees or fines under this code, nor shall such license holder be released from criminal prosecution or further civil proceedings.

6. Suspension or Revocation of Occupancy Permit: ~~The hearing officer may Suspend suspend~~ or revoke the occupancy permit that has been issued by the Village for the property. The hearing officer may order that the property be closed and secured against all unauthorized access, use, and occupancy for a period of up to one year.

7. Temporary Closure: ~~The hearing officer may~~ Order order the closure of any business, office, commercial warehouse, manufacturing, industrial, office or research operation, plant, or any other commercial property, entity, or use located on or in the criminal nuisance property. The hearing officer may order that the property be closed and secured against all unauthorized access, use, and occupancy for a period of up to one year.

8. Vacant or Unused Criminal Nuisance Business or Property: The hearing officer ~~may~~ Order order that a vacant or unused criminal nuisance property of whatever use or a vacant lot which is a criminal nuisance property, whether residential or commercial, be closed and secured against all unauthorized access, use, and occupancy. The hearing officer may order that the property be closed and secured against all unauthorized access, use, and occupancy for a period of up to one year. The hearing officer may further require that the property be fenced and/or gated to physically restrict access. The hearing officer may also require the hiring of security personnel to assure there is no unauthorized access, use, and occupancy. In the event that the Village is authorized to secure the property, all costs reasonably incurred by the Village to secure the property shall be made and assessed as a judgment against the person in charge or the owner and shall be a debt due and owing the Village. As used herein, "costs" mean those costs actually incurred by the Village for the physical securing of the property.

9. Attendance at Annual Landlord Management Seminar: The hearing officer may require each person in charge and/or the owner who is found to have violated this article to attend the next available annual landlord management seminar pursuant to section 12-2-12 of this code, as amended, administered by the Village if the property is subject to a residential rental license.

10. Business License Suspension or Revocation: The hearing officer may suspend or revoke an applicable business license.

11. Reimbursement for Village's Extraordinary Costs or Expenses: The hearing officer may require the person in charge or the owner to reimburse the Village for any extraordinary costs or expenses incurred by the Village in the provision of law enforcement, fire protection, or emergency medical services necessary as a result of criminal nuisance activity.

F. Any person who is assessed the cost of closure or is fined by the hearing officer shall be personally liable for the payment thereof to the Village.

G. The entry of an order by a hearing officer against a tenant pursuant to this section shall not constitute a defense of the obligation to pay rent by such tenant during any applicable effective period of such order.

H. Other remedies: In addition to any fines, fees, costs, or other remedies set forth in this section, the Village may seek a permanent or temporary injunction as set forth in this article, restraining order, the appointment of a receiver, abatement measures, or other legal or equitable remedies reasonably necessary for the prevention or abatement of a criminal nuisance business or property. Nothing in this section shall be construed to: (1) constitute an act of possession, ownership or control by the Village over any private

property; (2) deny a common law right to any person or entity to abate a nuisance; (3) affect the status of ongoing Village prosecution or other action; (4) prevent the issuance of a citation to any person or prosecution of any person for any violation of this Code or other applicable law; or (5) permit any activity prohibited by law.

~~16-3-7~~ 16-3-9: ALTERNATIVE ENFORCEMENT:

A. Nuisance Abatement: As an alternative to ~~administrative adjudication, as the enforcement provisions~~ set forth in section ~~16-3-6~~ 16-3-8 of this article, the Village may commence an action in the circuit court of Cook County fourth municipal district or chancery division of the circuit court of Cook County for a determination that the property is a criminal nuisance property and/or to abate the criminal nuisance.

B. Injunction: Upon being satisfied by affidavits or other sworn evidence that an alleged criminal nuisance property exists, the court may, without notice or bond, enter a temporary restraining order or a preliminary injunction or permanent injunction to enjoin any defendant from maintaining such criminal nuisance property and may enter an order restraining any defendant named from occupying, using or interfering with all property used in connection with the criminal nuisance property.

C. Commencement Of Action, Burden Of Proof:

1. In an action seeking a determination that a property is a criminal nuisance property, the Village shall have the initial burden of showing by a preponderance of the evidence that the property is a criminal nuisance property. The owner or person shall be permitted to rebut such evidence and present any other evidence that is, in the discretion of the court, relevant and reliable.

2. It shall be an affirmative defense by the person in charge or the owner ~~of rental or leased property~~ to an action seeking a determination that a property is a criminal nuisance property that the owner or person in charge at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become a criminal nuisance property, or could not, in spite of the exercise of reasonable care or diligence, control the conduct of tenants or others in possession leading to the finding that the property is a criminal nuisance property, or could not, in spite of the exercise of reasonable care and diligence, obtain an order for possession of the property, pursuant to the provisions of the forcible entry and detainer act, 735 Illinois Compiled Statutes 5/9-101 et seq., or that the owner or person in charge was the victim of the crime, including, but not limited to, an act of domestic or sexual violence as those terms are defined in section 10 of the safe homes act, 765 Illinois Compiled Statutes 750/10, or stalking as that term is defined in the criminal code of 2012, 720 Illinois Compiled Statutes 5/12-7.3.

3. In establishing the amount of any civil penalty or other relief requested, the court may consider any of the following factors, if they are found appropriate, and shall cite those found applicable:

- a. The actions or lack of action taken by the person in charge or the owner to mitigate or correct the criminal nuisance activities at the property;
- b. Whether the criminal activities at the property were repeated or continuous;
- c. The magnitude or gravity of the criminal nuisance activities at the property;
- d. The cooperation of the person in charge or the owner of the property with the Village to correct the offending condition or abate the nuisance;
- e. Whether the owner or property manager, in the event of rental or leased property, has required the tenant(s) to sign a "crime free lease addendum";
- f. Whether the person in charge or the owner has attended the Village's crime free housing seminar; and
- g. The cost to the Village of investigating and correcting or attempting to correct the condition.

D. Remedy:

1. In the event a court determines a property to be a criminal nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than thirty (30) days, but not more than one hundred eighty (180) days or until the criminal nuisance activity or violation is abated. In addition, the court may employ any other remedy deemed by it appropriate to permanently abate the nuisance, including the entry of a permanent injunction enjoining any tenants, co-tenants, and/or occupants responsible or partially responsible for the property becoming a criminal nuisance property from future use, occupancy of or presence at or upon the property.

2. In addition to the remedy provided in subsection ~~16-3-7D1~~ 16-3-9D1 of this section, the court may impose upon the person in charge or the owner of the property in question a civil penalty in an amount not to exceed the sum of seven hundred fifty dollars (\$750.00) per day, payable to the Village of Oak Park, for each day the person in charge or the owner had actual knowledge that the property was a criminal nuisance property and permitted the property to remain a criminal

nuisance property.

3. In determining what remedy or remedies to employ, the court may consider evidence of other conduct which has occurred on the property, including, but not limited to:

- a. The disturbance of neighbors;
- b. The occurrence of other criminal nuisance activities at, on or from the property;
- c. The property's general reputation for criminal nuisance activity;
- d. Physical damage to the property in question or surrounding properties; and
- e. Any hazard posed to any occupant of the property or adjoining property occupant or owner resulting from the physical condition of the property in question or its structures.

E. Secure Property: The court may authorize the Village to physically secure the property against use or occupancy in the event the person in charge or the owner of the property fails to do so within the time specified by the court. In the event that the Village is authorized to secure the property, all costs reasonably incurred by the Village to ~~effect~~ effectuate the closure shall be made and assessed as a judgment against the owner and shall be a debt due and owing the Village. As used herein, "costs" mean those costs actually incurred by the Village for the physical securing of the property.

F. Costs To Secure Property: The Village shall prepare a statement of costs incurred to physically secure the property and any other applicable costs as provided by law, and the Village shall thereafter submit said statement to the court for its review and approval.

G. Payment: Any person who is assessed the cost to physically secure a property and/or civil penalty by the court shall be personally liable for the payment thereof to the Village.

H. Obligation To Pay Rent: The entry of an order or injunction by the court against a tenant pursuant to this section shall not constitute a defense of the obligation to pay rent by such tenant during any applicable effective period of such order or injunction.

~~16-3-8~~ 16-3-10: CRIMINAL NUISANCE PROPERTY LOCATED AT MULTI-UNIT RENTAL RESIDENTIAL PROPERTY:

In the event any criminal nuisance property is a multi-unit rental residential property, any order entered by the court to abate the nuisance or otherwise vacate the property shall, in the

discretion of the court, be limited in scope as to apply only to the individual rental unit or person(s) in charge or tenant(s) or occupants of that unit forming the basis for a finding that the property is a criminal nuisance property.

~~16-3-9~~ 16-3-11: RETALIATION PROHIBITED:

It shall be unlawful for a person in charge or owner to terminate the lease agreement of a tenant or otherwise retaliate against any tenant because that tenant complained or otherwise notified the Village concerning criminal nuisance activity at a property. Such termination or retaliation shall be enforceable as a violation of this article.

Section 3. Severability and Repeal of Inconsistent Ordinances. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Effective Date. This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law.

ADOPTED this 6th day of September, 2022, pursuant to a roll call vote at follows:

Voting	Aye	Nay	Abstain	Absent
President Scaman				
Trustee Buchanan				
Trustee Enya				
Trustee Parakkat				
Trustee Robinson				
Trustee Taglia				

APPROVED this 6th day of September, 2022.

Vicki Scaman, Village President

ATTEST

Christina M. Waters, Village Clerk

Published in pamphlet form this 6th day of September, 2022.

Christina M. Waters, Village Clerk