

**AN ORDINANCE AMENDING CHAPTER 9.20 (PROHIBITING
THE USE OF PROPERTY FOR ILLEGAL AND NUISANCE
ACTIVITY) OF THE CODE OF ORDINANCES**

WHEREAS, in June 2014 the Common Council passed and adopted Ordinance G-2014-7, the so-called “Good Neighbor Ordinance,” codified at Chapter 9.20 of the Evansville Municipal Code, which prohibits the use of property for illegal and nuisance activity;

WHEREAS, the Council has been able to observe the Good Neighbor Ordinance’s use and effect since its adoption;

WHEREAS, the Good Neighbor Ordinance serves a substantial, legitimate, and nondiscriminatory City function of protecting residents and neighbors from criminal and nuisance activity affecting the public peace, health, and safety;

WHEREAS, the Council desires to clarify the Good Neighbor Ordinance is not intended to be used against victims of reported incidents of domestic violence; and

WHEREAS, the Council desires to better consider the nature and severity of criminal and nuisance conduct to best prevent illegal acts and to promote public peace, health, and safety.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Evansville as follows:

Section 1. Amendment of Section 9.20.010 of the Code. The definition of “Notice” as set forth in Section 9.20.010 of the Evansville Municipal Code is hereby amended by deleting the words stricken and inserting the words underlined as follows:

“Notice” means a written document served upon the owner and ~~or~~ property agent, as listed in the City’s rental registry, ~~or in the event a property is not registered,~~ and the Vanderburgh County Assessor’s records. In the event the address for the owner listed in the City’s rental registry and the Vanderburgh County Assessor’s records differs, notice shall be sent to both addresses. ~~and Notice shall also be provided to the tenant by personal service followed up with regular mail, postage prepaid, as contemplated in the Indiana Trial Rules. An owner or property agent may elect in their registration to receive notices by facsimile and/or email. A tenant may not waive their right to notice as defined in this paragraph.~~

Section 2. Amendment of Section 9.20.020 of the Code. Section 9.20.020 of the Evansville Municipal Code is hereby amended by inserting the words underlined and adding a new subsection (C) as follows:

“9.20.020 Abating nuisances in residential areas.

(A) Abating Nuisances. No owner or property agent of a residential rental building located in the City shall knowingly allow a tenant to be a nuisance to their neighbors. For purposes of this chapter an owner or property agent becomes aware of a nuisance upon receipt of a notice of a complaint, nuisance determination, or an eviction filing order as provided for in this chapter.

(B) Discrimination Forbidden. Nothing in this chapter shall be construed to encourage or authorize the discrimination by lessors against any persons based upon any protected class established by the legislative, executive or judicial branch of Federal, State or local government. Rather, it is the intent of this chapter to hold persons accountable for acquiescing in or participating in the continued use of their property in a manner that results in a nuisance or nuisance activity affecting the quality of life of residents of the City.

(C) This Chapter is not intended to be used against victims of reported incidents of domestic violence.”

Section 3. Amendment of Section 9.20.040(A)(8) of the Code. Section 9.20.040(A)(8) of the Evansville Municipal Code is hereby amended by deleting the words stricken and inserting the words underlined as follows:

“9.20.040 Activities resulting in the issuance of a nuisance determination.

(A) ~~Arrests or Citations~~ Criminal and Nuisance Activity. Notwithstanding EMC 9.20.030 and upon having knowledge, based upon a preponderance of the evidence (which may include a review of the facts forming the basis of the citations, probable cause affidavits, police reports, witness statements, and other relevant documentation), that a tenant ~~has been arrested, cited or found by the Police Department to have~~ committed any of the following offenses, the Police Department may issue a nuisance determination (collectively, hereinafter referred to as “nuisance activity”):

- (1) Criminal mischief in the tenant’s neighborhood;
- (2) Intimidation of a neighbor;
- (3) Theft, forgery or fraud with a neighbor as the victim or intended victim;
- (4) Battery against a neighbor;
- (5) Harassment of a neighbor;
- (6) Invasion of privacy or criminal trespass related to a neighbor;
- (7) Vandalism in the tenant’s neighborhood;
- (8) Disorderly conduct or resisting law enforcement in the tenant’s neighborhood, provided that disorderly conduct shall not include any directly related actions of a victim of a reported incident of domestic violence;
- (9) Public indecency in the tenant’s neighborhood;
- (10) Public intoxication in the tenant’s neighborhood;
- (11) Criminal conversion with a neighbor as the victim;
- (12) Maintaining a common nuisance in the tenant’s neighborhood;
- (13) Alcohol offenses related to underage drinking at the tenant’s dwelling unit or residential rental building;
- (14) Voyeurism in the tenant’s neighborhood;

- (15) Possession of drug paraphernalia or the possession, sale, or cultivation of less than thirty (30) grams of marijuana or less than two (2) grams of hash oil or hashish marijuana from the tenant's dwelling unit or residential rental building;
- (16) Illegal gambling occurring at the tenant's dwelling unit or residential rental building;
- (17) Participating in a criminal gang or criminal gang intimidation, as defined within the Indiana Code, in the tenant's neighborhood;
- (18) Failure to register in the tenant's neighborhood as required as a sex or violent offender under IC 11-8-8;
- (19) Violation of the municipal code related to firearms in the tenant's neighborhood (EMC 9.10.010);
- (20) Violation of the municipal code related to fireworks in the tenant's neighborhood (EMC 9.10.020);
- (21) Violation of the municipal code related to throwing lighted objects in the tenant's neighborhood (EMC 9.10.030);
- (22) Violation of the municipal code related to abandoned refrigerators in the tenant's neighborhood (EMC 9.10.050);
- (23) Violation of the municipal code related to residential noise in the tenant's neighborhood (EMC 10.30.030 or 16.05.390);
- (24) Violation of the municipal code related to vehicle noise in the tenant's neighborhood (EMC 10.30.040);
- (25) Violation of the municipal code related to abandoned vehicles in the tenant's neighborhood (EMC 8.10.100);
- (26) Violation of the municipal code related to property maintenance of the tenant's residential rental building if the tenant is responsible pursuant to the lease (Chapter 15.15 EMC);
- (27) Violation of the municipal code related to weeds and rank vegetation related to the tenant's residential rental building if the tenant is responsible pursuant to the lease (EMC 8.05.190);
- (28) Violation of the municipal code related to open burning (EMC 16.05.200); or
- (29) Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors or conduct.

The Police Department shall send a copy of the nuisance determination to the owner or property agent of record.

Section 4. Amendment of Section 9.20.060 of the Code. Section 9.20.060 of the Evansville Municipal Code is hereby amended by deleting the words stricken and inserting the words underlined as follows:

“The Police Department shall issue an eviction filing order if a tenant receives two or more nuisance determinations pursuant to EMC 9.20.040(A)(1) through (18) within a calendar year or three or more nuisance determinations pursuant to EMC 9.20.040(A)(19) through (29) within a calendar year. For purposes of this chapter a nuisance determination issued pursuant to EMC 9.20.040(A)(1) through (18) is equal to two nuisance determinations if considered in combination with one or more nuisance determinations issued pursuant to EMC 9.20.040(A)(19) through (29). An owner or

property agent shall initiate eviction proceedings against a tenant responsible for a nuisance if the tenant and the owner or property agent receives an eviction filing order.”

Section 5. Amendment of Section 9.20.070(A) of the Code. Section 9.20.070(A) of the Evansville Municipal Code is hereby amended by deleting the words stricken and inserting the words underlined as follows:

“(A) Automatic Eviction of a Tenant. Upon becoming aware of a crime enumerated in this section and the Police Department’s knowledge, based upon a preponderance of the evidence (which may include a review of the facts forming the basis of the citations, probable cause affidavits, police reports, witness statements, and other relevant documentation), that such criminal act or parole violation was committed by a tenant, the Police Department shall serve an eviction filing order to the owner or property agent if a tenant is arrested and charged with or is subsequently in violation of parole for any of the following crimes as defined within the Indiana Code:

- (1) Murder;
- (2) Rape;
- (3) Child molestation;
- (4) Prostitution occurring in the tenant’s neighborhood;
- (5) Sale, cultivation, or possession of illegal drugs, including synthetic drugs, or the sale of controlled substances, with the exception of the possession of marijuana, in the tenant’s neighborhood, provided that this section shall not apply to the sale, cultivation, or possession of less than thirty (30) grams of marijuana or less than two
(2) grams of hash oil or hashish;
- (6) Stalking related to a neighbor;
- (7) Manufacturing of methamphetamines in the tenant’s neighborhood;
- (8) Arson;
- (9) Robbery;
- (10) Burglary;
- (11) Sexual crimes as defined in IC 35-42-4-1 through 35-42-4-13, as may be amended from time to time;
- (12) Any violation of EMC 9.20.130;
- (13) Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors or conduct.”

(B) Issuing Notice. The Police Department shall serve written notice to the tenant responsible and the owner or property agent within 10 calendar days of the arrest or filing of a petition for revocation of parole. The property agent or owner shall initiate eviction proceedings within 10 calendar days of receiving the eviction filing order. If the tenant is one of multiple tenants on a single lease, the owner or property agent may, at its discretion, contract with the remaining tenants so long as the offending tenant is excluded from the revised lease. The owner or property agent does not waive any rights it may have under the original lease.

(C) Notwithstanding the foregoing, if an owner or property agent has demonstrated that an eviction of the responsible tenant has already been filed or the tenant has already vacated the dwelling unit, residence or residential rental unit, an owner or property agent shall not be required to initiate eviction proceedings.”

Section 6. Amendment of Section 9.20.090 of the Code. Section 9.20.090 of the Evansville Municipal Code is hereby amended by deleting the words stricken and inserting the words underlined as follows:

“9.20.090 Procedural review of nuisance determination or an eviction filing order.

An owner, ~~or~~ property agent, or tenant may petition for review of a nuisance determination or an eviction filing order in writing within five calendar days of receipt of such notice. The Safety Board shall accept petitions for review filed in person, by email, facsimile or mail on a form prescribed by the Safety Board which form shall include information regarding the review process including all relevant deadlines and information regarding the prohibition of renting to an evicted party pursuant to EMC 9.20.130. Any owner, ~~or~~ property agent, or tenant submitting a petition for review shall identify only issues related to procedural violations of this chapter in their petition for review.

The Safety Board shall conduct a procedural review of the manner in which the subject nuisance determination or eviction filing order was issued at its first reasonable opportunity and no later than the second regularly scheduled meeting after a petition for review has been received. An owner, ~~or~~ property agent, or tenant who filed a petition for review shall receive notice of the date, time, and place of the meeting at which a determination shall be issued at least five calendar days prior to the date of the meeting. The Safety Board’s review shall be limited to whether the procedural requirements of this chapter resulting in the issuance of a nuisance determination or an eviction filing order have been followed. ~~The Safety Board shall not hear any testimony or comment when making its determination.~~ A determination issued by the Safety Board shall be final. In the event the procedures of this chapter are not followed and a determination is issued in favor of the owner, ~~or~~ property agent, or tenant, the nuisance determination or eviction filing order that is the subject of the petition for review shall be vacated. The City shall not commence an action against an owner or property agent for violation of this chapter until a procedural review has been conducted by the Safety Board following the timely filing of a petition to review by an owner, ~~or~~ property agent, or tenant.”

Section 7. Amendment of Section 9.20.120 of the Code. Section 9.20.120 of the Evansville Municipal Code is hereby amended by deleting the words stricken and inserting the words underlined as follows:

“(A) The Chief of Police shall use reasonable efforts to train, educate, and assist owners of real estate in avoiding placing tenants or occupants in their real estate who are known violators of this chapter.

“(B) If an owner or property agent initiates eviction proceedings due to an eviction filing order, such owner or property agent shall provide the Police Department’s Crime Prevention Unit Commander with a file-stamped copy of the complaint within three (3) business days of its filing with the clerk. Police officers shall appear in court to testify if subpoenaed by owners or property agents and, subject to applicable law, work diligently to assist owners or property agents acting pursuant to this chapter through the disclosure of information, statements, witnesses or evidence related to a complaint, nuisance determination or eviction filing order, unless otherwise prohibited by law.

(C) Following 120 days from the effective date of this chapter, the Police Department shall maintain records of complaints, nuisance determinations and eviction filing orders and make such records available to owners and property agents upon request, unless otherwise prohibited by applicable law.”

Section 8. Severability. If any provision of this Ordinance is found to be invalid, the remaining provisions of this Ordinance shall not be affected by such a determination. These other provisions of this Ordinance shall remain in full force and effect without the invalid provision.

Section 9. Effective Date. This ordinance shall be in full force and effect from and after its passage by the Common Council.

PASSED BY the Common Council of the City of Evansville, Indiana, on the 25 day of APRIL, 2016, and on said day signed by the President of the Common Council and attested by the City Clerk.

ATTEST:

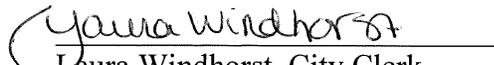


Missy Mosby
President of the Common Council



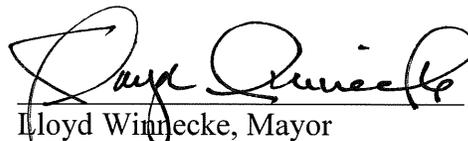
Laura Windhorst, City Clerk
City of Evansville, Indiana

Presented to me, the undersigned, City Clerk of the City of Evansville, Indiana, and to the Mayor of said City, the 27 day of APRIL, 2016, at 4 o'clock P.m. for his consideration and action thereon.



Laura Windhorst, City Clerk
City of Evansville, Indiana

Having examined the foregoing ordinance, I do now, as Mayor of the City of Evansville, Indiana, approve said ordinance and return the same to the City Clerk this 28th day of April, 2016, at 8:00 o'clock A.m.



Lloyd Winnecke, Mayor
City of Evansville, Indiana