

AMENDING CHAPTER 52 "OFFENSES AGAINST PUBLIC PEACE – SAFETY AND MORALS" OF THE MUNICIPAL CODE OF THE CITY OF DEKALB, ILLINOIS BY ADDING SECTION 52.05 "CRIMINAL HOUSING MANAGEMENT".

WHEREAS, the City of DeKalb (the "City") is a home rule unit of local government which may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare, pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

WHEREAS, the City's Corporate Authorities find that the reckless conduct of landowners or managing agents in permitting a dangerous or unsafe physical condition or facilities on residential or commercial real estate in the City endangers the public health, safety, morals and welfare; and

WHEREAS, the City's Corporate Authorities find that it is in the best interests of the City's welfare, public health, and safety to amend Chapter 52 "Offenses Against Public Peace – Safety and Morals" of the City's Municipal Code to add a new Section 52.05 "Criminal Housing Management" as provided herein by this Ordinance; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The recitals to this Ordinance are true, material, adopted, and incorporated herein as Section 1 to this Ordinance.

SECTION 2: The City's Corporate Authorities adopt and approve an amendment to the Chapter 52 "Offenses Against Public Peace – Safety and Morals" of the City's Municipal Code to add a new Section 52.05 "Criminal Housing Management", which shall state in its entirety as follows:

52.05 CRIMINAL HOUSING MANAGEMENT.

- a) Criminal housing management. A person commits criminal housing management when, having personal management or control of residential or commercial real estate, whether as a legal or equitable owner or as a managing agent or otherwise, s/he recklessly permits the physical condition or facilities of the residential or commercial real estate to become or remain in any condition which endangers the health or safety of any person.

A person acts "recklessly" within the meaning of this Section when s/he engages in any act or omission which shows an actual or deliberate intention to endanger the health or safety of any person or which, if not intentional, shows an utter indifference to or conscious disregard for the health or safety of any person. For example, a person may act "recklessly" within the meaning of this Section where s/he: (1) knows of a dangerous condition, or prior injuries caused by a condition, yet took no action to correct the condition; (2) intentionally removes a safety feature from the property despite the known danger of doing so; or (3) fails to take reasonable precautions when s/he knew or should have known of an extraordinary, impending, inherent, or unusual danger to the health or safety of any person.

A person does not act "recklessly" within the meaning of this Section when s/he is merely negligent, inadvertent, or unskillful. For example, a person may

not act "recklessly" within the meaning of this Section where s/he: (1) maintains an inspection or tenant complaint system with due care, yet fails to discover the condition in a reasonable period of time to prevent or correct the condition; (2) exercises some precautions to protect the health and safety of any person, even though those precautions were insufficient; or (3) took reasonably prompt corrective action to remedy a condition, even though such action might have been ineffective.

The existence of a violation of any building code adopted by the City of DeKalb including, but not limited to, any building, property maintenance, fire, mechanical, electrical, and plumbing code adopted by the City of DeKalb, shall constitute prima facie evidence that the physical condition or facilities of the residential or commercial real estate became or remains in a condition which endangers the health or safety of any person within the meaning of this Section. A person may rebut such prima facie evidence by establishing that the condition does not constitute an actual, extraordinary, impending, inherent, or unusual danger to the health or safety of any person. The City shall always have the burden of proving that the condition endangers the health or safety of any person, but the City does not need to prove that the condition proximately caused an injury to any person.

It shall not be a defense to the violation prescribed by this Section that the real estate is vacant, unoccupied, condemned, boarded, or enclosed unless a person boards, encloses, or otherwise secures the real estate pursuant to the approval, direction, or permission of the City's Chief Building Official. Any action to enforce this Section shall be stayed and dismissed pending the respondent's compliance with a permit for demolition or rehabilitation issued by the City's Chief Building Official.

- b) Remedies. Upon finding that a person has committed criminal housing management, the City's Administrative Hearing Officer or the Circuit Court of DeKalb County shall order the following remedies:
- i. A mandatory minimum fine of \$1,000 per day for every day of the violation;
 - ii. A mandatory minimum fine of \$5,000 per day for every day of the violation for any person who has subsequently committed criminal housing management within 1 year of any prior violation;
 - iii. An order requiring any person who owns, manages, or has any equitable interest in the real estate to remedy the violation;
 - iv. An order requiring any person who owns, manages, or has any equitable interest in the real estate to make restitution to any person whose health or safety was endangered because of the violation including, but not limited to, actual relocation expenses, actual remediation expenses, actual medical expenses, and actual loss of earnings;
 - v. An order allowing the City to inspect the real estate for compliance with the order to remedy the violation;
 - vi. An order allowing the City to inspect the real estate for compliance with the City's ordinances and codes for a period of at least 1 year following the

finding of a violation, provided that the City shall give at least 24-hour notice prior to any inspection;

- vii. An order allowing the City to remedy the violation and for the costs of said remediation including, administrative costs, attorney's fees, court costs, and other costs related to the enforcement of this Section, to be recoverable from any person who owns, manages, or has any equitable interest in the real estate as a lien on the real estate;
- viii. An order restraining any person who owns, manages, or has any equitable interest in the property, from collecting, receiving or benefiting from any rents or other monies available from the property, so long as the property remains in a condition which endangers the health or safety of any person; and
- ix. An order directing any person who owns, manages, or has any equitable interest in the property to pay any rents or other monies owed into an escrow account. The funds are to be paid out of the escrow account only to satisfy the reasonable cost of necessary repairs of the property which had been incurred or will be incurred in ameliorating the condition of the property which endangers the health or safety of any person, payment of delinquent real estate taxes on the property or payment of other legal debts relating to the property including, but not limited to, any debt owed as a result of a criminal housing management violation relating to the property. The order may provide that funds remain in escrow for a reasonable time after the completion of all necessary repairs to assure continued upkeep of the property and satisfaction of other outstanding legal debts of the property.

The owner shall be responsible for contracting to have necessary repairs completed by a contractor registered with the City, and the owner shall be required to submit all bills, together with certificates of completion, to the manager of the escrow account within 30 days after their receipt by the owner.

The City Manager or designee shall maintain and manage a separate trust account entitled "Property Improvement Trust Account", which shall serve as the depository for the escrowed funds prescribed by this Section. The City Manager or designee shall be responsible for the receipt, disbursement, monitoring and maintenance of all funds entrusted to this account. The City Manager or designee shall be authorized to promulgate rules and regulations to administer the provisions of this Section.

- c) **Costs.** As part of the costs of an action under this Section, there shall be assessed a reasonable fee against the respondent to be paid to the City of DeKalb to be used solely for the maintenance of the Property Improvement Trust Account. No money obtained directly or indirectly from the property subject to the case may be used to satisfy this cost.
- d) **Retaliation Prohibited.** No person who owns, manages, or has any equitable interest in the property shall retaliate against any person who complains or testifies about the alleged existence of any condition on the property which endangers the health or safety of any person, nor shall any rental agreement prohibit any such complaint or testimony. Any person who is found in violation

of this subsection shall be subject to a mandatory minimum fine of \$1,000 and any such further relief to make whole any victim of the retaliation prohibited by this subsection.

- e) No private cause of action. This Section does not create or form the basis of a private cause of action against the City and its officers, employees, and agents, or any person who owns, manages, or has any equitable interest in the residential or commercial real estate. Nothing in this Section shall be construed to authorize tenants to refrain from paying rent. Nothing in this Section shall be construed to limit or alter any existing liability incurred, or to be incurred, by the owner or manager of the residential or commercial real estate. Nor shall this Section be construed to provide the exclusive remedy for the conduct proscribed herein.
- f) Remedial Purpose. The purpose of this Section is remedial and should be construed broadly to effect its remedial purpose.

SECTION 3: This ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the City of DeKalb that to the extent that the terms of this ordinance should be inconsistent with any non-preemptive state law, that this ordinance shall supersede state law in that regard within its jurisdiction.

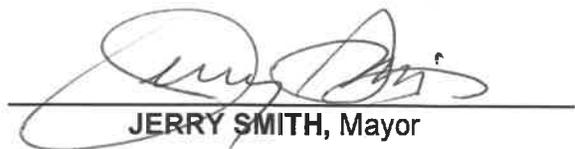
SECTION 4: That the City Clerk and/or Executive Assistant be authorized to attest the Mayor's signature and that this ordinance shall be in full force and effect from and after its passage and approval as provided by law.

ADOPTED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 24th day of August 2020 and approved by me as Mayor on the same day. Passed on First Reading on August 10, 2020 by an 8-0 roll call vote. Aye: Morris, Finucane, Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: None. Passed on Second Reading on August 24, 2020 by an 8-0 roll call vote. Aye: Morris, Finucane, Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: None.

ATTEST:



RUTH A. SCOTT, Executive Assistant



JERRY SMITH, Mayor

