

ORDINANCE NO. 809

**AN ORDINANCE DESCRIBING CHRONIC NUISANCE PROPERTY;
ESTABLISHING CRITERIA AND REGULATIONS FOR DETERMINATION
AND ENFORCEMENT OF ABATEMENT THEREOF (INCL. ALTERNATIVE
OF COURT ACTION WITH CIVIL PENALTIES);**

WHEREAS, the City of Stayton's Municipal Code (SMC) and the Oregon statues (ORS) provide the rules whereby citizens may enjoy a healthy, safe and peaceful City in which to live;

WHEREAS, the City's administration, through the Police Department and others, has established and conducts an on going enhanced safety properties program focusing on improving landlord – tenant premises occupancy relationships, endeavoring to minimize public disruptions, disturbances and nuisance activity on or near business district and residential (incl. multifamily dwellings) neighborhood properties;

WHEREAS, when specified properties are being chronically used as the site of activities prohibited by provisions of SMC and or ORS, which cause public disruptions, disturbance or nuisance, detrimental to the health, safety and welfare of the community, it is necessary to provide a means of deterring and eliminating such a condition at the site;

WHEREAS, it is the City Council's desire to establish by Ordinance regulations and processes to address the identification of prohibited acts and behavior and impose penalties for violations to include fines and abatement of the use and occupancy of chronic nuisance properties; and,

NOW, THEREFORE, the Stayton City Council does ordain as follows:

Section 1. Enactment of the Chronic Nuisance Property Ordinance, the text of which is attached hereto, designated Attachment 1 and, by this reference, incorporated herein.

ADOPTED BY THE STAYTON CITY COUNCIL this 7th day of February, 2000.

CITY OF STAYTON

Date:

2/9/00

By:

Henry A. Porter
HENRY A. PORTER, Mayor

Date: 2/9/00

Attest: 
DON EUBANK, Acting City Administrator

APPROVED AS TO FORM:


David A. Rhoten, City Attorney

TITLE 8. HEALTH AND SERVICES

CHAPTER 8.20

CHRONIC NUISANCE PROPERTY ORDINANCE

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8.20.010 TITLE OF PROVISIONS

This chapter shall be known as the “Chronic Nuisance Property Ordinance” (Ord. 809, February, 2000).

8.20.020 INCORPORATION OF STATE STATUTE AND STAYTON MUNICIPAL CODE

Any reference to state law or statute (Oregon Revised Statutes – “ORS”) or a provision of the Stayton Municipal Code (“SMC”) incorporated into this Ordinance refers to the state statute or SMC code provision in effect on the effective date of this Ordinance

8.20.030 DEFINITIONS

As used in this Ordinance, the following definitions apply:

1. “Chief of Police” means the Chief of the Stayton Police Department or designee.
2. “City Administrator” means the City Administrator of the City of Stayton or designee.
3. “Chronic Nuisance Property” means real property premises (including industrial, commercial or residential buildings), herein also referred to as the “property,” “premises” or “subject property,” upon, near (as hereinafter described in this section) or in which three or more distinct occurrences of any of the below listed prohibited acts or behaviors (as defined in Oregon law or the SMC) occur, or the patrons, employees, residents, owners or occupants thereof engage in three or more of said prohibited acts or behaviors on the property, or, in relation to the property within 400 feet of the property, during any 90 consecutive day period:
 - A. Criminal homicide or any type of attempted criminal homicide;
 - B. Rape in the First Degree;
 - C. Menacing;
 - D. Intimidation;

- E. Harassment;
 - F. Disorderly Conduct;
 - G. Discharge of Weapons;
 - H. Unnecessary Noise (SMC, Title 8 - HEALTH & SAFETY, Section 8.04.140 Noise & Vibrations);
 - I. Drinking in Public Places (SMC, Title 8 - HEALTH & SAFETY, Section 8.04.055 Prohibited Consumption of Alcoholic Beverages on Public Property);
 - J. Minor in Possession of Alcohol;
 - K. Assault;
 - L. Sexual Abuse;
 - M. Public Indecency;
 - N. Public Indecency (SMC, Title 9 - PUBLIC PEACE & WELFARE, Section 9.20.410 Public Urination or Defecation);
 - O. Criminal Mischief;
 - P. Criminal Mistreatment;
 - Q. Criminal Trespass; or,
 - R. Unlawful Use of a Weapon
4. "Owner" means the person(s) (including individual(s), corporation, partnership or other entity) having legal or equitable title to the property. "Property" means any real property and any improvement thereon incidental or appurtenant, including but not limited to any room, apartment, house, building, structure or any separate part or portion thereof, whether permanent or not.
5. "Responsible party" includes:
- A. The owner of the property, or the owner's manager or agent or other person or entity in control of the property on behalf of the owner; and/ or,
 - B. The person or entity occupying the property, including a bailee, lessee, tenant or other having possession.
 - C. Responsible party for a specific property shall be presumed from the following:
 - (1) The owner and the owner's agent, as shown on the Assessor's tax rolls of Marion County.
 - (2) The resident or occupant of the property, as shown on the records (including utilities records) of the City of Stayton.
6. "Court" means a court of competent jurisdiction, which may address the respective issue.

8.20.040 CHRONIC NUISANCE PROPERTY

- 1. The behavior, acts or omissions described in this Ordinance are hereby declared to be nuisances and if they commonly reoccur in relation to a specific property, such property may be declared 'chronic nuisance property,' thereby requiring the application of remedies set out in this Ordinance.

2. Any property within the City of Stayton, which is found to be a chronic nuisance property, shall be in violation of this Ordinance and subject to its remedies.
3. Any person who is a responsible party for property, which is deemed a chronic nuisance property, shall be in violation of this Ordinance and subject to its remedies.

8.20.050 PREFILING NOTIFICATION PROCEDURE

After two occurrences on or near (as defined in this Ordinance) the property, of any of the prohibited acts or behaviors listed in this Ordinance, within a consecutive 90-day period, the Chief of Police or designee shall provide notification, via certified mail, return receipt requested, to all known responsible parties for the property, stating the times and places of the alleged occurrences and the potential liability for violation of this Ordinance. The City Administrator and City Attorney shall be provided copies of the notice.

8.20.060 COMPLIANCE AGREEMENT WITH RESPONSIBLE PARTY(IES)

1. After providing notification to all known responsible parties, the Chief of Police or designee has the authority to solicit and obtain, on behalf on the City, a voluntary agreement with the party(ies) to comply with the provisions of this Ordinance (“compliance agreement”). The compliance agreement shall be in writing and signed by all known responsible parties and the Chief of Police or designee on behalf of the City; a copy thereof shall be provided to the City Administrator.
2. In proposing the compliance agreement, the Chief of Police or designee shall consider the factors outlined in Section 8.20.090 2. below.
3. The compliance agreement is strictly remedial in nature and shall not be interpreted to limit in any manner the authority of the City to commence an action against any responsible party or another for a violation of any provision of the Stayton Municipal Code or Oregon law.
4. If the compliance agreement is not followed as agreed, the City may proceed with civil action as provided in this Ordinance or the provisions of the ORS or the Stayton Municipal Code.

8.20.070 COMMENCEMENT OF ACTIONS; SUMMONS AND COMPLAINT

1. In the event there occurs on or near (as defined in this Ordinance) the property three or more continued prohibited acts or behavior as listed in Section 8.20.030 of this Ordinance, contrary to the terms of the compliance agreement and/or in violation of this Ordinance, the Stayton City Council shall be advised and, upon deliberation, may direct that the City proceed to initiate court action pursuant to the provisions of this Ordinance or take such other action as the Council deems appropriate.
2. Except as otherwise noted, the procedures to be used in processing a violation under this Ordinance are contained in SMC Title 1. GENERAL PROVISIONS, Ch. 1.32 General Penalty and Title 2. ADMINISTRATION AND PERSONNEL, Ch. 2.20 Municipal Court.
3. Subject to the provisions of SMC Title 1. GENERAL PROVISIONS, Sections 1.32.970, Violation: Penalty, 1.32.980, Each Act a Separate Violation, and 1.32.990, Default of Payment, following the filing of an action in a court of competent jurisdiction, upon verification of proper service of process of the Summons and Complaint, and a prima facie presentation to the Court, a default judgment and order may be entered against a respondent who fails to duly appear before that court.

8.20.080 REMEDIES; FINES; CIVIL PENALTY; ENFORCEMENT ORDER

1. In the event the respondent(s) is found by a preponderance of the evidence to have violated this

Ordinance, the court may, by judgment and order:

- A. Require that the chronic nuisance property be closed against all use and occupancy for a period of not less than 30 days, but not more than 180 days; and/or,
 - B. Assess a fine of not more than \$250.00 for each offense.
 - C. Subsequent acts and behavior in violation of the provisions of this Ordinance, which occur within two years following the entry of any earlier judgment and order, may be actionable, at the direction of the City Council, and, if violation(s) of this Ordinance is established, the chronic nuisance property may be closed in accordance with this Section, and the court may impose a civil penalty of a fine of not more than one thousand dollars (\$1,000.00).
 - D. In addition to above, the court may employ any other remedy provided by law, deemed by the court to be appropriate to abate the nuisance.
 - E. In addition to the above, the court may assess costs and charges as described in Section 8.20.110.
2. In lieu of closure of the property, at the court's discretion, the respondent may be permitted to file a bond with the City that is acceptable to the court and subject to the court's satisfaction of the respondent's good faith commitment to abatement of the nuisance. Such bond shall be in the amount of at least \$500 and shall be conditioned upon the non-recurrence, for a period of one year after entry of the judgment, of any of the acts or behaviors listed in Section 8.20.030 of this Ordinance. Forfeiture of the bond is subject to court review and order.
 3. The court may authorize the City to physically secure the subject property against use or occupancy, in compliance with the judgment or order, in the event the owner(s) or the responsible party (ies) fail to do so within the time specified by the court.

8.20.090

DEFENSES; MITIGATION

1. It is a defense to an action brought pursuant to this Ordinance, that the responsible party, the respondent, at the time the alleged action or behavior occurred, could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is a chronic nuisance property. The assertion that the party, the respondent, was not present at the property at the time the alleged acts or behavior occurred upon which the property was deemed chronic nuisance property, shall not, alone, be a defense to the action.
2. The court may consider any of the following factors, as appropriate, in its decision, and shall cite those found applicable:
 - A. The effort taken by the responsible party to mitigate or correct the alleged action or behavior which occurred at or near (as defined in this Ordinance) and in relation to the property;
 - B. Whether the alleged action or behavior was repeated or continuous;
 - C. The magnitude or gravity of the alleged action or behavior;
 - D. The cooperativeness of the responsible party with the City in causing the abatement of the alleged action or behavior;
 - E. The cost to the City of investigating and abating action or behavior or attempting to correct the condition; or,
 - F. Any other factor deemed by the court to be relevant.

8.20.100 EMERGENCY REMEDY

In addition to any remedy available to the City under this Ordinance or otherwise, in the event the City Administrator finds that a property or its use constitutes an immediate threat to the public safety and welfare, upon review and approval by the City Council, the City may apply to the court for such relief as is deemed appropriate.

8.20.110 COSTS; LIEN

1. The court may assess the property owner(s) and the responsible party (ies) the following costs incurred by the City in the proceeding:

A. Costs incurred in the actual physical securing of the subject property against use or occupancy, including, but not limited to, the cost of personnel, materials, medical costs, consulting fees, notices and equipment charges;

B. The City's investigative costs; and,

C. Administrative costs and attorney fees and costs (collectively referred to as cost) incurred in pre-filing implementation of the abatement process, together with the cost of the initiation and conducting of the court action.

2. The City Administrator may, within 14 days of the court's entry of judgment and order against the respondent(s), submit a signed detailed statement of costs (including attorneys' fees) to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rules of Civil Procedure, Rule 67, the amount submitted shall become a part of the judgment and a lien against the subject premises. A copy of the judgment and the statement of costs, together with a verified designation of the address and legal description of the property, shall be forwarded to the Stayton City Recorder, who shall enter the same in the Stayton City Lien Docket.

3. Persons assessed the costs and/or civil penalty pursuant to this Ordinance shall be jointly and severally liable for the payment thereof to the City.

8.20.120 ATTORNEY FEES

In any action brought pursuant to this Ordinance, the court may, in its discretion, award reasonable attorneys fees to the prevailing party.

8.20.130 SEVERABILITY

If any provision of this Ordinance, or its application to any person or circumstance, is held to be invalid for any reason, the remainder of the Ordinance, or the application of its provisions to other persons or circumstances, shall not in any way be affected.

8.20.140 NONEXCLUSIVE REMEDY

The remedies described in this Ordinance shall not be the exclusive remedies of the City in enforcement of the prohibition of the acts and behaviors described in Section 8.20.030.