

ORDINANCE NO.: 2003-119

AN ORDINANCE CREATING A CRIMINAL NUISANCE ABATEMENT BOARD PURSUANT TO ACT 1190 OF 2003; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES.

WHEREAS, in order to promote, protect, and improve the health, safety, and welfare of the citizens of Bentonville, the City Council wishes to create a criminal nuisance abatement Board to provide an equitable, expeditious, effective, and inexpensive method of abating public nuisance as defined by state law pursuant to Act 1190 of 2003; and

WHEREAS, the City Council finds that it is in the best interest of the citizens and residents of Bentonville, Arkansas that a Criminal Nuisance Abatement Board be created.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BENTONVILLE, ARKANSAS:

SECTION 1: CREATION OF BOARD. That the Bentonville City Council hereby creates a Criminal Nuisance Abatement Board (the "Board") pursuant to Act 1190 of 2003. The Board shall have all power as provided for and authorized by Act 1190.

SECTION 2: COMPOSITION AND ORGANIZATION OF BOARD. The Board shall be composed of five (5) citizens of Bentonville who shall be appointed by the governing body of the City Council. At the Board's first meeting, members of the Board shall draw lots so that one (1) member shall serve a three-year term, two (2) members shall serve a four-year term, and two (2) members shall serve a five-year term. All successors, whom shall be appointed by the City Council, shall serve one (1) five-year term. Board members shall elect a chair and a vice-chair and any other officers needed to conduct the business of the Board. The Board may promulgate rules and regulations needed to conduct the hearings on the complaints concerning places and premises used as public or common nuisances. The quorum necessary to conduct business shall be three (3) Board members. No order of the Board shall be entered, amended, or dissolved without three (3) Board members voting in favor of the motion in support thereof.

SECTION 3: ADMINISTRATIVE SUPPORT TO THE BOARD. The city's department of Community Development (the "Department") shall provide the necessary staff for the Board and shall contract with a court reporter to record all Board meetings and be prepared to make a record of all appeal to Circuit Court. The Staff Attorney shall serve as legal advisor to the Board.

SECTION 4. FILING OF COMPLAINTS WITH THE BOARD. Any employee, officer, or resident of the city may bring a sworn complaint before the Board against the owner of a place or premises that may constitute a nuisance. The complaint shall be filed on a form similar to the form attached hereto as "Exhibit A" and shall be filed in office of the Department. The oath for the complaint shall be administered by a notary public or other person authorized by law to administer oaths.

SECTION 5. SERVICE OF THE COMPLAINT ON OWNER. After receiving the Complaint the Department shall notify the complaint on the owner of the place or premises that is the basis of complaint. Notice shall be served upon the owner according to the Rule 4(d) of the Arkansas Rules of Civil Procedure. The Notice shall include a copy of the complaint (including any supporting documentation) and a copy of this Ordinance and shall be in a form similar to "Exhibit B." The Department may solicit the help of the Police Department to serve the notice as allowed by Section 3(c) of Act 1190.

SECTION 6. HEARINGS, FINDINGS AND DECISIONS OF THE BOARD.

(a) After a complaint is filed, the Board shall conduct a hearing on the matter after the owner of the place or premises has been given at-least ten (10) calendar days notice of the hearing. The owner or the complaining party may seek a continuance of the hearing verbally or in writing. Upon a showing of good cause, the continuance shall be granted by the Board. If all parties reach agreement (verbally or by an agreed order), no hearing is required.

(b) At the hearing, the Board may consider any evidence, including evidence of the general reputation of the place or premises. The owner of the premises shall have an opportunity to present evidence in his or her defense. Any party may retain counsel to represent them at the hearing. All witnesses at the hearing shall be sworn and may be questioned by any party , Board member or attorneys representing the parties or the Board.

(c) After the hearing, the Board may declare the place or premises to be a public nuisance as defined by Arkansas Code §§ 5- 74-109, 14-54-1502, and 16-105-402 or that are used for prostitution as defined by Arkansas Code § 5- 70-102 or my declare that no nuisance exists. The order shall be in a form similar to "Exhibit C."

(d) After declaring a place or premises a nuisance, the Board shall make a factual determination as to the reasons why the Board finds that a public nuisance exists.

(d) The sworn testimony and the Board findings shall become a part of the record.

SECTION 7. ORDER OF ABATEMENT.

(a) If the Board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such place or premises to take such action that the Board deems necessary to abate the nuisance or to adopt such procedure as may be appropriate under the circumstances to abate any such nuisance. The order shall be in a form similar to "Exhibit C" and may include, but is not limited to, the following:

(1) Prohibit the maintaining of the nuisance;

(2) Prohibit the operating or maintaining of the place or premises, including the closure of the place or premises or any part of the premises for a period no longer than the effective date of the order;

(3) Prohibit the conduct, operation, or maintenance of any business or activity on the premises which is conducive to the nuisance;

(4) Order the eviction of tenants of the place or premises who are responsible for the criminal conduct or allows or permits another to commit the criminal conduct;

(5) Order the owner of the place or premises or the owner's agents to perform criminal background checks of tenants before renting the property; or

(6) Order the owner to bring the place or premises into compliance with state and local safety codes before allowing the reoccupation of the property.

(b) The order must include a statement stating that violations of this order may be punishable by a fine of not more than two hundred fifty dollars (\$250) for each day that violations of the order continue or that the public nuisance continues to exist.

(c) A finding or order entered pursuant to this act shall become effective seven (7) calendar days after the order has been posted on the subject premises and mailed to the owner's last known address by first class mail. The order shall expire after one (1) year after the effective date or at such earlier time as is stated in the order. The order may be stayed pending appeal to circuit court pursuant to Act 1190.

SECTION 8. APPEALS TO CIRCUIT COURT. Within thirty (30) days after an order or decision has been entered by the Board according to the provisions in this act, any party may appeal to the circuit court for a de novo review on the record pursuant to Section 7 of Act 1190.

If an appeal is filed, the decision or order of the Board shall remain in effect unless stayed by the circuit court pursuant to Act 1190.

SECTION 9. VIOLATIONS OF ORDERS OR CONTINUATION OF NUISANCE ACTIVITY. If an order that has been entered is violated, the Board on its own or pursuant to a complaint may hold a hearing on whether or not a public nuisance continues to exist or an order has been violated. If the Board finds that the public nuisance continues to exist or that an order has been violated, the Board may impose a civil penalty of not more than two hundred fifty (\$250) for each day that the order is violated or that the nuisance continues to exist. Before such a hearing may be held, the owner must be given at-least ten (10) calendar days notice in writing of the hearing according to methods stated in the Arkansas Rules of Civil Procedure 4(d). The notice must state that if the Board finds that the nuisance continues to exist or that the order has been violated, the Board may impose a fine of not more than two hundred fifty dollars (\$250) for each day that the order has been violated or that the nuisance has continued to exist. The maximum amount of a civil penalty that may be imposed is ten thousand dollars (\$10,000). In addition to a civil penalty, the Board may award costs of a successful complainant not to exceed one thousand dollars (\$1000). The owner or the complaining party may seek a continuance of the hearing verbally or in writing. Upon a showing of good cause, the continuance shall be granted by the Board. Any civil penalty or costs awarded by the Board may be appealed to the circuit court within thirty (30) days pursuant to Act 1190.

SECTION 10. COLLECTION AND EXPENDITURE OF CIVIL PENALTIES. All civil penalties imposed by the Board shall be used by the police department for nuisance abatement purposes. Any order imposing costs or civil penalties not appealed to circuit court may be tiled with the Circuit Clerk's office and constitute a judgment of record and a lien against the nuisance property.

SECTION 11. SUPPLEMENTAL MEASURES. This ordinance does not restrict the right of any person or government official from proceeding against a public nuisance by any other means. This Ordinance is supplemental to all other laws and any other powers of the city .

SECTION 12. IMMUNITY .As provided by Act 1190, the Board, its individual members, and city employees assisting the Board are immune from suit or action for their activities in discharge of their duties under this act to the full extent of judicial immunity .Except for perjury and false swearing, complainants and witnesses are absolutely immune from suit or

action for all communications with the Board and all statements made within the nuisance abatement process.

SECTION 13: That all ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 14: That the provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall be declared or held invalid, such invalidity shall not affect the remainder of the sections, phrases or provisions.

SECTION 15: It is hereby found and determined that the immediate passage of this Ordinance is necessary in order to create a criminal nuisance abatement Board that allows for the abatement of criminal nuisance properties and premises in, Bentonville, Arkansas.