

TOWN COUNCIL



STAFF REPORT Police Department

MEETING DATE:	March 10, 2015
PROJECT:	Ordinance Repealing Chapter 18 General Offenses, Article XI Disorderly or Nuisance Premise of the Town Code and Replacing with New Chapter 18 General Offenses, Article XI Community Safety Ordinance – Second/Final Reading
PROJECT MANAGER:	Joey Reynolds, Chief of Police

RECOMMENDATION: Town Staff recommends that Town Council approve Second/Final Reading of an Ordinance repealing Chapter 18 General Offenses, Article XI Disorderly or Nuisance Premise of the Town Code and Replacing with New Chapter 18 General Offenses, Article XI Community Safety Ordinance.

UPDATE SINCE FIRST READING: On February 10, 2015, Town Council approved First Reading of this Ordinance as presented by Town Staff. As a result no changes have been made to the Ordinance since First Reading approval.

BACKGROUND: As a result of recent Town Council direction and Town Staff's on-going review of the regulations and requirements governing the community, Town Staff presented several Ordinances for Town Council consideration at the January 20, 2015 Town Council workshop. Among other items, this included an amendment to the current Nuisance Premises Ordinance in the Town of Bluffton. In general, this draft Ordinance amendment included the following:

1. Provided definitions and an expressed purpose of the Ordinance for the guidance of the Town Police Department in enforcing the Ordinance.
2. Made clear that property owners, managers, tenants, and others involved in the management of real property in the Town of Bluffton are responsible for activities that occur on the property
3. Established certain violations that affect the quality of life, safety, or welfare of the community as a nuisance and therefore constitute a community safety violation.
4. Provided a clear process of notification that a community safety violation had occurred.
5. In addition to fines and imprisonment, established that violations can be remedied by the revocation of any business license, civil action, and administrative injunction.

After review of the draft Ordinance, Town Council directed Town Staff insert the word "illegal" prior to the phrase "possession of weapons" in Section 18-234(a). The current Ordinance contains this change.

TOWN COUNCIL ACTIONS: Town Council has the authority to take the following actions with respect to this request:

1. Approve the Ordinance as submitted;
2. Approve the Ordinance with conditions; or
3. Deny the Ordinance as submitted.

ANALYSIS: During the recent implementation of the current Ordinance, it was determined by Town Staff and the Town Attorney that the current Ordinance is vague and difficult to enforce. These changes, as proposed by Town Staff and recommended by Town Council at the recent Town Council Workshop, are necessary to ensure a clear, predictable, and enforceable Ordinance is in effect in the Town of Bluffton.

ADOPTION PROCESS: These amendments are being processed according to the following schedule:

1. Town Council Workshop – January 20, 2015;
2. Town Council First Reading – February 10, 2015; and
3. Town Council Second Reading – March 10, 2015.

ATTACHMENTS:

1. Ordinance No. 2015-_____
 - a. Exhibit A – New Chapter 18 General Offenses, Article XI Community Safety Ordinance

ORDINANCE NO. 2015 - _____

TOWN OF BLUFFTON, SOUTH CAROLINA

AN ORDINANCE REPEALING CHAPTER 18 GENERAL OFFENSES, ARTICLE XI DISORDERLY OR NUISANCE PREMISE OF THE TOWN CODE AND REPLACING WITH NEW CHAPTER 18 GENERAL OFFENSES, ARTICLE XI COMMUNITY SAFETY ORDINANCE

WHEREAS, the Town of Bluffton desires to improve the general safety, welfare, health and properties of the citizens of the Town of Bluffton; and,

WHEREAS, to establish the necessary provisions to accomplish the above, the Town of Bluffton has authority to enact resolutions, ordinances, regulations, and procedures pursuant to South Carolina Code of Laws 1976, Section 5-7-30; and,

WHEREAS, the Code of Ordinances for the Town of Bluffton Chapter 18, Offenses and Miscellaneous Provisions, Article XI, Disorderly or Nuisance Premise provides the current regulations pertaining to disorderly and nuisance premises; and,

WHEREAS, the Town Council shall from time to time examine ordinances to ensure that they are properly regarded, enforced, sufficient and satisfactory to the needs of the community and can further suggest changes as deemed appropriate; and,

WHEREAS, the Town of Bluffton Town Council desires to repeal the current Article XI, Disorderly or Nuisance Premise and establish a new Article XI, Community Safety Ordinance to enable the Town of Bluffton to better facilitate, regulate, supervise, and provide consistent treatment throughout the Town.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, in accordance with the foregoing, the Town hereby amends the Code of Ordinances for the Town of Bluffton as follows:

SECTION 1. AMENDMENT. The Town of Bluffton hereby amends the Code of Ordinances for the Town Of Bluffton, South Carolina as follows:

- A. Repeal Article XI, Disorderly or Nuisance Premise from Chapter 18, Offenses and Miscellaneous Provisions as shown in Exhibit A, which is attached and incorporated hereto; and,
- B. Adopt and incorporate a new Article XI, Community Safety Ordinance to Chapter 18, Offenses and Miscellaneous Provisions as shown in Exhibit A, which is attached and incorporated hereto.

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. ORDINANCE IN FULL FORCE AND EFFECT. This entire Ordinance shall take full force and effect upon adoption.

DONE, RATIFIED AND ENACTED this _____ day of _____, 2015.

This Ordinance was read and passed at first reading on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at second reading held on _____, 2015.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Sandra Lunceford
Clerk, Town of Bluffton, South Carolina

ARTICLE XI. DISORDERLY OR NUISANCE PREMISE.**Sec. 18233. Prohibition.**

~~Any real property upon which its owners, property managers, tenants or occupants cause, permit, or maintain any activity that constitutes a public nuisance which results in frequent calls for service by law enforcement officials during a relatively short period of time is hereby declared to be a public nuisance.~~

Sec. 18234. Definitions.

~~(a) For the purposes of this section, a public nuisance is defined as any offense against the public order, peace, and economy of the Town. It includes, but is not limited to, any act, or any omission to perform any duty, which the common good, public decency or morals, or the public right to life, health, safety, and the use of property requires and which at the same time annoys, injures, endangers, renders insecure or interferes with the rights common to all members of the community, or unreasonably interferes with or obstructs the public in general, or any considerable number of persons, in their use of public property.~~

~~(b) For the purposes of this section, three (3) or more calls for service to address separate violations within any six (6) month period shall constitute frequent calls for service by law enforcement officials during a relatively short period of time.~~

Sec. 18235. Penalties.

~~(a) When a property is determined to be a disorderly or nuisance premise as described in this section, the Town Manager may send written notice to the owner of the property, property manager, tenant, or occupant advising the owner, property manager, tenant, or occupant that the property has been declared a disorderly or nuisance premise. Notice shall be presumed when the written notice is either personally served upon the owner, property manager, tenant, or occupant or mailed to the last known address of the owner, property manager, tenant, or occupant, and a copy is left at the property in question. The owner, property manager, tenant, or occupant shall have thirty (30) days from notice to abate the nuisance.~~

~~(b) If the property owner, property manager, tenant, or occupant refuses or fails to take reasonable measures to abate the nuisance within the proscribed thirty (30) days, that person is deemed guilty of a misdemeanor and upon conviction is subject to up to thirty (30) days confinement and/or a five hundred dollar (\$500) fine.~~

~~(c) Further, if the property owner, property manager, tenant, or occupant refuses or fails to take reasonable measures to abate the nuisance within thirty (30) days after a conviction for violation of this section, it is in the discretion of the Town Manager to take such steps necessary to abate the nuisance at the offender's expense.~~

~~Secs. 18 236—18 251. Reserved.~~

ARTICLE XI – COMMUNITY SAFETY ORDINANCE

Sec. 18-233. Purpose.

- (a) The Town Council finds that:
- (1) Behaviors and activities of a person(s) on real property within the Town may constitute a public nuisance and thereby create a significant risk to public safety when such behaviors and activities are associated with the ongoing occurrence of criminal activity.
 - (2) Each owner, occupant and tenant of real property within the Town is responsible for monitoring his or her property and for taking appropriate and reasonable action to prevent or address behaviors or activities occurring on his or her property that contribute to crime or create public nuisances. When a property owner or tenant, after receiving notice hereunder, fails to take appropriate and reasonable action to prevent and/or address such behaviors and activities, it is necessary for the health, safety and welfare of the neighborhoods and the Town as a whole, that the Town is able to undertake administrative or judicial action.
 - (3) Because behaviors and activities that are associated with the ongoing occurrence of criminal activity or crime have a substantial negative impact upon individuals, neighborhoods, and the Town as a whole, the Town Council, in adopting the ordinance codified in this chapter, finds the administrative and judicial penalties imposed for a violation of this chapter are justified and necessary to protect the property, health, safety, and welfare of this community.
 - (4) Community safety must be protected in a way that does not result in housing discrimination or evictions based upon prejudice, unsubstantiated fear, or personal animosities. Nothing in this chapter exempts property owners from strict compliance with State and Federal housing laws, including, but not limited to, laws regarding evictions, retaliatory or discriminatory conduct, or invasion of privacy.
 - (5) Nuisance properties have a tremendous negative impact upon the quality of life, safety, and health of neighborhoods where they are located. The said ordinance is enacted to remedy nuisance properties by providing a process for abatement; and this remedy is not an exclusive remedy available under any State or local laws and may be used in conjunction with such other laws.
 - (6) Also, nuisance properties are a financial burden to the Town by the repeated calls for service to the properties, because of the nuisance activities that repeatedly occur or exist on such property, and this chapter is a means to ameliorate those conditions and hold responsible the owner or persons in charge of such property.
- (b) Based on these findings, the purpose of this chapter is to provide administrative and judicial remedies against property owners and tenants who permit, allow, or fail to prevent ongoing behaviors and activities to occur on their properties that compromise public safety.

Sec. 18-234. Definitions.

- (a) Drug-related nuisance. Any activity related to the possession, sale, use, or manufacturing of an illegal drug or narcotic that creates an unreasonable interference with the comfortable enjoyment of life, property, or the safety and welfare of the residents of the property, the neighborhood, or the public. These activities include, but are not limited to, any activity commonly associated with illegal drug use and dealing, such as noise, steady foot and vehicle

traffic day and night to a particular property, illegal possession of weapons, drug loitering, possession of stolen property, identity theft, possession of property with serial numbers removed, evidence of forgery or fraud, or other drug-related activities.

- (b) Enforcement Officer. Any person authorized by the Town Manager pursuant to this chapter to enforce violations of this chapter.
- (c) Gang-related crime. Any crime motivated by gang membership or initiation, in which the perpetrator or any accomplice, or the victim or intended victim is a known member of a gang.
- (d) Owner and property owner. Both terms shall have the same meaning and may be used interchangeably and mean the owner or owners of record of the subject real property as shown on the latest tax assessment role of Beaufort County.
- (e) Person. Individual(s), corporations, associations, partnerships, limited liability companies, trustees, lessees, agents and assignees.
- (f) Property Manager. A person or firm charged with operating or managing a real estate property on behalf of an owner.
- (g) Real property and property. Both terms shall have the same meaning and may be used interchangeably and mean the lot or parcel of land for which the tenant, occupant, or owner has legal ownership, a possessory interest, use rights, or exercises custody or control thereof.
- (h) Tenant or occupant. Both terms shall have the same meaning and may be used interchangeably and means that person(s), visitor(s), or transient(s) utilizing, leasing, residing at, or occupying the real property in question regardless of whether a lease or contract exists between the parties; such occupancy may last for any limited period of time.
- (i) Town Manager. The Town Manager for the Town of Bluffton or designee.

Sec 18-235. Scope of Application.

- (a) The provisions of this chapter shall apply to all real property whether owner occupied or a rental property, whether residential, commercial, industrial, improved, or unimproved, throughout the Town.
- (b) A criminal conviction is not required for establishing the occurrence of a safety violation pursuant to this chapter.
- (c) The remedies set forth in this chapter are cumulative and additional to any and all other legal remedies available whether set forth elsewhere in the Town Code, or in State or Federal laws, regulations, or case law.

Sec 18-236. Dual Responsibility.

- (a) Every person owning, possessing, utilizing or having charge or control of real property within the Town is required to manage that property and control the environment thereon in a manner so as not to violate the provisions of this chapter. The owner, occupant and tenant of

real property shall be jointly and severally liable for safety violations as set forth in detail herein, regardless of any contract or agreement with any third party regarding the property.

- (b) Every tenant, occupant, lessee, property manager, or holder of any possessory interest in real property shall:
- (1) Comply with all Federal, State, and local laws applicable to the property.
 - (2) Supervise or cause to be supervised anyone utilizing, residing at, or occupying the property, with or without the consent of the owner, consistent with this chapter.
 - (3) Maintain the property in a manner so as not to violate the provisions of this chapter.

Sec. 18-237. Authority.

The Town Manager shall be responsible for administering and enforcing the provisions of this chapter. The Town Manager shall have the authority to designate employees as Enforcement Officers in conformance with this chapter to assist with enforcement responsibilities of this chapter, including, but not limited to, the issuance of citations.

Sec. 18-238. Safety Violations Prohibited.

It is hereby declared a violation of this chapter for a tenant, occupant, property manager, or property owner, whether through the owner or owner's agent, lessee, sublessor, sublessee, or occupant, to allow, permit or fail to prevent a safety violation (as defined herein) to occur on the real property of the owner on a repeated basis or after receipt of a notice as set forth herein. A safety violation consists of any of the following activities or behaviors that threaten the quality of life, health, safety, or welfare of residents of the property, the neighborhood, or the public:

- (a) Evidence of the illegal manufacture, cultivation, sale, use, or possession of controlled substances or other illegal drugs and substances, including paraphernalia, evidenced by the arrest of one (1) or more persons.
- (b) Any drug-related nuisance occurring within twelve months of an arrest on the property for a safety violation defined in subsection (a) of this section.
- (c) Any act of prostitution evidenced by the arrest of one or more persons.
- (d) Any gang-related crime.
- (e) The unlawful possession, discharging, or brandishing of a firearm or weapon by any person.
- (f) Violent criminal acts, whether or not a criminal case is filed, including, but not limited to, rape, attempted rape, robbery, battery, homicide, shootings, kidnapping, or arson.
- (g) Disturbances occurring at parties or gatherings at which alcohol or drugs are consumed or used by minors and/or crimes of violence have occurred.
- (h) Allowing the occupancy load to exceed the permitted number within a public assembly, as established by the Building Code, when alcohol and/or drugs are being consumed or accessible to the gathering.

- (i) Possession of child pornography.
- (j) The occurrence of two or more violations of Chapter 18 Offenses and Miscellaneous Provisions, Article IX Alcohol Possession, Consumption, and Sales of the Town Code within any twelve (12) month period.
- (k) The occurrence of any other criminal activity not specified in subsections (a) through (i) of this section, which threatens the quality of life, health, safety, or welfare of residents of the property, the neighborhood, or the public.

Sec. 18-239. Notice to Property Owner and Tenant.

- (a) To commence enforcement of this article, the Town Manager shall, within a reasonable period of time from the date of the discovery of a safety violation as defined herein, notify the property owner, property manager, and tenant, as applicable, of the occurrence of a safety violation on the property. It is the intent of this notice to provide the recipient official notification that a safety violation has occurred so the recipient is aware of the safety violation and can take appropriate action to immediately remedy the safety violation. The notice shall be presumed provided when the written notice is either personally served upon the owner, property manager, or tenant or mailed to the last known address of the owner, property manager, or tenant by registered or certified mail, return receipt requested. If service on any person cannot be accomplished through the above-stated means or if any person refuses to accept service, the Town Manager may provide written notice to the owner, property manager, and tenant by posting such written notice in a conspicuous place on the property. The removal of the posted notice by any person shall not affect the validity of such notice.
- (b) When the Town Manager notifies an owner of rental property of a safety violation allegedly caused by a specific tenant or the tenants of a specific unit or property, the Town Manager may concurrently give written notice thereof to the property manager, when one is known, and the specific tenant(s) of a unit or property.
- (c) The notice shall contain the following information:
 - (1) The address where the safety violation is occurring.
 - (2) A statement specifying the activities and behaviors which constitute the safety violation, including the names (when known) of the person or persons allegedly causing the safety violation, and may include reasonable actions which the Town Manager directs the property owner to take to abate the violation.
 - (3) A statement informing the owner, property manager, and tenant, as applicable, that if any safety violations reoccur after being served or receiving the notice, a citation and other administrative penalties for each new safety violation that occurs may be issued and imposed upon the owner, property manager, and tenant.
 - ~~(4)~~(4) A statement that the owner and property manager, as applicable, must, in responding to the notice and working with tenants, comply with all applicable Federal, State and local regulations relating to evictions and prohibitions against discrimination.
- (d) After an initial notice, Town shall not be responsible for providing notice pursuant to this section prior to issuance of a citation for subsequent safety violations on the same property that occur within the 365 days of the date the initial notice was served or received.

Sec. 18-240. Safety Violation Enforcement and Fines.

- (a) In addition to the actions and/or fines established in Article XII Penalties of this chapter, any violation of this article may result in any or all of the following actions and/or fines:
- (1) Suspension or revocation of any business license issued for the property as set forth in Section 6-33 of the Town Code;
 - (2) Institution of a civil action by the Town Attorney; and/or,
 - (+) (3) Administrative injunction ordering the action constituting a safety violation to immediately cease and desist; such an order may require an order that the property be immediately vacated to protect the health and welfare of the community.
- (b) Each day the safety violation(s) continue shall be deemed a new violation subject to additional citations, penalties, and fines.

Secs. 18-241 – 18-251. Reserved