

FIRST REGULAR SESSION

SENATE BILL NO. 203

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Pre-filed January 3, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1191S.02I

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Section A. Sections 82.1025, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 82.1025, 82.1027, and 82.1030, to read as follows: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

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

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

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

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

35 (2) A neighborhood organization, as defined in subdivision [(2)] (3) of section
36 82.1027, on behalf of any person or persons who own property within the boundaries
37 of the neighborhood or neighborhoods described in the articles of incorporation or
38 bylaws of the neighborhood organization and who could maintain a nuisance action
39 under this section or under the common law of private nuisance, or on its own behalf
40 with respect to a nuisance on property anywhere within the boundaries of the
41 neighborhood or neighborhoods.

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

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

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

52 that a nuisance exists and that legal action may be taken against the owner of the
53 property **if the nuisance is not eliminated within forty-five days after the date**

54 **on the written notice.** If the notice sent by certified mail is returned unclaimed or
55 refused, designated by the post office to be undeliverable, or signed for by a person
56 other than the addressee, then adequate and sufficient notice [may be given to the
57 tenant, if any, and the property owner of record by sending a copy of the notice by
58 regular mail to the address of the property owner or registered agent and] **shall be**
59 **provided by** posting a copy of the notice on the property where the nuisance allegedly
60 is occurring. A sworn affidavit by the person who mailed or posted the notice
61 describing the date and manner that notice was given shall be [prima facie] **sufficient**
62 evidence [of the giving of such notice] **to establish that the notice was given.** The
63 notice shall specify:

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

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

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

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

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

86 6. A proceeding under this section shall:

- 87 (1) Be heard at the earliest practicable date; and
- 88 (2) Be expedited in every way.

89 7. When a property owner or neighborhood organization brings an

90 action under this section for injunctive relief to abate a nuisance, a prima
91 facie case for injunctive relief shall be made upon proof that a nuisance
92 exists on the property. Such an action shall not require proof that the party
93 bringing the action has sustained damage or loss as a result of the nuisance.

94 8. With respect to an action under this section against the owner of
95 commercial, industrial, or vacant property, when a property owner or
96 neighborhood organization bringing the action prevails in such action, such
97 property owner or organization may be entitled to an award for its
98 reasonable attorneys' fees and expenses, as ordered by the court, incurred
99 in bringing and prosecuting the action, which award for attorneys' fees and
100 expenses shall be entered as a judgment against the owner of the property
101 on which the act or condition constituting the nuisance occurred or was
102 located.

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

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

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

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

11 a. **Is a bonafide community organization formed for the purpose of**
12 **neighborhood preservation or improvement;**

13 b. Whose articles of incorporation or bylaws specify that one of the purposes
14 for which the corporation is organized is the preservation and protection of residential
15 and community property values in **all or part of** a neighborhood or neighborhoods
16 with geographic boundaries that conform to the boundaries of not more than two
17 adjoining neighborhoods recognized by the planning division of the city or county in
18 which the neighborhood or neighborhoods are located [provided that the corporation's
19 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 real estate
22 or who reside in the neighborhood or neighborhoods described in the corporation's
23 articles of incorporation or bylaws subject to reasonable restrictions on membership

24 to protect the integrity of the organization; however, membership may not be
25 conditioned upon payment of monetary consideration in excess of twenty-five dollars
26 per year; and

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

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

34 **(b) An organization recognized by the federal Internal Revenue**
35 **Service as tax exempt under the provisions of Internal Revenue Code section**
36 **501(c)(3), or the corresponding section of any future tax code, which has had**
37 **a contract to furnish housing related services at any point during the five-**
38 **year period preceding the filing of the action with that governing**
39 **municipality or county, and is in compliance with or completed such**
40 **contract;**

41 (3) "Nuisance", [within the boundaries of the neighborhood or neighborhoods
42 described in the articles of incorporation or bylaws of the neighborhood organization,
43 an act or condition knowingly created, performed, maintained, or permitted to exist on
44 private property that constitutes a code or ordinance violation and that significantly
45 affects the other residents of the neighborhood; and] **an activity or condition**
46 **created, performed, maintained, or permitted to exist on private property**
47 **that constitutes a code or ordinance violation, whether or not the property**
48 **has been cited by the city or county in which the property is located; or, if**
49 **the property is in a deteriorated condition, due to neglect or failure to**
50 **reasonably maintain, abandonment, failure to repair after a fire, flood, or**
51 **some other deterioration of the property, or there is clutter on the property**
52 **such as abandoned automobiles, appliances, or similar objects; or, with**
53 **respect to commercial, industrial, and vacant property, if the activity or**
54 **condition on the property encourages, promotes, or substantially contributes**
55 **to unlawful activity within three hundred feet of the property; and the**
56 **activity or condition either:**

57 (a) Diminishes the value of the neighboring property; or

58 (b) Is injurious to the public health, safety, security, or welfare of neighboring
59 residents or businesses; or

60 (c) Impairs the reasonable use or peaceful enjoyment of other property in the
61 neighborhood.

82.1030. 1. Subject to subsection 2 of this section, sections **82.1025 to 82.1027**
2 **[to 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 **82.1025 to 82.1027 [to 82.1029]** shall not be construed **[as]** to grant
5 standing for an action challenging any zoning application or approval.

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

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

11 (1) The notice requirements of this section have been satisfied;
12 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) Sixty days after the neighborhood organization sends
16 written notice by certified mail, return receipt requested, postage
17 prepaid, to the appropriate municipal code enforcement agency of the
18 neighborhood organization's intent to bring an action under this
19 section, together with a copy of the notice the neighborhood
20 organization sent or attempted to send to the property owner in
21 compliance with subdivision (2) of subsection 2 of this section; and

22 (2) Sixty days after the neighborhood organization sends notice
23 by first class prepaid postage certified mail, return receipt requested,
24 to:

25 (a) The tenant, if any, or to "occupant" if the identity of the

tenant cannot be reasonably ascertained, at the property's address; and

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

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

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

4. The notice required by this section shall specify:

(1) The act or condition that constitutes the nuisance;

(2) The date the nuisance was first discovered;

(3) The address of the property and location on the property where the act or condition that constitutes the nuisance is allegedly occurring or exists; and

(4) The relief sought in the action.

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

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

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

6. An action may not be brought under this section based on an alleged violation of a particular code provision or ordinance if there is then pending against the property or the owner of the property a notice of violation with respect to such code provision or ordinance issued by an appropriate municipal code enforcement agency unless such notice

62 of violation has been pending for more than forty-five days and the
63 condition or activity that gave rise to the violation has not been
64 abated. This subsection shall not preclude an action under this section
65 where the appropriate municipal code enforcement agency has declined
66 to issue a notice of violation against the property or the property owner.

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

74 8. A copy of the notice of citation issued by the city that shows
75 the date the citation was issued shall be prima facie evidence of
76 whether and for how long a citation has been pending against the
77 property or the property owner.

78 9. A proceeding under this section shall:

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

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

Copy ✓