

Memorandum



DATE October 19, 2017

TO Honorable Members of the Public Safety and Criminal Justice Committee

SUBJECT **Nuisance Abatement Ordinance Update**

On Monday, October 23, 2017, you will be briefed on the Nuisance Abatement Ordinance Update and performance measures by Major Melissa McGee, Dallas Police Department. The attached presentation outlines the Dallas City Attorney's draft of the Nuisance Abatement Ordinance that will allow the City of Dallas to place placards on Risk properties, create a criminal offense for an owner/person-in-control of a Risk property who fails to attend the accord meeting, and authorize the City of Dallas to charge fees to recoup the cost of regulating Risk properties. The ordinance, if approved, will help the Community Risk Abatement Team's investigatory, enforcement and legal resources needed to the extent necessary to abate crime and improve quality of life at the property and meet established performance measures. The draft ordinance is also attached for your review.

Please contact me if you have any questions or need additional information.



Jon Fortune
Assistant City Manager

[Attachment]

cc: Honorable Mayor and Members of the City Council
T.C. Broadnax, City Manager
Larry Casto, City Attorney
Craig D. Kinton, City Auditor
Billerae Johnson, City Secretary (Interim)
Daniel F. Solis, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager

Jo M. (Jody) Puckett, Assistant City Manager (Interim)
Joey Zapata, Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Nadia Chandler Hardy, Chief of Community Services
Raquel Favela, Chief of Economic Development & Neighborhood Services
Theresa O'Donnell, Chief of Resilience
Directors and Assistant Directors

Nuisance Abatement Ordinance Update

Public Safety and Criminal Justice Committee
October 23, 2017

Melissa McGee, Major
Dallas Police Department
City of Dallas



Presentation Overview

- Nuisance Abatement Ordinance
- Performance Measures
- Next Steps

Purpose

- Introduce new Nuisance Abatement Ordinance
- Inform committee of the Community Risk Abatement Team's performance measures

Nuisance Abatement Ordinance

- Authorize City to place placards on properties where there is habitual criminal activity
- Create a criminal offense for owner/person-in-control of a property with habitual criminal activity who fails to attend the accord meeting
- Authorize the City to charge fees to recoup the cost of regulating properties with habitual criminal activity

Performance Measures

- **Goal 1:** Decrease abatable crime at Risk properties by 50% within one year of case acceptance
- **Goal 2:** 50% of Risk properties that exit the program are not reclassified as Risk properties within one year

Performance Measures

- **Goal 3:** Achieve 45% of Risk property compliance with initial nuisance abatement and repair agreement timeframes
- **Goal 4:** Close 60% of Risk case within one year of case acceptance

*These are proposed percentages subject to change upon established baseline

Next Steps

- Conduct fee study, approved by Public Safety and Criminal Justice Committee, to determine the schedule needed to recover cost of regulating properties with habitual criminal activity
- Finalize the legal wording/draft of the Nuisance Abatement Ordinance
- Council Approval
- Construct and place placards on properties with habitual criminal activity

Next Steps

- Enforce criminal offenses for an owner/person-in-control of property with habitual criminal activity who fails to attend the accord meeting
- Brief Public Safety and Criminal Justice Committee in one year regarding performance measures and necessity for adjusting baselines, targets and timeframes

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Dallas Police Department
City of Dallas



Appendix A

The following offenses are defined as abatable offenses in Chapter 125 of the Texas Civil Practice and Remedies Code:

- Discharge of a firearm in a public place
- Reckless discharge of a firearm
- Engaging in organized criminal activity as a member of a combination
- Delivery, possession, manufacture or use of a substance or other item
- Gambling, gambling promotion, or communicating gambling information
- Prostitution, promotion of prostitution, or aggravated promotion of prostitution
- Compelling prostitution
- Commercial manufacture, commercial distribution, or commercial exhibition of obscene material
- Aggravated assault
- Sexual assault and aggravated sexual assault
- Robbery and aggravated robbery
- Unlawfully carrying a weapon
- Murder and capital murder
- Continuous sexual abuse of young child or children
- Massage therapy or other massage services
- Employing a minor at a sexually oriented business
- Trafficking of persons
- Sexual conduct or performance by a child
- Employment harmful to a child

Appendix A

Pursuant to state law change, the following offenses are considered abatable offenses as of September 1, 2017

- Delivery, possession, manufacture or use of a substance or other item in violation of Chapter 481, Health and Safety Code
- Criminal trespass as described by Section 30.05, Penal Code
- Disorderly conduct as described by Section 42.01, Penal Code
- Arson as described by Section 28.02, Penal Code
- Criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of \$500 or more
- A graffiti offense in violation of Section 28.08, Penal Code

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10/19/17

ORDINANCE NO. _____

An ordinance amending Chapter 27, “Minimum Property Standards,” of the Dallas City Code, by amending Article VIII; adding Sections 27-45, 27-46, 27-47, 27-48, 27-49, 27-50, 27-51, 27-52; providing a purpose for the criminal nuisance abatement regulations; providing definitions; providing for the authority of the chief of police; providing presumptions for when a property is deemed a criminal nuisance and the owner is deemed to have knowingly tolerated the abatable criminal activity; requiring attendance at an accord meeting when the chief decides the presumptions are satisfied; setting out the rules for the accord meeting; creating an offense for failure to attend the accord meeting; providing for an appeal of the chief’s decisions to the permit and license appeal board; authorizing the chief to placard habitual criminal properties; creating an offense for unauthorized removal of a placard; providing for the inspection of habitual criminal properties; providing fees for the inspection of habitual criminal properties; providing for the delivery of notices; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, there are properties where certain criminal activity is prevalent, and it is in the interest of public health, safety, and welfare of the people of the city of Dallas for the city to regulate those properties to reduce criminal activity;

WHEREAS, signage, like placards, that indicates a property is the site of habitual criminal activity, will provide the city with an essential tool for the effective delivery of public safety services to the city’s residents and visitors;

WHEREAS, in order to reduce and eliminate certain criminal activity, the city needs the cooperation of owners who own properties where persons habitually engage in certain criminal activity by having those owners take affirmative steps to improve their properties;

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WHEREAS, crime prevention through environmental design (“CPTED”) is a proven multi-disciplinary approach to reducing criminal activity, and one that property owners can adopt to reduce criminal activity at their properties;

WHEREAS, pursuant to the city’s police power, home-rule authority, and as authorized by state law, the following regulations are hereby passed; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Article VIII, “Reserved,” of Chapter 27, “Minimum Property Standards,” of the Dallas City Code, as amended, to read as follows:

“ARTICLE VIII.

CRIMINAL NUISANCE ABATEMENT [RESERVED].

SEC. 27-45. PURPOSE.

(a) Consistent with the findings of fact in Section 27-1 of this chapter, the purpose of this article is to protect the health, safety, and welfare of the people of the city of Dallas by obtaining an owner’s compliance with minimum property conditions and lawful operations, which compliance is likely to reduce criminal activity on property where that criminal activity is so prevalent as to constitute a criminal nuisance. Reducing the crime rate in the city of Dallas is essential to making properties safe, sanitary, and fit for human habitation and for nonresidential purposes.

(b) This article does not create a private cause of action or expand existing tort liability against a property owner. This article is not a prerequisite to any suit, and does not in any way impair the city’s ability to file a lawsuit under Chapter 125 of the Texas Civil Practice and Remedies Code, as amended, or under any other law.

SEC. 27-46. DEFINITIONS.

In this article:

(1) **ABATABLE CRIMINAL ACTIVITY** means those activities listed in Chapter 125 of the Texas Civil Practice and Remedies Code, as amended. The term does not include nonapplicable crimes.

(2) **ACCORD MEETING** is a mandatory meeting between the chief of police and other city staff and the owner of a property that the chief of police has determined to be a habitual criminal property.

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(3) **CHIEF OF POLICE OR CHIEF** means the chief of the police department of the city or the chief's designee.

(4) **CPTED** means crime prevention through environmental design and is a multi-disciplinary approach to reducing crime by integrating the following concepts on property: natural surveillance that eliminates hiding places for people to engage in crime unnoticed; clear delineation of private space from public space; and controlled access onto private property.

(5) **CRIMINAL NUISANCE** means a common nuisance as described in Section 125.0015, or a public nuisance as described by Section 125.062 or 125.063, of the Texas Civil Practice and Remedies Code, as amended.

(6) **HABITUAL CRIMINAL PROPERTY** means a property that is the site of five or more abatable criminal activities within 365 days resulting in: 1) a police report documenting an investigation of a crime within the property; or 2) enforcement action against any person associated with the investigated crime within the property.

(7) **NONAPPLICABLE CRIMES** means all offenses involving domestic violence, forgery, counterfeiting, fraud, embezzlement, stolen property (buying, receiving, or possessing), crimes against family and children, and driving while intoxicated.

SEC. 27-47. AUTHORITY OF THE CHIEF OF POLICE.

The chief of police shall implement and enforce this article and may by written order establish such rules, regulations, or procedures, not inconsistent with this article, as the chief of police determines are necessary to discharge any duty under or to effect the purpose of this article.

SEC. 27-48. PRESUMPTIONS.

(a) A habitual criminal property is presumed a criminal nuisance.

(b) An owner of a habitual criminal property is presumed to have knowingly tolerated the abatable criminal activity by failing to take reasonable steps to abate the abatable criminal activity.

(c) The presumptions in this section are rebuttable at the accord meeting pursuant to Section 27-49.

SEC. 27-49. ACCORD MEETING.

(a) If the chief of police decides that the presumptions in Section 27-48 are met, the chief shall notify the owner of the property, in writing, of the chief's decision and shall provide the owner with notice to attend an accord meeting. The notice shall include a copy of this article.

(b) At the accord meeting, the following applies:

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(1) The owner may present evidence that the person is not the owner or that the owner has taken reasonable steps to abate the abatable criminal activity, including, without limitation, that the:

- (i) owner has implemented CPTED principles at the property;
- (ii) owner has implemented monitoring and surveillance systems at the property;
- (iii) owner is in compliance with all regulations governing the owner's business;
- (iv) owner is enforcing lease clauses related to reducing abatable criminal activity, such as tenant screening;
- (v) owner is communicating abatable criminal activity to the chief and cooperating with the chief, as requested; and
- (vi) property is in compliance with the standards set out in this code.

(2) The city attorney may attend the meeting as the chief's legal counsel and the owner may bring the owner's legal counsel to the meeting.

(c) The chief shall make all reasonable efforts to schedule the accord meeting during a time when the owner is available but not later than 30 days from the date the accord meeting notice is deemed received or is actually received by the owner, whichever date is sooner.

(d) Not later than 30 days after the date of the accord meeting, the chief shall provide the owner with notice of the chief's decision as to the presumptions under Section 27-48. Upon request of the owner, the chief may delay the notice of decision up to 60 days after the accord meeting, during which time the owner may present additional evidence under Section 27-49(b)(1). If the owner does not appear for the accord meeting, then the chief's decision is final as of the date of the accord meeting in the notice and the owner may not appeal for one year.

(d) An owner who is provided notice pursuant to this article commits an offense if the owner fails to attend an accord meeting.

(e) Each year, on the anniversary of the accord meeting date, the chief shall send a notice to the owner as to whether the presumptions under Section 27-48 are still met. The chief may, at any time, decide that the presumptions under Section 27-48 are no longer met and shall then notify the owner of the chief's decision.

SEC. 27-50. APPEAL FROM CHIEF OF POLICE'S DECISION.

(a) The chief's decision is final unless the owner files a written appeal to the permit

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and license appeal board. The appeal must be filed with the city secretary not later than 10 calendar days after the date of the accord meeting. A person who does not attend the accord meeting is not entitled to an appeal under this section for one year after the original accord meeting date. Only the owner is entitled to an appeal under this article.

(b) If a written request for an appeal hearing is filed under Subsection (a) with the city secretary within the 10-day limit, the permit and license appeal board shall hear the appeal. The city secretary shall set a date for the hearing not later than 30 days after the date the appeal is filed.

(c) In deciding the appeal, the permit and license appeal board is limited to the issues of whether the property constitutes a habitual criminal property, as defined in this article, and whether the owner knowingly tolerated the abatable criminal activity by failing to take reasonable steps to abate the abatable criminal activity.

(a) To the extent of a conflict between this article and Article IX, Chapter 2, of this code, this article controls.

SEC. 27-51. PLACARDING; INSPECTIONS AND FEES.

(a) Placarding. For a property that has been finally decided to constitute a criminal nuisance and for which the owner knowingly tolerated the abatable criminal activity, the chief may place a placard on or near the front door or main entrance to the structure or dwelling unit. For multitenant and commercial properties, the chief may also place a placard in a conspicuous place in a common area of the property.

(1) The placard shall state the following:

“THE DALLAS POLICE DEPARTMENT HAS DECLARED THIS PROPERTY A CRIMINAL NUISANCE UNDER ARTICLE VIII, CHAPTER 27, OF THE DALLAS CITY CODE. IF YOU HAVE QUESTIONS, PLEASE CALL DPD AT [TELEPHONE NUMBER DETERMINED BY THE CHIEF]; OR, IF YOU SEE SOMETHING SUSPICIOUS OCCURRING AT THIS PROPERTY OR IN AN EMERGENCY, DIAL 911.”

(2) A person commits an offense if the person, without authority from the chief, removes or destroys the placard.

(b) Inspections and fees. A property that has been finally decided to constitute a criminal nuisance and for which the owner knowingly tolerated the abatable criminal activity is subject to inspection by the chief for compliance with the conditions and activities set out in Section 27-49(b)(1), or any other condition or activity the chief reasonably determines will reduce abatable criminal activity at the property.

(1) For a single dwelling unit property, the inspection fee is \$XX.

(2) For a multitenant property, the inspection fee is \$XX for the exterior and any common area(s) for each separate structure inspected and \$XX for each unit actually inspected.

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- (3) For a commercial property, the inspection fee is \$XX.

SEC. 27-52. DELIVERY OF NOTICES.

Delivery of notices. Any notice to be provided by the city pursuant to this article shall be deemed effective if made to the owner or an agent, employee, officer, landlord, or property manager authorized to act on behalf of the owner. Notice is effective when:

- (1) personally delivered to the owner; or
- (2) mailed by certified U.S. mail, with return receipt requested, and addressed to the owner at the last address provided in the registration of the property under Article VII of this chapter, or, if the property is not subject to registration under this chapter, then to the last address in the central appraisal district records. Mailed notice shall be deemed received and effective three days after the date of mailing whether the notice was actually received or whether the notice was returned unclaimed or undeliverable.”

SECTION 2. That, unless specifically provided otherwise by this ordinance or by state law, a person violating a provision of this ordinance is, upon conviction, punishable by a fine not to exceed \$500.

SECTION 3. That Chapter 27 of the Dallas City Code shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That any act done or right vested or accrued, or any proceeding, suit, or prosecution had or commenced in any action before the amendment or repeal of any ordinance, or part thereof, shall not be affected or impaired by amendment or repeal of any ordinance, or part thereof, and shall be treated as still remaining in full force and effect for all intents and purposes as if the amended or repealed ordinance, or part thereof, had remained in force.

SECTION 5. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of Chapter 1 of the Dallas City Code, as amended.

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SECTION 6. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the city of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:

LARRY E. CASTO, City Attorney

By _____
Assistant City Attorney

Passed _____

DRAFT