

ORDINANCE NO. 2019 -

AN ORDINANCE REGULATING CHRONIC NUISANCE PREMISES

WHEREAS, the Police Department reports that there are locations within the Village which are the center for repeated calls for Police services because of actual or alleged criminal activities; and

WHEREAS, the repeated calls for service are a drain on Department resources and at times present public safety issues which cannot be adequately controlled through criminal citations or arrests; and

WHEREAS, the Administration and Police Department believe that additional enforcement tools are needed to require property owners for the sites of such repeated calls to better monitor and control criminal activity and nuisance activities upon and within their properties; and

WHEREAS, the Administration and Police Department believe that establishing a process to define and control chronic nuisance activities will assist in maintaining public safety.

NOW THEREFORE, Be It Ordained by the Council of the Village of Golf Manor, Hamilton County, Ohio, that:

SECTION I. Definitions.

For the purpose of this Chapter the words and phrases defined in the Sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

A. Chronic Nuisance.

“Chronic nuisance” shall mean a premises or property that is in violation of Section III of this Ordinance.

B. Nuisance or Nuisance Activity.

“Nuisance” or “nuisance activity” shall mean any of the following activities, conduct, or behavior whenever engaged in by premises owners, operators, occupants, or persons associated with a premises:

- (1) Assault, aggravated assault, or felonious assault as defined in Chapter 537 of the Code of Ordinances (“Code”) or as defined in Ohio Revised Code Sections 2903.11, 2903.12, or 2903.13 or any offense of violence as defined in Ohio Revised Code Section 2901.1;

- (2) Menacing, aggravated menacing, or menacing by stalking as defined in Code Sections 509.06 and 537.05 or as defined in Ohio Revised Code Sections 2903.21, 2903.22, or 2903.211;
- (3) Inducing panic, making a false alarm, or perpetrating a hoax weapon of mass destruction as defined in Chapter 509 of the Code or in Ohio Revised Code Sections 2917.31, 2917.32, and 2917.33;
- (4) Disrupting public services as defined in Ohio Revised Code Section 2904.4;
- (5) Curfew violation as defined in Chapter 531 of the Code;
- (6) Endangering children or contributing to unruliness or delinquency of a child as defined in Chapter 537 of the Code;
- (7) Disorderly conduct as defined in Chapter 509 of the Code or Ohio Revised Code Section 2917.11;
- (8) Discharging firearms in violation of Code Section 549.08;
- (9) Commission of any drug offense under Chapter 2925 or 3719 of the Ohio Revised Code or Chapter 513 of the Code;
- (10) Compelling or promoting prostitution, procuring, soliciting, or loitering to engage in solicitation, or prostitution as defined Ohio Revised Code Sections 2907-21 through 2907-25, inclusive or Chapter 533 of the Code;
- (11) Public gambling as defined in Chapter 517 of the Code or in Ohio Revised Code Section 2915.04;
- (12) Unauthorized possession, sale, or discharge of fireworks as defined in Ohio Revised Code Section 3743.65;
- (13) Loud noises or excessive sound from a motor vehicle as defined by Chapter 509 of the Code; and
- (14) Loud, dangerous, or vicious dog as defined in Chapter 505 of the Code.

C. Occupant.

“Occupant” shall mean the person residing in or having use of a premises. The same person or persons can be owner and occupant.

D. Operator.

“Operator” shall mean any person, firm, partnership, company, corporation or association, including their employees, agents, or contractors, that controls, operates, or manages a premise(s).

E. Owner.

“Owner” shall mean any person, partnership, firm, company, association, trust or corporation, who alone or jointly with others, shall be in possession of or have any control of any premises, or is listed as the owner of the premises on the records of the Hamilton County Auditor.

F. Person Associated With.

“Person associated with” shall mean any person who, whenever engaged in a nuisance or nuisance activity, enters, patronizes, visits; attempts to enter, patronize or visit; or waits to enter, patronize, or visit, a premises or person present on a premises, including any officer, director, customer, agent, employee, or independent contractor of a premises owner.

G. Property or Premises.

“Property” or “premises” shall mean a platted lot or part thereof, or unplatted lot or parcel of land, or plot of land either occupied or unoccupied by any building or structure, equipment, or property of any kind.

H. Unit.

“Unit” shall mean an individual residential dwelling in which the occupant(s) have a right to exclusive possession, including but not limited to an individual apartment within an apartment complex or an individual dwelling within a multi-family home.

SECTION II.

Notification That Premises May Be a Chronic Nuisance.

A. The Village Solicitor, or his or her designee, shall notify a premises owner in writing that the premises is in danger of becoming a chronic nuisance when any of the following circumstances have occurred at the premises;

- (1) When three or more nuisance activities have occurred at the premises, where each activity occurs on a separate day during a thirty-day period; or

- (2) The commission of a felony drug offense under any provision of Chapter 2925 or 3719 of the Ohio Revised Code has occurred at the premises; or
 - (3) When, within a one year period, the following number of nuisance activities has occurred at the premises:
 - (a) Premises with 2 or 3 residential units: 6 nuisance activities;
 - (b) Premises with 4 to 19 residential units: 14 nuisance activities;
 - (c) Premises with 20 to 39 residential units: 18 nuisance activities;
 - (d) Premises with 40 to 119 residential units: 20 nuisance activities;
 - (e) Premises with 120 to 199 residential units, 26 nuisance activities;
 - (f) Premises with over 200 residential units: 30 nuisance activities.
- B. The notice provided for in Section II is a lawful order. Each directive contained in the notice is a separate lawful order, and failure to obey any directive is subject to penalties pursuant to Section IV herein.
- C. The notice provided for in Section II shall be deemed properly delivered if sent by first class mail to the address for the owner listed in the records of the Hamilton County Auditor. If the notice is returned as undeliverable, the notice shall be deemed properly delivered if it is either posted on the front door of the premises that is the subject of the notice and order or if it is delivered in person to the owner. The notice shall contain the following information:
- (1) The street address or legal description sufficient for identification of the premises;
 - (2) A factual description of the nuisance activities that have occurred at the premises, including the dates of the nuisance activities;
 - (3) A statement that the premises owner shall respond to the Village Solicitor, or his or her designee, within 10 days of the date of the owner's receipt of the notice with a written plan to abate the nuisance activities;

- (4) A statement requiring the owner to provide a written plan to abate the nuisance, and the failure to provide a written plan could subject the owner to penalties pursuant to Section IV; and
- (5) A statement that the cost of future enforcement at the premises as a result of nuisance activities shall be billed to the premises owner and could become a lien against the property if not paid.

SECTION III. Determination that Premises is a Chronic Nuisance.

- A. Whenever the Village Solicitor, or his or her designee, determines that an additional nuisance activity has occurred at a premises for which a notice has been issued pursuant to Section II, and this nuisance activity occurs more than 14 days after the notice has been issued, the Village Solicitor, or his or her designee, shall determine that the premises is a chronic nuisance and issue a lawful order that the owner abate the nuisance within 30 days of the owner's receipt of the notice. The Village Solicitor, or his or her designee, shall also calculate the cost of enforcement for this and any subsequent nuisance activities, notify the owner that the owner is being billed for the cost of this and any subsequent nuisance activities, and bill the owner for the cost of enforcement. Failure to abate the nuisance shall be deemed a violation of this chapter.
- B. The notice and order provided for in Section II shall be deemed properly delivered if sent by first class mail to the address for the owner listed on the records of the Hamilton County Auditor. If the notice and order are returned as undeliverable, the notice and order shall be deemed properly delivered if they are either posted on the front door of the premises that is the subject of the notice and order or if they are delivered in person to the owner. The notice shall contain the following information:
 - (1) The street address or legal description sufficient for identification of the premises;
 - (2) A description of the nuisance activity or activities for which the premises owner is being billed, including the dates of the nuisance activity or activities;
 - (3) An order that the nuisance activity be abated; and
 - (4) A statement that the premises owner may appeal the determination that the owner's premises is a chronic nuisance or may appeal the amount of the bill as provided in Section V.
- C. A determination that a premises is a chronic nuisance subject to bills for the cost of enforcement pursuant to Section IV and subject to fines or

criminal prosecution pursuant to Section IV shall be effective against the owner until the nuisance is abated under the thresholds established in Section II.

SECTION IV. Citations for Multiple Nuisance Activities; Criminal and Civil Penalties.

- A. Whoever violates this chapter or fails to obey any lawful order issued by the Village Solicitor, or his or her designee, to abate a chronic nuisance within 30 days or to provide a written plan to abate the nuisance activities within 10 days, is guilty of a misdemeanor of the fourth degree on the first offense and guilty of a misdemeanor of the third degree on the second and subsequent offense. Each day's continuation of a violation or failure to comply is a separate offense.
- B. As an alternative to criminal prosecution, the Village Solicitor, or his or her designee, may cite a person who violates any provision of this chapter or fails to obey any order to abate a chronic nuisance within 30 days or to provide a written plan to abate the nuisance activities within 10 days. Such civil citation may then be pursued as a civil action in a Court of appropriate jurisdiction.
 - (1) Citations for nuisance activities shall be imposed based on the number of bills for enforcement sent to a premises owner for a specific premise(s) within a two-year period beginning with the date of the nuisance activity that is the subject of the first bill for enforcement sent to the premises owner for that specific premises.
 - (2) Whenever a premises owner has been billed on three or more separate dates within a two-year period beginning with the date of the nuisance activity that is the subject of the first bill for enforcement sent to the premises owner for that specific premises, the Police Chief, or his or her designee, shall issue a citation to the premises owner as follows:
 - (a) For the fourth bill within a two-year period, a citation of \$500.00 shall be imposed;
 - (b) For the fifth bill within a two-year period, a citation of \$1,000.00 shall be imposed;
 - (c) For the sixth bill within a two-year period, a citation of \$1,500.00 shall be imposed;
 - (d) For the seventh bill within a two-year period, a citation of \$5,000.00 shall be imposed;

- (e) For each bill after the seventh bill within a two-year period, a citation of \$10,000.00 shall be imposed.
- C. With regard to any premises or unit where a violation occurs that constitutes a nuisance activity, that premises or unit shall be a public nuisance subject to abatement pursuant to Ohio Revised Code Chapter 3767 including, but not limited to, a one year closure of the premises or unit where the nuisance activity occurred.
- D. Notwithstanding the requirements of this chapter, the Village Solicitor is authorized to file suit under state and local law to abate nuisances existing at property or premises, including seeking injunctive relief.
- E. Notwithstanding subsections (A) and (B) or Section IV, no criminal sanctions, civil citations or bills shall be issued under this Chapter if the owner submits a written plan to abate the nuisance activities pursuant to Section II, but the premises shall remain subject to abatement under Ohio Revised Code Chapter 3767.

SECTION V. Appeals.

- A. A premises owner may appeal the determination of the Village Solicitor, or his or her designee, pursuant to Section III that a premises is a chronic nuisance, the amount of the bill for enforcement related to nuisance activities at the premises pursuant to Section IV, or a civil citation issued pursuant to Section IV within 30 days from the date of the notification from the Village Solicitor, or his or her designee, that the premises is a chronic nuisance or within 30 days from the date the bill or civil citation is issued.
- B. Any appeal filed by a owner or operator must request in writing that an administrative hearing be conducted by the Planning Commission. The Planning Commission will issue a written determination on any appeal.

SECTION VI. Liens.

Bills for enforcement and civil citations that are not paid will become liens on the premises to the extent permitted under applicable law.

SECTION VII. Status Reports to Village Council.

The Village Solicitor shall give a monthly update on the progress in abating known nuisance properties before the Executive Committee or other appropriate committee of Council unless that committee determines that such report is not necessary. The monthly update shall be a full accounting of nuisance enforcement actions and progress for properties in the Village that

have the greatest number of chronic nuisance calls for service and other nuisance problems.

The report shall include the following for the thirty-day period covered by the report:

- (A) New initial nuisance notification letters sent in the thirty-day period covered by the report;
- (B) Nuisance abatement plans received that have been deemed acceptable;
- (C) Subsequent nuisance activities at any premises included in the report;
- (D) Change in status letters sent to premises;
- (E) Billing notices and appeals related to any premises included in the report;
- (F) Criminal prosecutions, civil citations and appeals related to any premises included in the report;
- (G) Decisions on any appeals related to any premises included in the report; and

SECTION VIII. Eviction or Retaliation Prohibited.

- A. It shall be unlawful for a landlord to terminate the Lease Agreement or periodic tenancy of any tenant without good cause or otherwise retaliate against any tenant because that tenant complained to the police or other Village official or employee about nuisance or criminal activities on the landlord's premises or made calls for service to the police related to nuisance or criminal activities on the landlord's premises. It shall be unlawful for a landlord or any person acting as an agent for the landlord to intimidate or actively discourage a tenant and/or persons associated with a tenant from calling the police to report nuisance activity associated with a property. It shall be presumed that any attempt to increase charges, reduce services, or to otherwise harass or retaliate against the tenant during the 12-month period following receipt of the complaint by the Chief of Police constitutes unlawful retaliation under this section.

Such presumption shall be rebutted by the preponderance of evidence that the actions taken by the landlord were based upon good cause. "Good cause" as used in this subsection means that a landlord must show good cause for his or her actions, other than one related to or caused by the

operation of this section. Notwithstanding the foregoing, a tenant's Lease Agreement or periodic tenancy may be terminated for a failure to pay rent; committing nuisance activity as defined herein; committing waste upon the premises; violating the terms and conditions of the Lease Agreement or periodic tenancy; or as otherwise provided in O.R.C. 5321. A landlord's failure to renew a Lease Agreement or periodic tenancy upon expiration of such Lease Agreement or periodic tenancy shall not be deemed a violation of this subsection.

SECTION IX. Severability.

The provisions of any part of this Chapter are severable. If any provision or subsection hereof or the application thereof to any person or circumstances is held invalid, the other provisions, subsection, and applications of such Ordinance to other persons or circumstances shall not be affected thereby. It is declared to be the intent of this section that the same would have been adopted had such invalid provisions, if any, not been included herein.

SECTION X. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED this _____ day of _____, 2019.

Mayor Greg Schwartzberg

ATTEST:

Anna Gedeon, Assistant Clerk

APPROVED AS TO FORM:

Terrence M. Donnellon, Solicitor