

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE BILL NO. 3
100TH GENERAL ASSEMBLY

0430H.07C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 82.1025, 82.1026, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, and to enact in lieu thereof six 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Section A. Sections 82.1025, 82.1026, 82.1027, 82.1028, 82.1029, 82.1030, and 82.1031, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 82.462, 82.1025, 82.1026, 82.1027, 82.1030, and 82.1031, to read as follows:

82.462. 1. Except as provided in subsection 3 of this section, a person who is not the owner of real property or who is a creditor holding a lien interest on the property, and who suspects that the real property may be abandoned may enter upon the premises of the real property, without having a right to a mechanics lien pursuant to section 429.010, to do the following:

(1) Without entering any structure located on the real property, visually inspect the real property to determine whether the real property may be abandoned;

(2) Upon a good faith determination based upon the inspection that the property is abandoned, perform any of the following actions:

(a) Secure the real property;

(b) Remove trash or debris from the grounds of the real property;

(c) Landscape, maintain, or mow the grounds of the real property; or

(d) Remove or paint over graffiti on the real property.

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.

14 **2. A person who enters upon the premises and conducts the actions permitted in**
15 **subsection 1 of this section and who makes a good faith determination based upon the**
16 **inspection that the property is abandoned shall be:**

17 **(1) Immune from claims of civil and criminal trespass and all other civil liability**
18 **therefor, unless the act or omission constitutes gross negligence or willful, wanton, or**
19 **intentional misconduct; and**

20 **(2) Barred from bringing a civil action against the property owner seeking damages**
21 **as a result of physical injury, unless the property owner's act or omission constitutes gross**
22 **negligence or willful, wanton, or intentional misconduct.**

23 **3. In the case of real property that is subject to a mortgage or deed of trust, the**
24 **creditor holding the debt secured by the mortgage or deed of trust may not enter upon the**
25 **premises of the real property under subsection 1 of this section if entry is barred by an**
26 **automatic stay issued by a bankruptcy court.**

27 **4. As used in this section, "abandoned property" shall mean:**

28 **(1) A vacant, unimproved lot zoned residential or commercial for which the owner**
29 **is in violation of a county or municipal nuisance or property maintenance ordinance; or**

30 **(2) With respect to actions taken pursuant to this section by a creditor holding a**
31 **lien interest in the property, a property which contains a structure or building which has**
32 **been continuously unoccupied by persons legally entitled to possession for at least six**
33 **months prior to entry under this section and the creditor's debt secured by such lien**
34 **interest has been continuously delinquent for not less than three months; or**

35 **(3) With respect to actions taken pursuant to this section by persons other than**
36 **creditors, a property which contains a structure or building which has been continuously**
37 **unoccupied by persons legally entitled to possession for at least six months prior to entry**
38 **under this section, and for which the owner is in violation of a county or municipal**
39 **nuisance or property maintenance ordinance, and for which either:**

40 **(a) Ad valorem property taxes are delinquent; or**

41 **(b) The property owner has failed to comply with any county or municipal**
42 **ordinance requiring registration of vacant property, or the county or municipality has**
43 **determined the structure to be uninhabitable due to deteriorated conditions.**

44 **5. This section shall apply only to real property located in any home rule city with**
45 **more than four hundred thousand inhabitants and located in more than one county, in any**
46 **county with a charter form of government and with more than nine hundred fifty thousand**
47 **inhabitants, in any home rule city with more than one hundred sixteen thousand but fewer**
48 **than one hundred fifty-five thousand inhabitants, in any home rule city with more than**
49 **seventy-one thousand but fewer than seventy-nine thousand inhabitants, home rule city**

50 **with more than one hundred fifty-five thousand but fewer than two hundred thousand**
51 **inhabitants, and in any city not within a county.**

82.1025. 1. ~~[This section applies]~~ **Sections 82.1025, 82.1027, and 82.1030 apply** to a
2 nuisance located within the boundaries of any county of the first classification with a charter
3 form of government and a population greater than nine hundred thousand, in any county of the
4 first classification with more than one hundred ninety-eight thousand but fewer than one hundred
5 ninety-nine thousand two hundred inhabitants, in any county of the first classification with more
6 than seventy-three thousand seven hundred but fewer than seventy-three thousand eight hundred
7 inhabitants, in any county of the first classification with more than ninety-three thousand eight
8 hundred but fewer than ninety-three thousand nine hundred inhabitants, in any home rule city
9 with more than one hundred fifty-one thousand five hundred but fewer than one hundred
10 fifty-one thousand six hundred inhabitants, **home rule city with more than one hundred**
11 **fifty-five thousand but fewer than two hundred thousand inhabitants**, in any city not within
12 a county and in any city with at least three hundred fifty thousand inhabitants which is located
13 in more than one county.

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

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

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

33 (2) A neighborhood organization, as defined in subdivision (2) of section 82.1027, on
34 behalf of any person or persons who own property within the boundaries of the neighborhood

35 or neighborhoods described in the articles of incorporation or bylaws of the neighborhood
36 organization and who could maintain a nuisance action under this section or under the common
37 law of private nuisance, or on its own behalf with respect to a nuisance on property anywhere
38 within the boundaries of the neighborhood or neighborhoods.

39 4. An action shall not be brought under this section until sixty days after the party who
40 brings the action has sent written notice of intent to bring an action under this section by certified
41 mail, return receipt requested, postage prepaid to:

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

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

47

48 that a nuisance exists and that legal action may be taken against the owner of the property **if the**
49 **nuisance is not eliminated within sixty days after the date on the written notice.** If the
50 notice sent by certified mail is returned unclaimed or refused, designated by the post office to be
51 undeliverable, or signed for by a person other than the addressee, then adequate and sufficient
52 notice ~~[may be given to the tenant, if any, and the property owner of record by sending a copy~~
53 ~~of the notice by regular mail to the address of the property owner or registered agent and]~~ **shall**
54 **be provided by** posting a copy of the notice on the property where the nuisance allegedly is
55 occurring. A sworn affidavit by the person who mailed or posted the notice describing the date
56 and manner that notice was given shall be ~~[prima facie]~~ **sufficient** evidence ~~[of the giving of such~~
57 ~~notice]~~ **to establish that the notice was given.** The notice shall specify:

58 (a) The act or condition that constitutes the nuisance;

59 (b) The date the nuisance was first discovered;

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

62 (d) The relief sought in the action.

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

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

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

69 ~~—— 6. A neighborhood organization may not bring an action under this section if, at the time~~
70 ~~of filing suit, the neighborhood organization or any of its directors own real estate, or have an~~

71 ~~interest in a trust or a corporation or other limited liability company that owns real estate, in the~~
 72 ~~city or county in which the nuisance is located with respect to which real property taxes are~~
 73 ~~delinquent or a notice of violation of a city code or ordinance has been issued and served and is~~
 74 ~~outstanding.~~

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

80 **6. A proceeding under this section shall:**

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

82 **(2) Be expedited in every way.**

83 **7. When a property owner or neighborhood organization brings an action under**
 84 **this section for injunctive relief to abate a nuisance, a prima facie case for injunctive relief**
 85 **shall be made upon proof that a nuisance exists on the property. Such an action shall not**
 86 **require proof that the party bringing the action has sustained damage or loss as a result**
 87 **of the nuisance.**

88 **8. With respect to an action under this section against the owner of commercial or**
 89 **industrial property, when a property owner or neighborhood organization bringing the**
 90 **action prevails in such action, such property owner or organization may be entitled to an**
 91 **award for its reasonable attorneys' fees and expenses, as ordered by the court, incurred in**
 92 **bringing and prosecuting the action, which award for attorneys' fees and expenses shall**
 93 **be entered as a judgment against the owner of the property on which the act or condition**
 94 **constituting the nuisance occurred or was located.**

82.1026. The governing body of any home rule city with more than four hundred
 2 thousand inhabitants and located in more than one county **and in any home rule city with more**
 3 **than one hundred fifty-five thousand but fewer than two hundred thousand inhabitants**
 4 may enact ordinances to provide for the ~~[building official of the] city [or any authorized~~
 5 ~~representative of the building official]~~ to petition the circuit court in the county in which a vacant
 6 nuisance ~~[building or structure]~~ **property** is located for the appointment of a receiver to
 7 rehabilitate the building or structure, to demolish ~~[#]~~ **the building or structure**, or to sell ~~[#]~~
 8 **the property** to a ~~[qualified]~~ **buyer who can demonstrate an ability to abate the nuisance and**
 9 **vacancy. The court shall maintain jurisdiction over the matter and the property until the**
 10 **city dismisses the case or the nuisance and vacancy is abated.**

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

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

13 **b. Whose articles of incorporation or bylaws specify that one of the purposes for which**
14 **the corporation is organized is the preservation and protection of residential and community**
15 **property values in all or part of a neighborhood or neighborhoods with geographic boundaries**
16 **that conform to the boundaries of not more than two adjoining neighborhoods recognized by the**
17 **planning division of the city or county in which the neighborhood or neighborhoods are located**
18 ~~[provided that the corporation's articles of incorporation or bylaws provide that:~~

19 ~~—— (a) The corporation has members;~~

20 ~~—— (b) Membership shall be open to all persons who own residential real estate or who~~
21 ~~reside in the neighborhood or neighborhoods described in the corporation's articles of~~
22 ~~incorporation or bylaws subject to reasonable restrictions on membership to protect the integrity~~
23 ~~of the organization; however, membership may not be conditioned upon payment of monetary~~
24 ~~consideration in excess of twenty-five dollars per year; and~~

25 ~~—— (c) Only members who own residential real estate or who reside in the neighborhood or~~
26 ~~neighborhoods described in the corporation's articles of incorporation or bylaws may elect~~
27 ~~directors or serve as a director]~~ **in any home rule city with more than three hundred fifty**
28 **thousand inhabitants and located in more than one county, any home rule city with more**
29 **than one hundred fifty-five thousand but fewer than two hundred thousand inhabitants,**
30 **or in any city not within a county; and**

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

34 **(b) An organization recognized by the federal Internal Revenue Service as tax**
35 **exempt under the provisions of Internal Revenue Code section 501(c)(3), or the**
36 **corresponding section of any future tax code, which has had a contract with any home rule**
37 **city with more than three hundred fifty thousand inhabitants and located in more than one**
38 **county, any home rule city with more than one hundred fifty-five thousand but fewer than**

39 **two hundred thousand inhabitants, or with any city not within a county to furnish housing**
40 **related services in that municipality or county at any point during the five-year period**
41 **preceding the filing of the action, and is in compliance with or completed such contract;**

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

- 56 (a) Diminishes the value of the neighboring property; or
- 57 (b) Is injurious to the public health, safety, security, or welfare of neighboring residents
58 or businesses; or
- 59 (c) Impairs the reasonable use or peaceful enjoyment of other property in the
60 neighborhood.

82.1030. 1. Subject to subsection 2 of this section, sections **82.1025 and** 82.1027 [~~to~~
2 ~~82.1029~~] shall not be construed [~~as~~] to abrogate any equitable or legal right or remedy otherwise
3 available under the law to abate a nuisance.

4 2. Sections **82.1025 and** 82.1027 [~~to 82.1029~~] shall not be construed [~~as~~] to grant
5 standing for an action challenging any zoning application or approval.

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

5

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

4

- ~~[82.1029. 1. A neighborhood organization, on behalf of a person or persons who own real estate or reside within one thousand two hundred feet of a property on which there is a condition or activity constituting a code or ordinance violation in the neighborhood or neighborhoods described in the articles of incorporation or the bylaws of the neighborhood organization, or on its own behalf with respect to a code or ordinance violation on property anywhere within the boundaries of the neighborhood or neighborhoods, may seek injunctive and other equitable relief in the circuit court for abatement of a nuisance upon showing:~~
- ~~(1) The notice requirements of this section have been satisfied; and~~
- ~~(2) The nuisance exists and has not been abated.~~
- ~~2. An action under this section shall not be brought until:~~
- ~~(1) Sixty days after the neighborhood organization sends written notice by certified mail, return receipt requested, postage prepaid, to the appropriate municipal code enforcement agency of the neighborhood organization's intent to bring an action under this section, together with a copy of the notice the neighborhood organization sent or attempted to send to the property owner in compliance with subdivision (2) of subsection 2 of this section; and~~
- ~~(2) Sixty days after the neighborhood organization sends notice by first class prepaid postage certified mail, return receipt requested, to:~~
- ~~(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.~~

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

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

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

50 ~~6. An action may not be brought under this section based on an alleged~~
51 ~~violation of a particular code provision or ordinance if there is then pending~~
52 ~~against the property or the owner of the property a notice of violation with respect~~
53 ~~to such code provision or ordinance issued by an appropriate municipal code~~
54 ~~enforcement agency unless such notice of violation has been pending for more~~
55 ~~than forty-five days and the condition or activity that gave rise to the violation~~
56 ~~has not been abated. This subsection shall not preclude an action under this~~
57 ~~section where the appropriate municipal code enforcement agency has declined~~
58 ~~to issue a notice of violation against the property or the property owner.~~

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

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

69 ~~9. A proceeding under this section shall:~~

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

71 ~~(2) Be expedited in every way.]~~

