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Griggs, Deaver,  
Collette, Wylie

First Reading: June 13, 2005

Second Reading: June 27, 2005

COUNCIL BILL NO. 2005 - 185

GENERAL ORDINANCE NO. 5465

#### AN ORDINANCE

AMENDING Chapter 74, Springfield City Code, Nuisance and Housing Code, Article VII, Nuisances, Division 1, Generally, by adding, Section 74-390, Definitions; Section 74-391, Places used for illegal sale, manufacture and use of controlled substances; Section 74-392, Places used for the commission of crimes or ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any inhabitants of the city; and Section 74-393, Remedies, punishment and general provisions.

WHEREAS, there is a need in the City of Springfield for a procedure to address the use of structures within the City for the illegal sale and use of controlled substances and the use of places for commission of crimes or ordinance violations or other acts done, permitted, allowed or continued to the damage or injury of inhabitants of the City; and

WHEREAS, these types of acts occurring on properties within the City causes a serious negative impact and blighting effect on the surrounding neighborhood; and

WHEREAS, there is a need for a procedure to address the negative impact created by these properties by ending these types of occurrences; and

WHEREAS, preventing occupancy of these structures can stop the cycle of damaging acts and minimize the negative impact on the neighborhood ;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as follows:

Section 1 - There is hereby created four new Code sections numbered as Sections 74- 390, 74-391, 74-392 and 74-393, which shall read as follows:

**Section 74-390. Definitions**

As used in Sections 74-391, 74-392 and 74-393 the following words are defined as:

"Controlled substances" means drugs, substances, or immediate precursors in Schedules I through V listed in Sections 195.005 to 195.425, RSMo. and for purposes of this definition shall include anhydrous ammonia possessed in violation of RSMo. 578.154.

"Inhabitable structure" means a ship, trailer, sleeping car, airplane, or other vehicle or structure:

1. Where any person lives or carries on business or other calling; or
  2. Where people assemble for purposes of business, government, education, religion, entertainment or public transportation; or
  3. Which is used for overnight accommodation of persons.
- Any such vehicle or structure is "inhabitable" regardless of whether a person is actually present.

"Hearing officer" such person as designated by the city manager to hear administrative matters.

"Place" means any building, dwelling unit, lot, plot or parcel of land, premises, room or structure.

**Section 74-391. Places used for illegal sale, manufacture and use of controlled substances.**

A. Any room, building, structure or inhabitable structure in which occurs the illegal use, manufacture, keeping or selling of controlled substances is a public nuisance. No person shall keep or maintain such a public nuisance.

B. The chief of police or his designee shall notify the owner and occupant of any place used for the illegal use, manufacture, keeping or selling of controlled substances that the place is in violation of this section, including the reason why, and that if the place continues to be used in such a manner a hearing shall be held to determine

whether a public nuisance exists and, if so, to determine the appropriate abatement remedies. Notice shall be by personal service, certified mail, private delivery service, publication or by posting on the premises.

C. Upon receiving information that the illegal use, manufacture, keeping or selling of controlled substances continues to occur after the notice required in this section has been issued, the chief of police or his designee may file a petition with the office of the city clerk which shall state what relief is sought or proposed and the reason for granting it. The petition should be filed within six months of the last occurrence of keeping or maintaining the public nuisance unless a delay in filing is required by an ongoing investigation or other extraordinary circumstance but not to exceed one year from the date of the last occurrence.

D. The petition shall be forwarded to the hearing officer who shall set the time and location for a hearing, and shall cause notice thereof and a copy of the petition to be served on the owner and occupant, if any, of the inhabitable structure or place at least ten days prior to the hearing. Service shall be personal, by certified mail, private delivery service, publication or by posting on the premises and the hearing shall be conducted in the manner set forth in RSMo 536.070.

E. If the hearing officer finds that the owner of the room, building, structure or inhabitable structure knew that the place was being used for the illegal use, manufacture, keeping or selling of controlled substances, the hearing officer may enter an order directing that the place be vacated and not be occupied or used for such period as the hearing officer may determine, not to exceed one year. The hearing officer may also suspend utilities for up to one year. If the "inhabitable structure" is a vehicle, the hearing officer may issue an order that will prevent the vehicle from continuing to be a public nuisance. Upon finding that an inhabitable structure or place is a public nuisance, the hearing office may include in his decision an order directed to occupants to vacate the property.

**Section 74-392. Places used for the commission of crimes or ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any inhabitants of the city.**

A. Any place that is used for the commission of crimes, ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any of the inhabitants of the city after notice is given and the place continues to be used for the commission of

crimes, ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any inhabitants of the city is a public nuisance.

B. The chief of police or director of health or other head of a department charged with ordinance or code enforcement or their respective designees shall notify the owner and occupant of any place used for the commission of crimes, ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any inhabitants of the city, that the place is in violation of this section, including the reason why, and that if the place continues to be used in such a manner a hearing shall be held to determine whether a public nuisance exists and, if so, to determine the appropriate abatement remedies. Notice shall be by personal service, certified mail, private delivery service, publication, or by posting on the premises.

C. If the place continues to be used for the commission of crimes, ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any inhabitants of the city, after such notice, the chief of police or director of health or other head of a department charged with ordinance or code enforcement or their respective designees shall file a petition with the city clerk which shall state what relief is sought or proposed and the reason for granting it. The petition should be filed within six months of the last occurrence of an act constituting a public nuisance pursuant to this section unless a delay in filing is required by an ongoing investigation or other extraordinary circumstance but not to exceed one year from the date of the last occurrence.

D. The petition shall be forwarded to the hearing officer who shall set the time and location for a hearing and shall cause notice thereof and a copy of the petition to be served on the owner and occupant of the place at least ten days prior to the hearing. Service shall be personal, by certified mail, private delivery service, publication, or by posting on the premises and the hearing shall be conducted in the manner set forth in RSMo 536.070.

E. At the hearing the hearing officer shall determine whether the place is a public nuisance, giving such weight to the following factors as he or she deems appropriate:

1. The physical characteristics of the neighborhood in which the place is located, with particular consideration given to the proximity of the place to residential property, parks, churches, schools and playgrounds;
2. Whether there is littering, as prohibited by law, by the owner, occupant or persons frequenting the place;

3. Whether there is drinking of alcoholic beverages in public, as prohibited by law, by the owner, occupant or persons frequenting the place;

4. Whether there is lewd and indecent conduct, as prohibited by law, including public urination or defecation, by the owner, occupant or persons frequenting the place;

5. Whether there is the possession, sale or use of controlled substances, as prohibited by law, by the owner, occupant or persons frequenting the place;

6. Whether there is harassing or intimidating conduct, as prohibited by law, by the owner, occupant or persons frequenting the place, toward persons living in the neighborhood or passing by the place;

7. Whether there is noise prohibited by law, caused by the owner, occupant or persons frequenting the place;

8. Whether there is the commission of other crimes, ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any inhabitants of the city, by the owner, occupant or persons frequenting the place;

9. Whether there is street or sidewalk congestion caused by the owner, occupant or persons frequenting the place;

10. Any other activity deemed relevant by the hearing officer including prior similar conduct.

F. For purposes of this section, a person shall be considered to frequent a place if he or she lives or works at, or visits the place, or if the person loiters about the place.

G. If the hearing officer finds that the place is a public nuisance in violation of this section, he or she shall order the owner or occupant to abate the nuisance, and may further order any appropriate action to abate the same, including suspending utility service for up to one year and including ordering that the place shall be vacated and shall not be occupied or used for a period not exceeding one year.

#### **Section 74-393, Remedies, punishment and general provisions.**

The following remedies, punishment and general provisions shall apply to Sections 74-390, 74-391 and 74-392:

A. In determining the length of any order restricting the occupancy of the premises, the hearing officer may take into consideration any credible evidence of the owner's efforts to prevent the conduct that created the public nuisance

**B. Any party aggrieved by the decision of the hearing officer may appeal to a court of competent jurisdiction as is set forth in RSMo. 536.100 and 536.110.**

**C. It is unlawful for any person to:**

- 1. Fail to obey an order to abate a nuisance issued pursuant to these sections;**
- 2. Interfere with any entry into or upon an inhabitable structure or place by any police officer, agent or employee of the city for the purpose of abating the nuisance, as ordered pursuant to this section;**
- 3. Occupy or use or to permit the occupancy or use of any place, room, building, structure or inhabitable structure in violation of an order issued by the hearing officer pursuant to these sections;**
- 4. Damage or remove any notice or order posted at the inhabitable structure or place pursuant to this section;**
- 5. Keep or maintain an inhabitable structure or place used for the commission of crimes, ordinance violations, or acts done, permitted, allowed or continued to the damage or injury of any inhabitants of the city.**

**D. A sale of an inhabitable structure or place shall not act to remove any order entered by the hearing officer; however, a new or potential owner may by motion request the hearing officer to establish conditions under which the order could be suspended. Should the hearing officer determine that a suspension of the previous order is appropriate, the hearing officer shall set out in writing the conditions of the suspension and shall set out the fact that any violation of the conditions shall result in an immediate reinstatement of the order.**

**E. The closure of any inhabitable structure or place pursuant to this section shall not constitute an act of possession, ownership or control by the city of the closed inhabitable structure or place.**

**F. Nothing contained in this section shall relieve the owner or occupant of any place from complying with the building, fire, health and zoning codes, or any other ordinance that regulates the condition or use of the place.**

**G. The issuance of an order by a hearing officer may be used as the basis for a revocation, suspension or denial of any license or permit for the use or occupancy of the property subject to the order.**

**H. A search warrant may be obtained pursuant to Section 74-33 of this chapter during an investigation of a complaint for violation of Sections 74-391 or 392 or to aid in enforcing any order entered by the hearing officer.**

Section 2 - Penalty Clause. Any person found guilty of violating this ordinance shall be penalized in accordance with Section 1-7 of the Springfield City Code.

Section 3 - This ordinance shall be in full force and effect from and after passage.

Passed at meeting: June 27, 2005

Thomas A. Carlson  
Mayor

Filed as Ordinance: June 27, 2005

Attest: Doreen M. Lito, City Clerk

Approved as to form: Robert Paulson Esq. City Attorney

Approved for Council action: Harold, City Manager