

ORDINANCE NO. 575

VILLAGE OF BELLEVUE, ILLINOIS ORDINANCE DEFINING NUISANCE PROPERTY AND ESTABLISHING PENALTIES FOR COMMITTING OR PERMITTING NUISANCE ACTIVITIES

WHEREAS, the Village of Bellevue Board of Trustees ("Board") is authorized by section 11-60-2 of the Illinois Municipal Code to define, prevent and abate nuisances; and

WHEREAS, the Village President and Village Board of Trustees has determined that it is in the best interests of the Village of Bellevue to define nuisance properties and prohibit the commission of nuisance activities through the enforcement of nuisance standards.

NOW THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF BELLEVUE, PEORIA COUNTY, ILLINOIS, AS FOLLOWS:

1. Violations.

(a) Any certain property within the Village of Bellevue that becomes a Chronic Nuisance Property or an Aggravated Chronic Nuisance Property is in violation of this Ordinance and is subject to its remedies.

(b) Any owner or person in charge who permits property under his or her ownership or control to be a Chronic Nuisance Property or an Aggravated Chronic Nuisance Property shall be in violation of this Ordinance and subject to its remedies.

2. Definitions.

(a) *Chronic Nuisance Property.* **Chronic Nuisance Property** shall be property upon which three or more of the criminal offenses listed below ("Chronic Nuisance Acts") have occurred during any 365-day period, as a result of any three separate and distinct events.

- (1) First degree murder as defined in 720 ILCS 5/9-1;
- (2) Any kidnapping offense as defined in 720 ILCS 5/10-1 et seq.;
- (3) Criminal Housing Management as defined in 720 ILCS 5/12-5.1;
- (4) Possession of explosives or incendiary devices as defined in 720 ILCS 5/20-2;
- (5) Any offense involving deadly weapons as defined in 720 ILCS 5/24 et seq.;
- (6) Mob action as defined in 720 ILCS 5/25-1;
- (7) Possession, manufacture or delivery of controlled substances as defined in 720 ILCS 570/401 et seq.;
- (8) Sexual abuse or related offenses as defined in 720 ILCS 5/12-15 et seq.;
- (9) Possession, cultivation, manufacture or delivery of cannabis as defined in 720 ILCS 550/1 et seq.;
- (10) Sale, delivery or possession of drug paraphernalia, as defined in 720 ILCS 600/3 and 3.5;
- (11) Disorderly conduct as defined in 720 ILCS 5/26-1;

- (12) Gambling as defined in 720 ILCS 5/28-1;
- (13) Assault or battery or any related offense as defined in 720 ILCS 5/12-1 et seq.;
- (14) Public indecency as defined in 720 ILCS 5/11-9;
- (15) Prostitution as defined in 720 ILCS 5/11-14 et seq.;
- (16) Criminal damage to property as defined in 720 ILCS 5/21 et seq.;
- (17) Illegal consumption or possession of alcohol as defined in 235 ILCS 5/1-1 et seq.;

(b) *Aggravated Chronic Nuisance Property.* **Aggravated Chronic Nuisance Property** shall be property upon which two or more of the criminal offenses listed below (“Aggravated Chronic Nuisance Acts”) have occurred during any 365-day period, as a result of any two separate and distinct events.

- (1) First degree murder as defined in 720 ILCS 5/9-1;
- (2) Any kidnapping offense as defined in 720 ILCS 5/10-1 et seq.;
- (3) Criminal housing management as defined in 720 ILCS 5/12-5.1;
- (4) Possession of explosives or incendiary devices as defined in 720 ILCS 5/20-2;
- (5) Any offense involving deadly weapons as defined in 720 ILCS 5/24 et seq.;
- (6) Mob action as defined in 720 ILCS 5/25-1 (a)(1), (d), (e);
- (7) Possession, manufacture or delivery of controlled substances as defined in 720 ILCS 570/401 et seq.;
- (8) Sexual abuse or related offenses as defined in 720 ILCS 5/12-15 et seq.;
- (9) Possession, cultivation, manufacture or delivery of cannabis as defined in 720 ILCS 550/1 et seq.;
- (10) Sale, delivery or possession of drug paraphernalia, as defined in 720 ILCS 600/3 and 3.5.

(c) *Control.* The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.

(d) *Owner.* Any person, partnership, land trust, or corporation having any legal or equitable interest in the property. Owner includes, but is not limited to:

- (1) A mortgagee in possession in whom is vested (a) all or part of the legal title to the property; or (b) all or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or
- (2) An occupant who can control what occurs on the property; or
- (3) Any person acting as an agent of an owner as defined herein.

(e) *Permit.* To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

(f) *Person.* Any natural person, association, partnership or corporation capable of owning or using property in the Village of Bellevue.

(g) *Person in charge.* Any person in actual or constructive possession of a property, including but not limited to an owner, occupant of property under his or her domain, ownership or control.

(h) *Property.* Any real property, including that which is affixed, incidental or pertinent to land, including but not limited to any premises, room, house, building or structure or any separate part or portion thereof, whether permitted or not.

3. Remedies.

(a) In the event a court determines property to be a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property**, the court may order that the property be closed and secured against all use and occupancy for a period of not less than 30 days, but not more than 180 days, or the court may employ any other remedy deemed by it to be appropriate to abate the nuisance.

(b) In addition to the remedy provided in paragraph (a) above, the court may impose upon the owner of the property a civil penalty in the amount of up to \$250.00 per day, payable to the Village of Bellevue, for each day the owner had knowledge that the property was a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property** and permitted the property to remain a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property**.

(c) In determining what remedy or remedies shall be employed, the court may consider evidence of other conduct which has occurred on the property, including, but not limited to:

- (1) The actions or lack of action taken by the owner to mitigate or correct the problem at the property;
- (2) Whether the problem at the property was repeated or continuous;
- (3) The magnitude or gravity of the problem;
- (4) The cooperation of the person in charge with the Village;
- (5) The cost to the Village to investigate and correct or attempt to correct the condition;
- (6) The disturbance of neighbors;
- (7) The recurrence of loud and obnoxious noises; and/or
- (8) Repeated consumption of alcohol in public.

(d) The court may authorize the Village of Bellevue to physically secure the property against use or occupancy in the event the owner fails to do so within the time specified by the court or to take other steps necessary to abate a chronic nuisance or an aggravated chronic nuisance.

(e) In the event that the Village of Bellevue is authorized to secure the property or otherwise abate a chronic nuisance or an aggravated chronic nuisance, all costs reasonably incurred by the Village of Bellevue to effect a closure or abate the nuisance shall be assessed against the owner. The Village of Bellevue shall submit a statement of costs to the court for its

review. If no objection of the statement is made within the period prescribed by the court, or if the court, after objection is made, determines that the statement of costs is accurate, the court shall approve such costs.

(f) Any person who is assessed the cost of abatement and/or civil penalty by the court shall be personally liable for the payment thereof to the Village of Bellevue. If payment is not made, the Village of Bellevue may pursue all available collection procedures, including but not limited to the filing of a lien on the property found to be a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property**, a civil collection action, or requesting a court to find the owner in contempt of court for nonpayment of such costs.

(g) In the court's discretion, a tenant may be entitled to his or her reasonable relocation costs from the owner, as those costs are determined by the court if, without actual notice, the tenant moved into the property, after the owner received notice as described herein of the police superintendent's determination as described below.

(h) The Village, in addition to any other remedies set forth herein, may, at its discretion, charge an owner of a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property** with a violation of this Ordinance, which may be processed and prosecuted as an ordinance violation.

4. Notice.

When the Sheriff of Peoria County or his designee receives two or more police reports documenting the occurrence of Chronic Nuisance Acts, as defined in paragraph 2(a) of this Ordinance, or one or more police reports documenting the occurrence of Aggravated Chronic Nuisance Acts, as defined in paragraph 2(b) of this Ordinance, on or within a property, the Sheriff or his designee shall independently review such reports to determine whether they describe Chronic Nuisance Acts or Aggravated Chronic Nuisance Acts. Upon such findings, the Sheriff or his designee may:

(1) Notify the owner or person in control in writing that the property is in danger of becoming a **Chronic Nuisance Property** or **Aggravated Chronic Nuisance Property**. The notice shall contain the following information:

- a. The street address or a legal description sufficient for identification of the property.
- b. A statement that the superintendent of police has information that the property may be **Chronic Nuisance Property** or **Aggravated Chronic Nuisance Property**, with a concise description of the nuisance activities that may exist, or that have occurred. The superintendent of police or his designee shall offer the person in charge an opportunity to propose a course of action that the superintendent of police agrees will abate the nuisance activities giving rise to the violation.
- c. Demand that the owner respond to the superintendent of police or his designee within ten days to discuss the nuisance activities.

Nothing herein shall prohibit the superintendent of police or his designee from sending a warning letter after receiving one police report documenting the occurrence of a nuisance activity, as defined in this Ordinance.

(2) After complying with the notification procedures described herein when the superintendent of police or his designee receives a police report documenting the occurrence of a third nuisance activity at or within a property and determines that the property has become a **Chronic Nuisance Property** or **Aggravated Chronic Nuisance Property**, the superintendent of police or his designee shall:

- a. Notify the owner or person in control in writing that the property has been determined to be a **Chronic Nuisance Property**. The notice shall contain the following information:
 1. The street address or legal description sufficient for identification of the property.
 2. A statement that the superintendent of police has determined the property to be a **Chronic Nuisance Property** with a concise description of the nuisance activities leading to his/her findings.
 3. Demand that the owner respond within ten days to the superintendent of police and propose a course of action that the superintendent of police agrees will abate the nuisance activities giving rise to the violation.
 4. Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the owner at the address of the property believed to be a **Chronic Nuisance Property**, or such other place which is likely to give the person in charge notice of the determination by the superintendent of police.
 5. A copy of the notice shall be served on the owner at such address as shown on the tax rolls of the county in which the property is located, and/or the occupant, at the address of the property, if these persons are different than the owner, and shall be made either personally or by first class mail, postage prepaid.
 6. A copy of the notice shall also be posted at the property after ten days has elapsed from the service or mailing of the notice to the owner and the owner has not contacted the superintendent of police.
- b. The failure of any person to receive notice that the property may be a **Chronic Nuisance Property** or **Aggravated Chronic Nuisance Property** shall not invalidate or otherwise affect the proceedings under this Ordinance. The notification procedures set forth herein need not be followed in cases of aggravated chronic public nuisances.
- c. If after the notification, but prior to the commencement of legal proceedings by the Village of Bellevue pursuant to this Ordinance, an

owner stipulates with the superintendent of police or his designee that the owner will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the superintendent of police may agree to postpone legal proceedings for not less than ten (10) days nor more than 30 days. If the agreed course of action does not result in the abatement of the nuisance activity or if no agreement concerning abatement is reached within 30 days, the superintendent of police shall request authorization for the corporation counsel to commence a legal proceeding to abate the nuisance.

- d. Concurrent with the notification procedures set forth herein, the superintendent of police or his designee shall send copies of the notice, as well as any other documentation that supports legal proceedings to the corporation counsel.

5. Commencement of Action; Burden of Proof.

(a) The Village of Bellevue may commence an action to abate a chronic nuisance or an aggravated chronic nuisance as described and defined in this Ordinance.

(b) In an action seeking abatement of a **Chronic Nuisance Property** or **Aggravated Chronic Nuisance Property**, the Village of Bellevue shall have the initial burden of showing by preponderance of the evidence that the property is a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property**.

(c) It is a defense to an action seeking the closure of **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property** that the owner or person in control of the property at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property**, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the findings that the property is a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property**.

6. Emergency Closing Procedures.

(a) In the event that it is determined that the property is an immediate threat to the public safety and welfare, the Village of Bellevue may apply to the court for such interim relief, as is deemed by the corporation counsel to be appropriate. In such an event, the notification provision set forth in this Ordinance (above) need not be complied with; however, the Village of Bellevue shall make a diligent effort to notify the person in charge prior to a court hearing.

(b) In the event that the court finds the property constitutes a **Chronic Nuisance Property** or an **Aggravated Chronic Nuisance Property**, and finds that the property is an immediate threat to the public safety and welfare, the court may order the remedies set forth in this Ordinance. In addition, in the event that it also finds the person in charge had knowledge of activities or conditions of the property constituting or violating this Ordinance and permitted the activities to occur, the court may assess a civil fine as provided above.

7. **Severability.**

If any provision of this article or its application, or any person or circumstances held to be invalid for any reason, the remainder of said application of its provisions to the other persons or circumstances shall not be in any way affected.

8. **Effective Date.**

This ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as is hereby authorized to be done by the President and Board of Trustees.

PASSED AND APPROVED THIS 13th DAY OF FEBRUARY, 2006.

6 AYES

0 NAYS

0 ABSENT

VILLAGE OF BELLEVUE, ILLINOIS

By: Ralph E. Wilson
Ralph E. Wilson, President

Attest: Carol A. Howard
Carol A. Howard, Village Clerk