

ORDINANCE NO. 140

THE CHARTER TOWNSHIP OF BIG RAPIDS ORDAINS:

SECTION 1. This Ordinance shall be known as the “**Nuisance Party Ordinance.**”

SECTION 2. PREAMBLE AND LEGISLATIVE FINDINGS.

The Big Rapids Charter Township Board determines that whenever the repeated illegal use, sale, distribution, furnishing or possession of controlled substances or alcoholic beverages occurs on any real property, or whenever any real property is used repeatedly for the violation of laws regulating controlled substances, alcoholic beverages, or nuisance parties, a public nuisance may result. A public nuisance results from the increased criminal activity that occurs within the surrounding neighborhood, the increased pedestrian and vehicular traffic within the surrounding neighborhood, the increased noise and public disturbances that occur within the surrounding neighborhood by reason of unreasonably loud music, yelling and screaming, brawls, domestic violence, damage to personal property, litter and public urination, blocking of public roads and right of ways, and the fear engendered in the minds of neighbors living in the surrounding neighborhood.

SECTION 3. DEFINITIONS.

For the purpose of this ordinance the following definitions shall apply unless the context clearly indicates or requires a different meaning.

TOWNSHIP BOARD. The Big Rapids Charter Township Board or a special committee of the Big Rapids Charter Township Board.

NUISANCE PARTY. An incident defined in this ordinance as a nuisance party.

OWNER. Any person who possesses or holds any legal or equitable interest in real property.

OWNER also includes any person who holds, exercises or delegates any control, custody or dominion over real property whether or not that person has or claims to have any legal or equitable interest in the real property. **OWNER** specifically includes tenants, whether or not identified in a written lease.

REAL PROPERTY means any land, house, structure, building, dwelling, apartment, premises, or any part thereof.

REPEATED and REPEATEDLY. Three or more times within any nine-month period.

NUISANCE PARTY. A social gathering or party conducted on any premises within the Township and which, by reason of the conduct of those persons in attendance, results in any one or more of the following conditions or events occurring on the premises or neighboring public or private property:

- a. The unlawful sale, furnishing, possession, or consumption of alcoholic beverages;
- b. Urination or defecation on neighboring public or private property, or on the premises in view of another person;
- c. Unlawful deposit of trash or litter;
- d. Destruction of property;
- e. Unlawful vehicular traffic, or the unlawful standing or parking of vehicles which obstructs the free flow of traffic or interferes with the ability to render emergency services to the premises or neighboring public or private property;
- f. Unlawful parking of vehicles within the public streets, alleys, or sidewalks, or upon private property;
- g. Unreasonably loud noise under the circumstances which disturbs the comfort, quiet or repose of one or more members of the neighborhood.
- h. Conduct or a condition which injures any person;
- i. Conduct or a condition which endangers the safety of persons or property in the neighborhood;
- j. Conduct or a condition which results in the indecent exposure of a person, or the display of graphic sexual behavior, whether real or simulated, to a member of the public not attending the social gathering or party.
- k. Unlawful sale, furnishing, manufacture, use, or possession of a controlled substance as defined by federal or state law.

SECTION 4. DECLARATION OF PUBLIC NUISANCE.

Whenever one of these specified incidents or conditions occurs or exists repeatedly on any real property within Big Rapids Charter Township, the Big Rapids Charter Township Board may declare by resolution that the real property is a public nuisance, and may order the nuisance abated:

- a) The illegal use, sale, distribution, furnishing or possession of a controlled substance; or
- b) The illegal use, sale, manufacture, distribution, furnishing or possession of an alcoholic beverage; or

- c) Holding, sponsoring, causing, or allowing a nuisance party on any real property in Big Rapids Charter Township.

SECTION 5. PROCEDURE FOR DECLARATION OF A PUBLIC NUISANCE.

A declaration of a public nuisance under this chapter by the Big Rapids Charter Township Board shall occur according to the following procedure.

A declaration of a public nuisance can occur only after a formal complaint is filed by the Township Board and notice is given to the owner of the real property and the owner has had an opportunity to be heard at a public evidentiary hearing before the Township Board.

Notice of the public evidentiary hearing shall be given to the owner by personal service or certified mail to the address indicated by the records of the Township Assessor or the Mecosta County Register of Deeds. The notice shall state the nature of the alleged public nuisance, and the time, date and location of the hearing by certified mail, return receipt requested. Notice to an owner shall occur at least seven calendar days prior to the date of the hearing. Notice shall be given to any and all persons who have an ownership interest in the real property, including record title owners, mortgage holders, tenants, and trustees, whose ownership interest is reflected in the records described above. Notice shall be posted on the real property at least seven calendar days prior to the date of the hearing.

The Township Board shall act as a municipal administrative agency, functioning in a quasi-judicial capacity as authorized when determining whether or not a public nuisance exists under the standards established in this ordinance. The Township Board shall make this determination based solely on evidence presented at the public evidentiary hearing, of which a record shall be made and kept. In conducting the public evidentiary hearing, the Township Board shall afford the owner and Township personnel an opportunity to present evidence and make arguments as to factual and legal issues. Cross-examination of opposing witnesses shall be permitted. An owner may appear in person or be represented by an attorney, but lay representation shall not be permitted. In conducting the public evidentiary hearing, the Township Board can admit and give weight to probative evidence of a nature commonly relied upon by reasonably prudent individuals in the conduct of their affairs. The Township Board shall not be bound by the Michigan Rules of Evidence. Irrelevant, incompetent and unduly repetitious evidence shall be excluded.

The Township Board shall make factual findings at the close of the public evidentiary hearing, determining at a minimum:

- a) The street address and legal description of the property; and
- b) The owner(s) of the real property; and
- c) The number and nature of specified incidents or conditions; and
- d) The time frame in which these occurred or existed; and

- e) The nature of the alleged public nuisance; and
- f) The actions taken by the owner to prevent or abate the specified incidents or conditions.

The declaration of a public nuisance and any order of abatement must be by an affirmative vote of not less than four Township Board members.

SECTION 6. ABATEMENT OF NUISANCE AND COSTS.

If the Township Board determines by resolution that any real property is a public nuisance according to the provisions of this ordinance, and after giving due consideration to the actions taken by the owner to prevent or abate the specified incidents or conditions, it may order abatement of the public nuisance in addition to any other remedies available at law or in equity. The order of abatement can be entered at the public evidentiary hearing on the alleged public nuisance, or at a later hearing noticed out in the same manner as the public evidentiary hearing. The Township Board may receive additional evidence on the issue of abatement.

If it is determined that all or a portion of the real property should be vacated to abate the public nuisance, the Township Board shall order the real property vacated and declare occupancy of all or a portion of the real property prohibited, which shall authorize the Township Board to prohibit occupancy by padlocking, boarding, or otherwise securing the real property, for up to one year as determined by the Township Board based upon the evidence.

The Township Board may determine and order that the owner shall be liable for the full cost of materials and personnel, including Township employees and contractors, utilized in padlocking, boarding or securing the real property, and subsequent or remedial actions required to keep the real property vacant for the abatement period.

The Township Board may order the costs assessed against the real property and collected as taxes.

Where only a discrete area of the real property is involved in the illegal activity giving rise to the declaration of a public nuisance, the Township Board shall not order any other part of the real property vacated. By the way of example, if only a single apartment in a multiple unit structure is the site of the incidents or conditions specified in this Chapter, then the Township Board shall order the single apartment to be vacated, and not the entire structure.

SECTION 7. FINDING OF PUBLIC NUISANCE.

The Township Board may find that a public nuisance exists if any three or more of the following listed incidents or conditions occur within a nine-month period, as established by evidence presented at the public evidentiary hearing.

The real property has been searched by law enforcement officers and an illegal controlled substance has been found on site.

The real property has been the site of a nuisance party as defined in this ordinance.

The real property has been the site of the illegal use, sale, distribution, furnishing or possession of a controlled substance or an alcoholic beverage.

A rebuttable presumption that a public nuisance exists at the real property arises when one of the incidents or conditions occurs or exists and notice of it is given by personal service or certified mail to the owner with an explanation of the potential consequences if similar activities occurs at the property within nine months, and if two or more specified incidents or conditions occur or are found to exist within nine months of the first.

The nine month period shall be extended by the number of days the real property is ordered padlocked.

SECTION 8. NOTIFICATION TO OWNERS.

The notice of a specified incident or condition, and the notice of a public evidentiary hearing, as sent to an owner by certified mail or personal service, shall include a report of each specified incident or condition describing the date, location, persons known to be involved, and the nature of the underlying illegal activity.

SECTION 9. APPEAL.

An owner of real property aggrieved by any final decision or order of the Township Board under this chapter may appeal to the Circuit Court within 21 days of the date of the decision or order.

The Circuit Court shall consider the appeal on the record made before the Township Board. The Circuit Court shall review the record and determine if the Township Board's decision or order

- a) Complies with state and local law,
- b) Is supported by competent, substantial and material evidence on the record as a whole, and
- c) Involves the reasonable exercise of discretion.

SECTION 10. POSTING AND LISTING OF PUBLIC NUISANCES.

Whenever the Township Board declares real property is a public nuisance and orders the nuisance abated by ordering that the real property be vacated, the Township Board Supervisor shall post a notice so stating at every entrance to each building on the real property, and at the entrance to each dwelling unit or other portion of the real property ordered vacated.

The Township Clerk shall maintain a list of those real properties declared to be public nuisances, and the order of abatement or other remedies ordered by the Township Board. Any person requesting a copy of the list shall be supplied one at no charge. The list shall be available for public inspection at the Township Clerk's office.

No person other than an authorized Township employee shall tamper with, deface, alter, damage or remove the notice posted by the Department of Public Safety.

SECTION 11. NUISANCE PARTY PROHIBITED.

Any owner, occupant, tenant, guests or person otherwise having any possessory control, individually or jointly, of any premises who either sponsors, conducts, hosts, invites, or permits a social gathering or party which is or during the course thereof becomes a nuisance party which is either the intentional result of or within the reasonable expectations of the person or persons having such possessory control is hereby deemed to have committed a violation of this code, and upon conviction shall be subject to the penalties as provided in this Ordinance. In any prosecution for a

violation of this section or the section prohibiting persons from attending nuisance parties, proof of specific intent shall not be required as a necessary element, but proof of general criminal intent shall be a necessary element. The penalty for a subsequent violation of this section is set forth in Section 13.

SECTION 12. PERSONS IN ATTENDANCE AT NUISANCE PARTIES.

Any person knowingly in attendance at a nuisance party as defined in this Ordinance whether or not such person has any possessory control over the premises, shall be deemed to have committed a violation of this section and upon conviction shall be punished as provided in Section 13. "Knowingly" shall require as an element of proof that the person knew or had clear reason to know of the actual existence of one or more of the conditions or events listed in the definition of a nuisance party.

SECTION 13. PENALTY.

Any person convicted under this Ordinance shall be subject to a maximum penalty of 90 days in jail, or an equal amount of community service, or any combination thereof not exceeding 90 days, and a \$500 fine, and restitution to victims as determined by the Court.

Any person convicted of violating of this Ordinance for a subsequent offense within four years after commission of a previous offense, shall be punished by a fine of not less than \$250 nor more than \$500 and a mandatory imprisonment for a term of not less than three days and not exceeding 90 days for each subsequent violation.

SECTION 14. EFFECTIVE DATE.

This Ordinance shall become effective on Friday, August 11th, 2023.

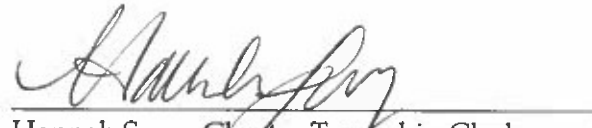
We certify that the foregoing Nuisance Party Ordinance was duly enacted by the Township Board of the CHARTER TOWNSHIP OF BIG RAPIDS, MECOSTA COUNTY, MICHIGAN, on the 11th day of August, 2023.

Attest:





William Stanek, Charter Township Supervisor



Hannah Saez, Charter Township Clerk