

**ORDINANCE NO. 20, 2017**

**AN ORDINANCE ADDING CHAPTER 560 TO THE ST. BERNARD CODIFIED ORDINANCES TO UPDATE THE LAWS RELATING TO CRIMINAL ACTIVITY NUISANCES AND DECLARING AN EMERGENCY**

**WHEREAS**, the Council of St. Bernard intends to update the Village laws relating to health and safety by adding Chapter 560 Criminal Activity Nuisances to the St. Bernard Codified Ordinances; now therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF OHIO:**

**Section 1.** Chapter 560 Criminal Activity Nuisances is hereby added in its entirety, and that the new chapter shall be enacted and added to the St. Bernard Codified Ordinances and shall be recorded in its entirety to read as follows:

**Chapter 560 Criminal Activity Nuisances**

**560.01 CRIMINAL ACTIVITY NUISANCES DECLARED.**

(a) Activities, as defined in any of the following provisions of the St. Bernard Codified Ordinances, occurring on any residential or commercial property located within the Village, and engaged in by an owner, occupant or invitee of the owner or occupant of the property, are declared to be nuisance activities. To be a nuisance activity, a criminal conviction is not necessary. There must, however, be probable cause to believe that the activity occurred. For purposes of this Chapter, a residential property means any real property that is either zoned to permit residential occupancy or otherwise has a residential occupancy upon it. For purposes of this Chapter, a commercial property means any real property that is either zoned to permit business or general retail occupancy, or otherwise contains business uses, including but not limited to industrial, office, hotel, general retail and all other commercial uses however described.

- (1) Any animal violation under Chapter 505 of the Codified Ordinances.
- (2) Any disorderly conduct or disorderly activity violation under Chapter 509 of the Codified Ordinances
- (3) Any drug abuse violation under Chapter 513 of the Codified Ordinances;
- (4) Any Environmental Pollution Control violation under Chapter 515 of the Codified Ordinances;
- (4) Any gambling violation under Chapter 517 of the Codified Ordinances;
- (5) Any health, safety or sanitation violation under Chapter 521 of the Codified Ordinances;
- (6) Any Junk and Rubbish Storage violation under Chapter 523 of the Codified Ordinances;
- (7) Any Law Enforcement and Public Office violation under Chapter 525 of the Codified Ordinances;
- (8) Any liquor control violation under Chapter 529 of the Codified Ordinances;
- (9) Any Minors Curfew Violation under Chapter 531 of the Codified Ordinances;
- (10) Any obscenity and sex offenses violation under Chapter 533 of the Codified Ordinances;
- (11) Any Illegal Distribution of Cigarettes or Other Tobacco Products violation under Chapter 535 of the Codified Ordinances;
- (12) Any offense against persons violation under Chapter 537;
- (13) Any Rat Control violation under Chapter 539 of the Codified Ordinances;
- (14) Any property offense under Chapter 541 of the Codified Ordinances;
- (15) Any Registration of Convicted persons violation under Chapter 543 of the Codified Ordinances;

(16) Any theft or fraud offense under Chapter 545 of the Codified Ordinances;

(17) Any weapons and explosives violation under Chapter 549 of the Codified Ordinances;

(b) When four or more nuisance activities as defined in division (a) occur on separate occasions on the same residential or commercial property within any three hundred sixty-five (365) day period, the Director of Public Safety may declare the premises to be a nuisance property and may abate the nuisance as provided in Section 560.02.

**560.02 ACTION TO ABATE NUISANCES; COSTS OF ENFORCEMENT.**

(a) Notice of Declaration of Nuisance. The Director of Public Safety, upon finding that four (4) or more nuisance activities as defined in Section 560.01 have occurred on separate occasions within any three hundred sixty-five (365) day period on the same residential or commercial property may cause a written notice and order to be served on the owner of the property declaring that the property is a nuisance property. This notice and order shall identify the nuisance activities, and the estimated costs to abate any future nuisance activity; shall state that the owner may avoid being charged the costs of abatement by taking steps to prevent any further nuisance activity as set forth in division (d) of this Section; and shall state the appeal process. The notice shall further state that if a fifth or subsequent nuisance activity as defined in Section 560.01 occurs later than thirteen (13) days after the date of the written nuisance declaration notice and within twelve (12) months of the date of the fourth or any subsequent nuisance activity, the Village may abate the nuisance by responding to the activities using administrative and law enforcement actions, and the costs of the abatement shall be charged to the owner of the nuisance property and may be certified as a lien on the nuisance property. Notice shall be deemed properly delivered by delivering it personally to the owner or leaving it at the owner's usual place of business or residence, or by mailing it to the owner, or, if it cannot be served in any of the other ways mentioned above, by publishing it once in a newspaper of general circulation within the Village, or by posting it in a conspicuous place on the real estate involved.

(b) Abatement. If the Director of Public Safety determines that a fifth or subsequent nuisance activity as defined in Section 560.01 occurs later than thirteen (13) days after the date of the initial written nuisance declaration notice and within twelve (12) months after the date of the fourth or any subsequent nuisance activity, the Village may abate the nuisance activity by using administrative and law enforcement actions, and the costs of the abatement shall be charged to the owner of the property and, if not paid, may be certified by the Director of Finance to the County Auditor to be placed on the nuisance property as a lien to be collected as other taxes and returned to the Village. The cost to abate the nuisance activity shall be calculated as set forth in division (c). The Village shall provide notice to the owner of the nuisance property of the Village's decision to charge the cost of abatement. If the costs are not paid by the owner, the Village shall notify the owner at least thirty (30) days before the costs are certified to the County Auditor. The notice shall contain a street address or legal description of the property, a description of the nuisance activities and the cost to abate. Notices shall be served as set forth in division (a) of this section. The Director of Law may take any other action necessary to collect the costs of abatement.

(c) Costs of Abatement. Costs of abatement shall be determined based on the time required to respond to the nuisance activity multiplied by an hourly rate based upon the wages and benefits of a police officer, animal warden, building department inspector or other enforcement officer, dispatch costs, vehicle and equipment costs, and supervisory and administrative costs. The hourly rate may be adjusted based on the number of police officers and/or other Village employees required to abate the nuisance.

(d) Nuisance Abatement Plan. The owner of a nuisance property may avoid being charged the cost of abating future nuisances if the owner meets with the Director of Public Safety; presents a plan to prevent further nuisance activity

and that plan is approved by the Director of Public Safety; and implements the plan.

(e) Appeal. The owner of a nuisance property who receives a notice declaring the owner's property to be a nuisance property, a notice charging the cost of abating nuisance activity, or a notice that the cost of abatement shall be certified to the County Auditor, may appeal the notice by submitting a written request to reconsider to the Director of Public Safety within ten (10) days of the date of the notice. If, after a decision on that request, the owner disagrees with the decision, the owner may appeal the decision of the Director of Public Safety to the Board of Zoning Appeals. An appeal to the Board of Zoning Appeals shall be made within fifteen (15) days of the postmark date of the decision from the Director of Public Safety denying the request for reconsideration. The Board shall conduct a hearing and render a decision in accordance with Village ordinances and rules governing its conduct and procedure. An appeal to the Board of Zoning Appeals shall not stay any actions by the Village to abate any subsequent nuisance activity. In an appeal to the Board of Zoning Appeals of a nuisance declaration notice, the Village must show by a preponderance of the evidence that there was probable cause to believe that each nuisance activity stated in the notice being appealed has occurred, and that the declaration of the property as a nuisance property is justified. In an appeal to the Board of Zoning Appeals of a notice charging the cost of abating nuisance activity, or a notice that the cost of abatement shall be certified to the County Auditor, the Village must show by a preponderance of the evidence that the charging of abatement costs or the certification of abatement costs is justified. The owner may prevail on appeal of any notice if the owner demonstrates by a preponderance of the evidence that:

(1) He or she was not the owner at the time of any of the nuisance activity that is the basis of the notice; or

(2) He or she had knowledge of the nuisance activity, but promptly and vigorously took all actions necessary to abate the nuisance activity including, without limitation, compliance with the requirements of division (C) of Section 5321.17 and division (A)(9) of Section 5321.04 of the Revised Code; or

(3) He or she had no knowledge of the nuisance activity and could not, with reasonable care and diligence, have known of the nuisance activity; and upon receipt of the notice of the declaration of the property as a nuisance property he or she promptly took all actions necessary to abate the nuisance including, without limitation, compliance with the requirements of division (C) of Section 5321.17 and division (A)(9) of Section 5321.04 of the Revised Code.

**560.03 FAILURE TO ABATE NUISANCE ACTIVITY.**

(a) Whenever a property owner has been billed on three (3) or more separate dates within a two-year time period for the cost to abate nuisance activity under this Chapter, the Director of Public Safety shall notify the property owner that he or she may be issued a criminal citation for a misdemeanor of the second degree thirty (30) days after the third bill is issued.

(b) No property owner shall fail to abate nuisance activity within thirty (30) days after the third bill within a two-year time period for the cost to abate nuisance activity under this Chapter.

(c) Whoever violates this section is guilty of failure to abate nuisance activity, a misdemeanor of the second degree.

**560.04 OTHER LEGAL ACTIONS NOT AFFECTED.**

The declaration of a nuisance property, an order to abate a nuisance, or the charging or assessment of costs by the Village on a property under this chapter, do not affect or limit the Village's right or authority to bring criminal prosecution or other legal action against any person for violation of the Village's ordinances.

**560.05 SEVERABILITY.**

If any clause, sentence, paragraph or part of this chapter, or its application to any person or circumstance shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Chapter nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part and to the

persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is declared to be the legislative intent that this chapter would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

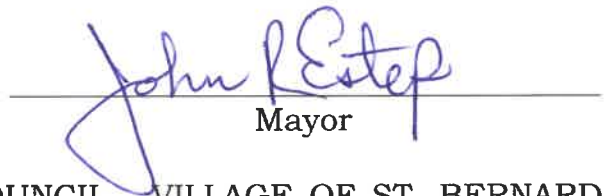
**Section 2.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for the emergency is the immediate need to update the Codified Ordinances of St. Bernard. Therefore, this Ordinance shall take effect immediately by and upon its passage, and the approval of two- thirds of the members of said Council. However, this Ordinance shall take effect on the earliest date provided by law if approved by no more than a majority of the members of Council and in that event the emergency provisions herein are set at naught.

Passed this 5<sup>th</sup> day of October, 2017.

  
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President of Council

ATTEST: M. Sue Kathman  
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Clerk of Council

Approved this 5<sup>th</sup> day of October, 2017.

  
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Mayor

I, M. SUE KATHMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF OHIO, DO HEREBY testify that the publication of Ordinance No. 20, 2017, was made by posting true copies of the same in the most public places designated by Council: St. Bernard Square Bus Stop; Vine Street and Washington Avenue; Bertus Street Park; Greenlee Avenue and Johnson Alley; Park on Heger Drive; each for a period of fifteen (15) days or more commencing 10.5, 2017.

ATTEST: M. Sue Kathman DATE 10.5.17  
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Clerk of Council

Approved as to form Michael O'Peck Date 10.5.17  
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Director of Law