

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 190537

Amending Chapter 48, Nuisances, by repealing Section 48-1 and enacting a new section of like number and subject matter, adding a new Section 48-50 to add spillover light as a nuisance, and adding a Section 48-51, renumbering the chronic nuisance section.

WHEREAS, the City intends to protect the public health and general welfare by controlling the adverse impacts of glare and light trespass that constitutes a public nuisance in residential neighborhoods; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 48, Nuisances, is hereby amended by repealing Section 48-1 and enacting a new section of like number and subject matter, adding a new Section 48-50, and adding a Section 48-51, renumbering the chronic nuisance section to read as follows:

**Sec. 48-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Boat* means any device used or capable of being used for navigation on water.

*Camper shell* means but is not limited to any unit primarily designed as temporary living quarters for recreation, camping or travel use, or an enclosed space which is capable of being occupied and designed to be temporarily attached to the bed or frame of a truck or similar self-powered vehicle.

*City* means the City of Kansas City, Missouri.

*Detention basin* means any facility designed for the purpose of temporarily holding water which is then released at a predetermined rate and controls the flow of stormwater downstream.

*Director of finance* means the director of finance or any authorized representative.

*Director of health* means the director of health or any authorized representative.

*Director of neighborhood and community services* means the director of neighborhood and community services or any authorized representative.

*Director of parks and recreation* means the director of parks and recreation or any authorized representative.

*Director of public works* means the director of public works or any authorized representative.

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*Fence* means a structure serving as an enclosure, barrier or boundary, usually made of posts, boards, wires, masonry or rails.

*Garbage* means the animal and vegetable waste resulting from the handling, preparation, cooking, serving and nonconsumption of food.

*Noxious plant* means any plant capable of poisoning, including but not limited to poison ivy, at any height or state of maturity.

*Occupant* means any person who has a legal or equitable interest in a parcel of real property other than a fee interest, including a life tenant, tenant, lessee, tenant at will, tenant at sufferance or adverse possessor, as well as a person in possession or a person who has charge, care or control of the parcel of real property, as the agent or personal representative of the person holding legal title to a fee interest. Possession, charge, care or control may include living, sleeping, cooking or eating in the parcel of real property.

*Owner* means any person who, alone or jointly or severally with others:

- (1) Shall have legal title to any parcel of real property, building or structure, or part thereof, with or without accompanying actual possession thereof; or
- (2) Shall have charge, care or control of any parcel of real property, building or structure, or part thereof, as agent or personal representative of the person having legal title to the building or structure, or part thereof; or
- (3) Shall have possession or right to possession under a contract for deed.
- (4) Shall have legal title of a vehicle.

*Parking space* means an area on a lot satisfying all of the following requirements:

- (1) The area must be as wide and as long as the vehicle parked thereon, but shall not be less than seven and one-half feet wide and 15 feet in length if an automobile is parked thereon;
- (2) The area must be connected to a public street or alley by a driveway not less than seven and one-half feet wide; and
- (3) The parking space shall be surfaced in accordance with sections 52-35 and 56-112.

A parking space may be provided in the front yard if the parking space is at least 20 feet from the front property line or if it is authorized by a development plan or variance approved in accordance with the zoning ordinance.

*Person* means and includes any individual, firm, estate, corporation, association, partnership, cooperative or governmental agency.

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*Premises* means any public or private property, vacant or occupied lot, plot, parcel of land, street, sidewalk, alley, boulevard, highway, right-of-way, park, parkway, public square or viaduct, including the structures or buildings thereon.

*Private sewage disposal system* means any arrangement of devices and structures used for receiving, transporting, treating and disposing of sewage, including private and community sewer lines.

*Rank weeds* means thickets or any vegetation which may emit noxious odors or any vegetation which is ten inches or more in height, including but not limited to grasses and unattended growths of other plants, bushes and shrubbery. Rank weeds shall not mean trees in excess of six feet in height, cultivated or attended trees less than six feet in height, or cultivated or attended plants, bushes or shrubbery.

*Recreational vehicle* means any unit primarily designed as a temporary living quarters for recreation, camping or travel use which either:

- (1) Contains its own motive power, as in the case of but not limited to motor homes, motor coaches, mini-motor homes or recreational vans; or
- (2) Is permanently mounted on a vehicle such as a truck camper or pickup camper.

*Refuse* means unwanted or discarded waste materials in a solid or semisolid state consisting of garbage or rubbish or a combination thereof.

*Rubbish* means solid wastes consisting of combustible and noncombustible waste materials from residential, commercial, industrial and institutional establishments, including yard wastes and items commonly referred to as trash.

*Spillover Light* means light produced by an exterior light on premises that spills over onto another property and exceeds 0.186 foot-candle at the property line of any other property zoned R-10, R-7.5 and R.6.

*Thickets* means dense growth of wild shrubbery, regardless of height, having stems or trunks less than four inches in diameter, and briar patches.

*Trailer* means but is not limited to any vehicle designed or utilized for the transportation of a boat, automobile, snowmobile, livestock, cargo or similar items, or as temporary living quarters for recreation, camping or travel use as in the case of a travel, tent, camp, pop-up or fifth wheel trailer and the like, which does not have motive power of its own, but is designed to be drawn by another vehicle.

*Vehicle* means any self-propelled device, or portion thereof, not operated exclusively upon tracks, and shall include, without limitation, automobiles, trucks, buses, motor homes, tractors and motorcycles.

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**Sec. 48-50. Obtrusive light.**

Spillover light and outdoor light emitting, generating or reflecting glare or light into adjacent residences and streets is hereby declared to constitute a nuisance.

**Sec. 48-51. Chronic nuisance.**

(a) *Chronic nuisance unlawful.* It shall be unlawful for any owner or occupant, as defined in section 48-1, of any property, premise, lot, tract or parcel of land to cause, permit, encourage or allow a chronic nuisance to exist upon said property.

(b) *Definitions.*

- (1) *Chronic nuisance.* A chronic nuisance is the use of any property, premise, lot, tract or parcel of land, or any structure or portion of structure thereon, for any of the following repeated activities, behaviors, or conduct occurring on that property or any structure or portion of structure thereon, or that is associated with the property:
  - a. Illegal use, possession or distribution of drug or drug paraphernalia as defined in section 50-201 or otherwise by the laws of the city or the state; or
  - b. Illegal possession or use of marijuana as defined in section 50-10 or otherwise by the laws of the city or the state; or
  - c. Illegal possession, use or sale of firearms or weapons as defined in article VIII of chapter 50 or otherwise by the laws of the city or the state; or
  - d. Prostitution or patronizing prostitution, as defined in section 50-72 or otherwise by the laws of the city or the state; or
  - e. Drinking alcoholic beverages in public places as defined in section 50-152 or otherwise by the laws of the city or the state; or
  - f. Disorderly conduct defined in section 50-164 or otherwise by the laws of the city or the state; or
  - g. Attempting bodily injury as defined in section 50-168 or otherwise by the laws of the city or the state; or
  - h. Any other activity that constitutes a felony or misdemeanor under federal or state law.
  - (i) Provided, however, that the grounds for determining a chronic nuisance violation for the purposes of section 48-50 does not include any request for police protection or any police intervention

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in the face of a threat or a perceived threat to person or property, or any request for the assistance of the police to enforce a court order, including, but not limited to, circumstances in which the conviction, request for assistance or other police intervention arises from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the premises.

- (2) *Repeated.* Whenever the city police department has responded three or more times during a 30-day period or seven or more times within a 180-day period to the same property for any of the activities described in 48-50(b)(1).

(c) *Administrative procedures.*

- (1) Whenever the city police department has responded and provides documentation for said repeated responses and the director of the neighborhoods and housing services department becomes aware of such reports, the director of the neighborhoods and housing services department shall provide written notice to the property owner and occupants that:
- a. Identifies the property by legal and street address;
  - b. States that the property may be designated as a chronic nuisance property which may necessitate actions to abate or remove such chronic nuisance;
  - c. Describes the nuisance activities that have occurred on the property;
  - d. Orders that an agreed abatement plan must be reached with the director of the neighborhoods and housing services department within 30 days of the notice; and
  - e. Orders that abatement measures must be taken by the owner within 30 days of the notice.
- (2) The written notice shall be delivered to the owner and the occupant(s) of the property by delivery to him or her personally, or by leaving notice at his or her usual place of abode with a member of the family over the age of 15 years, or by mail, addressed to the owner or agent and the occupant(s). If a person to whom such notice is addressed cannot be found after diligent effort to do so, service may be made upon such person by posting the notice on or about the property described in the notice, or by causing such notice to be published in a newspaper of general circulation. If the owner or occupant is a corporation, the notice shall be served upon an officer, a person in charge of any local business office, or its registered agent or any other agent authorized by appointment or required by law to receive service of process.

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- (3) Upon the expiration of the 30-day abatement period in section (c)(1) above, the director of the neighborhoods and housing services department shall determine whether the nuisance activities have been abated. If the nuisance activities have been abated, or the property owner is making reasonable efforts toward abatement as determined by the director of the neighborhoods and housing services department, the property owner may continue to work with the director of the neighborhoods and housing services department to abate the nuisance. If the nuisance activities have not been abated or an agreed abatement plan has not been reached, the director of the neighborhoods and housing services department shall set a hearing to determine if the property is a chronic nuisance property. Notice shall be served upon the property owner and shall include the time, date, and location of the hearing and shall be served upon the property owner in the manner prescribed in section (c)(2) above. All mortgagees of record and other interested parties known to the city, including tenants of the property known to the city, shall receive a copy of the notification.

(d) *Chronic nuisance board.*

(1) *Membership of chronic nuisance board.*

- a. There is hereby established a chronic nuisance board, appointed by the mayor for a term of four years, consisting of seven members who are not employees of the city. The mayor may remove members for just cause upon written notice. Each member shall have been a resident of the city for at least one year prior to appointment.
- b. The following representation should be considered in making appointments to the board: the law enforcement profession, the legal profession, the real estate profession, the neighborhood associations, the landlord associations, the tenant associations, and the community at large.
- c. The director or his designee shall act as secretary of the board.
- d. A representative of the city attorney's office shall attend all meetings held by the board.

(2) *Powers and duties of chronic nuisance board.*

- a. To interpret the provisions of section 48-50.
- b. To determine if a property is a chronic nuisance and order abatement that may include but is not limited to ordering the property closed, making a complaint to regulated industries division, ordering appropriate security measures, closing and boarding the property, or and causing special tax bills be generated for any future calls for service, excluding any call as described in 48-50(b)(1)i.

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- c. To adopt reasonable rules and regulations governing the form, method and procedures used in the filing, hearing and disposition of appeals, and for the conduct of its own business.
  - d. To hear cases pertaining to chronic nuisance as defined in this section. At the hearing on the record, the party contesting the notice or the determination that the property is a chronic nuisance property shall be given the opportunity to testify and to present evidence concerning the issue. The chronic nuisance property notice, property record, and related documentation in the proper form shall be prima facie evidence of the municipal code violation. An issued the notice of violation need not be present. The board may continue the hearing to a later date to request that additional information from the neighborhoods and housing services department or the recipient of the notice be presented by the appropriate parties prior to issuing a written decision.
  - e. For good cause shown, to grant extensions of time in which to comply with the provisions of this section.
  - f. To grant continuances.
  - g. To issue subpoenas compelling attendance of witnesses and production of evidence.
  - h. To administer oaths and affirmations.
  - i. To cause all hearings to be suitably recorded.
  - j. To render its appellate decision in writing with copies to the appellant, director and city attorney.
  - k. The board shall have all other powers or duties which are now or may hereafter be granted to or imposed upon it by ordinance, statute or final decision of a court.
- (3) *Judicial review of decisions of chronic nuisance board.* For any decision of the chronic nuisance board upon an order or action taken pursuant to this section, the occupant, owner, or the director may seek judicial review in a manner provided by law. The method of judicial review of any decision of the board shall be as provided in RSMo chapter 536.
- (e) *Chronic nuisance hearing.*
- (1) The hearing shall be heard by the chronic nuisance board as defined in this section and shall be conducted in the manner prescribed in subsection (d)(2) above and as further detailed in subsection (e)(2) below in order to

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determine whether a property is a chronic nuisance property. Each interested party shall be given an opportunity to present evidence under oath and to be represented by counsel.

- (2) Following the hearing and considering all of the testimony and evidence submitted at the hearing, the chronic nuisance board shall make a written determination as to whether the property is a chronic nuisance property and will consider the following in making said determination:
  - a. Knowledge of the property owner of the chronic nuisance or otherwise illegal activities occurring on the property.
  - b. Nature and extent of nuisance activity associated with the property.
  - c. Nature and extent of conditions that violate city codes.
  - d. Actions taken by the property owner to prevent nuisance activity and to abate existing nuisance activity found to exist on the property.
  - e. The physical characteristics of the property, including the proximity of property to residential property, parks, churches, schools and playgrounds.
  - f. Whether there is harassing or intimidating conduct, as prohibited by law, by the owner, occupant(s) or person(s) frequenting the property toward persons living in the neighborhood or passing by the place. A person shall be considered to be frequenting the property if he or she lives or works on the property, visits the property, or loiters about the property, as defined in section 50-161 of the Code.
  - g. Whether there is street or sidewalk congestion caused by the owner, occupant or persons frequenting the place, as defined in subsection (e)(2)f above.
  - h. The impact of chronic nuisance determination on innocent parties, such as, but not limited to, tenants of the property.
  - i. Any other evidence deemed relevant by the chronic nuisance board.
- (3) The board shall issue a final written determination within ten days of the conclusion of the hearing. If the board determines that the property owner is working to remedy the matter, the board may continue the hearing for up to 60 days before making a final determination. If the board determines that the conditions on the property constitute a chronic nuisance, the board may order the abatement of the nuisance or order any action necessary to abate the nuisance, including the closing of any structure or any part thereof on the property for a period not to exceed one year.



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- (4) In determining whether the property or any portion thereof should be ordered closed as a result of the existence of a chronic nuisance, the board shall consider, in addition to all other relevant factors, the impact of the closure on innocent parties; however, the lack of knowledge of, acquiescence or participation in, or responsibility for a public nuisance on the part of the owners, lessors, lessees, mortgagees and all those persons in possession or having charge of as agent or otherwise, or having any interest in the property used in conducting or maintaining the public nuisance, shall not be a defense by such persons or entities.
- (5) The order issued by the board shall include the address of the property, a description of the nuisance(s), the length of time allowed for the property owner to abate the nuisance or, if the structure or any part thereof is ordered closed, the length of time of the closure and, if only a part of the structure is ordered closed, the identification of the area to be closed. Furthermore, the order will require that if the property is ordered closed, the property owner shall submit a plan of action intended to prevent the property from being a chronic nuisance property after the period of closure expires, as further described in section (f)(1) below. The order shall also state that any costs incurred by the city in order to uphold this order, including closure of the property, will be specially assessed and shall be deemed both a personal debt against the owner as well as a lien on the property until paid.
- (6) The order shall be mailed to the property owner, occupants known to the city, and mortgagees of record of the property. The order shall be posted on the property within 48 hours of the decision.

(f) *Enforcement of the order.*

- (1) Within 30 days of the closure of the property, the property owner shall submit to the director of the neighborhoods and housing services department for approval a plan of action as described in section (e)(5) above intended to prevent the property from being a chronic nuisance property after the period of closure expires. The plan shall include any lawful method of abatement and remediation as deemed applicable by the director of the neighborhoods and housing services department. If the property owner, lessor or lessee submits proof satisfactory to the board that the nuisance(s) has been abated for a period of 30 days, the board may vacate the provisions of the order directing closure or may modify said order.
- (2) If a property or a portion thereof is ordered closed, it shall be unlawful to occupy the property ordered closed or allow the property ordered closed to be occupied during the period of closure.
- (3) Any closure pursuant to this section shall not constitute an act of possession, ownership or control of the closed structure by the city.

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- (4) If the owner does not obey the order of the board, the city shall take all appropriate steps to undertake and complete the work necessary to abate the chronic nuisance and/or close and secure the structure and shall assess the costs to the owner as a special tax bill. The special tax bill from the date of its issuance shall be deemed a personal debt against the person or persons who were the owners of record of the property at the time the city caused the nuisance thereon to be abated. If there was more than one owner of record of the property at the time the city caused the nuisance thereon to be abated, they shall be jointly and severally liable for the personal debt paid as provided in section 2-1722 of this Code. The city may initiate actions against such owner(s) to collect the personal debt if payment in full is not received before the bill becomes delinquent. The special tax bill from the date of its issuance shall also be a lien on the property until paid. Such lien may be enforced by any method appropriate for the enforcement of special assessments generally.
- (5) The owner of the property at the time an order is issued shall be responsible for complying with the order, regardless if he or she conveys his or her interest in the property to any other person or persons after such order was issued and served.
- (6) No order to close shall relieve the owner or occupant of any property from complying with the building, fire, property maintenance and zoning codes or any other ordinance that regulates the condition or use of the premises.
- (7) In situations which are determined to be emergencies, as defined in section 48-68, the city may proceed pursuant to the emergency procedures as necessary.

(g) *Retaliation prohibited.*

- (1) It shall be unlawful for a landlord to terminate the lease agreement or periodic tenancy of any tenant or otherwise retaliate against any tenant because the tenant complained to the city about nuisance activities on the landlord's premises. 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 city 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, such as but not limited to failure to pay rent, committing a nuisance activity as defined by this chapter, violating the terms and conditions of the lease agreement or periodic tenancy, or the necessity of closing the building in an effort to abate the chronic nuisance(s). A landlord's failure to renew a lease agreement upon expiration of such lease agreement shall not be deemed a violation of this section.

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- (2) It shall be unlawful for a tenant or any other person to submit or cause to be submitted a false report(s) as defined in section 50-42 to the city police department alleging incidents of any of the activities identified in section 48-50(b).

(h) *Violations and penalties.*

- (1) It shall be unlawful for any owner or occupant, as defined in section 48-1, of any property, premise, lot, tract or parcel of land to cause, permit, encourage or allow a chronic nuisance to exist upon said property.
- (2) It shall be unlawful to use, occupy or permit the use or occupancy of any structure ordered closed through the procedures of this section.
- (3) It shall be unlawful to interfere with any entry into or upon the place by any police officer, agent or employee of the city for the purpose of closure of a structure or otherwise abating the nuisance as ordered pursuant to this section.
- (4) It shall be unlawful to remove an order posted on the property.
- (5) Any violation of this section shall be punishable as provided in section 48-72.

**Sec. 48-52 – 48-60. Reserved.**

Approved as to form and legality:

  
Martha Means  
Assistant City Attorney



Authenticated as Passed

  
Sly James, Mayor

  
Marilyn Sanders, City Clerk

JUL 11 2019

Date Passed