

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

**AN ORDINANCE AMENDING CHAPTER 532 OF THE CODIFIED
ORDINANCES OF CITY OF STRUTHERS, OHIO
AND DECLARING AN EMERGENCY.**

WHEREAS, Chapter 532 of the Codified Ordinances of the City of Struthers, Ohio currently states:

532.01 PUBLIC NUISANCES DEFINED.

As used in this chapter, the following activities, occurring on property within the City and engaged in by an owner, occupant or invitee of the owner or occupant are hereby declared to be “Public Nuisance”:

- (a) Any disorderly conduct, disturbance of the peace, noise or other similar violation under City Ordinances and/or statutes of the State of Ohio;
- (b) Any drug abuse violation under City Ordinances and/or statutes of the State of Ohio;
- (c) Any gambling violation under City Ordinances and/or statutes of the State of Ohio;
- (d) Any health, safety, or sanitation violations under City Ordinances and/or statutes of the State of Ohio;
- (e) Any obstruction of official business violations under City Ordinances and/or statutes of the State of Ohio;
- (f) Any alcohol violation under City Ordinances and/or statutes of the State of Ohio;
- (g) Any sex offense under City Ordinances and/or statutes of the State of Ohio, including but not limited to public indecency, solicitation and prostitution;
- (h) Any offense against another person under City Ordinances and/or statutes of the State of Ohio, including but not limited to assault, battery, menacing, endangering children, and contributing to the unruliness and/or delinquency of a child;
- (i) Any offense against property under City ordinances and/or statutes of the State of Ohio, including but not limited to criminal damaging, criminal mischief, burglary and arson.
- (j) Any theft violation under City ordinances and/or statutes of the State of Ohio, including but not limited to theft and receiving stolen property.
- (k) Any fireworks violation under City Ordinances and/or statutes of the State of Ohio;
- (l) Any open burning or recreational fires in violation of City Ordinances and/or statutes of the State of Ohio;
- (m) Any activity engaged in by a person under eighteen years of age which would constitute a violation of an offense listed in this section if committed by an adult.

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

532.02 NOTICES AND ORDERS.

(a) The Chief of Police of the City of Struthers or his designee, upon finding that three or more nuisance activities declared in Section 532.01 have occurred on City property within any twelve (12) month period, shall cause a written notice and order to be served on the owner and/or landlord of the property, declaring that such property is a nuisance property. The notice and order shall set forth:

- (1) The nature of the nuisances;
- (2) The dates and times that the police have previously been called to the property;
- (3) That subsequent responses by the police to the property in question for any three (3) same nuisance will result in fines to the property owner/landlord;
- (4) The amount of fines to be assessed in the event of subsequent responses; and
- (5) That the property owner/landlord may avoid being charged costs of responses by taking steps to prevent any further nuisance activities as defined in this chapter.

(b) Notice and order shall be served on the property owner and/or landlord personally or by certified mail and regular mail to the person's residence, regular place of business or last known address. If the certified or regular mail is returned undelivered, a copy shall be posted in a conspicuous place in or on the person's residence, regular place of business, last known address or on the property affected.

(c) If, within twelve (12) months, the police response to a fourth or successive nuisance activities on the property, the property owner and/or landlord will be assessed the civil fines as prescribed in Section 532.99. The Chief of Police or designee shall issue a home rule citation to the property owner or landlord of the property.

532.03 AFFIRMATIVE DEFENSES.

It shall be an affirmative defense of the property owner and/or landlord, and a bar to imposition of the fines set forth in Section 532.99 if the property owner and/or landlord demonstrate that:

- (a) He/she was not the owner of the property at the time of the occurrence of the prior nuisance activities; or
- (b) He/she, having received notice of the nuisance activity, promptly took reasonable and necessary action to abate each nuisance; and
- (c) He/she having received notice of the nuisance activity, evicted, ejected or removed from occupancy or possession of the property those persons causing the nuisance; or
- (d) He/she having received notice of the nuisance activity took action to reasonably secure the property from unwanted entry or trespass of the property.

532.04 ORDINANCE NOT EXCLUSIVE.

The provisions of this chapter shall not be expected to be a limitation or restriction upon the authority of any department, division, official or employee of the City of Struthers, Ohio, but shall be deemed as an enlargement of any authority existing by virtue of the laws of the State of Ohio or any other ordinance heretofore enacted by Council.

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

532.05 CONSTITUTIONALITY.

Each section of this chapter shall be deemed to be a separate and distinct section and in the event any one section is declared unconstitutional, said declaration shall in no way effect any other section of this chapter.

532.99 PENALTY.

A violation of this chapter, whereby the police are responding to a fourth or more nuisances at the property, shall constitute an unclassified civil misdemeanor punishable by a civil fine as follows:

- (a) First Offense \$250.00
- (b) Second Offense \$500.00
- (c) Third Offense \$750.00
- (d) Fourth and Subsequent Offenses \$1,000.00

WHEREAS, Council desires to make certain amendments to Chapter 532 of the City's Codified Ordinances.

NOW, THEREFORE, BE IT ORDINANED by the Council for the City of Struthers, Ohio, ³/₄'s of all members elected thereto concurring, that:

SECTION 1: Chapter 532 of the City's Codified Ordinances is hereby amended to read as follows:

CHAPTER 532: CRIMINAL ACTIVITY NUISANCE

532.01 DEFINITIONS

- (a) "Chronic Nuisance" means a property on which three (3) or more Nuisance Activities exist or have occurred during any six (6) month period.
- (b) "Nuisance Activity" shall mean any of the following activities, conduct or behavior:
 - (i) Any animal violations under Chapter 505 of the City's Codified Ordinances or similar statutes of the State of Ohio;
 - (ii) Any disorderly conduct, disturbance of the peace, noise or other violation of Chapter 509 of the City's Codified Ordinances or similar statutes of the State of Ohio;
 - (iii) Any drug abuse violation under Chapter 513 of the City's Codified Ordinances or similar statutes of the State of Ohio and any felony violation under Chapter 2925 of the Ohio Revised Code;
 - (iv) Any gambling violation under Chapter 517 of the Codified Ordinances or similar statutes of the State of Ohio;
 - (v) Any obstruction of official business violation under § 525.07 of the City's Codified Ordinances or similar statutes of the State of Ohio;
 - (vi) Any alcohol violation under Chapter 529 of the Codified Ordinances or similar statutes of the State of Ohio;
 - (vii) Any sex offense under Chapter 533 of the City's Codified Ordinances or similar statutes of the State of Ohio;

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

- (viii) Any offense against another person under Sections §§ 537.03 (assault), 537.04 (negligent assault), 537.05 (aggravated menacing), 537.06 (menacing), 537.07 (endangering children), or 537.18 (contributing to the unruliness and delinquency of a child) of the City's Codified Ordinances or similar statutes of the State of Ohio, including felonies;
 - (ix) Any offense against property under §§ 541.03 (criminal damaging or endangering) or 541.04 (criminal mischief) of the City's Codified Ordinances or similar statutes of the State of Ohio;
 - (x) Any theft violation under §§ 545.05 (theft) and 545.18 (receiving stolen property) of the City's Codified Ordinances or similar statutes of the State of Ohio, including felonies;
 - (xi) Any weapons, explosives, firearm or handgun violation under Chapter 549 of the City's Codified Ordinances or similar statutes of the State of Ohio, including felonies;
 - (x) Any curfew violation under § 509.08 of the City's Codified Ordinances and similar statutes of the State of Ohio; and
 - (xi) Any activity engaged in by a person under eighteen years of age which would constitute a violation of an offense listed in this section if committed by an adult.
- (c) "Owner" means a person or entity that has legal title to, or any kind of ownership interest in, Property according to the official records of the Mahoning County Recorder. If more than one person or entity owns Property, "Owner" refers to each person or entity that has legal title to, or any kind of ownership interest in, Property according to the official records of the Mahoning County Recorder.
- (d) "Property" means any building, structure, dwelling, lot, parcel, or land located within the City whether the property is public or private and/or residential or commercial.

532.02 PROCEDURE

- (a) The Law Director shall notify the Owner, in writing, that the Property is in danger of becoming a Chronic Nuisance when there are specific facts and circumstances documenting the occurrence of two (2) or more Nuisance Activities at the Property within a six (6) month period. The notice is a lawful order, and each directive contained therein is a separate lawful order. Failure to obey any directive subjects the Owner to penalties of this chapter.
- (b) The notice provided for in division (a) of this section shall contain the following information:
 - (i) The street address or a legal description sufficient for identification of the Property;
 - (ii) A description of the Nuisance Activities that have occurred at the Property, including the dates of each Nuisance Activity;
 - (iii) A statement that, if a third Nuisance Activity occurs within six (6) months of the dates of the first two Nuisance Activities, the City may assess a civil penalty against the Owner and/or abate the nuisance using administrative actions with the costs thereof charged to the Owner and/or assessed against the Property.
- (c) If the Law Director determines that an additional Nuisance Activity has occurred at the Property within six (6) months of the occurrence of the first two (2) or more Nuisance Activities, the Law Director shall determine that the Property is a Chronic Nuisance and issue a lawful order for the Owner to abate the nuisance within thirty (30) days. Failure to abate the nuisance shall be deemed a violation of this Chapter.

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

- (d) The notice provided for in division (c) of this section shall contain the following information:
 - (i) The street address or a legal description sufficient for identification of the Property;
 - (ii) A description of the Nuisance Activities that have occurred at the Property, including the dates of each Nuisance Activity;
 - (iii) An order for the Owner to either abate the nuisance within thirty (30) days from the date on which the notice was served or provide the Law Director with an acceptable plan to abate the Nuisance Activities within fifteen (15) days from the date on which the notice was served;
 - (iv) A statement that, if the nuisance is not abated, the City may assess a civil penalty against the Owner and/or abate the nuisance using administrative actions with the costs thereof charged to the Owner and/or assessed against the Property; and
 - (v) An explanation for the process to appeal.

532.03 SERVICE

The notices provided for in § 532.02 shall be deemed properly served when:

- (a) By handing the notice to the Owner;
- (b) By leaving the notice at the Owner's usual residence with a person of suitable age and discretion residing with the Owner;
- (c) By sending the notice by certified mail to the last known address of the Owner and receiving a return receipt showing delivering of the mailing; or
- (d) By sending the notice by ordinary mail to the last known address of the Owner and by posting the notice on the Property.

532.04 IMPACT

- (a) Any Property that is a Chronic Nuisance violates this chapter.
- (b) Any Owner who permits the Property to be a Chronic Nuisance or who fails to comply with a notice or order to abate a nuisance shall be in violation of this chapter.
- (c) Whoever violates this chapter is guilty of a misdemeanor of the third degree.
- (d) After a Property has been determined to be a Chronic Nuisance, the Owner shall be charged for the actual cost of service by the City for responding to each subsequent Nuisance Activity at the Property.
- (e) As an alternative, or in addition, to criminal prosecution, the Code Enforcement Director may, at the request of the Law Director, assess a civil penalty against an Owner who violates any provision of this chapter for the following amounts:
 - (i) \$250.00 for a third Nuisance Activity (resulting in the Property becoming a Chronic Nuisance);
 - (ii) \$500.00 for the first Nuisance Activity after the Property is declared a Chronic Nuisance;
 - (iii) \$750.00 for the second Nuisance Activity after the Property is declared a Chronic Nuisance;

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

- (iv) \$1,000.00 for the third Nuisance Activity after the Property is declared a Chronic Nuisance;
- (v) \$2,000.00 for each Nuisance Activity after the third Nuisance Activity after the Property is declared a Chronic Nuisance.
- (f) A separate offense shall be deemed committed each day on which a violation occurs or continues.
- (g) The cost of service by the City for responding to a Nuisance Activity after the Property is declared a Chronic Nuisance or for any other action taken by the City pursuant to this chapter shall be recovered in the following manner:
 - (i) The Owner shall be billed directly for the costs, and the Owner shall pay the bill within thirty (30) days.
 - (ii) If the Owner does not timely pay the bill, the City may collect the costs by any of the following methods:
 - (A) The City may certify the costs to the County Auditor for collection as other taxes and assessments are collected to the extent permitted by law.
 - (B) The City may commence a civil action against the Owner.

532.05 BURDEN OF PROOF; AFFIRMATIVE DEFENSES

- (a) To be a Nuisance Activity, the City must be able to show by a preponderance of the evidence that the Nuisance Activity occurred. A criminal conviction is not necessary.
- (b) The City shall have the initial burden of proof to show by a preponderance of the evidence that the Property is a Chronic Nuisance.
- (c) If the City satisfies its burden of proof, the Property shall not be determined to be a Chronic Nuisance if the Owner shows by a preponderance of the evidence that:
 - (i) The Owner was not the owner at the time of any Nuisance Activity that is the basis for the notice;
 - (ii) The Owner has knowledge of the Nuisance Activity, but has promptly and vigorously taken all actions necessary to abate the Nuisance Activity;
 - (iii) The Owner did not have 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 required by § 532.02(a), the Owner promptly took all actions necessary to abate the Nuisance Activity; or
 - (iv) The Owner was in the process of eviction either at the time of or as a result of the notice declaring the Property to be a Chronic Nuisance.
- (d) Copies of police incident reports and reports of other city departments documenting Nuisance Activities and evidence of a Property's general reputation and the reputation of the Owner or persons residing in or frequenting the Property shall be admissible in determining whether the Property is a Chronic Nuisance.

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

532.06 ALTERNATIVE REMEDIES

The provisions and procedures set forth in this chapter shall not expressly or by implication repeal or supersede any other provisions or procedures of the City's Codified Ordinances or any other applicable law on the same or related matters. This chapter shall supplement existing procedures and will provide an alternative, non-exclusive procedure for the abatement of a Chronic Nuisance. Nothing in this chapter shall preclude or prohibit the City from resorting to any appropriate legal remedy.

532.07 APPEAL

- (a) The Owner may appeal the determination of the Law Director that a Property is Chronic Nuisance, the amount of the bill for enforcement related to Nuisance Activities at the Property, or a civil penalty issued pursuant to § 532.04(e) with City Council by filing a written petition with the Clerk of Council, requesting a hearing and setting forth the name, address and phone number of the petitioner and a brief statement of the grounds for such hearing.
- (b) The petition shall be filed within fourteen (14) days from the date on which the notice required by § 532.02(c) is served on the Owner and shall be accompanied by a non-refundable fee of Twenty-five Dollars (\$25.00).
- (c) Upon receipt of the petition, the Clerk of Council shall set a date for a hearing before City Council. Upon setting the hearing, the Clerk of Council shall notify the Owner of the date, time and place by sending written notice of the hearing at least seven (7) days prior to the hearing by United States regular mail to the address for the Owner contained in the petition. At the hearing, the Owner shall be given the opportunity to be heard and to show cause as to why the Property is not a Chronic Nuisance, the bill for enforcement related to the Nuisance Activity is incorrect, and/or the civil penalty issued pursuant to § 532.04(e) is incorrect. City Council shall affirm, disaffirm, or modify the determination of the Law Director that a Property is Chronic Nuisance, the amount of the bill for enforcement related to Nuisance Activities, or the amount of the civil penalty issued pursuant to § 532.04(e).
- (d) If the Owner does not appear for the hearing, the appeal shall be dismissed and the amount of the bill for enforcement related to Nuisance Activities at the Property and for the civil penalty shall be upheld.

SECTION 2: All ordinances, or parts thereof, that are inconsistent with the provisions of this Ordinance are hereby repealed insofar, but only insofar, as the same are inconsistent herewith.

SECTION 3: It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open in the public, in compliance with law.

SECTION 4: A delay in the effective date of this ordinance will result in detriment to the economic health, safety and welfare of the Struthers community at large. Accordingly, this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare of the City and shall therefore be in full force and effect from and immediately upon its passage and approval by the Mayor

CITY OF STRUTHERS, Ohio
Ordinance

NO. 21-054

PASSED IN COUNCIL THIS 13th DAY OF October, 2021.

Megan R. Shorthouse
CLERK OF COUNCIL

Michael S. Patrick
PRESIDENT OF COUNCIL

FILED WITH THE MAYOR THIS 13th DAY OF October, 2021.

Megan R. Shorthouse
CLERK OF COUNCIL

APPROVED BY THE MAYOR THIS 13th DAY OF October, 2021.

Catherine Cerccone Miller
MAYOR

PUBLISHED IN THE HOMETOWN JOURNAL

DATE: 10/21/2021-10/28/2021

Megan R. Shorthouse
CLERK OF COUNCIL