

ORDINANCE NO. 13-2021

AN ORDINANCE BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO TO CREATE SECTION 510 WITH REGARDS TO NUISANCE ACTIVITY AND CREATING A BOARD OF NUISANCE ABATEMENT APPEALS, AND DECLARING AN EMERGENCY.

WHEREAS, as there is a need to put in place an ordinance to abate nuisance properties within the City.


NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NEW PHILADELPHIA, OHIO, THAT:

SECTION 1. The attached Ordinance 510 is added to the Codified Ordinances of the City of New Philadelphia.

SECTION 2. This Ordinance is hereby declared to be an emergency measure and its immediate passage is necessary in order to preserve, protect and maintain the health, safety and welfare of the citizens of the City of New Philadelphia, Ohio.

SECTION 3. This Ordinance shall take effect and be in force immediately upon its passage.

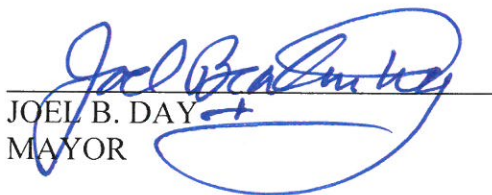
PASSED: July 12, 2021


DONALD C. KEMP
PRESIDENT OF COUNCIL

ATTEST:


JULIE COURTRIGHT
CLERK OF COUNCIL

APPROVED:


JOEL B. DAY
MAYOR

SPONSORED BY: SAFETY, HEALTH, AND SERVICES COMMITTEE

510.01 Declaration of Nuisances

- (a) Definition of Nuisance Activity. The following activities occurring either on residential or commercial property, or within one thousand (1,000) feet of the property line of said residential or commercial property, and engaged in by the owner, or the owner's agent, or, the owner's lessee, occupant, invitee or the person or entity in charge of said residential or commercial property (including individual apartments and condominium units and occupants of hotel rooms) are hereby declared to be a public nuisances:
- (1) Any animal violations under Sections 505.01 (animals running at large), 505.071 (cruelty to companion animals), 505.09 (barking or howling dogs), 505.14 (vicious animals), 505.141 (menacing and aggressive animals), 505.16 (dangerous animals) of the Codified Ordinances;
 - (2) Any disorderly conduct disturbances of the peace or other violation of Chapter 509 of the Codified Ordinances and Ohio Revised Code 2917.11;
 - (3) Any drug abuse violation under Chapter 513 of the Codified Ordinances and Ohio Revised Code 2925.01(G);
 - (4) Any gambling violation under Chapter 517 of the Codified Ordinances;
 - (5) Any false alarm call which is defined for the purposes of this Chapter as being an emergency call by an alarm company triggered either by an automated or manual alarm activation which, after investigation by the Police it is determined that there is no need for criminal investigation and that the alarm activated for some other reason;
 - (6) Any sex related offenses under Sections 533.07 (public indecency), 533.08 (procuring), 533.09 (soliciting), 533.091 (loitering to engage in solicitation), 533.10 (prostitution), or in Ohio Revised Code Chapter 2907;
 - (7) Any health, safety, or sanitation violation under Chapter 521 of the Codified Ordinances;
 - (8) Any weapons, explosives, firearm or handgun violation under Chapter 549 of the Codified Ordinances;
 - (9) Any alcohol violations under Chapter 529 of the Codified Ordinances or under Chapter 4301 of the Ohio Revised Code;
 - (10) Any noise violation under Chapter 531 of the Codified Ordinances;
 - (11) Any fireworks violation under Section 1519 of the Codified Ordinances;
 - (12) Any obstruction of official business violation under Chapter 525.07 of the Codified Ordinances;
 - (13) Any offenses against property under Sections 541.03 (criminal damaging or endangering) or 541.04 (criminal mischief) of the Codified Ordinances or under Chapter 2921.31 of the Ohio Revised Code;
 - (14) Any trespass or aggravated trespass offenses under Section 541.05 and 541.051 of the Codified Ordinances or under Sections 2911.23 and 2911.211 under the Ohio Revised Code;
 - (15) Any arson or related offenses under Chapter 541 of the Codified Ordinances and under Chapter 2909 in the Ohio Revised Code;
 - (16) Any offense against persons under Chapter 537 of the Codified Ordinances except Sections 537.051 (menacing by stalking) and 537.14 (domestic violence);
 - (17) Any other criminal offense that threatens the health, safety or welfare of the City or unreasonably interferes with the right of the residents of the City of New Philadelphia to the peaceful enjoyment of their neighborhoods;

- (18) Any offense that is a felony under the Ohio Revised Code;
- (19) Any activity engaged in by a person under eighteen (18) years of age which would constitute a violation of any offense listed in this section if committed by an adult.
- (b) For the purposes of subsection (a), the occurrence of a nuisance activity means either a citation has been issued, or an arrest has been made, or a conviction has been obtained, or a City Department, including, but not limited to, Police, Fire, Animal Control, or Building, has documented the activity in lieu of arrest or citation.
- (c) Initiation of Nuisance Declaration Process. The Director of Public Safety or his or her designee, upon finding that two or more nuisance activities or any one felony as outlined in subsection (a) have occurred within a twelve-month period, may cause a written notice and order to be served on the owner of the property. The notice shall declare that if a third nuisance activity, or any additional felony as outlined in subsection (a) hereof occurs within a twelve-month period of the first nuisance activity, such property shall be declared a nuisance property. The notice and order shall set forth the nature of the nuisances and the estimated costs to abate any future nuisance and shall state that the owner may avoid being charged the costs of abatement by taking steps to prevent any further nuisance activity as set forth in this section. The notice shall further state that the City may abate the nuisance by responding to the activities using administrative and law enforcement actions and the costs of such abatement shall be assessed on the nuisance property as set forth in subsection (g). Notice shall be served pursuant to the Ohio Rules of Civil Procedure.
- (d) Nuisance Declaration. If a third nuisance activity as declared in this section, or any additional felony, occurs within twelve months after the first of the two nuisance activities referred to in subsection (c), the Director of Public Safety or his or her designee may declare the property to be a nuisance under this chapter. Once a property has been declared a nuisance then any subsequent occurrence of any activity listed in subsection (a) may cause another nuisance declaration. The cost of responding to the nuisance activity shall be assessed on the nuisance property. The nuisance declaration may come before or after the City has incurred the response costs. The costs shall be calculated as set forth in subsection (g) hereof. The City shall provide notice to the owner of the nuisance property to pay the costs of abatement at least thirty (30) days before such costs are certified to the County Auditor for assessment against the property, and such notice shall contain a description of the nuisance activity that is the basis for the notice of intent to assess the property, and the cost to abate. If the same is not paid within thirty (30) days of the mailing of the notice, such amount may be certified to the County Auditor for collection as other taxes and assessments are collected, or the City may seek recovery of such costs by civil action. Notice shall be served pursuant to the Ohio Rules of Civil Procedure.
- (e) Reconsideration Request. The owner of a nuisance property who receives a nuisance declaration notice from the Director of Public Safety or his or her designee pursuant to subsection (d) may appeal such notice by submitting a written request for reconsideration to the Director of Public Safety within thirty (30) days of the date of the nuisance declaration notice. If the Director of Public Safety or his or her designee finds that the

facts presented do not constitute a public nuisance then the Director of Public Safety or his or her designee shall rescind the notice. Otherwise the Director of Public Safety or his or her designee shall deny the request and advise the appellant in writing of the denial and of the appellant's right to file an appeal to the Board of Nuisance Abatement Appeals.

- (f) Appeal to the Board of Nuisance Abatement Appeals. The owner may appeal the denial of the request for reconsideration by submitting a written appeal letter to the Board of Nuisance Abatement Appeals within thirty (30) days of the date of the denial. Any such appeal shall not stay any actions by the City to abate the first or any subsequent nuisance activity. In any such appeal, the City must show by a preponderance of the evidence that each nuisance activity stated in the notice being appealed, or if the activities stated in the notice number more than three, each nuisance activity for which the City seeks compensation, has occurred, and that the declaration of the property as a nuisance property or of the intent of the City to assess the property for abatement costs, whichever is applicable, is justified. If a nuisance activity has been evidenced by a criminal conviction then it shall be per se proof that the activity has occurred.

The City shall be deemed to have failed to meet this standard if the owner demonstrates by a preponderance of evidence that:

- (1) He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or
 - (2) He or she had knowledge of the nuisance activity, but has promptly and vigorously taken all actions necessary to abate each nuisance including, without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9); or
 - (3) He or she had no knowledge of the nuisance activity and could not with reasonable care and diligence, have known of the nuisance activity; and upon receipt of the notice of the declaration of the property as a nuisance property, he or she promptly took all actions necessary to abate the nuisance including without limitation, compliance with the requirements of Ohio R.C. 5321.17(C) and 5321.04(A)(9).
- (g) Costs of abatement shall be the actual cost based upon expenses and the hourly wage of any personnel involved in the response to the nuisance activity defined in subsection (d) and any related notice and declaration proceedings.
- (h) The declaration of a nuisance property, an order to abate a nuisance, or the assessment of costs by the City on a property, does not affect or limit the City's right or authority to bring criminal prosecution or other legal action against any person for violation of the City's ordinances.

510.02 (RESERVED).

510.03 (RESERVED).

510.04 BOARD OF NUISANCE ABATEMENT APPEALS.

- (a) Establishment; Purpose. The Board of Nuisance Abatement Appeals is hereby established to hear appeals pursuant to Section 510.01. The Board of Nuisance

Abatement Appeals shall be the final administrative appeal in determining whether the declaration of nuisance as outlined in Section 510.01 is upheld.

- (b) Membership. The Board of Nuisance Abatement Appeals shall be composed of five members. The Mayor shall appoint three members and City Council shall appoint two members. All members thereof shall be residents of the City of New Philadelphia. In no event shall any member be an employee of the City.
- (c) Terms. Board members shall serve a term of three years and receive no compensation for service. The Mayor shall initially appoint two members to a four-year term and one member to a three-year term. Council shall initially appoint one member to a four-year term and one member to a three-year term. Vacancies shall be filled by the initial appointing authority.
- (d) Chairperson. The Mayor shall appoint the chairperson and co-chairperson of the Board annually. The chairperson or co-chairperson shall preside over all of the meetings.
- (e) Quorum. The Board shall consist of a minimum of three members for a valid and binding decision.
- (f) Rules of Procedure. The Board is authorized to adopt its own bylaws and general rules of operation. Such bylaws and rules shall be consistent with this Chapter. The Board shall meet at such times as determined necessary by the Board, but shall hear any appeal pursuant to Section 510.01(f) within 90 days of its receipt.
- (g) Secretary. The Director of Law shall appoint a person to serve as the Secretary to the Board for the purpose of receiving appeals, sending notice of hearings and decisions, maintaining notes, recordings and any other record of hearings and preparing the record of hearing for filing in the Court of Common Pleas in any appeal from a decision of the Board.