

SECOND REGULAR SESSION

# HOUSE BILL NO. 1941

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COLONA (Sponsor), DIEHL AND HUMMEL (Co-sponsors).

5981H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 82.1025, 82.1027, 82.1028, 82.1029, and 82.1030, RSMo, and to enact in lieu thereof five new sections relating to property regulations in certain cities and counties.

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*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, and 82.1030, RSMo, are  
2 repealed and five new sections enacted in lieu thereof, to be known as sections 82.1025, 82.1027,  
3 82.1028, 82.1029, and 82.1030, to read as follows:

82.1025. 1. In any county of the first classification with a charter form of government  
2 and a population greater than nine hundred thousand, in any county of the first classification with  
3 more than one hundred ninety-eight thousand but fewer than one hundred ninety-nine thousand  
4 two hundred inhabitants, in any county of the first classification with more than seventy-three  
5 thousand seven hundred but fewer than seventy-three thousand eight hundred inhabitants, in any  
6 county of the first classification with more than ninety-three thousand eight hundred but fewer  
7 than ninety-three thousand nine hundred inhabitants, in any home rule city with more than one  
8 hundred fifty-one thousand five hundred but fewer than one hundred fifty-one thousand six  
9 hundred inhabitants, in any city not within a county and in any city with at least three hundred  
10 fifty thousand inhabitants which is located in more than one county, a parcel of property is a  
11 nuisance, if such property adversely affects the property values of a neighborhood **or the**  
12 **property value of any property within the neighborhood** because the owner of such property  
13 allows the property to be in a deteriorated condition, due to neglect **or failure to reasonably**  
14 **maintain**, violation of a county or municipal building code [or] , standard, **or ordinance**,  
15 abandonment, failure to repair after a fire, flood or some other damage to the property or because  
16 the owner or resident of the property allows clutter on the property such as abandoned

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 automobiles, appliances or similar objects. Any property owner who owns property within a  
18 reasonable distance to a parcel of property which is alleged to be a nuisance may bring a nuisance  
19 action against the offending property owner for the amount of damage created by such property  
20 to the value of the petitioner's property and court costs, provided that the owner of the property  
21 which is alleged to be a nuisance has received notification of the alleged nuisance and has had  
22 a reasonable opportunity, not to exceed forty-five days, to correct the alleged nuisance. This  
23 section is not intended to abrogate, and shall not be construed as abrogating, any remedy  
24 available under the common law of private nuisance.

25       2. [A nuisance] **An action for injunctive relief to abate a nuisance under this section**  
26 may be brought by **anyone who owns property within a reasonable distance to a property**  
27 **which is alleged to be a nuisance or** by a neighborhood organization, as defined in section  
28 32.105, representing any person or persons who could maintain a nuisance action under this  
29 section or under the common law of private nuisance.

30       3. **When a property owner or neighborhood organization bringing an action under**  
31 **this section prevails in such action, such property owner or organization may be entitled**  
32 **to an award for its reasonable attorneys' fees and expenses, as ordered by the court,**  
33 **incurred in bringing and prosecuting the action, which award for attorneys' fees and**  
34 **expenses shall be entered as a judgment against the owner of the property on which the act**  
35 **or condition constituting the nuisance occurred or was located. Such judgment, if filed for**  
36 **record with the recorder of deeds for the city or county in which the property is located,**  
37 **shall constitute a lien against such property.**

82.1027. As used in sections 82.1027 to [82.1029] **82.1030**, the following terms mean:

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

7       (2) "Neighborhood organization", an organization defined in section 32.105;

8       (3) "Nuisance", within the boundaries of the community represented by the  
9 neighborhood organization, an act or condition knowingly created, performed, or maintained on  
10 private property that constitutes a [local] code **or ordinance** violation and that[:

11       (a)] significantly affects the other residents of the neighborhood; **and:**

12       [(b)] (a) Diminishes the value of the neighboring property; [and] **or**

13       [(c)] (b) Is injurious to **the** public health, safety, **security**, or welfare of neighboring  
14 residents or [obstructs] **businesses; or**

15           (c) **Impairs** the reasonable use **or peaceful enjoyment** of other property in the  
16 neighborhood.

82.1028. Sections 82.1027 to [82.1029] **82.1030** apply to a nuisance located within the  
2 boundaries of **any city not within a county and** any home rule city with more than four hundred  
3 thousand inhabitants and located in more than one county.

82.1029. 1. A neighborhood organization representing persons aggrieved by a [local]  
2 code **or ordinance** violation may seek injunctive and other equitable relief in the circuit court  
3 for abatement of a nuisance upon showing:

4           (1) The notice requirements of this subsection have been satisfied; and

5           (2) The nuisance exists and has not been abated.

6           2. An action under this section shall not be brought[:

7           (1) Until sixty days after the neighborhood organization sends notice of the violation and  
8 of the neighborhood organization's intent to bring an action under this section, by certified mail,  
9 return receipt requested, to the appropriate municipal code enforcement agency;

10          (2) If the appropriate municipal code enforcement agency has filed an action for  
11 equitable relief from the nuisance;

12          (3)] until sixty days after the neighborhood organization sends notice by first class  
13 prepaid postage certified mail to:

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

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

20 that a nuisance exists and that legal action may be taken if the nuisance is not abated. If the  
21 notice sent by certified mail is returned unclaimed or refused, designated by the post office to be  
22 undeliverable, or signed for by a person other than the addressee, then adequate and sufficient  
23 notice may be given to the tenant, if any, and the property owner of record by sending a copy of  
24 the notice by regular mail **to the address of the property owner or registered agent** and  
25 posting a copy of notice on the property where the nuisance allegedly is occurring. **A sworn**  
26 **affidavit by the person who mailed or posted the notice describing the date and manner**  
27 **that notice was given shall be prima facie evidence of the giving of such notice.** The notice  
28 shall specify:

29           (a) The [nature of the alleged] **act or condition that constitutes the nuisance;**

30           (b) The date [and time of day] the nuisance was first discovered;

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

33 (d) The relief sought in the action.

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

36 (1) That the neighborhood organization has taken the required steps to satisfy the notice  
37 requirements under this [subsection] **section**; and

38 (2) That each condition precedent to the filing of the action under this section has been  
39 met.

40 4. An action shall not be brought **under this section** against an owner of residential  
41 rental property [unless, prior to giving notice under this section, a notice of violation relating to  
42 the nuisance first has been issued by an appropriate municipal code enforcement agency and  
43 remains outstanding after a period of forty-five days] **based on an alleged code or ordinance**  
44 **violation if there is a citation pending against the property or its owner by the city based**  
45 **on an alleged violation of the same code or ordinance provision unless such citation has**  
46 **been pending for more than forty-five days without resolution. This subsection shall not**  
47 **prohibit an action under this section based on an alleged code or ordinance violation for**  
48 **which no city citation is pending.**

49 5. [(1) If a violation notice issued by an appropriate municipal code enforcement agency  
50 is an essential element of the municipal enforcement action, a copy of the notice signed by an  
51 official of the appropriate municipal code enforcement agency shall be prima facie evidence of  
52 the facts contained in the notice.

53 (2) A notice of abatement issued by the appropriate municipal code enforcement agency  
54 in regard to the violation notice shall be prima facie evidence that the plaintiff is not entitled to  
55 the relief requested] **A copy of the notice of citation issued by the city that shows the date the**  
56 **citation was issued shall be prima facie evidence of whether and for how long a citation has**  
57 **been pending against the property or the property owner.**

58 6. A proceeding under this section shall:

59 (1) Be heard at the earliest practicable date; and

60 (2) Be expedited in every way.

61 7. **When a neighborhood organization prevails in an action brought under this**  
62 **section, it may be entitled to an award for its reasonable attorneys' fees and expenses, as**  
63 **ordered by the court, incurred in bringing and prosecuting the action, which award for**  
64 **attorneys' fees and expenses shall be entered as a judgment against the owner of the**  
65 **property on which the act or condition constituting the nuisance occurred or was located.**

66 **Such judgment, if filed for record by the recorder of deeds for the city or county in which**  
67 **the property is located, shall constitute a lien against such property.**

82.1030. 1. Subject to subsection 2 of this section, sections 82.1027 to 82.1029 shall not  
2 be construed as to abrogate any equitable or legal right or remedy otherwise available under the  
3 law to abate a nuisance.

4 2. Sections 82.1027 to 82.1029 shall not be construed as to grant standing for an action[:  
5 (1)] challenging any zoning application or approval];

6 (2) In which the alleged nuisance consists of an interior physical defect of a property; or

7 (3) Involving any violation of municipal alcoholic beverages law].

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