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AN ORDINANCE AMENDING TITLE 8, CHAPTER 6 OF THE ORLAND PARK VILLAGE CODE IN REGARD TO CHRONIC REAL PROPERTY NUISANCES

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WHEREAS, the Village President and Board of Trustees of the Village of Orland Park (the “Village”) have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare of its citizens; and

WHEREAS, pursuant to 65 ILCS 5/1-2-1, the Village may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities; and

WHEREAS, the Village deems it to be in the best interest of the public to regulate real property where the owner or occupant of the real property engages in, allows or enables criminal or illegal activity to occur on or near the real property.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Orland Park, Cook and Will Counties, Illinois, and pursuant to its home rule powers, as follows:

SECTION 1

The above recitals are incorporated herein by reference as though fully set forth herein.

SECTION 2

Title 8, Chapter 6, of the Orland Park Village Code is amended by adding a new Section 8-6-14, which shall read in its entirety as follows:

“8-6-14: CHRONIC NUISANCES:

A. Any real property within the Village which becomes a chronic nuisance property is in violation of this Section and is subject to its remedies. Any person in charge who permits real property under his or her ownership or control to be a chronic nuisance property shall be in violation of this Section and subject to its remedies and penalties, as well as the penalties provided for in Section 8-6-99 of this Chapter.

B. Definitions.

1. Chronic nuisance property upon which either two or more of the following criminal activities have occurred during any 60-day period or three (3) or more of the following criminal activities have occurred during any 365-day period, as a result of separate factual events that have been independently investigated by a law enforcement agency:

- a. Disorderly conduct as defined in 720 ILCS 5/26-1, as amended;
- b. Unlawful use of weapons as defined in 720 ILCS 5/24-1 et seq., as amended;
- c. Mob action as defined in 720 ILCS 5/25-1, as amended;
- d. Discharge of a firearm as defined in 720 ILCS 5/24-1.2 et seq., as amended;
- e. Gambling as defined in 720 ILCS 5/28-1, as amended;
- f. Possession, manufacture or delivery of a controlled substance, a counterfeit substance or a controlled substance analog, as defined in 720 ILCS 570/401 et seq., as amended;
- g. Possession, cultivation, manufacture or delivery of cannabis as defined in 720 ILCS 550/1 et seq., as amended;
- h. Possession, manufacture or delivery of controlled substances as defined in the Illinois Controlled Substances Act, 720 ILCS 570/401 et seq., as amended;
- i. Sale, delivery or possession of drug paraphernalia, as defined in 720 ILCS 600/3 and 3.5, as amended
- j. Possession, manufacture, or delivery of methamphetamine as defined in the Methamphetamine Control and Community Protection Act, 720 ILCS 646/1 et seq., as amended
- k. Any offense involving the use, sale or delivery of intoxicating compounds as defined in the Use of Intoxicating Compounds Act, 720 ILCS 690/.01 et seq., as amended
- l. Assault or battery or any related offense as defined in 720 ILCS 5/12-1 et seq., 5/12-2 et seq., 5/12-3, or 5/12-4 et seq., as amended;
- m. Sexual abuse or related offenses as defined in 720 ILCS 5/12-15 et seq., or 5/12-16 et seq., as amended;
- n. Public indecency as defined in 720 ILCS 5/11-9 et seq., as amended;
- o. Sexual exploitation of a child as defined in 720 ILCS 5/11-9.1, as amended;
- p. Prostitution as defined in 720 ILCS 5/11-14 et seq., as amended;
- q. Criminal damage to property as defined in 720 ILCS 5/21-1 et seq., as amended;
- r. Illegal consumption or possession of alcohol, as defined in 235 ILCS 5/1 et seq., as amended;
- s. A violation of a provision the Village Code relating to disorderly conduct, assault, battery, unlawful use of a weapon, possession or cannabis, possession of drug paraphernalia, underage consumption of alcohol, disposal of garbage/refuse/solid waste and/or noise regulations; and
- t. A violation of Title 5 Chapter 7 (Property Maintenance) or Title 5 Chapter 1 (Building Code) of the Village Code.

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

3. Owner. Any person, agent, firm or corporation having any legal or equitable interest in the property. Owner includes, but is not limited to, a mortgagee in

possession in whom is vested all or part of the legal title to the property or all or part of the beneficial ownership and the right to the present use and enjoyment of the premises; or an occupant who can control what occurs on the property.

4. Permit. To suffer, allow, consent to, acquiesce by failure to prevent, or expressly ascent [assent] or agree to the doing of an act.

5. Person. Any natural person, association, limited liability company, partnership or corporation capable of owning or using property in the Village.

6. 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.

7. Property. Any real property, including land which is affixed, incidental or pertinent to the land, including but not limited to any premises, room, house, building, or structure or any separate part or portion thereof.

C. Commencement of action. When the chief of police receives a report documenting the occurrence of the second nuisance activity in a 60-day period or the third nuisance activity in a 365-day period at or within a property and determines that the property has become a chronic nuisance property pursuant to this Section, 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: the street address or legal description sufficient for identification of the property; a statement that the Chief of Police has determined the property to be chronic nuisance property with a concise description of the nuisance activities leading to his/her findings; and a 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.

2. Service shall be made either personally or by certified mail, postage pre-paid, 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.

3. 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 from the person in charge, and shall be made either personally or by certified mail, postage pre-paid, return receipt requested.

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

5. 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 Section.

6. After the notification, but prior to the commencement of legal proceedings by the Village pursuant to this Section, 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) nor more than thirty (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 thirty (30) days, the Chief of Police shall request authorization from the Village Manager or his/her designee for the Village Attorney to commence a legal proceeding to abate the nuisance.

7. 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 Village Attorney.

8. 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.

D. Abatement of nuisance. The Village Attorney may commence an action to abate a public nuisance as described in this Section. 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.

E. Burden of Proof.

1. In an action seeking closure of a chronic nuisance property pursuant to this Section, the Village shall have the initial burden of showing by a 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 pursuant to this Section 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 and shall state those found applicable:

- a. The actions or lack of action taken by the person in charge to mitigate or correct the nuisance at the property.
- b. Whether the nuisance at the property was repeated or continuous.
- c. The magnitude or gravity of the nuisance.
- d. the cooperation of the person in charge with the Village.
- e. The cost of the Village investigating and correcting or attempting to correct the nuisance condition..

#### F. Remedies.

1. In the event a court determines property to be a chronic nuisance property under this Section, the court may order that the property be closed and secured against all use and occupancy for a period of not less than thirty (30) days, but not more than one hundred eighty (180) 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) above, the court may impose upon the owner of the property a civil penalty in the amount of up to \$500 per day, but no less than \$100 per day, payable to the Village, for each day the owner had actual knowledge that the property was a chronic nuisance property and permitted the property to remain a 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.

#### G. Emergency closing procedures.

1. In the event that it is determined that the property is an immediate threat to the public health, safety or welfare, the Village may apply to the court for such interim relief, as is deemed appropriate by the Chief of Police. In such an event, the notification provision set forth in Subsection (C) above need not be complied with, however, the Village 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 this Section, the court may order the remedy set out above. 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 Section and permitted the activities to occur, the court may assess a civil fine as provided above.

3. The court may authorize the Village 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 Village is authorized to secure the property, all reasonable costs incurred by the Village to affect a closure shall be made and assessed as a lien against the property. If used herein, "costs" means these costs actually incurred by the Village for the physical securing of the property.

4. The Village shall prepare a statement of cost and the Village 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.

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 to the Village.

H. If any provision, clause or paragraph of this Section shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining provisions of this Section.

I. Other remedies. The adoption of this Section does not preclude the Village from using any other lawful methods to enforce the provisions of this Code.