

130.05 USE OF REAL ESTATE FOR ILLICIT DRUG ACTIVITY.

- (A) *Purpose.* The Town Council finds it to be in the best interests of the residents of the Town of Rome City and the general public to provide for the regulation of conduct it deems to be offensive; to prevent vice, disorder, and immorality and to promote public peace, health, and safety; therefore, to this end, the Town Council enacts this section.
- (B) *Permitting the use of real estate for illicit drug activity.* No owner of real estate located in the Town of Rome City shall knowingly allow that real estate to be used as a site for any use or sale of illicit narcotics or controlled dangerous substances, after having received written notice pursuant to I.C. 36-7-9-25 from the Marshal's office of the Town of Rome City that a present occupant or tenant of that property has been using or selling illicit narcotics or controlled dangerous substances, or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property. Or has otherwise been engaging in or allowed activity constituting a nuisance pursuant to I.C. 32-20-6-6. A legal or equitable owner of real estate is deemed to have knowledge of such activity upon receipt of notice set forth in this section. For the purposes of this section, an owner of real estate is defined as any person who, alone, or jointly or severally with others shall have legal or equitable title to any dwelling or dwelling unit.
- (C) *Notice.* Notice is deemed to be given to the owner, upon receipt of notice as indicated above, by the owner of record pursuant to the record and files of the Office of the Noble County Assessor's Office.
- (D) *Discrimination forbidden.* Nothing in this section shall be construed to encourage or authorize the discrimination by lessors against any person(s) based upon race, creed, religion, sex, age, or national origin. Rather, it is the intent of this section to hold persons accountable for acquiescing in or participating in the continued use of his or her property as the location of illegal drug activity, after having received notice as set forth in division(C).
- (E) *Reports, investigations and notices by the Police Department.*
- (1) A complaint or report of suspected illegal activities constituting the use or sale of narcotics or controlled substances, or conduct constituting a nuisance pursuant to I.C. 32-30-6-6, by tenants, occupants and/or their visitors, guests or invitees as observed the lessor, third persons such as other tenants of the property, or persons residing or working in the vicinity of the property, or town officials, and/or representatives of agencies and or/departments of the town shall be submitted to the office of the Town Marshal and each such report or complaint shall be individually logged in that office.
 - (2) Upon receipt of any report or complaint of such suspected illegal activities on real estate premises, a determination shall be made by the town, Town Marshal, and or other law enforcement agencies as to the need and nature of any further investigation including, but not limited to, the necessity for surveillance by the Town Marshal of such real estate premises.
 - (3) Upon completion of investigation by the Town Marshal revealing that such suspected illegal activity is taking place at a particular premise, a warning letter shall be sent by the Town Marshal to the owner of the real estate and a copy to the tenant/occupant whose premises is the subject of the investigation, by certified mail, return receipt requested, informing the owner of the

investigation revealed the suspected illegal activity and the fact that there is an on-going investigation. The warning letter shall inform the owner of his/her choice to take action to abate such suspected illegal activity has not ceased, to take further legal action.

(4) Once a search warrant has been obtained to search the real estate premises for narcotics or controlled substances, or for any other evidence related to the suspected illegal activity, a second letter which shall be sent to the owner of the real estate, by certified mail, return receipt requested, shall inform the owner that the warrant was served, that the investigation at the premises is continuing, and that legal proceedings may be commenced pursuant to this section. The letter shall inform the owner of his or her choice to take some form of remedial action. A copy of the letter shall be sent to the town Marshal, the Town Attorney's office, and to the tenant or occupant of the premises for which a search warrant is obtained.

(5) Upon receipt of a copy of the second letter issued under division (E) (4) of this section, the Town Attorney's office may proceed under I.C. 34-1-522-2(b) to abate or enjoin any suspected illegal activity, as defined herein constituting a nuisance as defined in I.C. 32-30-6-6, and/or to advise the Town Marshal to issue a notice pursuant to divisions (B) and (C) of this section. The notice shall advise that legal proceedings may be instituted against the owner of real estate, pursuant to this section, and shall also inform the owner of his or her choice to commence eviction proceedings pursuant to division (G) of this section.

(F) *Criteria for establishing a violation.* Conviction for a violation of this section will be determined by the appropriate judicial authority and based upon the totality of the circumstances present, including, but not limited to, evidence that the owner has received notices suspected of illegal activity pursuant to divisions (B),(C), and (E) of this section.

(G) *Eviction proceedings as a defense.*

(1) No person shall be charged with the violation of this section if the person:

(a) Has instituted eviction proceedings within 30 days of receipt of the notice of criminal activities, in accordance with division (B) above, against the tenant whose suspected criminal activities would otherwise give rise o potential liability under this section; and

(b) Has completed the eviction proceedings within 30 days of commencement of the proceedings.

(2) If any eviction proceeding is not completed within 30 days by reason of court ordered delays in the proceedings, the person charged with a violation of this section must, nonetheless, move forward expeditiously with any eviction proceeding.

(H) *Multiple unit dwellings.* In the case of a multiple unit dwelling, the only person(s) necessary to name in an eviction proceeding is the tenant or occupant occupying the actual unit involved with the suspected illegal activity described herein.

(I) *Filing of criminal charges.* Charging an owner of real estate with a violation of this section shall be an adjunct to, and not substitution for, any criminal charges filed as a result of investigation by the town Marshal against occupants or tenants of that owner's real estate premises for use or sale of illicit drugs or

- controlled dangerous substances, or conduct constituting a nuisance pursuant to I.C. 32-30-6-6, or Chapter 93 of the Municipal Code of the Town of Rome City.
- (J) *Assistance by Town Marshal.* The Town Marshal shall use reasonable efforts to train, educate, and assist owners of real estate in avoiding placing tenants or occupants in their real estate who are known violators if illegal activities enumerated herein.
- (K) *Limited indemnification of owners of real estate.* The Town of Rome City shall provide a limited indemnification to an owner of real estate located in the town of Rome City, subject to the following conditions.
- (1) The owner of real estate shall have received the written notice required by division (B) of this section from the town Marshal advising that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances, or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or has otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 32-30-6-6.
- (2) The owner of real estate has instituted eviction proceedings within 30 days of receipt of notice of suspected illegal activities, in accordance with division (B) above, against a tenant who's suspected criminal activities would otherwise give rise to potential liability under this section.
- (3) The owner of real estate shall give no less than 30 days notice to the Town Attorney, by certified mail, return receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at the hearing.
- (4) The Town Attorney, upon receipt of the notice and list of witnesses, shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses, including, but not limited to, witness from the Rome City Town Marshal whose presence shall be required at the hearing on the eviction proceedings.
- (5) All witnesses listed by either the owner of real estate and/or the Town Attorney's office shall be subpoenaed by the owner of real estate, in proper and legal fashion, and be allowed to testify.
- (6) The tenant involved as a defendant in the eviction proceeding shall prevail on the merits, not by reason of procedural irregularities, by sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received, pursuant to division (B) above of this section, did not, in fact, take place.
- (7) The tenant institutes legal proceedings against the owner of real estate in the form of a counter claim or separate action and obtains a judgment for damages against the owner of real estate by reason of the tenant having prevailed on the merits in accordance with division (K)(6) above.
- (8) The owner of real estate completes whatever steps he or she chooses to undertake to seek review of the judgment by motion to correct errors and/or appeal.
- (9) The limited indemnification by the Town of Rome City shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid; but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this section; but will include either the

reasonable attorney's fees incurred in the defense of legal proceedings brought by a tenant pursuant to division (K)(7) above, regardless of the outcome of the proceedings, or the provision of the legal services by the town of Rome City, at the town's options.

(L) *List to be kept by Town Marshal.* The Town Marshal shall keep a list of the names and addresses of all tenants or occupants to whom copies of letters were sent pursuant to division(E)(4) above, and shall make the names available to members of the public requesting them in reference to potential renters of real estate in the town.

(Ord. 99-07, passes 12-13-1999) Penalty, see 130.99