

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 731
97TH GENERAL ASSEMBLY

Reported from the Committee on Jobs, Economic Development and Local Government, March 6, 2014, with recommendation that the Senate Committee Substitute do pass.

5065S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, RSMo, and to enact in lieu thereof five new sections relating to property regulations in certain cities and counties.

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Section A. Sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, to read as follows:

82.1025. 1. **[In] This section applies 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

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 property to be in a deteriorated condition, due to neglect **or failure to**
18 **reasonably maintain**, violation of a county or municipal building code [or],
19 standard, **or ordinance**, abandonment, failure to repair after a fire, flood or
20 some other damage to the property or because the owner or resident of the
21 property allows clutter on the property such as abandoned automobiles,
22 appliances or similar objects. Any property owner who owns property within [a
23 reasonable distance to] **one thousand two hundred feet of** a parcel of
24 property which is alleged to be a nuisance may bring a nuisance action against
25 the offending property owner for the amount of damage created by such
26 [property] **nuisance** to the value of the petitioner's property, **including**
27 **diminution in value of the petitioner's property**, and court costs[, provided
28 that the owner of the property which is alleged to be a nuisance has received
29 notification of the alleged nuisance and has had a reasonable opportunity, not to
30 exceed forty-five days, to correct the alleged nuisance. This section is not
31 intended to abrogate, and shall not be construed as abrogating, any remedy
32 available under the common law of private nuisance].

33 [2. A nuisance] **3. An action for injunctive relief to abate a nuisance**
34 **under this section** may be brought by:

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

37 (2) **By a neighborhood organization, as defined in subdivision (2) of**
38 section [32.105] **82.1027, [representing] on behalf of** any person or persons
39 **who own property within the boundaries of the neighborhood or**
40 **neighborhoods described in the articles of incorporation or bylaws of**
41 **the neighborhood organization and who could maintain a nuisance action**
42 **under this section or under the common law of private nuisance, or on its own**
43 **behalf with respect to a nuisance on property anywhere within the**
44 **boundaries of the neighborhood or neighborhoods.**

45 **4. An action shall not be brought under this section until sixty**
46 **days after the party who brings the action has sent written notice of**
47 **intent to bring an action under this section, by certified mail, return**
48 **receipt requested, postage prepaid, to:**

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

51 (2) **The property owner of record at the last known address of**
52 **the property owner on file with the county or city, or, if the property**

53 owner is a corporation or other type of limited liability company, to the
54 property owner's registered agent at the agent's address of record; that
55 a nuisance exists and that legal action may be taken against the owner
56 of the property. If the notice sent by certified mail is returned
57 unclaimed or refused, designated by the post office to be undeliverable,
58 or signed for by a person other than the addressee, then adequate and
59 sufficient notice may be given to the tenant, if any, and the property
60 owner of record by sending a copy of the notice by regular mail to the
61 address of the property owner or registered agent and posting a copy
62 of the notice on the property where the nuisance allegedly is occurring.
63 A sworn affidavit by the person who mailed or posted the notice
64 describing the date and manner that notice was given shall be prima
65 facie evidence of the giving of such notice. The notice shall specify:

- 66 (a) The act or condition that constitutes the nuisance;
67 (b) The date the nuisance was first discovered;
68 (c) The address of the property and location on the property
69 where the act or condition that constitutes the nuisance is allegedly
70 occurring or exists; and
71 (d) The relief sought in the action.

72 5. When a neighborhood organization files a suit under this
73 section, an officer of the neighborhood organization or its counsel shall
74 certify to the court:

- 75 (1) From personal knowledge, that the neighborhood
76 organization has taken the required steps to satisfy the notice
77 requirements under this section; and
78 (2) Based on reasonable inquiry, that each condition precedent
79 to the filing of the action under this section has been met.

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

87 7. When a property owner or neighborhood organization bringing
88 an action under this section prevails in such action, such property
89 owner or organization may be entitled to an award for its reasonable

90 attorneys' fees and expenses, as ordered by the court, incurred in
91 bringing and prosecuting the action, which award for attorneys' fees
92 and expenses shall be entered as a judgment against the owner of the
93 property on which the act or condition constituting the nuisance
94 occurred or was located. Such judgment, if filed for record with the
95 recorder of deeds for the city or county in which the property is
96 located, shall constitute a lien against such property.

97 8. This section is not intended to abrogate, and shall not be
98 construed as abrogating, any remedy available under the common law
99 of private nuisance.

82.1027. As used in sections 82.1027 to [82.1029] **82.1030**, the following
2 terms mean:

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

10 (2) "Neighborhood organization", [an organization defined in section
11 32.105] **a Missouri not-for-profit corporation whose articles of**
12 **incorporation or bylaws specify that one of the purposes for which the**
13 **corporation is organized is the preservation and protection of**
14 **residential and community property values in a neighborhood or**
15 **neighborhoods with geographic boundaries that conform to the**
16 **boundaries of not more than two adjoining neighborhoods recognized**
17 **by the planning division of the city or county in which the**
18 **neighborhood or neighborhoods are located provided that the**
19 **corporation's articles of incorporation or bylaws provide that:**

20 (a) **The corporation has members;**

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

28 **(c) Only members who own residential real estate or who reside**
29 **in the neighborhood or neighborhoods described in the corporation's**
30 **articles of incorporation or bylaws may elect directors or serve as a**
31 **director;**

32 (3) "Nuisance", within the boundaries of the [community represented by]
33 **neighborhood or neighborhoods described in the articles of**
34 **incorporation or bylaws of the neighborhood organization, an act or condition**
35 knowingly created, performed, [or] maintained, **or permitted to exist on**
36 private property that constitutes a [local] code **or ordinance violation and that[**

37 **(a)] significantly affects the other residents of the neighborhood; and:**

38 **[(b)] (a) Diminishes the value of the neighboring property; [and] or**

39 **[(c)] (b) Is injurious to the public health, safety, security, or welfare of**
40 neighboring residents or [obstructs] **businesses; or**

41 **(c) Impairs the reasonable use or peaceful enjoyment of other**
42 property in the neighborhood.

 82.1028. Sections 82.1027 to [82.1029] **82.1030** apply to a nuisance
2 located within the boundaries of **any city not within a county and** any home
3 rule city with more than four hundred thousand inhabitants and located in more
4 than one county.

 82.1029. 1. A neighborhood organization [representing], **on behalf of a**
2 **person or persons [aggrieved by a local code violation] who own real estate**
3 **or reside within one thousand two hundred feet of a property on which**
4 **there is a condition or activity constituting a code or ordinance**
5 **violation in the neighborhood or neighborhoods described in the**
6 **articles of incorporation or the bylaws of the neighborhood**
7 **organization, or on its own behalf with respect to a code or ordinance**
8 **violation on property anywhere within the boundaries of the**
9 **neighborhood or neighborhoods,** may seek injunctive and other equitable
10 relief in the circuit court for abatement of a nuisance upon showing:

11 (1) The notice requirements of this [subsection] **section** have been
12 satisfied; and

13 (2) The nuisance exists and has not been abated.

14 2. An action under this section shall not be brought **until:**

15 (1) [Until] Sixty days after the neighborhood organization sends **written**
16 notice [of the violation and] **by certified mail, return receipt requested,**
17 **postage prepaid, to the appropriate municipal code enforcement agency**

18 of the neighborhood organization's intent to bring an action under this section,
19 [by certified mail, return receipt requested, to the appropriate municipal code
20 enforcement agency] **together with a copy of the notice the neighborhood**
21 **organization sent or attempted to send to the property owner in**
22 **compliance with subdivision (2) of subsection 2 of this section; and**

23 (2) [If the appropriate municipal code enforcement agency has filed an
24 action for equitable relief from the nuisance;

25 (3) until] Sixty days after the neighborhood organization sends notice by
26 first class prepaid postage certified mail, **return receipt requested**, to:

27 (a) The tenant, if any, **or to "occupant" if the identity of the tenant**
28 **cannot be reasonably ascertained, at the property's address; and**

29 (b) The property owner of record **at the last known address of the**
30 **property owner on file with the county or city, or, if the property**
31 **owner is a corporation or other type of limited liability company, to the**
32 **property owner's registered agent at the registered agent's address of**
33 **record;**

34 that a nuisance exists and that legal action may be taken if the nuisance is not
35 abated. If the notice sent by certified mail is returned unclaimed or refused,
36 designated by the post office to be undeliverable, or signed for by a person other
37 than the addressee, then adequate and sufficient notice may be given to the
38 tenant, if any, and the property owner of record by sending a copy of the notice
39 by regular mail **to the address of the property owner or registered agent**
40 and posting a copy of notice on the property where the nuisance allegedly is
41 occurring.

42 **3. A sworn affidavit by the person who mailed or posted the**
43 **notice describing the date and manner that notice was given shall be**
44 **prima facie evidence of the giving of such notice.**

45 **4. The notice required by this section shall specify:**

46 (a) The [nature of the alleged] **act or condition that constitutes the**
47 **nuisance;**

48 (b) The date [and time of day] the nuisance was first discovered;

49 (c) The **address of the property and** location on the property where the
50 **act or condition that constitutes the** nuisance is allegedly occurring **or**
51 **exists; and**

52 (d) The relief sought in the action.

53 [3.] **5. In filing a suit under this section, an officer of the neighborhood**

54 organization **or its counsel** shall certify to the court:

55 (1) **From personal knowledge**, that the neighborhood organization has
56 taken the required steps to satisfy the notice requirements under this
57 [subsection] **section**; and

58 (2) **Based on reasonable inquiry**, that each condition precedent to the
59 filing of the action under this section has been met.

60 [4.] **6. An action [shall] may not be brought [against an owner of**
61 residential rental property unless, prior to giving notice under this section, a
62 notice of violation relating to the nuisance first has been issued by an appropriate
63 municipal code enforcement agency and remains outstanding after a period of
64 forty-five days] **under this section based on an alleged violation of a**
65 **particular code provision or ordinance if there is then pending against**
66 **the property or the owner of the property a notice of violation with**
67 **respect to such code provision or ordinance issued by an appropriate**
68 **municipal code enforcement agency unless such notice of violation has**
69 **been pending for more than forty-five days and the condition or**
70 **activity that gave rise to the violation has not been abated. This**
71 **subsection shall not preclude an action under this section where the**
72 **appropriate municipal code enforcement agency has declined to issue**
73 **a notice of violation against the property or the property owner.**

74 **7. A neighborhood organization may not bring an action under**
75 **this section if, at the time of filing suit, the neighborhood organization**
76 **or any of its directors own real estate, or have an interest in a trust or**
77 **a corporation or other limited liability company that owns real estate,**
78 **in the city or county in which the nuisance is located with respect to**
79 **which real property taxes are delinquent or a notice of violation of a**
80 **city code or ordinance has been issued and served and is outstanding.**

81 [5. (1) If a violation notice issued by an appropriate municipal code
82 enforcement agency is an essential element of the municipal enforcement action,
83 a copy of the notice signed by an official of the appropriate municipal code
84 enforcement agency shall be prima facie evidence of the facts contained in the
85 notice.

86 (2) A notice of abatement issued by the appropriate municipal code
87 enforcement agency in regard to the violation notice shall be prima facie evidence
88 that the plaintiff is not entitled to the relief requested.]

89 **8. A copy of the notice of citation issued by the city that shows**

90 **the date the citation was issued shall be prima facie evidence of**
91 **whether and for how long a citation has been pending against the**
92 **property or the property owner.**

93 [6.] **9.** A proceeding under this section shall:

94 (1) Be heard at the earliest practicable date; and

95 (2) Be expedited in every way.

96 **10. When a neighborhood organization prevails in an action**
97 **brought under this section, it may be entitled to an award for its**
98 **reasonable attorneys' fees and expenses, as ordered by the court,**
99 **incurred in bringing and prosecuting the action, which award for**
100 **attorneys' fees and expenses shall be entered as a judgment against the**
101 **owner of the property on which the act or condition constituting the**
102 **nuisance occurred or was located. Such judgment, if filed for record by**
103 **the recorder of deeds for the city or county in which the property is**
104 **located, shall constitute a lien against such property.**

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

4 2. Sections 82.1027 to 82.1029 shall not be construed as to grant standing
5 for an action[:

6 (1)] challenging any zoning application or approval[;

7 (2) In which the alleged nuisance consists of an interior physical defect
8 of a property; or

9 (3) Involving any violation of municipal alcoholic beverages law].

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