Agenda Cover Memorandum

Meeting Date: July 10, 2017

Meeting Type: ☒ COW (Committee of the Whole) ☐ City Council ☐ Budget Workshop

Item Title: Adopt a Chronic Nuisance Properties Ordinance

Action Requested: ☒ Approval ☐ For Discussion ☐ Feedback Requested ☐ For Your Information

Staff Contact: Chief Frank Kaminski Phone #: 847-856-5252 Email: fkaminsk@parkridgepolice.org

Background:
Attached you will find a draft of a Chronic Nuisance Properties ordinance prepared by the City attorney at my request. This ordinance will allow the Police Department to take action against the properties which continually get calls for police service involving certain activities.

The ordinance basically works as follows:

1. If at least two separate events occur at a property within 180 days, (6 months), and the activity is one that is listed in the ordinance, the Department can initiate steps to abate the nuisance at the property.

2. Prior to citing the property, the Chief of Police will notify the property owner that there is cause for designating the property as a nuisance property and request a meeting with the property owner.

3. During the meeting, the property owner has the opportunity to present a plan to abate the nuisance. If accepted, the proceeding will be suspended. If the plan fails, the Department will continue with the filing of charges.

4. The case would then move to an Administrative Adjudication Hearing. The penalties are fines. The majority of the activities listed in the ordinance are for criminal related matters. The City can seek to close the property and or abate the nuisance. However, building code violations are also included. These have been reviewed with CP& D Director, J. Brown and he supports the ordinance.

I have had experience with this type of ordinance in the City of Evanston. I found it to be very helpful and it got positive results.

Currently, Park Ridge does not have many properties that fall into this category, but we do get a few now and then. Obviously, this ordinance is not a panacea for problem properties, but it would be helpful to have this ordinance as another "tool" in our toolbox.

Thank you for your consideration.

Recommendation:
Approve first reading of an Ordinance for Chronic Nuisance Properties

Budget Implications:
Does Action Require an Expenditure of Funds: ☐ Yes ☒ No

If Yes, Total Cost:

If Yes, is this a Budgeted Item: ☐ Yes ☐ No ☐ Requires Budget Transfer

If Budgeted, Budget Code (Fund, Dept, Object)

Attachment(s), if any:
- Chronic Nuisance Properties Ordinance

Article 14 CONDUCT AND OFFENSES

CHAPTER 22 CHRONIC NUISANCE PROPERTIES

SECTION:

14-22-1: - NUISANCE DECLARED:

A. Any certain property within the City which becomes a chronic nuisance property is in violation of this Chapter and is subject to its remedies.

B. Any person in charge who permits property under his or her ownership or ownership and control to be a chronic nuisance property shall be in violation of this Chapter and subject to its remedies.

14-22-2: - DEFINITIONS:

CHRONIC NUISANCE PROPERTY: Property upon which two (2) or more of the activities listed below have occurred during any one hundred eighty (180) day period, as a result of any two (2) separate factual events that have been independently investigated by any law enforcement agency.

A. Disorderly Conduct as defined in 720 ILCS 5/26-1.

B. Unlawful Use of Weapons as defined in 720 ILCS 5/24-1 et seq.

C. Mob Action as defined in 720 ILCS 5/25-1.

D. Discharge of a Firearm as defined in 720 ILCS 5/24-1.2 and 1.5.

E. Gambling as defined in 720 ILCS 5/28-1.

F. Possession, Manufacture or Delivery of Controlled Substances as defined in 720 ILCS 570/401 et seq.

G. Public Indecency as defined in 720 ILCS 5/11-9.

H. Assault or Battery or Any Related Offense as defined in 720 ILCS 5/12-1 et seq.

I. Prostitution as defined in 720 ILCS 5/11-14 et seq.

J. Criminal Damage to Property as defined in 720 ILCS 5/21-1 et seq.

K. Possession, Cultivation, Manufacture or Delivery of Cannabis as defined in 720 ILCS 550/3 et seq.

L. Illegal consumption or possession of alcohol as defined in any City of Park Ridge ordinance or State of Illinois statute.

M. Violation of any Animal Control order issued under Article 5, Chapter 8 of the City of Park Ridge Code of Ordinances

N. "Criminal housing management" as defined in 720 ILCS 5/12-5.1.

O. "Street gang related" or "gang related" activity as defined in 740 ILCS 147/10.

P. "Structures unfit for human occupancy" as defined in the 2015 edition of the International Residential Code For One and Two Family Dwellings, as adopted by the City of Park Ridge (§15-3-1).

Q. "Unsafe structures" as defined in the 2015 edition of the International Residential Code For One and Two Family Dwellings, as adopted by the City of Park Ridge (§15-3-1).

R. Multiple and serious violations of the 2015 edition of the International Residential Code For One and Two Family Dwellings, as adopted by the City of Park Ridge (§15-3-1).

S. Any Activity that constitutes a felony or a Class A misdemeanor pursuant to any Federal or Illinois statute.

T. A violation of section 14-4-4 of the City of Park Ridge Code, pertaining to parental responsibility.

CONTROL: The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.

OWNER: Any person, agent, firm or corporation having any legal or equitable interest in the property. Owner includes, but is not limited to: a) a mortgagee in possession in whom is vested 1) all or part of the legal title to the property; or 2) all or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or b) an occupant who can control what occurs on the property.

PERMIT: To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

PERSON: Any natural person, association, partnership or corporation capable of owning or using property in the City.

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.

PROPERTY: Any real property, including land in 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.

14-22-3: - REMEDY:

A. In the event a court determines property to be a chronic nuisance property, the court or the City hearing officer may order that the property be closed and secured against all use and occupancy for a period of one hundred eighty (180) days, or the court or City hearing officer may employ any other remedy deemed by it to be appropriate to abate the nuisance.

B. In addition to the remedy provided in subsection A of this Section, the court or the City hearing officer may impose upon the owner of the property a civil penalty in an

amount of not less than five hundred dollars ($500.00) per day up to two thousand five hundred dollars ($2,500.00) per day, payable to the City, for each day the owner had actual knowledge that the property was a chronic nuisance property and permitted the property to remain a public nuisance.

C. In determining what remedy or remedies shall be used, the court or the City hearing officer may consider evidence of other conduct which has occurred on the property, including, but not limited to:

   1. The disturbance of neighbors.
   2. The recurrence of loud and obnoxious noises.
   3. Repeated consumption of alcohol in public.

14-22-4: - ABATEMENT OF NUISANCE:

The City Attorney, or special counsel to the City, may commence an action to abate a public nuisance as described above. Upon being satisfied by affidavits or other sworn evidence that an alleged public nuisance exists, the court or City hearing officer may, without notice or bond, enter a temporary restraining order or may enter an order restraining any defendant from removing or interfering with all property used in connection with the public nuisance.

14-22-5: - PROCEDURE:

When the Chief of Police of the City receives one or more police reports documenting the occurrence of nuisance activity on or within a property, the Chief of Police shall independently review such reports to determine whether they describe criminal acts. Upon such findings, the Chief of Police may:

A. Notify the person in charge in writing that the property is in danger of becoming a chronic nuisance property. The notice shall contain the following information:

   1. The street address or a legal description sufficient for identification of the property.
   2. A statement that the Chief of Police has information that the property may be a chronic nuisance property, with a concise description of the nuisance activities that may exist, or that have occurred. The Chief of Police shall offer the person in charge an opportunity to propose a course of action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.
   3. Demand that the person in charge respond to the Chief of Police within ten (10) days to discuss the nuisance activities.

B. After complying with the notification procedures described herein when the Chief of Police receives a police report documenting the occurrence of a second nuisance activity at or with a property and determines that the property has become a chronic nuisance property, the Chief of Police shall:

1. Notify the person in charge in writing that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:

    a. The street address or legal description sufficient for identification of the property.

    b. A statement that the Chief 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.

    c. Demand that the person in charge respond within ten (10) days to the Chief of Police and propose a course of action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.

    d. Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge 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 Chief of Police.

    e. 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 person in charge, and shall be made either personally or by first class mail, postage prepaid.

    f. A copy of the notice shall also be posted at the property after ten (10) days have elapsed from the service or mailing of the notice to the person in charge and the person in charge has not contacted the Chief of Police.

    g. The failure of any person to receive notice that the property may be a chronic nuisance property shall not invalidate or otherwise affect the proceedings under this Chapter.

C. If after the notification, but prior to the commencement of legal proceedings by the City pursuant to this Chapter, a person in charge stipulates with the Chief of Police that the person in charge will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the Chief of Police may agree to postpone legal proceedings for a period of not less than ten (10) days nor more than thirty (30) days, except in the case of a nuisance activity where a search warrant was executed at the property. 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 thirty (30) days, the Chief of Police shall request authorization from the City to commence a legal proceeding to abate the nuisance.

D. Concurrent with the notification procedures set forth herein, the Chief of Police shall send copies of the notice, as well as, any other documentation which supports legal proceedings to the City Attorney.

E. When a person in charge makes a response to the Chief of Police as required above, any conduct or statements made in connection with the furnishing of that

response shall not constitute an admission that any nuisance activities have or are occurring. This subsection does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.

14-22-6: - COMMENCEMENT OF ACTION; BURDEN OF PROOF:

In an action seeking closure of a chronic nuisance property, the City shall have the initial burden of showing by preponderance of the evidence that the property is a chronic nuisance property.

A. It is a defense to an action seeking the closure of a chronic nuisance property that the owner 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 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.

B. In establishing the amount of any civil penalty requested, the court or the City hearing officer, may consider any of the following factors if the need be found appropriate, and shall refer to those found applicable:

   1. The actions or lack of action taken by the person in charge 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 City.
   5. The cost of the City investigating and correcting or attempting to correct the condition.

14-22-7: - 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 City may apply to the court for such interim relief, as is deemed by the Chief of Police to be appropriate. In such an event, the notification provision set forth in Section 14-22-5 of this Chapter need not be complied with, however, the City 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" as defined in this Chapter, the court may order the remedy set out. 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 Chapter and permitted the activities to occur, the court may assess a civil fine as provided above.

C. The court may authorize the City to physically secure the property within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to effect a closure shall be made and assessed as a lien against the property. As used herein, "costs" means those costs

actually incurred by the City for the physical securing of the property, as well as tenant relocation costs.

D. The City Code Enforcement Department effecting the closure shall prepare a statement of costs and the City shall thereafter submit said statement to the court for its review. If no objection of the statement is made within the period described by the court, a lien in said amount may be recorded against said property.

E. Any person who is assessed the costs of closure and/or civil penalty by the court shall be personally liable for the payment thereof to the City.

F. A tenant is entitled to their reasonable relocation costs, as those are determined by the court if, without actual notice, the tenant moved into the property, after either:

   1. The owner or tenant received notice as described herein of the Chief of Police's determination as described above.

   2. Unknown owner or other agent received notice of an action brought pursuant to this Section.

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