

ORDINANCE NUMBER: 2576

**AN ORDINANCE OF THE CITY OF SOUTH BELOIT, ILLINOIS AMENDING
CHAPTER 34 – ENVIRONMENT, ARTICLE IX ABATEMENT OF CHRONIC
NUISANCE PROPERTIES OF THE CITY CODE OF ORDINANCES**

WHEREAS, the City of South Beloit, Illinois (“City”) has adopted a City Code of Ordinances (“Code”); and

WHEREAS, Chapter 34 of the Code governs Environment; and

WHEREAS, the City desires to amend Chapter 34 to create a new Article IX to be entitled “Abatement of Chronic Nuisance Properties”; and

WHEREAS, the City has determined it is in the best interest of the City and its citizens to enact such amendments.

NOW THEREFORE, be it ordained by the Mayor and City Council of the City of South Beloit, Illinois as follows:

1. The above recitals are incorporated herein and made a part hereof.
2. That Article IX entitled “Abatement of Chronic Nuisance Properties” is hereby created to read as follows (deletions shown as strikethroughs and additions as underlined and bold):

“Article IX – Abatement of Chronic Nuisance Properties

Sec. 34-221 Violations.

1. Any certain property within the City of South Beloit which becomes a chronic nuisance property is in violation of this Article and subject to its remedies.

2. Any person in charge who permits property under his or her ownership or control to be a public nuisance property is in violation of this Article and subject to its remedies.

Sec. 34-222 Definitions.

As used in this article:

1. “Chronic nuisance property” shall be property upon which three or more of the nuisance activities listed below have occurred during any 120 day period, as a result of any three separate factual events that have been independently investigated by any law enforcement agency. Or, if there are three or more calls for police service including, but not limited to, calls that may fall within the descriptions below that when compared to other properties in the City of South Beloit of similar type,

reasonably indicate that the activity at this property is out of character for the area and is impacting the quality of life of those areas.

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. Sexual abuse or related offense as defined in 720 ILCS 5/12-15 et seq.

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

k. Criminal damage to property as defined in 720 ILCS 5/21-1 et seq.

l. Possession, cultivation, manufacture or delivery of cannabis as defined in 720 ILCS 550/3 et seq.

m. Illegal consumption or possession of alcohol as defined in 235 ILCS 5/1 et seq.

2. "Control" means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on that property.

3. "Owner" means 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,

2. all or part of the beneficial ownership and the right to the present use and enjoyment of the premises

b. An occupant who can control what occurs on the property.

4. "Permit" means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

5. "Person" means any natural person, association, partnership, corporation capable of owning or using property in the City.

6. "Person in charge" means 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.

7. "Property" means any real property, including land, 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.

Sec. 34-223 Remedy.

1. In the event a court determines property to be a chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period not to exceed one hundred eighty days or the court may employ any other remedy deemed by it to be appropriate to abate the nuisance.

2. In addition to the remedy provided in subsection (1) of this section, the court may impose upon the owner of the property a civil penalty in the amount of not less than one hundred dollars per day up to seven hundred fifty dollars 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 chronic nuisance property.

3. 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:

a. The disturbance of neighbors.

b. The recurrence of loud and obnoxious noises;

c. Repeated consumption of alcohol in public.

Sec. 34-224 Abatement of Nuisance.

1. The prosecuting attorneys of the City of South Beloit, Winnebago County, Illinois may commence an action to the chronic public nuisance property as described above. Upon being satisfied by affidavits or other sworn evidence that an alleged

chronic nuisance property exists, the court may without notice or bond enter a temporary restraining order or a preliminary injunction to enjoin any defendant from maintaining such nuisance and may enter an order restraining any defendant from removing or interfering with all property used in connection with the public nuisance.

2. All licenses, permits, or certificate issued by the City of South Beloit authorizing the serving of food or liquor on any premises found to constitute a public nuisance shall be void and shall be revoked by the City. No license, permit, or certificate so revoked shall be reissued for such premises for a period of 60 days thereafter; not shall any person convicted of knowingly maintaining such nuisance be reissued such license, permit, or certificate for one year from his conviction. No license, permit, or certificate shall be revoked pursuant to this Article without a full hearing conducted by the City.

Sec. 34-225 Procedure.

When the Chief of Police receives one or more police reports documenting the occurrence of a 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 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 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 days to discuss nuisance activities.

b. If after complying with the notification procedures described herein the Chief of Police 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, 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 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 certified mail addressed to the person in charge at the address of the property believe 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 Winnebago County, Illinois 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 certified mail;

(f) A copy of the notice shall also be posted at the property after the ten days has 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 Article.

2. If after the notification, but prior to the commencement of legal proceedings by the City pursuant to this Article, a person in charge stipulates with the Chief of Police that the person in charge will pursue a course of action that 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 nor more than thirty 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 thirty days, the Chief of Police shall request authorization from the Commissioner of Public Health and Safety for the prosecuting attorneys of the City of South Beloit to commence a legal processing to abate the nuisance.

3. 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 Attorneys.

(c) 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.

Sec. 34-226 Commencement of Action – Burden of Proof.

1. 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.

2. It is a defense to an action seeking the closure of 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.

3. In establishing the amount of any civil penalty requested, the court may consider any of the following factors if they find appropriate, and shall cite those found applicable:

a. The actions or lack of action taken by the person in charge to mitigate or correct the problem at the property;

b. Whether the problem at the property was repeated or continuous;

c. The magnitude or gravity of the problem;

d. The cooperation of the person in charge with the City;

e. The cost of the City investigation and correcting or attempting to correct the condition.

Sec. 34-227 Emergency Closing Procedures.

1. In the event that it is determined that the property is an immediate threat to 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 34-225 need not be complied with, however, the City shall make a diligent effort to notify the person in charge prior to a court hearing.

2. In the event that the court finds the property constitutes a chronic nuisance property as defined in Section 34-222, the court may order the remedy set out above. In addition, in the event that it also finds a person in charge had knowledge of activities or conditions of the property constituting or violating this Article and permitted the activities to occur, the court may assess a civil fine as provided above.

3. The court may authorize the City of South Beloit 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. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to affect the closure shall be made and assessed as a lien against the property. If used herein, "costs" mean those costs actually incurred by the City for the physical securing of the property, ongoing maintenance of the property, as well as tenant relocation costs.

4. The City of South Beloit staff affecting the closure shall prepare a statement of costs and the City shall thereafter submit such statement to the court for its review. If no objection of the statement is made within the time period described by the court, a lien in such amount may be recorded against such property.

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

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

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

b. Unknown owner or other agent received notice of an action brought pursuant to this section;

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

3. All other ordinances of the City shall remain in effect as previously enacted except that those ordinances, or parts thereof, in conflict are hereby repealed to the extent of such conflict.

4. This Ordinance shall be in full force and effect from after its passage, approval, and publication in pamphlet form as provided by law.

PASSED UPON MOTION BY Morse

SECONDED BY Fitzgerald

BY ROLL CALL VOTE THIS 7th DAY OF December, 2020

AS FOLLOWS:

VOTING "AYE": Adleman, Fitzgerald, Hedrington,
Morse, Rehl

VOTING "NAY": _____

ABSENT, ABSTAIN, OTHER _____

APPROVED December 7, 2020

ATTEST:

Gracy L. Yatruck
CLERK

[Signature]
MAYOR