

13-1-8: NUISANCE GATHERING/HOUSE:

A. Definitions:

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.

NUISANCE GATHERING: 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 combination of two (2) or more of the primary enumerated offenses in subsection B of this section or two (2) or more violations of this Code.

NUISANCE HOUSE: A dwelling unit, meaning a single-family structure, attached or detached, a rooming house, apartment, condominium, or townhouse within the City, or any parcel of real property with or without permanent structure, where the conduct of the resident(s) or tenant(s) results in the occurrence of any combination of two (2) or more of the primary enumerated offenses in subsection B of this section or two (2) or more violations of this Code or two (2) or more violations regarding:

1. Any activity, behavior or conduct that constitutes a felony as defined in the Illinois Criminal Code, 720 Illinois Compiled Statutes 5/1-1 et seq.
2. Any activity, behavior or conduct that constitutes a misdemeanor as defined in the Illinois Criminal Code of 1961, 720 Illinois Compiled Statutes 5/1-1 et seq., or any similar offense under this Code.
3. Any activity, behavior or conduct that constitutes a forcible felony as defined in the Illinois Criminal Code, 720 Illinois Compiled Statutes 5/1-1 et seq., or a felony where serious bodily harm occurs may immediately be deemed a chronic nuisance house regardless of whether there have been any prior unlawful activities that have occurred as defined in this Code.

B. Primary Enumerated Offenses:

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| Title 2 violations: | | |
| | Section 2-4-1 | Sale of alcoholic liquor without required license |
| | Section 2-5-5 | Possession or consumption on public property or control premises |
| Title 4 violations: | | Any violation of title 4 in which the violation threatens life, safety and health |
| | Section 4-15-1 | Any violation of the adopted Property Maintenance Code in which the violation threatens life, safety, and health |
| Title 8 violations: | | Any violation of the adopted Fire Code in which the violation threatens life, safety, and health |
| Title 10 violations: | | |
| | Section 10-1-14 | Burning; combustible materials |
| | Section 10-2-17 | Litter on occupied private property |
| | Section 10-2-18 | Owner and person in control to maintain premises free of litter |
| Title 14 violations: | | |
| | Section 14-2-1 | Assault and battery |
| | Section 14-2-2 | Fighting |
| | Section 14-2-3 | Intimidation |
| | Section 14-2-4 | Prostitution |
| | Section 14-2-5 | Public indecency and public nudity |
| | Section 14-2-6 | Public urination or defecation |
| | Section 14-2-7 | Reckless conduct |
| | Section 14-3-4 | Damage to property |
| | Section 14-4-2 | Disorderly conduct |
| | Section 14-4-3 | Gambling |
| | Section 14-4-4 | Mob action |
| | Section 14-4-7 | Use of sound devices and general noise restrictions |
| | Section 14-4-8 | False alarms |
| Title 17 violations: | | |
| | Section 17-1-4 | Obstructing the flow of vehicular or pedestrian traffic |
| | Section 17-1-4 | Abandonment of vehicles |

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| | Section 17-3-3 | Inoperable motor vehicles within City limits |
| | Section 17-3-4 | Unlicensed vehicles in residential areas |
| Title 18 violations: | | |
| | Section 18-12-2 | Parking prohibited in specific places |

C. 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 gathering" 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.

D. 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 gathering shall disperse immediately. No person shall knowingly or wilfully fail or refuse to obey such order.

E. 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 (\$250.00) for a first offense; not less than five hundred dollars (\$500.00) for the second offense; not less than seven hundred fifty dollars (\$750.00) for each subsequent offense. (Ord. 2018-26)

13-1-9: 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, "nuisance gathering", "nuisance house" as defined in section 13-1-8 of this chapter 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. (Ord. 2018-26)

B. Definitions:

CHRONIC NUISANCE HOUSE: A dwelling unit that experiences three (3) or more unlawful activities in, at, on, or about the unit or has had water, electric or sewer service disconnected for thirty (30) days or more during a twelve (12) month period (or 6 or more unlawful activities in, at, on, or about a hotel/motel) subject to the notice requirements of this section. The twelve (12) month period shall reset anytime 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 twelve (12) month period shall reset for a hotel/motel anytime there is a change in ownership of the property. For the purpose of this section, 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.

REAL PROPERTY: Any real estate, vacant land, building, structure or housing accommodations within the City limits.

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 those activities listed in section 13-1-8, "Nuisance Gathering/House", of this chapter.
2. Any activity, behavior or conduct that constitutes a felony as defined in the Illinois Criminal Code, 720 Illinois Compiled Statutes 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 Illinois Compiled Statutes 5/1-1 et seq., or any similar offense under this Code.
4. Any activity, behavior or conduct that constitutes a forcible felony as defined in the Illinois Criminal Code, 720 Illinois Compiled Statutes 5/1-1 et seq., or a felony where serious bodily harm occurs may immediately be deemed a chronic nuisance house regardless of whether there have been any prior unlawful activities that have occurred as defined in this Code. (Ord. 2016-59; Ord. 2018-26)

C. Procedure:

1. First Unlawful Activity:

a. Notification By Chief Of Police: 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:

(1) The street or legal address of the dwelling unit.

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

(3) The names of the occupants or others involved in the incident.

(4) The date and time (within 5 business days 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, e-mail or facsimile.

(5) A statement substantially as follows:

(A) 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. Response By Landlord/Property Manager (Or Owner, If Owner Occupied): 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 shall be by one of the following methods: personal service; registered or certified mail, with return receipt requested; electronic mail; or facsimile. The response shall indicate whether the offenders were occupants (tenants) and any actions the owner took in response to the activity, such as:

(1) A letter of warning to the occupants.

(2) Any phone calls, electronic mail, or communications to the occupants.

(3) Any corrective action taken, such as a "no trespass" notice issued to nontenants.

(4) A meeting with the occupants and their responses.

(5) Copies of any agreements, resolutions, or pledges by occupants.

(6) Landlord's comments or questions on the incident.

(7) A noise curfew was instituted for the unit.

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

c. 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 subsection C1a of this section:

(1) 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) business days of the chief's receipt of that response letter.

(2) At the follow up meeting, the chief shall 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 year period and discuss other possible means to correct the problem.

(3) The chief shall explain that, in the event of the occurrence of a third unlawful activity in, at, on, or about the dwelling unit within a one 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.

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

2. Second Unlawful Activity:

a. Notification By Chief Of Police: 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 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:

(1) The street or legal address of the dwelling unit.

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

(3) The names of the occupants or others involved in the incident.

(4) The date and time (within 5 business days 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, e-mail or facsimile.

(5) A statement substantially as follows:

(A) 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. Determining Necessity Of Mandatory Meeting With Chief Of Police: In determining whether to send the second notice, the chief shall 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.

c. Mandatory Meeting With The Chief Of Police: At the mandatory meeting, the chief shall 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 shall 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 shall be sent, and expiration of the time limits for sending such notice shall not bar such notice.

3. Third Unlawful Activity:

a. Notification By Chief Of Police: 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 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:

(1) The street or legal address of the dwelling unit.

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

(3) The names of the occupants or others involved in the incident.

(4) The date and time (within 5 business days 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, e-mail or facsimile.

(5) A statement substantially as follows:

(A) 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 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/or agreed upon penalties in the event of noncompliance by that date.

4. Notices By Chief; Other City Departments:

a. 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, code enforcement 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 toward the total violations.

5. Notices By Chief; Effect Of Failure To Give Notice:

a. 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:

(1) 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, e-mail or facsimile within five (5) business

days of the issuance of a citation 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:

(1) To the landlord/property manager (or owner, if owner occupied).

(2) To the person to whom the last tax bill on the property was sent in the event that subsection C5a of this section does not apply.

f. An expiration of the time limits for sending said notices shall not bar such notice or enforcement of this section or any other section of this code.

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:

a. 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.

(1) 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.

(2) 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. Penalty: The landlord/property manager (or owner) who commits an act prohibited by this section shall be subject to a fine of not less than two hundred fifty dollars (\$250.00) for a first offense; not less than five hundred dollars (\$500.00) for the second offense; not less than seven hundred fifty dollars (\$750.00) for each subsequent offense.

2. Liable For Costs: 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. City May Seek Relief: 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 this code or as otherwise provided by law. (Ord. 2016-59)