

## ORDINANCE NO. 510

## AN ORDINANCE PROHIBITING CHRONIC NUISANCE PROPERTY AND PROVIDING PENALTIES FOR THE DESIGNATION THEREOF.

The City of Columbia City ordains as follows:

Section 1. Short Title. This ordinance may be cited as the “Columbia City Chronic Nuisance Property Ordinance.”

Section 2. Definitions.

A) Chronic Nuisance Property.

- 1) Property on which three or more nuisance activities have occurred during any thirty (30) day period;
- 2) Property on which, or within 200 feet of which, any person associated with the property has engaged in three or more nuisance activities during any thirty (30) day period; or
- 3) Property which, upon request for execution of a search warrant, has been the subject of a determination by a court that probable cause that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, 475.005 to 475.285, and/or 475.940 to 475.995 have occurred within the previous thirty (30) days.

B) Nuisance Activities. Any of the following activities, behaviors or criminal conduct:

- 1) Harassment as defined in ORS 166.065(1)(a).
- 2) Intimidation as provided in ORS 166.155 through 166.165.
- 3) Disorderly conduct as provided in ORS 166.025.
- 4) Assault or menacing as provided in ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185, or ORS 163.190.
- 5) Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as provided in ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435, or ORS 163.445.
- 6) Public indecency as provided in ORS 163.465.
- 7) Prostitution or related offenses as provided in ORS 167.007, ORS 167.012, and ORS 167.017.
- 8) Alcoholic liquor violations as provided in ORS Chapter 471.105 through 471.482.
- 9) Offensive littering as provided in ORS 164.805.
- 10) Criminal trespass as provided in ORS 164.243, 164.245, 164.255, or 164.265.
- 11) Theft as provided in ORS 164.015 through 164.140.

- 12) Arson or related offenses as provided in ORS 164.315 through 164.335.
- 13) Possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS 167.203, ORS 475.005 to 475.285, or ORS 475.940 to 475.995.
- 14) Illegal gambling as provided in ORS 167.117, ORS 167.122, or ORS 167.127.
- 15) Criminal mischief as provided in ORS 164.345 through 164.365.
- 16) Any attempt to commit (as defined by ORS 161.405), or conspiracy to commit (as defined by ORS 161.455), any of the above offenses.
- 17) Fire or discharge of a firearm.
- 18) Excessive noise.
- 19) Unlawful drinking in public places.
- 20) Curfew violation.

C) Council Member in Charge. The City Council Member assigned responsibility for the Police Department.

D) Control. The ability to regulate, restrain, dominate, counteract, or govern conduct that occurs on a property.

E) Person in Charge. Any person, in actual or constructive possession of a property, including, but not limited to, an owner or occupant of property under his or her dominion, ownership, or control.

F) Permit. To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

G) Person. Any natural person, agent, association, firm, partnership, or corporation capable of owning, occupying, or using property in the City of Columbia City.

H) Property. Any property, including land and that which is affixed, incidental or appurtenant to land, including, but not limited to, any business or residential premises, room, house, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property is limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring, but includes areas of the property used in common by all units of property including without limitation other structures erected on the property and areas used for parking, loading and landscaping.

I) Person Associated With. Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit, a property or person present on property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner thereof.

Section 3. Violation.

A) Any property within the City of Columbia City which is a chronic nuisance property, is in violation of this ordinance and subject to its remedies.

B) Any person in charge who permits property to be a chronic nuisance property shall be in violation of this ordinance and subject to its remedies.

Section 4. Procedure.

A) When the Columbia City Police Department receives two or more police reports documenting the occurrence of nuisance activity on or within 200 feet of a property within the City, the Chief of Police shall review such reports to determine whether they describe criminal acts enumerated under this ordinance, Section (2)(B)(1-20). Upon such a finding, the Chief may:

1) Notify the person in charge in writing that the property is in danger of becoming chronic nuisance property. The notice shall contain the following information:

a) The street address or a legal description sufficient for identification of the property.

b) A statement that the Chief has information that the property may be chronic nuisance property, with a concise description of the nuisance activities that may exist or that have occurred. The Chief shall offer the person in charge an opportunity to propose a course of action that the Chief agrees will abate the nuisance activities giving rise to the violation.

c) Demand that the person in charge respond to the Chief within ten (10) days to discuss the nuisance activities.

B) After complying with the notification procedures of Section (4)(A)(1), when the Chief of Police receives a police report documenting the occurrence of a third nuisance activity at or within 200 feet of a property and determines that the property has become chronic nuisance property, the Chief of Police shall:

1) Notify the person in charge that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:

a) The street address or a legal description sufficient for identification of the property.

b) A statement that the Chief of Police has determined the property to be chronic nuisance property with a concise description of the nuisance activities leading to his/her findings.

c) Demand that the person in charge respond within ten (10) days to the Chief of Police and propose a course of action that the Chief of Police agrees will abate the nuisance activities giving rise to the violation.

d) Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property believed to be a chronic nuisance property, or such other place which is likely to give the person in charge notice of the determination by the Chief of Police.

e) A copy of the notice shall be served on the owner at such address as shown on the tax rolls of the county in which the property is located, and/or the occupant, at the address of the property, if these persons are different than the person in charge, and shall be made either personally or by first class mail, postage prepaid.

f) A copy of the notice shall also be posted at the property if ten (10) days has elapsed from the service or mailing of the notice to the person in charge, and the person in charge has not contacted the Chief of Police.

g) The failure of any person to receive notice that the property may be a chronic nuisance property shall not invalidate or otherwise affect the proceeding under this ordinance.

2) Chronic nuisance property, as defined by section 2(A)(3), shall be subject only to the notification requirements of section (4)(B).

3) If after the notification, but prior to the commencement of legal proceedings by the City pursuant to this ordinance, a person in charge stipulated with the Chief of Police that the person in charge will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the Chief of Police may agree to postpone legal proceedings for a period of not less than ten (10) nor more than thirty (30) days, except in the case of nuisance activity under Section (2)(B)(13) where a search warrant was executed at the property. If the agreed course of action does not result in the abatement of the nuisance activity or if no agreement concerning abatement is reached within thirty (30) days, the Chief of Police may refer the matter to the Council Member in Charge and request authorization for the City Attorney to commence a legal proceeding to abate the nuisance.

4) Concurrent with the notification procedures set forth in Section (4)(B), the Chief of Police shall send copies of the notice, as well as any other documentation which supports legal

proceedings against the property, to the Council Member in Charge and to the City Attorney.

C) When a person in charge makes a response to the Chief of Police as required by Section (4)(A)(1)(c) or (B)(1)(c) above, any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have occurred or are occurring. This subsection does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.

Section 5. Burden of proof; Defenses; Mitigation of Civil Penalty.

A) In an action for chronic nuisance property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.

B) It is a defense to an action for chronic nuisance property that the person in charge at all material times 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 chronic nuisance property.

C) In establishing the amount of any civil penalty requested, the court may consider any of the following factors and shall cite those found applicable:

- 1) The actions taken by the person in charge to mitigate or correct the nuisance activities at the property;
- 2) The financial condition of the person in charge.
- 3) Whether the problem at the property was repeated or continuous;
- 4) The magnitude or gravity of the problem;
- 5) The cooperativeness of the person in charge with the City;
- 6) The cost to the City of investigating and correcting or attempting to correct the nuisance activities;
- 7) Any other factor deemed by the court to be relevant.

Section 6. Closure During Pendency of Action; Emergency Closures.

Any emergency closure proceeding initiated under this provision shall be based on evidence showing that nuisance activities have occurred on the property and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of emergency closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders. In such an event the notification procedures set forth in section (4)(A) and (B) need not be complied with.

Section 7. Commencement of Actions; Remedies.

A) The Council Member in Charge may authorize the City Attorney to commence legal proceedings in a court of competent jurisdiction to enjoin or abate chronic nuisance property and to seek closure, the imposition of civil penalties against any or all of the persons in charge thereof, and any other such relief deemed appropriate.

B) If after the commencement but prior to the trial of an action brought by the City pursuant to this ordinance, a person in charge of chronic nuisance property stipulates with the City that he or she will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the City may agree to stay proceedings for a period of not less than ten (10) days nor more than sixty (60) days, except in the case of nuisance activity under Section (2)(B)(13) involving drugs where a search warrant was executed at the property. The person in charge or the City may thereafter petition the court for such additional like periods of time as may be necessary to complete the action(s) to abate the nuisance activities. However, in the event that the City reasonably believes the person in charge of a property is not diligently pursuing the action(s) necessary to abate the nuisance activities, the City may apply to the court for release from the stay and may seek such relief as is deemed appropriate.

C) In the event a court determines property to be chronic nuisance property, the court shall order that the property be closed and secured against all access, use, and occupancy for a period of not less than six (6) months, nor more than one (1) year. The court shall retain jurisdiction during any period of closure. The person in charge may petition the court for an order reducing the period of closure if the person in charge and the City stipulate that the nuisance has been, and will continue to be, abated.

D) If a property is found to be chronic nuisance property in violation of this ordinance, the person in charge of the chronic nuisance property is subject to a civil penalty of up to \$100 per day for each day nuisance activities occurred on the property following notice pursuant to Section 4(B).

Section 8. Enforcement.

A) The court may authorize the City to physically secure the property against all access, use or occupancy in the event that the person in charge fails to do so within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to physically secure the property shall be paid to the City by the person in charge and may be included in the City's money judgment. As used in this subsection, "costs" mean those costs actually

incurred by the City for physically securing the property, as well as tenant relocation costs pursuant to Subsection (A)(4) of this section.

1) The City shall prepare a statement of the costs of physically securing the property, and the City shall thereafter submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rule of Civil Procedure 68, the statement of costs shall be included in the City's money judgment.

2) Judgments imposed by this ordinance shall bear interest at the rate of nine (9) percent per year from the date the judgment is entered.

3) Any person who is assessed the costs of physically securing the property by the court shall be personally liable for the payment thereof to the City.

4) The person in charge shall pay reasonable relocation costs of a tenant as defined by ORS 90.100(16), if, without actual notice, the tenant moved into the property after either:

a) A person in charge received notice of the Chief of Police's determination pursuant to Section (4)(A); or

b) A person in charge received notice of an action brought pursuant to Section (7)(A).

Section 9. Attorney Fees. In any action pursuant to this ordinance, the court may, in its discretion, award attorney's fees to the prevailing party.

[Section 10. Severability.]

Passed by the council and approved by the mayor June 19, 1997.