

**Memorandum
City Attorney**

To: City Manager
Subject: Nuisance Property Ordinance
Date: December 3, 2015

On August 21, 2015 Gov. Rauner signed into law Senate Bill 1547, which went into effect on November 19, 2015 known as state bill 1547, now public act 99 – 441. The new law prohibits any municipality from enacting or enforcing any ordinance or regulation which penalizes tenants or landlords based on police calls that were intended to prevent or respond to domestic or sexual violence or that were made on behalf of an individual with a disability, incidents of actual or threatened domestic or sexual violence, or collectivity or ordinance violations that are directly related to domestic or sexual violence. If a municipality violates this new statute the city may be subject to suit for declaratory and injunctive relief, monetary damages and attorney fees and costs.

The Shriver Center and the ACLU have sent a letter to the city indicating that their review of the city of Rock Island's chronic nuisance property ordinance, as it currently exists, will be in violation of the new law if the ordinance is not modified to conform to the new law. The chronic nuisance property ordinance is found at section 4 – 146.1.

The original chronic nuisance property ordinance was drafted in 1995 and amended in 1998. In the late 1980s and early 1990s state law enforcement and the Atty. Gen.'s office were promoting and evaluating the use of nuisance ordinances to assist in the abatement of properties which were habitually involved in the commissions of crime. The United States Bureau of justice was involved in the development and use of municipal ordinances in what they referred to as community oriented strategies for reduction of criminal law violations. During this period of time the Illinois Atty. Gen.'s office was approaching municipalities and encouraging them to adopt nuisance abatement strategies which included the use of chronic nuisance property ordinances to try and curtail repeat and habitual violations of the criminal law at properties located within the municipality. Subsequent studies of the effects of chronic nuisance property abatement ordinances concluded that certain classes of individuals were being adversely affected by these ordinances which resulted in the passing of the new legislation.

The new legislation amends the Illinois municipal code in prohibits ordinances penalizing tenants contact police or other emergency services. 65 ILCS 5/1-2-1.5(b) states no municipality shall enact or worse and ordinance or regulation that penalizes

tenants or landlords based on contact made to police or emergency services if the contact was made with the intent to prevent or respond to domestic violence or sexual violence; the intervention for emergency assistance was needed to respond to or prevent domestic violence or sexual violence; or the contact was made by, on behalf of, or otherwise concerns an individual with a disability in the purpose of the contact was related to that individual disability; 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 criminal activity or a local ordinance violation 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 tenants household, gas, or other party and against a tenant, household member, just, or other party.

The current chronic nuisance property ordinance Sec. 4-146.1 defines chronic nuisance property as any kind of structure where activity involving certain listed criminal offenses are occurring or has occurred. Section (a) (1) (g) of the the ordinance includes any felony offense as defined in 720 Illinois compiled statutes 5/2-7 and section (a) (2) (d) indicates that if three or more of the behaviors listed below have occurred during a 60 day. As a result of three separate factual events not stemming from the same incident the property is a chronic nuisance. Section (2)(d) includes the offense of domestic battery as defined in 720 ILCS 5/12-3-2.

In order to comply with the new state law the city will need to remove the reference to domestic battery as offense for which a property can be declared a chronic nuisance under section (2)(d). The ordinance should also be modified to put in a qualifying sentence under paragraph 1(g) and modifying the language to read “a felony offense as defined in 720 ILCS 5/2-7” to read “any felony offense not prohibited from being considered in determination of a nuisance property under 65 ILCS 5/1-2/1.5”.

The ordinance should further be modified to note that “in no event shall any police contact that was made by, or on behalf of, or otherwise concerns an individual with a disability be used in the determination that a property is a chronic nuisance property when the purpose of the contact was related to that individual disability.

RECOMMENDATION: I recommend that the current chronic nuisance property ordinance be modified as set forth above to comply with the new law that went into effect November 19, 2015 known as state bill 1547, now public act 99 – 441.

Submitted by: David G. Morrison, City Attorney

Approved by: Thomas Thomas, City Manager