

FIRST REGULAR SESSION

HOUSE BILL NO. 1048

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MERIDETH.

1603H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 82.1025, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, and to enact in lieu thereof three new sections relating to property regulations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 82.1025, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 82.1025, 82.1027, and 82.1030, to read as follows:

82.1025. 1. [~~This section applies~~] **Sections 82.1025 to 82.1030 apply** to a nuisance located within the boundaries of any county of the first classification with a charter form of government and a population greater than nine hundred thousand, in any county of the first classification with more than one hundred ninety-eight thousand but fewer than one hundred ninety-nine thousand two hundred inhabitants, in any county of the first classification with more than seventy-three thousand seven hundred but fewer than seventy-three thousand eight hundred inhabitants, in any county of the first classification with more than ninety-three thousand eight hundred but fewer than ninety-three thousand nine hundred inhabitants, in any home rule city with more than one hundred fifty-one thousand five hundred but fewer than one hundred fifty-one thousand six hundred inhabitants, in any city not within a county and in any city with at least three hundred fifty thousand inhabitants which is located in more than one county.

2. [~~A parcel of property is a nuisance, if such property adversely affects the property values of a neighborhood or the property value of any property within the neighborhood because the owner of such property allows the property to be in a deteriorated condition, due to neglect or failure to reasonably maintain, violation of a county or municipal building code, standard, or ordinance, abandonment, failure to repair after a fire, flood or some other damage to the property~~]

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 ~~or because the owner or resident of the property allows clutter on the property such as abandoned~~
18 ~~automobiles, appliances or similar objects.] Any property owner who owns property within one~~
19 thousand two hundred feet of a parcel of property which is alleged to be a nuisance may bring
20 a nuisance action **under this section** against the offending property owner for the amount of
21 damage created by such nuisance to the value of the petitioner's property, including diminution
22 in value of the petitioner's property, and court costs [~~provided that the owner of the property~~
23 ~~which is alleged to be a nuisance has received notification of the alleged nuisance and has had~~
24 ~~a reasonable opportunity, not to exceed forty-five days, to correct the alleged nuisance. This~~
25 ~~section is not intended to abrogate, and shall not be construed as abrogating, any remedy~~
26 ~~available under the common law of private nuisancee].~~

27 3. An action for injunctive relief to abate a nuisance [~~under this section~~] may be brought
28 **under this section** by:

29 (1) Anyone who owns property within one thousand two hundred feet to a property
30 which is alleged to be a nuisance; or

31 (2) A neighborhood organization, as defined in subdivision (2) of section 82.1027, on
32 behalf of any person or persons who own property within the boundaries of the neighborhood
33 or neighborhoods described in the articles of incorporation or bylaws of the neighborhood
34 organization and who could maintain a nuisance action under this section or under the common
35 law of private nuisance, or on its own behalf with respect to a nuisance on property anywhere
36 within the boundaries of the neighborhood or neighborhoods.

37 4. An action shall not be brought under this section until [~~sixty~~] **forty-five** days after the
38 party who brings the action has sent written notice of intent to bring an action under this section
39 by certified mail, return receipt requested, postage prepaid to:

40 (1) The tenant, if any, or to "occupant" if the identity of the tenant cannot be reasonably
41 ascertained, at the property's address; and

42 (2) The property owner of record at the last known address of the property owner on file
43 with the county or city [~~or, if the property owner is a corporation or other type of limited liability~~
44 ~~company, to the property owner's registered agent at the agent's address of record;]~~

45

46 that a nuisance exists and that legal action may be taken against the owner of the property **if the**
47 **nuisance is not eliminated within forty-five days after the date on the written notice.** If the
48 notice sent by certified mail is returned unclaimed or refused, designated by the post office to be
49 undeliverable, or signed for by a person other than the addressee, then adequate and sufficient
50 notice [~~may be given to the tenant, if any, and the property owner of record by sending a copy~~
51 ~~of the notice by regular mail to the address of the property owner or registered agent and]~~ **shall**
52 **be provided by** posting a copy of the notice on the property where the nuisance allegedly is

53 occurring. A sworn affidavit by the person who mailed or posted the notice describing the date
54 and manner that notice was given shall be ~~[prima facie]~~ **sufficient** evidence ~~[of the giving of such~~
55 ~~notice]~~ **to establish that the notice was given.** The notice shall specify:

- 56 (a) The act or condition that constitutes the nuisance;
57 (b) The date the nuisance was first discovered;
58 (c) The address of the property and location on the property where the act or condition
59 that constitutes the nuisance is allegedly occurring or exists; and
60 (d) The relief sought in the action.

61 5. ~~[When a neighborhood organization files a suit under this section, an officer of the~~
62 ~~neighborhood organization or its counsel shall certify to the court:~~

63 ~~—— (1) From personal knowledge, that the neighborhood organization has taken the required~~
64 ~~steps to satisfy the notice requirements under this section; and~~

65 ~~—— (2) Based on reasonable inquiry, that each condition precedent to the filing of the action~~
66 ~~under this section has been met.~~

67 ~~—— 6. A neighborhood organization may not bring an action under this section if, at the time~~
68 ~~of filing suit, the neighborhood organization or any of its directors own real estate, or have an~~
69 ~~interest in a trust or a corporation or other limited liability company that owns real estate, in the~~
70 ~~city or county in which the nuisance is located with respect to which real property taxes are~~
71 ~~delinquent or a notice of violation of a city code or ordinance has been issued and served and is~~
72 ~~outstanding.~~

73 ~~—— 7. This section is not intended to abrogate, and shall not be construed as abrogating, any~~
74 ~~remedy available under the common law of private nuisance.] A copy of a notice of citation~~
75 **issued by the city or county that shows the date the citation was issued shall be prima facie**
76 **evidence of whether and for how long a citation has been pending against the property or**
77 **the property owner.**

78 **6. A proceeding under this section shall:**

- 79 **(1) Be heard at the earliest practicable date; and**
80 **(2) Be expedited in every way.**

81 **7. When a property owner or neighborhood organization brings an action under**
82 **this section for injunctive relief to abate a nuisance, a prima facie case for injunctive relief**
83 **shall be made upon proof that a nuisance exists on the property. Such an action shall not**
84 **require proof that the party bringing the action has sustained damage or loss as a result**
85 **of the nuisance.**

86 **8. With respect to an action under this section against the owner of commercial,**
87 **industrial, or vacant property, if a property owner or neighborhood organization bringing**
88 **the action prevails in such action, such property owner or organization may be entitled to**

89 **an award for its reasonable attorneys' fees and expenses, as ordered by the court, incurred**
 90 **in bringing and prosecuting the action, which award for attorneys' fees and expenses shall**
 91 **be entered as a judgment against the owner of the property on which the act or condition**
 92 **constituting the nuisance occurred or was located.**

82.1027. As used in sections [~~82.1027~~] **82.1025** to 82.1030, the following terms mean:

2 (1) "Code or ordinance violation", a violation under the provisions of a municipal code
 3 or ordinance of any home rule city with more than four hundred thousand inhabitants and located
 4 in more than one county, or any city not within a county, which regulates fire prevention, animal
 5 control, noise control, property maintenance, building construction, health, safety, neighborhood
 6 detriment, sanitation, or nuisances;

7 (2) "Neighborhood organization", **either:**

8 **(a) A Missouri not-for-profit corporation that:**

9 **a. Is a bona fide community organization formed for the purpose of neighborhood**
 10 **preservation or improvement;**

11 **b. Whose articles of incorporation or bylaws specify that one of the purposes for which**
 12 **the corporation is organized is the preservation and protection of residential and community**
 13 **property values in all or part of a neighborhood or neighborhoods with geographic boundaries**
 14 **that conform to the boundaries of not more than two adjoining neighborhoods recognized by the**
 15 **planning division of the city or county in which the neighborhood or neighborhoods are located**
 16 ~~[provided that the corporation's articles of incorporation or bylaws provide that:~~

17 ~~—— (a) The corporation has members;~~

18 ~~—— (b) Membership shall be open to all persons who own residential real estate or who~~
 19 ~~reside in the neighborhood or neighborhoods described in the corporation's articles of~~
 20 ~~incorporation or bylaws subject to reasonable restrictions on membership to protect the integrity~~
 21 ~~of the organization; however, membership may not be conditioned upon payment of monetary~~
 22 ~~consideration in excess of twenty-five dollars per year; and~~

23 ~~—— (c) Only members who own residential real estate or who reside in the neighborhood or~~
 24 ~~neighborhoods described in the corporation's articles of incorporation or bylaws may elect~~
 25 ~~directors or serve as a director]; and~~

26 **c. Whose board of directors is comprised of individuals, at least half of whom**
 27 **maintain their principal residence in a neighborhood the organization serves as described**
 28 **in the organization's articles of incorporation or bylaws; or**

29 **(b) An organization recognized by the federal Internal Revenue Service as tax**
 30 **exempt under the provisions of Internal Revenue Code Section 501(c)(3), or the**
 31 **corresponding section of any future tax code, which has had a contract to furnish housing**
 32 **related services at any point during the five-year period preceding the filing of the action**

33 **with that governing municipality or county, and is in compliance with or completed such**
 34 **contract;**

35 (3) "Nuisance"~~], within the boundaries of the neighborhood or neighborhoods described~~
 36 ~~in the articles of incorporation or bylaws of the neighborhood organization, an act or condition~~
 37 ~~knowingly created, performed, maintained, or permitted to exist on private property that~~
 38 ~~constitutes a code or ordinance violation and that significantly affects the other residents of the~~
 39 ~~neighborhood; and] : (a) An activity or condition created, performed, maintained, or~~
 40 **permitted to exist on private property that constitutes a code or ordinance violation,**
 41 **regardless if the city or county has issued a citation for the property, as a result of:**

- 42 **a. A deteriorated condition due to neglect or failure to reasonably maintain;**
- 43 **b. Abandonment;**
- 44 **c. Failure to repair after a fire, flood, or some other deterioration of the property;**

45 **or**

- 46 **d. Clutter on the property such as abandoned automobiles, appliances, or similar**
 47 **objects; or**

48 **(b) If the property is commercial or industrial and is vacant, an activity or**
 49 **condition on the property that encourages, promotes, or substantially contributes to**
 50 **unlawful activity within three hundred feet of the property, and that activity or condition**
 51 **either:**

- 52 ~~[(a)]~~ **a. Diminishes the value of the neighboring property; or**
- 53 ~~[(b)]~~ **b. Is injurious to the public health, safety, security, or welfare of neighboring**
 54 **residents or businesses; or**
- 55 ~~[(c)]~~ **c. Impairs the reasonable use or peaceful enjoyment of other property in the**
 56 **neighborhood.**

82.1030. 1. Subject to subsection 2 of this section, sections **82.1025 to 82.1027** ~~[to~~
 2 ~~82.1029]~~ shall not be construed as to abrogate any equitable or legal right or remedy otherwise
 3 available under the law to abate a nuisance.

4 2. Sections **82.1025 to 82.1027** ~~[to 82.1029]~~ shall not be construed [as] to grant standing
 5 for an action challenging any zoning application or approval.

6

~~[82.1028. Sections 82.1027 to 82.1030 apply to a nuisance located within~~
 2 ~~the boundaries of any city not within a county and any home rule city with more~~
 3 ~~than four hundred thousand inhabitants and located in more than one county.]~~
 4

~~[82.1029. 1. A neighborhood organization, on behalf of a person or~~
 2 ~~persons who own real estate or reside within one thousand two hundred feet of~~
 3 ~~a property on which there is a condition or activity constituting a code or~~

4 ordinance violation in the neighborhood or neighborhoods described in the
 5 articles of incorporation or the bylaws of the neighborhood organization, or on
 6 its own behalf with respect to a code or ordinance violation on property anywhere
 7 within the boundaries of the neighborhood or neighborhoods, may seek injunctive
 8 and other equitable relief in the circuit court for abatement of a nuisance upon
 9 showing:

10 ~~_____ (1) The notice requirements of this section have been satisfied; and~~
 11 ~~_____ (2) The nuisance exists and has not been abated.~~

12 ~~_____ 2. An action under this section shall not be brought until:~~

13 ~~_____ (1) Sixty days after the neighborhood organization sends written notice~~
 14 ~~by certified mail, return receipt requested, postage prepaid, to the appropriate~~
 15 ~~municipal code enforcement agency of the neighborhood organization's intent to~~
 16 ~~bring an action under this section, together with a copy of the notice the~~
 17 ~~neighborhood organization sent or attempted to send to the property owner in~~
 18 ~~compliance with subdivision (2) of subsection 2 of this section; and~~

19 ~~_____ (2) Sixty days after the neighborhood organization sends notice by first~~
 20 ~~class prepaid postage certified mail, return receipt requested, to:~~

21 ~~_____ (a) The tenant, if any, or to "occupant" if the identity of the tenant cannot~~
 22 ~~be reasonably ascertained, at the property's address; and~~

23 ~~_____ (b) The property owner of record at the last known address of the~~
 24 ~~property owner on file with the county or city, or, if the property owner is a~~
 25 ~~corporation or other type of limited liability company, to the property owner's~~
 26 ~~registered agent at the registered agent's address of record;~~

27 ~~_____ that a nuisance exists and that legal action may be taken if the nuisance is not~~
 28 ~~abated. If the notice sent by certified mail is returned unclaimed or refused,~~
 29 ~~designated by the post office to be undeliverable, or signed for by a person other~~
 30 ~~than the addressee, then adequate and sufficient notice may be given to the~~
 31 ~~tenant, if any, and the property owner of record by sending a copy of the notice~~
 32 ~~by regular mail to the address of the property owner or registered agent and~~
 33 ~~posting a copy of notice on the property where the nuisance allegedly is~~
 34 ~~occurring.~~

35 ~~_____ 3. A sworn affidavit by the person who mailed or posted the notice~~
 36 ~~describing the date and manner that notice was given shall be prima facie~~
 37 ~~evidence of the giving of such notice.~~

38 ~~_____ 4. The notice required by this section shall specify:~~

39 ~~_____ (1) The act or condition that constitutes the nuisance;~~
 40 ~~_____ (2) The date the nuisance was first discovered;~~
 41 ~~_____ (3) The address of the property and location on the property where the act~~
 42 ~~or condition that constitutes the nuisance is allegedly occurring or exists; and~~
 43 ~~_____ (4) The relief sought in the action.~~

44 ~~_____ 5. In filing a suit under this section, an officer of the neighborhood~~
 45 ~~organization or its counsel shall certify to the court:~~

46 ~~_____ (1) From personal knowledge, that the neighborhood organization has~~
47 ~~taken the required steps to satisfy the notice requirements under this section; and~~

48 ~~_____ (2) Based on reasonable inquiry, that each condition precedent to the~~
49 ~~filing of the action under this section has been met.~~

50 ~~_____ 6. An action may not be brought under this section based on an alleged~~
51 ~~violation of a particular code provision or ordinance if there is then pending~~
52 ~~against the property or the owner of the property a notice of violation with respect~~
53 ~~to such code provision or ordinance issued by an appropriate municipal code~~
54 ~~enforcement agency unless such notice of violation has been pending for more~~
55 ~~than forty-five days and the condition or activity that gave rise to the violation~~
56 ~~has not been abated. This subsection shall not preclude an action under this~~
57 ~~section where the appropriate municipal code enforcement agency has declined~~
58 ~~to issue a notice of violation against the property or the property owner.~~

59 ~~_____ 7. A neighborhood organization may not bring an action under this~~
60 ~~section if, at the time of filing suit, the neighborhood organization or any of its~~
61 ~~directors own real estate, or have an interest in a trust or a corporation or other~~
62 ~~limited liability company that owns real estate, in the city or county in which the~~
63 ~~nuisance is located with respect to which real property taxes are delinquent or a~~
64 ~~notice of violation of a city code or ordinance has been issued and served and is~~
65 ~~outstanding.~~

66 ~~_____ 8. A copy of the notice of citation issued by the city that shows the date~~
67 ~~the citation was issued shall be prima facie evidence of whether and for how long~~
68 ~~a citation has been pending against the property or the property owner.~~

69 ~~_____ 9. A proceeding under this section shall:~~

70 ~~_____ (1) Be heard at the earliest practicable date; and~~

71 ~~_____ (2) Be expedited in every way.]~~

72

2 ~~[82.1031. No action shall be brought under section 82.1025 or sections~~
3 ~~82.1027 to 82.1030 if the owner of the property that is the subject of the action~~
4 ~~is in good faith compliance with any order issued by the department of natural~~
5 ~~resources, the United States Environmental Protection Agency, or the office of~~
~~attorney general.]~~

