

**CITY OF CARBONDALE, ILLINOIS  
ORDINANCE NO. 2016-**

**AN ORDINANCE AMENDING TITLE THIRTEEN OF CHAPTER ONE OF THE  
CARBONDALE REVISED CODE AS IT RELATES TO NUISANCES**

**ADOPTED BY THE CITY COUNCIL  
OF THE CITY OF CARBONDALE, ILLINOIS  
THE 30<sup>TH</sup> DAY OF AUGUST, 2016**

**Published in pamphlet form by authority of the City Council of the City of Carbondale,  
Jackson County, Illinois, this 31<sup>st</sup> day of August, 2016.**

**CERTIFICATE OF PUBLICATION**

**I, Jennifer R. Sorrell, the duly qualified City Clerk of the City of Carbondale,  
Illinois, and the official custodian of the records of said City, do hereby certify that this  
Ordinance was published in pamphlet form by authority of the City Council on the 31<sup>st</sup> day  
of August, 2016.**

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**Jennifer R. Sorrell, City Clerk**

**ORDINANCE NO. 2016-**

**AN ORDINANCE AMENDING TITLE THIRTEEN OF CHAPTER ONE OF THE  
CARBONDALE REVISED CODE AS IT RELATES TO NUISANCES**

**WHEREAS**, the City of Carbondale, Illinois is a home rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

**WHEREAS**, pursuant to Article VII, Section 6(a), of the Illinois Constitution, 1970, the City of Carbondale may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

**WHEREAS**, Title Thirteen of the Carbondale Revised Code regulates the finance, taxation, and business affairs of the businesses within the city limits of the City of Carbondale; and

**WHEREAS**, the City Council of the City of Carbondale finds that it is in the best interest of the City of Carbondale to amend Title 13, Chapter 1 of the Carbondale Revised Code by adding a new Section 8 and Section 9 as they relate to chronic nuisance and nuisance gathering.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE  
CITY OF CARBONDALE AS FOLLOWS:**

**SECTION 1.** That Title 13, Chapter 1 of the Carbondale Revised Code is hereby amended as set out in Exhibit “A” attached hereto and made a part hereof.

**SECTION 2.** All of the remaining sections of Title 13 of the Carbondale Revised Code shall remain in full force and effect.

**SECTION 3.** That all ordinances and parts thereof in conflict herewith are expressly repealed and are of no other force and effect.

**SECTION 4.** That repeal of any ordinance by this Ordinance shall not affect any rights accrued or liability incurred under said repealed ordinance to the effective date hereof. The provisions of this Ordinance insofar as they are the same or substantially the same as those of any prior ordinance, shall be construed as a continuation of said prior ordinances.

**SECTION 5.** That it is the intention of the City Council of the City of Carbondale that this Ordinance and every provision thereof shall be considered separable and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

**SECTION 6.** That the City Council of the City of Carbondale finds that the subject matter of this Ordinance pertains to the government and affairs of the City of Carbondale and is passed pursuant to authorities granted it by State statutes and the Home Rule powers of the City of Carbondale pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution.

**SECTION 7.** That this Ordinance shall take effect upon its passage, approval, recording, and publication in pamphlet form in accordance with law.

APPROVED: \_\_\_\_\_  
John M. Henry, Mayor

ATTEST: \_\_\_\_\_  
Jennifer R. Sorrell, City Clerk

### 13-1-8: Chronic Nuisance House

#### **A. DECLARATION OF CHRONIC NUISANCE HOUSE-**

It shall be unlawful for any person to intentionally, knowingly, recklessly, or negligently permit any dwelling unit, including rental and owner-occupied units, and hotels/motels, within the City of Carbondale to become, exist, or be used as a Chronic Nuisance House. Any unlawful activity, as defined in CRC Title 13, Chapter 1, Section 9, Nuisance Gathering/House, paragraph (D), that is found to exist in, at, on or about such a dwelling unit or hotel/motel shall be subject to fine and abatement in accordance with this section.

#### **B. DEFINITIONS-**

**Chronic Nuisance House-** A dwelling unit that experiences three (3) or more unlawful activities in, at, on, or about the unit during a 12 month period (or six (6) or more unlawful activities in, at, on, or about a hotel/motel) subject to the notice requirements of this Section. The 12 month period shall reset any time there is a leasing change resulting in a complete change in tenants or landlord/property manager/ownership, so that violations shall not transfer from previous occupant(s) to new occupant(s). The 12 month period shall reset for a hotel/motel any time there is a change in ownership of the property. For the purpose of this ordinance, unlawful activities shall NOT include any incidents pertaining to domestic or sexual violence.

**Dwelling Unit-** One room, or more than one connected rooms, designed as a separate independent housekeeping establishment and containing cooking, bathroom and sleeping facilities.

**Hotel/Motel-** Every building or other structure kept, used, maintained, advertised and held out to the public to be a place where sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which six (6) or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms where meals are served to such guests.

**Residential Incident-** Any unlawful activity in, at, on or about a dwelling unit, which is documented by the arrest or the issuance of a citation. For the purposes of this Section, a written warning shall not be considered an arrest or citation.

**Unlawful Activity-** Any of the following activities, behavior or conduct:

1. Any violation of Carbondale Revised Code (CRC) Title 13, Section xxx, Nuisance Gathering/House:
  - a. Possession or Consumption on Public Property or Control Premises (CRC 2-5-5)
  - b. Public Urination or Defecation (CRC 14-2-6)
  - c. Sale of Alcoholic Liquor without Required License (CRC 2-4-1)
  - d. Litter in Public Places (CRC 10-2-2) or Litter from Vehicles (CRC 10-2-6)
  - e. Parking Prohibited in Specific Places (CRC 18-12-2)
  - f. Damage to Property (CRC 14-3-4)
  - g. Obstructing the Flow of Vehicular or Pedestrian Traffic (CRC 17-1-4)
  - h. Use of Sound Devices and General Noise Restrictions (CRC 14-4-7)

- i. Assault and Battery (CRC 14-2-1), Fighting (CRC 14-2-2) or Intimidation (CRC 14-2-3)
  - j. Reckless Conduct (CRC 14-2-7)
  - k. Public Indecency and Public Nudity (CRC 14-2-5)
  - l. False Alarms (CRC 14-4-8)
  - m. Burning; Combustible materials (CRC 10-1-4)
2. Any activity, behavior or conduct that constitutes a felony as defined in the Illinois Criminal Code, 720 ILCS 5/1-1 et seq.
3. Any activity, behavior or conduct that constitutes a misdemeanor as defined in the Illinois Criminal Code of 1961, 720 ILCS 5/1-1 et seq. or any similar offense under this Municipal Code.

## **C. PROCEDURE-**

### **1. First Unlawful Activity**

a. Whenever the Chief of Police (or his designee) receives notice that a citation has been issued or an arrest has been made for an unlawful activity in, at, on, or about a particular dwelling unit, the Chief may notify the Landlord/Property Manager (or owner, if owner-occupied) of the dwelling unit of the incident. The notice shall contain the following information:

- i. The street or legal address of the dwelling unit
- ii. A copy of the citation or arrest report describing the incident and enumerating the offense(s) that occurred.
- iii. The names of the occupants or others involved in the incident.
- iv. The date and time (within 48 hours of issuance of a citation or arrest) and manner in which the notice of the unlawful activity was given to the Landlord/Property Manager (or owner, if owner-occupied) in person, by telephone, email or facsimile.
- v. A statement substantially as follows:

The City of Carbondale Police Department has information that the property is in danger of becoming a Chronic Nuisance House. In the event of occurrences of two (2) additional unlawful activities in, at, on, or about that unit, the Chief may declare the unit a Chronic Nuisance House and refer the matter to the City Attorney to be brought before an administrative hearing officer for a hearing. Corrective action must be taken to ensure that subsequent unlawful activity does not occur.

b. A response form should be included along with a statement requesting the Landlord/Property Manager (or owner, if owner-occupied) to complete and return the form to the Chief within seven (7) business days of the postmark on the Chief's written notice or the date it was personally served. The response may be by personal service, registered or certified mail, return receipt requested, electronic mail, or facsimile indicating whether the offenders were occupants (tenants) and any actions the owner took in response to the activity, such as:

- i. A letter of Warning to the occupants
- ii. Any phone calls, electronic mail, or communications to the occupants
- iii. Any corrective action taken, such as a No Trespass notice issued to non-tenants.
- iv. A meeting with the occupants and their responses.
- v. Copies of any agreements, resolutions, or pledges by occupants.
- vi. Landlord's comments or questions on the incident.
- vii. A noise curfew was instituted for the unit.

c. Any documentation provided to the City may be utilized in any later proceeding involving the property or the affected units, tenants, or persons.

d. Chief's Follow up to Landlord/Property Manager's (or owner's, if owner-occupied) Response- If the Landlord/Property Manager (or owner, if owner-occupied) responds to the notice referenced in (6) above:

- i. The Chief (or his designee) shall deliver a follow-up response letter to the Landlord/Property Manager (or owner, if owner-occupied) regarding the Chief's assessment of the Landlord/Property Manager's (or owner's, if owner-occupied) response, including whether the response was adequate, inadequate, acceptable, and/or unacceptable. If inadequate or unacceptable, the Chief shall invite the Landlord/Property Manager (or owner, if owner-occupied) to a follow-up meeting within ten (10) days of the Chief's receipt of that response letter.
- ii. At the follow-up meeting, the Chief should recommend that the Landlord/Property Manager (or owner, if owner-occupied) take reasonable corrective action so that a second or subsequent unlawful activity does not occur in, at, on, or about the same dwelling unit within a one (1) year period and discuss other possible means to correct the problem.

ii. The Chief should explain that, in the event of the occurrence of a third unlawful activity in, at, on, or about the dwelling unit within a one (1) year period, the Chief may declare the property a Chronic Nuisance House and refer the matter to the City Attorney to be brought before an administrative hearing officer for a hearing at which the landlord may be subjected to penalties under this Section.

iii. The results of the meeting shall be documented in writing, including any agreement reached with the Landlord regarding corrective action to be taken. The Landlord/Property Manager (or owner, if owner-occupied) should acknowledge his/her agreement in writing, and a copy of the agreement should be provided to the landlord.

## 2. Second Unlawful Activity

a. Whenever the Chief of Police (or his designee) receives notice that a citation has been issued or an arrest has been made for a second unlawful activity in, at, on, or about a particular dwelling unit within a one (1) year period, the Chief may notify the Landlord/Property Manager (or owner, if owner-occupied) of the dwelling unit that the property is in danger of becoming a Chronic Nuisance House. The notice shall contain the following information:

i. The street or legal address of the dwelling unit

ii. A copy of the citation or arrest report describing the second incident and enumerating the offense(s) that occurred.

iii. The names of the occupants or others involved in the incident.

iv. The date and time (within 48 hours of issuance of a citation or arrest) and manner in which the notice of the second unlawful activity was given to the Landlord/Property Manager (or owner, if owner-occupied) in person, by telephone, email or facsimile.

v. A statement substantially as follows:

The City of Carbondale Police Department has information that the property is in danger of becoming a Chronic Nuisance House. In the event of a subsequent unlawful activity in, at, on, or about that unit, the Chief may declare the unit a Chronic Nuisance House and refer the matter to the City Attorney to be brought before an administrative hearing officer for a hearing. Corrective action must be taken to ensure that a subsequent unlawful activity does not occur.

b. In determining whether to send the second notice, the Chief may consider the prior cooperation (or lack of cooperation) of the Landlord/Property Manager (or owner, if owner-occupied) in responding to the Chief's notification letter, agreeing upon corrective

action, and whether or not the agreed corrective action was taken. In the event that the Chief finds that further discussions with the Landlord/Property Manager (or owner, if owner-occupied) may achieve corrective action, the Chief may convene a mandatory meeting to establish such a corrective action plan.

i. Mandatory Meeting with the Chief- At the mandatory meeting, the Chief may suggest various courses of action for the Landlord/Property Manager (or owner, if owner-occupied) to prevent further unlawful activities from occurring. A corrective action plan should be established, which may include the lawful eviction of a tenant or the Landlord/Property Manager's ability to bar persons from the property. In the event that the Landlord/Property Manager (or owner, if owner-occupied) fails to attend the mandatory meeting, the second notice should be sent, and expiration of the time limits for sending such notice shall not bar such notice.

### 3. Third Unlawful Activity

a. Whenever the Chief of Police (or his designee) receives notice that a citation has been issued or an arrest has been made for a third or subsequent unlawful activity in, at, on, or about a particular dwelling unit within a one (1) year period, and determines, after consultation with and agreement from the City Manager, that the unit has become a Chronic Nuisance House, the Chief shall notify the Landlord/Property Manager (or owner, if owner-occupied) of the dwelling unit that the property has been declared a Chronic Nuisance House. The notice shall contain the following information:

i. The street or legal address of the dwelling unit

ii. A copy of the citation or arrest report describing the third incident and enumerating the offense(s) that occurred.

iii. The names of the occupants or others involved in the incident.

iv. The date and time (within 48 hours of issuance of a citation or arrest) and manner in which the notice of the third unlawful activity was given to the Landlord/Property Manager (or owner, if owner-occupied) in person, by telephone, email or facsimile.

v. A statement substantially as follows:

The Chief of Police, with consultation and agreement from the City Manager, has determined the dwelling unit to be a Chronic Nuisance House (with a concise description of the unlawful activities occurring during the one (1) year period that led to the finding). The Chief shall refer the matter to the City Attorney to be brought before an administrative hearing officer for a hearing, but, if the Landlord/Property Manager (or owner, if owner-occupied) notifies the Chief immediately upon receipt of the notice and agrees to remedy the disorderly conditions within ten (10)



days, or to take other agreed and timely measures, the Chief may, at his/her sole discretion, postpone referring the matter to the City Attorney.

b. Settlement Agreement- The Chief, with consultation and agreement from the City Manager, and Landlord/Property Manager (or owner, if owner-occupied) may agree to resolve the matter short of a hearing by entering into a settlement agreement to include the imposition of a fine and remediation plan for the dwelling unit, along with a compliance date, and agreed upon penalties in the event of non-compliance by that date.

#### 4. Notices by Chief; Other City Departments

The Chief (or his designee) shall maintain two-way communication with other City Departments having the potential to interact with occupants or owners of a dwelling unit engaged as a nuisance gathering/house, including, but not limited to, Fire Department, Building and Neighborhood Services, and the City Attorney's Office. Violations of the Nuisance Gathering/House ordinance cited by any City Department with the capacity to issue citations shall count towards the total violations.

#### 5. Notices by Chief; Effect of Failure to Give Notice

Notices that are required to be given by the Chief to the Landlord/Property Manager (or owner, if owner-occupied) shall be given as follows:

- a. The Chief shall use reasonable efforts to notify the Landlord/Property Manager (or owner, if owner-occupied) of the issuance of a citation or arrest for unlawful activity in person, or by telephone, email or facsimile within forty-eight (48) hours of issuance or arrest.
- b. The Chief shall also give written notice, pursuant to this Section, by regular mail or by personal service within ten (10) business days of the issuance of a citation or arrest for unlawful activity.
- c. Written notice declaring a Chronic Nuisance House pursuant to this Section shall require notice by certified or registered mail, receipt requested.
- d. Notice shall be effective five (5) days after mailing or on the date delivered, if by personal service.
- e. Notice shall be given to the Landlord/Property Manager (or owner, if owner-occupied) as follows:
  - i. To the Landlord/Property Manager (or owner, if owner-occupied)
  - ii. To the person to whom the last tax bill on the property was sent in the event that subsection 4a does not apply.

## 6. Burden of Proof; Notice

a. In an action seeking the abatement of a Chronic Nuisance House, the City shall have the initial burden of proof in showing by a preponderance of the evidence that the dwelling unit is a Chronic Nuisance House.

b. For purposes of showing that the dwelling unit is a Chronic Nuisance House and that unlawful activities have occurred in, at, on, or about the unit, the testimony of police officers to recount witness statements shall be admissible. Police reports, court records, and prosecution records are admissible and relevant, and may be used to prove that the unit is a Chronic Nuisance House. The City shall not be obligated to prove each underlying violation as a component of its case in chief in the Chronic Nuisance House case.

## 7. Landlord Use of Forcible Entry and Detainer Actions

If a Landlord/Property Manager has initiated a Forcible Entry and Detainer Action in the Circuit Court of Jackson County to evict the tenant(s) of a dwelling unit that is subject to notices under this Section, the City shall initially agree to enter and continue the administrative hearing in regard to its declaration as a Chronic Nuisance House, pending the result of such court action. In deciding whether or not to further continue the matter based upon the eviction proceeding, the City shall consider, among other things, whether eviction is the only remedy for preventing future unlawful activities, and whether the action is being timely prosecuted and diligently pursued by the Landlord/Property Manager.

a. Landlords/Property Managers must submit to the City, prior to the Administrative Hearing, a copy of the Forcible Entry and Detainer lawsuit that was filed, and provide regularly updated copies of pleadings after each hearing or court status date.

b. The Landlord/Property Manager shall notify the Chief of Police (or his designee) regarding the progress of the court proceeding within seven (7) business days of its resolution, including, but not limited to, orders to stay judgments, evict, grant possession or abandonment, and dismissal of the case.

## **D. PENALTIES FOR MAINTAINING A CHRONIC NUISANCE HOUSE**

If the Administrative Hearing Officer finds that the Landlord/Property manager (or the Owner of an owner-occupied structure) has permitted a Chronic Nuisance House, the Landlord/Property Manager (or Owner) is subject to the following penalties:

1. The Landlord/Property Manager (or Owner) shall be fined not less than Three Hundred Dollars (\$300.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for each unit declared to be a Chronic Nuisance House. Further, such Landlord/Property Manager or owner shall be fined not less than Seven Hundred Fifty Dollars (\$750.00) nor more than Fifteen Hundred Dollars (\$1,500.00) for each subsequent unlawful activity that occurs in, at, on or about that unit within the one (1) year period.

2. In addition to the penalties set above, a Landlord/Property Manager or Owner shall be liable for administrative costs associated with the Hearing pursuant to this Section, or court costs that may be assessed in an action for ordinance violation in the Circuit Court.
3. In the event that a Landlord/Property Manager or Owner fails to remit the fines associated with the ruling of an Administrative Hearing Officer or Judge, or fails to comply with the terms of an agreed settlement, the City may seek such relief as may be provided for within Carbondale Revised Code or as otherwise provided by law.

#### 13-1-9: Nuisance Gathering/House

- A. A Nuisance Gathering is a social gathering or party which is conducted within the City, at a dwelling unit or hotel/motel, and by reason of the conduct of person(s) in attendance, results in the occurrence of any one (2) or more of the enumerated offenses in (D).
- B. A Nuisance House is a dwelling unit, meaning a single family structure, attached or detached, a rooming house, apartment, condominium, or townhouse within the City, where the conduct of the resident(s) or tenant(s) results in the occurrence of any two (2) or more of the enumerated offenses in (D).
- C. A Hotel/Motel is every building or other structure kept, used, maintained, advertised and held out to the public to be a place where sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which six (6) or more rooms are used for the sleeping accommodations of such guests and having one or more public dining rooms where meals are served to such guests.
- D. Enumerated Offenses; References Carbondale Revised Code
  4. Possession or Consumption on Public Property or Control Premises (CRC 2-5-5)
  5. Public Urination or Defecation (CRC 14-2-6)
  6. Sale of Alcoholic Liquor without Required License (CRC 2-4-1)
  7. Litter in Public Places (CRC 10-2-2) or Litter from Vehicles (CRC 10-2-6)
  8. Parking Prohibited in Specific Places (CRC 18-12-2)
  9. Damage to Property (CRC 14-3-4)
  10. Obstructing the Flow of Vehicular or Pedestrian Traffic (CRC 17-1-4)
  11. Use of Sound Devices and General Noise Restrictions (CRC 14-4-7)
  12. Assault and Battery (CRC 14-2-1), Fighting (CRC 14-2-2) or Intimidation (CRC 14-2-3)
  13. Reckless Conduct (CRC 14-2-7)
  14. Public Indecency and Public Nudity (CRC 14-2-5)
  15. False Alarms (CRC 14-4-8)
  16. Burning; Combustible Materials (CRC 10-1-14)
- E. Declaration of Nuisance- A nuisance gathering/house shall be deemed to constitute a public nuisance. No person, who is an owner, occupant, tenant, or who otherwise has lawful possession or possessory control, individually or jointly with others, of any

premises shall knowingly, negligently or recklessly allow a social gathering or party on said premises to become a nuisance party as defined in this section, nor shall they knowingly, negligently or recklessly allow conduct on said premises in violation of the enumerated offenses, becoming a nuisance house.

F. Order to Cease and Desist- A nuisance gathering shall cease upon the order of a police officer and all persons not residing at the site of such nuisance party shall disperse immediately. No person shall knowingly or willfully fail or refuse to obey such order.

G. Penalty- Any person who fails to perform an act required by this section or who commits an act prohibited by this section shall be subject to a fine of not less than Two Hundred Fifty Dollars (\$250) for a first offense, and an increased fine for successive offenses.

#### 13-1-8-10: ENFORCEMENT OF CODE:

A. Action Brought By City Or Individuals: Enforcement of this Chapter may be accomplished by the City in any manner authorized by law, and in addition, any person who by reason of another's violation of any provision of this Chapter, suffers special damage to himself different from that suffered by other property owners throughout the City generally, may bring an action to enjoin or otherwise abate an existing violation in any manner authorized by law.

B. State Abatement Procedure Adopted: The City Council hereby incorporates and adopts by reference the proceedings for abatement as provided by the laws of this State for the abatement of public nuisances.

C. Abatement By City: The City Manager or his designee is hereby authorized to abate any nuisance, enjoin the use of buildings, apartments, or places as public nuisances, and to utilize any and all of the proceedings adopted in this Chapter.

#### 13-1-9-11: PENALTY:

A. Established: Any person who allows said nuisance to exist or fails to abate said nuisance is in violation of this Chapter and, upon conviction, shall be fined not less than one hundred dollars (\$100.00) nor more than seven hundred fifty dollars (\$750.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

B. New Offense: If any such person shall continue a nuisance after being fined for the same, a new cause of action shall immediately accrue against such person, subjecting the offender to a like penalty as aforesaid.

C. Additional Remedies Available: Nothing in this Chapter shall prevent the City from seeking civil remedies in addition to the aforementioned penalties in order to abate or prevent a violation of this Chapter.