

Code Enforcement

Student Housing—Pass or Fail

By David Wesner, Corporation Counsel, Danville, Illinois

One of the most difficult situations to work through for code enforcement officials is a dispute between neighbors. Each neighbor may have legitimate complaints about violations at the other's property. But the complaints may not rise to a level that requires immediate attention. And, the complaints are often driven mainly driven by a neighbor's feelings toward the other, and not necessarily driven by the need to address a broader community concern. Regardless, each neighbor will likely continue to call municipal authorities trying to force the issue and get back at the other neighbor or create unnecessary problems for them. This in turn requires that code enforcement staff get involved and stay involved.

If you add to this mix a large age difference between the neighbors, such as the scenario where a group of twenty-somethings are living among a more mature age cohort, the situation can become even more problematic. This is a frequent occurrence in municipalities which are home to a university or college. Student housing may be located across different areas of the community. Some will likely be centered in the heart of the university or college setting, which may lessen some of the potential causes of conflict. But some are likely to be situated within established neighborhoods. This juxtaposition may well bring with it the elements described above and give rise to neighbor disputes.

Student housing almost always brings increased noise and traffic. It may also result in increased littering and many other issues that could likely impact residents and property values—not only those adjacent to the students' dwellings but throughout the neighborhood as well. As such, communities ask themselves which way to turn in trying to address these issues.

A starting point may be in looking at whether—and how--pressure on certain individuals may make a difference. Of course the first person to look at would be the landlord. Depending on the individual or entity, the lessor may be amenable to pressure. For example, if students are not keeping up the condition of their building, creating issues for properties next door or elsewhere the neighborhood, the landlord may be able to approach them and deal with the situation. But that pressure will only go so far if the lease does not contain provisions that would truly enable the lessor to tackle the problem. Another angle (one which was used in the apartment building where my own mother is a tenant) might be used if the students in question happen to be athletes: contacting the appropriate coaches or athletic directors. These officials will likely not tolerate negative publicity about their athletic programs and will have the means to pressure students to stop the problem behavior.

As mentioned above, pressure on a landlord may only be successful if the lease contains provisions the landlord can use to address the issue. One provision that could be made a part of a lease would be a "good neighbor agreement." Some landlords may provide for this concept on their own. Some municipalities adopt ordinances regulating the landlord/tenant relationship and require landlords to insert such clauses in their lease documents. The "good neighbor agreement" may be similar to another type of lease attachment that has been promoted by municipalities—the "crime-free lease addendum." Both of these types of lease attachments attempt to accomplish the same goal. The agreement will specify that tenants need to abide by certain rules which prohibit them from engaging in various activities--and also holds them responsible for their guests who may engage in the prohibited activity. The agreements will provide that any violation would be considered a breach of the lease, triggering a right of eviction.

Another vehicle for coping with unruly student housing (and problem rental properties generally) is a nuisance ordinance. The applicable ordinance in my community (Danville, Illinois) is titled "Maintaining a Public Nuisance." Danville is a municipality of about 35,000 and includes a community college. Our city, as perhaps with yours, has dealt over the years with landlords who do not take an interest in the activity occurring on their property nor responsibility for dealing with the tenants who are engaging in that activity. We have discussed whether we should regulate the landlord/tenant relationship outright, but we are not considering moving in that direction. This leaves the nuisance ordinance as the best alternative. The ordinance could be viewed as a codification of the lease agreement provisions mentioned above.

But in this version, the rules are directed at the landlord rather than the tenants. The ordinance provides a list of offenses, including state criminal offenses and city code violations, which would provide the basis for declaring the property a public nuisance. Some of the offenses listed would likely pertain to student housing. A property would be declared a public nuisance if more than one offense occurs within a six-month period, or if it is a single offense which is a felony. Once a property constitutes a public nuisance pursuant to the definition in the ordinance, a notice is sent to the owner indicating that it must take measures to ensure the improper activity ceases. If the activity continues, the city may seek the penalties described in the

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42. Fort Meyers Beach Development Code Ch. 34 sec. 622k. http://www.fortmyersbeachfl.gov/DocumentCenter/Home/View/320
43. http://www.azcentral.com/community/gilbert/articles/2010/05/14/20100514gilbert-vacation-homes-0515.html
44. http://www.kdrv.com/short-term-rentals-against-city-code/
45. http://austintexas.gov/str
46. http://www.statesman.com/news/news/local/as-austin-short-term-rental-rules-take-effect-hund/nSZbj
47. http://austintexas.gov/sites/default/files/files/Code_Compliance/STRs/S ML

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the mayor's office, and even a state senator. Because of the community's demands for immediate action, several governmental entities felt compelled to join an already complicated situation.

On Sept. 5, the final show cause hearing for the tenant's eviction was held. The tenant failed to appear at the hearing, the order was issued, and the King County Sheriff posted notice the following day. Over the next week, I visited the home with officers and the home owner, verified that the tenants had not yet vacated, and developed a timeline with the sheriff's detective assigned to execute the eviction. Additionally, I was the point person to keep the increasing number of governmental agencies up to date on our progress and plans.

As eviction day grew closer it became evident that simply kicking the tenants out would not solve all the problems. Their mess still had to be cleaned up and it was clear that the tenants weren't going to do it. One of our office's land use attorneys, Tamera Van Ness, pushed DPD to issue a citation and expedite the abatement process. Once the citation was posted, the owner consented to a voluntary abatement. This cleared the City to have the property cleared immediately after the eviction.

In the weeks leading up to the eviction I worked closely with SPD to make sure all the pieces were in place. I maintained contact with the sheriff's office to make sure all parties would be present as required. The owner, with neighborhood cooperation, secured a contractor to board up the doors and windows of the home. The owner and neighborhood volunteers would clear out any "valuables" left behind by the tenant. CPT conferenced with the Conservation Corps to confirm they had the necessary tools, namely a large dumpster, standing by to clear the garbage off the property.

Finally, the day had arrived. On Sept. 18, we all headed out to the property for the 10 a.m. eviction. When we arrived, the Conservation Corps was ready to go with a large dumpster and a back hoe! This was important because as we quickly realized using a hand shovel to clear the garbage would have taken days. All we needed was the sheriff and the owner, who both arrived on schedule. The eviction went smoothly and the tenants left peacefully, despite the media's attempts at encouraging confrontation. Once the tenants had left, the cleanup frenzy began and, by 3:00 p.m., the place was unrecognizable. Almost everything proceeded according to plan. The only issue remaining was a need for a second dumpster that we were told we just couldn't have; that was easily remedied with calls from the North Precinct operations lieutenant and an assistant city attorney doing his best to sound intimidating. Overall, the day went smoothly, and the biggest reward was the neighbors' gratitude that the tenants were gone and the property was clean.

Since the property is still in the process of being listed as a short sale and technically abandoned, I worked with the owner to draft and sign a trespass agreement. That gives SPD authority similar to that in the retail trespass program (http://www.seattle.gov/law/precinct_liaisons/seattletrespass.htm). Between the neighbors' vigilance and SPD's ability to enforce trespassing with the owner's permission, the home should remain secure until it is sold and demolished. ML

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6. *Id.*
7. Although the magistrate judge makes light of this fact, the requesting party in *Venture Corp*. waited until shortly before the end of discovery to seek clarification about the produced ESI and documents, and may therefore have improperly sought to extend discovery. *See* 2014 WL 5305575 *2.
8. 2014 WL 5305575 *2.
9. 2014 WL 5305575 *3.

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ordinance. One of the orders the city may seek is closure of the building for a period of not less than 30 days. With the possibility of a closure order being put in place where the landlord would potentially lose rental income, we anticipate that landlords will be far more likely to address the problems at their property once they receive a notice from the city. In fact, we have used this tactic with successful results.

One peripheral issue that has arisen with respect to nuisance ordinances of this nature was framed in an e-mail from IMLA Executive Director Chuck Thompson. His note related that the ACLU is challenging these types of ordinances on the basis that they can have a negative impact on victims of crime. An example they cite is a woman who was being evicted from her residence—because the property had been found to violate nuisance ordinances due to her repeated calls to law enforcement about domestic violence against her, taking place in her rental. In essence, her complaining about intolerable (and likely criminal) actions occurring against her in her own apartment caused the property to be classed as a nuisance and taken off the rental rolls.

These are challenging problems. Like many issues in municipal law, there are valid concerns to be considered on both (or many) sides of the argument. I believe that nuisance ordinances can be drafted to accommodate the concerns raised by the ACLU. (I would encourage those of us who use these types of ordinances to send a copy to IMLA, along with any comments on your experience with the provision; as IMLA seeks to work with the ACLU on this issue, I am certain that any additional information would be useful).

To sum up, one element of a successful college town – whether home to a major university or a smaller community college—is adequate student housing. When a younger, transient student population lives within established, stable neighborhoods, conflicts are sure to arise. I am confident most of these issues can be resolved via some of the ideas I have referenced above, including carefully crafted housing ordinances. ML