



MEMORANDUM

TO: Mary Katherine Greenlaw, Mayor, and members of City Council
FROM: Kathleen Dooley, City Attorney
SUBJECT: Updating the drug blight ordinance
DATE: July 29, 2022 (for the August 9, 2022 Council Meeting)

ISSUE

Shall City Council amend the City Code drug blight provisions, adopted in 2012, to reflect amendments to the state authorizing legislation?

RECOMMENDATION

Yes. This special-purpose nuisance abatement ordinance can be an effective tool in protecting the public health, safety, and welfare in the circumstances it addresses. The General Assembly has broadened the scope of this authority from the previous “drug blight” to reach “criminal blight;” and to provide additional protections for property owners who undertake the requested corrective action in good faith.

DISCUSSION

The City Council has broad general authority to exercise all powers necessary or desirable to secure and promote the general welfare of the inhabitants of the City, and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the City.¹ One special application of this authority is to protect the public from the blighting effects of real estate on which a condition named “criminal blight” exists.

“Criminal blight” is defined by Va. Code §15.2-907 to mean “a condition existing on real property that endangers the public health or safety of residents of a locality and is caused by

- (i) the regular presence on the property of persons in possession or under the influence of controlled substances;
- (ii) the regular use of the property for the purpose of illegally possessing, manufacturing, or distributing controlled substances;
- (iii) the regular use of the property for the purpose of engaging in commercial sex acts; or

¹ Va. Code §15.2-1102.

- (iv) the discharge of a firearm that would constitute a criminal act under Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

Under this state enabling legislation, the City may, after documenting the condition of the property, send notice to the property owner advising that the owner has 30 days to undertake corrective action to abate the criminal blight, and that the locality will, if requested to do so, assist the owner in determining and coordinating the appropriate corrective action. The landowner may seek a 30-day extension period to complete the corrective action, and the City shall allow this extension of time if requested.

If the owner will not take corrective action, then the locality may seek a court order revoking the certificate of occupancy for the property. If the locality undertakes corrective action, then that expense is chargeable to the owner. And if the owner takes the requested corrective action, then the locality is required to "deem the criminal blight abated," close the proceeding, and promptly notify the owner that the file is closed. But if the criminal blight recurs, then the locality may initiate a new proceeding.

As stated above, the state enabling legislation has been amended over the course of the 10 years since the City Council adopted Fredericksburg's ordinance. The ordinance must be kept up to date to provide a valid basis for any future enforcement actions.

FISCAL IMPACT

None.

Attachments: draft ordinance



August 9, 2022
Regular Meeting
Ordinance No. 22-__

MOTION:

SECOND:

RE: Updating the City Code Drug Blight Provisions to Reflect Changes in State Law

ACTION: APPROVED: Ayes: 0; Nays: 0

FIRST READ: _____ **SECOND READ:** _____

Sec. I. Introduction.

City Council adopted City Code Chapter 59, "Nuisances," Article III, "Removal, Repair, etc., of Buildings and Other Structures Harboring Illegal Drug Use," in 2012 by adoption of Ordinance No. 12-29. The "drug blight" ordinance is an important tool for the protection of the public health, safety, and welfare to require the owner of real property to take timely corrective action to abate the use of that property for illegal activity.

In the ten years since the adoption of the drug blight ordinance, the General Assembly has amended the authorizing state statute, §15.2-907, several times. The City Code must conform to the authorizing state statute, and it is the purpose of this ordinance to update the City Code to do so.

Sec. II. City Code amendment.

It is hereby ordained that City Code Chapter 59, "Nuisances," is amended as follows:

1. The title of City Code Chapter 59, "Nuisances," Article III, "Removal, Repair, etc., of Buildings and Other Structures Harboring Illegal Drug Use," is amended as follows:

Article III Removal, Repair, etc., of Buildings and Other Structures Harboring
Illegal Drug Use *or other Criminal Activity*

2. Section 59-1, "Definitions," is amended as follows:

Sec. 59-1. Definitions.

[Definitions not included in this ordinance are not amended.]

AFFIDAVIT

A sworn written statement prepared by the City Manager *or the City officer or employee with the required knowledge* in accordance with Article III of this chapter.

COMMERCIAL SEX ACTS

Any specific activities that would constitute a criminal act under Article 3 (§ 18.2-346 et seq.) of Chapter 8 of Virginia Code Title 18.2 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

CORRECTIVE ACTION

~~For purposes of Article III means the taking of steps which are reasonably expected to be effective to abate drug blight on real property, such as removal, repair or securing of any building, wall or other structure~~ *(i) taking specific actions with respect to the buildings or structures on property that are reasonably expected to abate criminal blight on such real property, including the removal, repair, or securing of any building, wall, or other structure, or (ii) changing specific policies, practices, and procedures of the real property owner that are reasonably expected to abate criminal blight on real property. A local law-enforcement official shall prepare an affidavit on behalf of the locality that states specific actions to be taken on the part of the property owner that the locality determines are necessary to abate the identified criminal blight on such real property and that do not impose an undue financial burden on the owner.*

CRIMINAL BLIGHT

A condition existing on real property that endangers the public health or safety of residents of the City and is caused by (i) the regular presence on the property of persons in possession or under the influence of controlled substances; (ii) the regular use of the property for the purpose of illegally possessing, manufacturing, or distributing controlled substances; (iii) the regular use of the property for the purpose of engaging in commercial sex acts; or (iv) the discharge of a firearm that would constitute a criminal act under Article 4 (§18.2-279 et seq.) of Chapter 7 of Title 18.2 or a substantially similar local ordinance if a criminal charge were to be filed against the individual perpetrator of such criminal activity.

DRUG BLIGHT

~~— A condition existing on real property which tends to endanger the public health or safety of residents of the City, caused by the regular presence on the property of persons under the influence of controlled substances or the regular use of the property for the purpose of illegally possessing, manufacturing or distributing controlled substances.~~

3. City Code section 59-5, "Notice to abate," is amended as follows:

Sec. 59-5. Notice to abate.

- A. *The notice process set forth in this section shall apply unless a different notice process is specifically prescribed for a category of nuisance, such as the notice provisions for criminal blight in Article III.*

[The remaining subsections are re-lettered.]

4. City Code section 59-300, "Notice of drug blight," is amended as follows:

Sec. 59-300. Notice of ~~drug~~ criminal blight.

In addition to the administration and enforcement process established in Article I of this chapter, the City Manager or his designee is authorized to undertake corrective action with respect to ~~drug~~ criminal blight on real property, *or to require the owner of the real property to undertake corrective action*, in accordance with the procedures described herein.

- A. The City Manager or his designee shall execute an affidavit, citing Code of Virginia, § 15.2-907 and this article, affirming that (i) ~~drug~~ criminal blight exists on certain property in the manner described therein; (ii) the City has used due diligence without effect to abate the ~~drug~~ criminal blight; and (iii) the ~~drug~~ criminal blight constitutes a present threat to the public's health, safety or welfare.
- B. The City Manager or his designee shall submit the affidavit to the City Attorney requesting that the owner of the property be notified by ~~regular mail~~ *certified mail, return receipt requested; hand delivery; or overnight delivery by a commercial service or the United States Postal Service*, sent to the last known address as it appears in the assessment records of the City. The notice and a copy of the affidavit shall advise the owner that (i) the owner has up to 30 days from the date thereof to undertake corrective action to abate the ~~drug~~ criminal blight described in the affidavit and, (ii) if requested to do so, the City will assist the owner in determining and coordinating the appropriate corrective action to abate the ~~drug~~ criminal blight described in the affidavit. The notice shall further advise the owner of the right to appeal the determination of drug blight pursuant to § 59-5E of this chapter. *If the owner notifies the City in writing within the 30-day period that additional time to complete the corrective action is needed, the City shall allow such owner an extension for an additional 30-day period to take such corrective action.*

5. Section 59-301, "Failure to take corrective action," is amended as follows:

Sec. 59-301. Failure to take corrective action.

If no corrective action is undertaken by the owner of the property within 30 days from receipt of notice from the City Attorney, *or during the extension if such extension is granted by the City*, then the City Attorney shall send by ~~regular mail~~ *certified mail, return receipt requested*, an additional notice to the owner of the property, stating (i) that within 15 days from the date of the notice, the City will commence to abate the drug blight by taking any corrective action the City deems appropriate to include, but not limited to, the removal of the building or other structure so as to abate the ~~drug~~ criminal blight on the property *or (ii) the date on which the City may commence legal action in a court of competent jurisdiction to obtain a court order to require that the owner take such corrective action or, if the owner does not take corrective action, a court order to revoke the certificate of occupancy for such property, which date shall be no earlier than 15 days after the date of mailing of the notice.* Upon receipt of this final notice, the owner shall have the right, upon reasonable notice to the City, to seek equitable relief, and the City shall initiate no corrective action while a proper petition is pending before a court of competent jurisdiction.

6. Section 59-302, "Corrective action by owner," is amended as follows:

Sec. 59-302. Corrective action by owner.

- A.** If the owner of such property takes timely corrective action pursuant to this article, the City shall deem the ~~drug~~ *criminal* blight abated and shall close the proceeding without any charge or costs to the owner, and shall promptly provide written notice to the owner that the proceeding has been terminated satisfactorily. The closing of the proceeding shall not bar the City from initiating a subsequent proceeding if the ~~drug~~ *criminal* blight recurs.
- B.** *If a property owner in good faith takes corrective action, and despite having taken such action, the specific criminal blight identified in the affidavit of the City persists, such property owner shall be deemed in compliance with this Article.*
- C.** *If a tenant in a rental dwelling unit, or a tenant on a manufactured home lot, is the cause of criminal blight on such property and the property owner in good faith initiates legal action and pursues the same by requesting a final order by a court of competent jurisdiction against such tenant to remedy such noncompliance or to terminate the tenancy, such owner shall be deemed in compliance with this Article.*

Sec. III. Effective date.

This ordinance shall take effect immediately upon adoption.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 22-__ duly adopted at a meeting of the City Council meeting held Date, 2022 at which a quorum was present and voted.

***Tonya B. Lacey, MMC
Clerk of Council***