

**CITY OF BALTIMORE
COUNCIL BILL 05-0270
(First Reader)**

Introduced by: Councilmembers Rawlings Blake, Clarke, Young, Kraft, Harris, Spector,
Reisinger, President Dixon, Councilmembers Curran, Holton

Introduced and read first time: October 31, 2005

Assigned to: Public Safety Subcommittee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Police Department, Health Department,
Department of Finance, Environmental Control Board

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Public Nuisance Premises – Noise**

3 FOR the purpose of including violations of certain noise regulations within the definition of
4 “public nuisance”; providing for the abatement of these nuisance; clarifying, conforming, and
5 correcting certain language; and generally relating to public nuisance premises.

6 BY repealing and reordaining, with amendments

7 Article 19 - Police Ordinances

8 Section(s) 43-1 and 43-2

9 Baltimore City Code

10 (Edition 2000)

11 BY repealing and reordaining, without amendments

12 Article 19 - Police Ordinances

13 Section(s) 43-3 through 43-12

14 Baltimore City Code

15 (Edition 2000)

16 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
17 Laws of Baltimore City read as follows:

18 **Baltimore City Code**

19 **Article 19. Police Ordinances**

20 **Subtitle 43. Public Nuisances**

21 **§ 43-1. Definitions.**

22 (a) *In general.*

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

1 [As used in] IN this subtitle, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED[:].

2 (b) *Commissioner*.

3 “Commissioner” means the Police Commissioner of Baltimore City or the
4 Commissioner’s designee.

5 (c) *Conviction*.

6 [For the purpose of this subtitle, “conviction” shall include] “CONVICTION” INCLUDES
7 probation before judgment.

8 (d) *Owner*.

9 “Owner” and “owner of record” mean the person in whose name a premises is recorded
10 in the land records of Baltimore City.

11 (e) *Person*.

12 “Person” means an individual, receiver, guardian, personal representative, fiduciary, or
13 representative of any kind, and any corporation, partnership, firm, association, joint
14 venture, or other legal entity.

15 (f) *Premises*.

16 “Premises” means ALL OR ANY PART OF any land, building, or other structure[, or part
17 thereof].

18 (g) *Public nuisance*.

19 (1) A “public nuisance” is any premises:

20 (i) where violations of the law governing:

21 (A) prostitution and lewdness;

22 (B) controlled dangerous substances;

23 (C) gambling; [or]

24 (D) criminal possession of stolen property, OR

25 (E) NOISE IN EXCESS OF THAT PERMITTED BY CITY HEALTH ARTICLE, TITLE
26 9 {“NOISE REGULATION”},

27 are occurring; and

28 (ii) where 2 or more violations of [such] THESE provisions[, which] have resulted
29 in 2 or more criminal convictions[, have occurred] on 2 or more occasions

1 within a 24-month period of time prior to the commencement of a proceeding
2 [pursuant to] UNDER §§ 43-3 through 43-7 of this subtitle.

3 (2) It [shall be] IS prima facie evidence that a public nuisance has occurred [upon] ON the
4 2nd conviction for a violation of any of the provisions of the law governing the
5 enumerated offenses.

6 **§ 43-2. Legislative findings and declarations.**

7 (a) *Existence of public nuisances.*

8 The Mayor and City Council finds and declares:

9 (1) that public nuisances exist in the City of Baltimore in the continuing and recurrent
10 use of certain premises in violation of the laws relating to prostitution, gambling,
11 controlled dangerous substances, [and] stolen property, AND EXCESSIVE NOISE;
12 and

13 (2) that these public nuisances are harmful to the safety, health, and general welfare
14 of the citizens and businesses of, and visitors to, Baltimore City.

15 (b) *Subtitle to provide needed law enforcement tools.*

16 The enforcement of abatement procedures by the Commissioner and the penalties
17 imposed [pursuant to] BY this subtitle:

18 (1) constitute an additional method of law enforcement in response to the
19 proliferation of [the above described] these public nuisances; and

20 (2) are an exercise of the City’s police power that is reasonable and necessary in order
21 to protect the health, safety, and general welfare of the people of Baltimore City.

22 **§ 43-3. Nuisance abatement authorized.**

23 (a) *Commissioner’s basic authority.*

24 After 2 convictions under § 43-1(g) of this subtitle and notice to the premises’ owner and
25 opportunity for a hearing, the Commissioner may:

26 (1) order the discontinuance of the public nuisance in the premises where the public
27 nuisance exists; or

28 (2) order the closing of the premises to the extent necessary to abate the nuisance.

29 (b) *Limitations.*

30 (1) Except as specified in paragraph (2) of this subsection, if the premises consists
31 entirely of residential units or mixed residential and other use units, and the public
32 nuisance has occurred solely within 1 or more residential units, abatement authority is

1 restricted to the residential units in which the public nuisance has occurred, and does
2 not extend to any other unit in the premises.

3 (2) The restrictions of paragraph (1) of this subsection do not apply to a public nuisance
4 occurring in any:

5 (i) motel;

6 (ii) hotel; or

7 (iii) rooming house or rooming unit, as those terms are defined in the Zoning
8 Code of Baltimore City.

9 **§ 43-4. Notice and opportunity for hearing.**

10 (a) *In general.*

11 Prior to the issuance of an order by the Commissioner under this subtitle, the
12 Commissioner shall give notice and an opportunity for a hearing to determine whether a
13 public nuisance exists in the premises to the owner, lessor, lessee, mortgagor, and
14 mortgagee of the premises.

15 (b) *Contents of notice.*

16 The notice shall state:

17 (1) the date, place, and time of the hearing;

18 (2) the right of the aforesaid persons to be heard and to be represented at the hearing;

19 (3) the possible consequences of failure to appear; and

20 (4) such other particulars as may be appropriate.

21 (c) *Service and posting of notice.*

22 (1) The notice shall be given by personal service or by certified or registered mail to the
23 owner, lessor, lessee, mortgagor, and mortgagee, or their respective agents, as their
24 names and addresses:

25 (i) are recorded in the land records of Baltimore City;

26 (ii) appear in the registration statement made under City Code Article 13, Subtitle
27 4 {“Registration of Residential Properties”}; or

28 (iii) are otherwise known or readily ascertainable.

29 (2) In addition, the notice shall be posted on the premises.

1 § 43-5. Lack of knowledge, etc., not a defense.

2 The lack of knowledge of, acquiescence or participation in, or responsibility for a public
3 nuisance, on the part of any person who may be the owner, lessor, or lessee, mortgagor,
4 mortgagee, or other interested person and all those persons in possession of or having charge
5 of as agent or otherwise, or having any interest in the property, real or personal, used in
6 conducting or maintaining the public nuisance, is not sufficient cause to set aside the
7 Commissioner’s order of abatement.

8 § 43-6. Issuance and enforcement of order.

9 (a) *Posting and notice of order.*

10 Following the hearing procedure, an order of the Commissioner issued pursuant to this
11 subtitle shall be posted on the premises and notice thereof shall be given to those persons
12 and in the manner set forth in § 43-4 of this subtitle.

13 (b) *Enforcement; period of closing.*

14 (1) On and after the 10th business day following the posting, as set forth in subsection (a)
15 of this section, and upon the written directive of the Commissioner, the order may be
16 enforced.

17 (2) A closing shall be for such period as the Commissioner reasonably may direct, but in
18 no event shall the closing be for a period of more than 1 year from the date of the
19 closing.

20 (c) *Nature of closing.*

21 A closing directed by the Commissioner pursuant to this subtitle is not an act of
22 possession, ownership, or control by the City of Baltimore.

23 § 43-7. Vacating order to close.

24 The Commissioner shall vacate the provisions of the order to close if an interested person:

25 (1) posts a bond for the period of the ordered closing in an amount not exceeding the
26 assessed value of the premises as shown in the tax assessment records of Baltimore
27 City, prorated for the proportional assessment of units closed if less than all units
28 therein are closed, but not to exceed \$1,000,000 in any case; and

29 (2) submits reasonably adequate proof to the Commissioner that the nuisance has been
30 abated and will not be maintained or permitted in any unit of the premises during the
31 period of the ordered closing.

32 § 43-8. Termination of tenancy.

33 Upon conviction pursuant to § 43-9 of this subtitle or issuance of a closing order:

34 (1) the owner, lessor, or agent may immediately terminate the tenancy; and

1 (2) if the lessee and any other occupants of the property fail to vacate the premises, the
2 owner, lessor, or agent may use the conviction order in an action pursuant to the
3 tenant-holding-over, breach-of-lease, or tenant-at-will provisions of law.

4 **§ 43-9. Rules and regulations.**

5 The Commissioner shall promulgate rules and regulations that may be necessary or proper to
6 effectuate the purpose and the provisions of this subtitle, including advising the premises
7 owner, or agent, of an arrest or conviction for the criminal conduct defined in § 43-1 of this
8 subtitle occurring in those premises which the Commissioner determines will be subject to
9 this subtitle, and the procedure and terms of posting bonds.

10 **§ 43-10. Judicial and appellate review.**

11 (a) *Judicial review.*

12 Any person aggrieved by any act of the Commissioner taken under this subtitle may seek
13 judicial review of that act by petition to the Circuit Court for Baltimore City in
14 accordance with the Maryland Rules of Procedure.

15 (b) *Appellate review.*

16 A party to the judicial review may appeal the court's final judgment to the Court of
17 Special Appeals in accordance with the Maryland Rules of Procedure.

18 **§ 43-11. {Reserved}**

19 **§ 43-12. Prohibited conduct; penalties.**

20 (a) *Destruction, etc., of posted order.*

21 Any person who destroys, removes, or defaces an order posted by the Commissioner is
22 guilty of a misdemeanor punishable by a fine of not more than \$300 or imprisonment for
23 not more than 30 days, or both.

24 (b) *Failure to obey order.*

25 (1) Any person:

26 (i) who intentionally disobeys any proper order issued by the Commissioner; or

27 (ii) who uses or occupies or permits any other person to use or occupy any
28 premises ordered closed,

29 is guilty of a misdemeanor punishable by a fine of \$1,000 or imprisonment for not
30 more than 1 year, or both.

31 (2) Each day a violation of this subsection continues is a separate offense.

1 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
2 are not law and may not be considered to have been enacted as a part of this or any prior
3 Ordinance.

4 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
5 after the date it is enacted.