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ORDINANCE NO. _____

ORDINANCE RELATING TO NUISANCES, AMENDING CHAPTER 35 OF THE OKLAHOMA CITY MUNICIPAL CODE, 2020, SECTION 35-177, PROCEDURE USED TO ABATE PUBLIC NUISANCE PER SE ON OR AT REAL PROPERTY UNDER THIS DIVISION.

EMERGENCY ORDINANCE

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

SECTION 1. Section 35-177 of Division 2 of Article VI of Chapter 35 of the Oklahoma City Municipal Code, 2020, is amended to read as follows:

CHAPTER 35

NUISANCES

ARTICLE VI. CRIMINAL ACTIVITIES PUBLIC NUISANCE ABATEMENT

DIVISION 2. Public Nuisances Involving Real Properties

§ 35-177. - Procedure used to abate public nuisance per se on or at real property under this division.

(a) To abate a public nuisance per se on or at real property as declared in Section 35-176 of this division, the City Manager or designated agent acting on behalf of the City shall use the procedure set forth in this section.

(b) Before bringing a civil action in district court to abate the public nuisance, as authorized by Subsection (c) of this section, the City shall serve the owner, lessee or manager of the real property a written notice and order statement demanding that the owner, lessee or manager immediately abate ~~terminate~~ all drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations which exists on or at the real property.

(1) The City's decision under Subsection (b) of this section to serve a written notice and order statement to an owner, lessee or manager of real property shall be based on ~~one or both~~ of the following factors:

a. The real property involved is known by general reputation in the community to be a location where drug-related criminal activity,

prostitution-related criminal activity or open lot disturbance violations occur; or

b. The real property involved is known to law enforcement personnel as a location where drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations occur; and–

c. The owner, lessee or manager has not taken adequate steps to abate the nuisance activity; and

d. Appropriate measures can be taken to abate the nuisance activity on or at the real property.

(2) Any ~~The~~ written notice and order ~~statement~~ to an owner, lessee or manager ~~the owner(s), lessee(s), and/or manager(s)~~ shall contain the following information:

a. The street address and a legal description sufficient for the owner, lessee or manager to locate the real property on or at which drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations are occurring;

b. A statement generally describing the drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations which are taking place on or at the real property; ~~and~~

c. A statement ordering the owner, lessee or manager to abate ~~immediately terminate all~~ drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations which are taking place on or at the real property; ~~and~~

d. A list of measures to be taken that are likely to abate the nuisance activity on or at the real property, and a time period within which the measures shall have been initiated or completed; and

e. A statement providing a deadline for the owner, lessee or manager to request an administrative hearing before the City Manager or designee to contest the notice and the findings and orders it contains. The notice shall inform the owner, lessee or manager that they may request a hearing concerning the abatement of the public nuisance which shall be conducted at a specific date, time and place, if requested in writing or as otherwise prescribed in the notice. Failure to request an administrative hearing in the manner specified and within the time prescribed in the notice and order will be deemed a failure to exhaust administrative remedies and the order will be

deemed final for the City as to the persons who were served with the notice and order.

(3) The City shall attempt to serve the property owner, lessee or manager with the required written notice and order statement by personal delivery ~~requesting abatement, within ten days, of the drug-related criminal activity, prostitution-related criminal activity, or open lot disturbance violations,~~ if said owner, lessee or manager is located ~~may be found~~ in Oklahoma City.

(4) Proof of service of the written notice and order statement shall be kept in the regularly maintained files of the City.

(5) If service of the written notice and order statement cannot be completed by personal delivery, the City ~~shall~~ may serve the notice and order said statement by posting a copy of the notice and order statement on the real property used for drug-related criminal activity, or prostitution-related criminal activity, or open lot disturbance violations, and by mailing the notice and order said statement to the name and address shown in the records of the County Assessor as owner of the real property, or if the notice is returned as undeliverable, by posting on the real property and by publication once at least ten days prior to any action by the municipality pursuant to the provisions of this division or as otherwise allowed by law. "Publication" shall be given the meaning set forth in 11 O.S. § 1-102(8) or in any successor section in Title 11 of the Oklahoma Statutes.

(6) If an administrative hearing is requested as prescribed in the notice and order, the due process hearing shall be held before the City Manager or designee acting on behalf of the City, who shall act as the hearing officer and exercise quasi-judicial powers. At the hearing, the hearing officer shall determine de novo whether there exists on or at the real property a public nuisance per se, as declared by Section 35-176 of this division, and whether the orders contained in the nuisance notice are appropriate or should be modified.

(7) A notice scheduling a hearing, requested by any owner, lessee or manager, shall be sent by first-class mail to the owner, lessee or manager who requested it, and any other owner, lessee or manager who was previously served with a notice and order, and shall state that any of the owners, lessees or managers shall have the right to appear at the hearing and be heard and present evidence. The hearing shall be set not less than ten business days from the date the notice of hearing is sent, and may be continued from time to time and day to day as circumstances warrant. At the hearing, the hearing officer shall consider the evidence and shall issue an order in accordance with the evidence.

(8) The procedure to be followed and the standards to be applied by the hearing officer in conducting the administrative hearing shall be the following:

a. The hearing affords the owner, lessee or manager and their legal counsel an opportunity to appear, respond and present evidence and argument on the pertinent issues of the hearing;

b. Only relevant, competent and material evidence is allowed;

c. Unduly repetitive evidence is excluded;

d. Judicial notice is taken of judicially cognizable facts;

e. A record of the proceedings is made that reflects:

1. Documentary evidence considered;

2. A list of witnesses who testify and an audio or video recording of their testimony or a transcript of proceedings;

3. Content of matters officially noticed;

4. Any offers of proof; and

5. A list of other evidence or data submitted.

f. At the conclusion of the hearing, or as soon as possible thereafter, the hearing officer shall issue a written order, with findings of fact and conclusions of law, indicating the final decision;

g. The burden of proof on the City at any such hearing shall be a preponderance of the evidence based upon a totality of the circumstances; and

h. The written administrative order of the hearing officer shall be served in person or by first-class mail at the last-known address of the persons who requested the hearing and all who appeared at the hearing to contest the City's nuisance abatement notice, shall be final for the City, and shall be subject only to review of a court of competent jurisdiction as allowed by law. The order shall state that an appeal to the district court of the county wherein the real property is located may be filed in accordance with 12 O.S. § 951.

(c) Pursuant to 50 O.S. §§ 16 and 17, as amended, and 11 O.S. § 22-121, as amended, the City Manager, or designated agent, in the name of the City, is authorized to bring a civil action in district court to abate a public nuisance per se against the owners, lessees or managers who own, occupy or manage real property used for drug-related criminal activity, prostitution-related criminal activity or open

lot disturbance violations, or who in any way permit, create, take part in, maintain, or refuse to terminate or halt any such criminal activity on said property.

(1) The City may pursue informal nuisance abatement remedies with the owner, lessee or manager of real property used for drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations. Any informal abatement remedy implemented shall not prohibit formal abatement action in the appropriate district court when deemed necessary or appropriate to do so by the City.

(2) The owner, lessee or manager of real property shall be deemed to have actual knowledge of drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations for subsequent public nuisance violations after initial notice of the same has been given pursuant to the provisions of this section.

(3) The civil action to abate a public nuisance per se under Subsection (c) of this section shall follow the Oklahoma Statutes and the Oklahoma Rules of Civil Procedure.

(4) The civil action to abate a public nuisance per se under Subsection (c) of this section shall be brought in the county where the nuisance exists or is maintained.

(5) In the civil action authorized by this section, the City may request remedies to abate the public nuisance, including but not limited to the following:

a. that the court order the immediate and complete closure of the real property used for drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations;

b. that the court prohibit all use of the real property used for drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations unless and until the owners, lessees and managers abate all such criminal activity;

c. that the court prohibit any person, including the owners, lessees or managers, from entering the real property used for drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations until the owners, lessees and managers abate all such activity;

d. that the court prohibit the owners, lessees and managers from allowing or permitting any person who is a known unlawful drug user, possessor or seller or a known prostitute from entering the real

property used for drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations until the owners, lessees and managers abate all such activity and that the court order that the property remain closed until proof of such compliance is presented to the court;

e. that the court require the owners, lessees and managers to bring the real property used for drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations into compliance with all applicable City codes and ordinances within 30 days of the date on which the court's order is entered;

f. that the court require recovery by the City of all costs of the civil action under this section, as authorized by 50 O.S. § 17;

g. that the court require payment of the City's costs for the labor and materials and administrative costs required to abate the public nuisance per se or to carry out the order of the court;

h. that the court require removal of structures, improvements, fixtures and personal property located on the real property that are used in whole or in part for or in furtherance of drug-related criminal activity, prostitution-related criminal activity or open lot disturbance violations; and

i. any other relief the court determines to be appropriate, just or proper.

(d) Nothing in the division shall be construed to prohibit the filing of any criminal charges or of any other civil action or actions, including but not limited to forfeiture proceedings, as may be allowed by law.

SECTION 2. EMERGENCY. Whereas, it being immediately necessary for the preservation of the peace, health, safety and public good of The City of Oklahoma City and the inhabitants thereof that the provisions of this ordinance be put into full force and effect, an emergency is hereby declared to exist, by reason whereof this ordinance shall take effect and be in full force from and after its passage as provided by law.

INTRODUCED AND READ in open meeting of the Council of The City of Oklahoma City, Oklahoma, this 16TH day of JANUARY, 2024.

PASSED with emergency by the Council of The City of Oklahoma City, Oklahoma, on this ____ day of _____, 2024.

SIGNED by the Mayor of The City of Oklahoma City, Oklahoma, on this ____ day of _____, 2024.

ATTEST:

CITY CLERK

MAYOR

REVIEWED for form and legality:



Assistant Municipal Counselor