

ORDINANCE NO. 511

AN ORDINANCE PROHIBITING SPECIFIED CRIME 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 Specified Crime Ordinance.”

Section 2. Specified crime property prohibited.

A) It is unlawful for any structure to be employed or used as specified crime property within the City of Columbia City. If a structure is found to be used or employed in violation of this subsection, it is subject to closure for a period of up to 1 year.

B) It is unlawful for any person to employ, use, maintain, or allow the employment, use or maintenance of structures under their ownership and/or control as specified crime property. If persons are found in violation of this subsection, they are subject to civil penalties of up to \$500 per day for each day the property has been so employed, used, or maintained.

C) It is unlawful for any person to use or occupy any structure determined to be specified crime property after service of notice has been made pursuant to Section (4).

1) The provisions of Subsection (C) may be waived by the City in the event that the Chief of Police, Council member in charge, or a court of competent jurisdiction determines that exigent circumstances are such that the use or occupancy of the structure prior to a full court hearing is mandated.

2) Any occupant who fails to voluntarily cease the use or occupancy of a structure as required by Subsection (C) may be removed only pursuant to a court order after notice and an opportunity to be heard by the court having jurisdiction of an action brought pursuant to this ordinance.

Section 3. Definitions. As used in this ordinance, the following terms have the meanings given them in this section.

A) Guidelines. The “Interim Guidelines for the Reduction of Contamination in Buildings used as “Methamphetamine Drug Labs” found at Section 4 of the “Hazardous Chemical Guidelines” (4th Ed., June, 1988) published by the Oregon Department of Human Resources, Health Division.

B) Specified Crime Property. Any kind of structure, edifice, building or unit(s) thereof where activity involving the unauthorized delivery or manufacture of a controlled substance as defined in ORS Chapter 475, gambling as defined in

ORS 167.117, or prostitution as defined in ORS 167.007 has occurred or is occurring.

C) Owner. Any person, agent, firm, corporation, association, or partnership including:

- 1) A mortgagee in possession in whom is vested:
 - a) All or part of the legal title to property, or
 - b) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or
- 2) An occupant of that structure.

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

Section 4. Procedure.

A) When the Chief of Police believes that a structure has been or is being used or maintained in violation of this ordinance, the Chief of Police may commence proceedings to cause the closure of the structure as well as the imposition of civil penalties against any or all of its owner(s). Except in cases brought pursuant to Section 6, in the event the Chief of police wishes to commence proceedings:

- 1) The Chief shall notify the owner(s) of record in writing that the structure has been determined to be specified crime property. The notice shall contain the following information:
 - a) The street address and a legal description sufficient for identification of the premises on which the structure is located.
 - b) A statement that the Chief of Police has found the structure to be in violation of this chapter with a concise description of the condition leading to his/her findings.
- 2) A copy of the notice shall be served on the owner and/or their agent, if known, at least 10 days prior to the commencement of any judicial action by the City. Service shall be made either personally or by mailing a copy of the notice by registered or certified mail, postage prepaid, return receipt requested, to each person at their address as it appears on the last equalized assessment of the tax roll as well as on the last instrument of conveyance as recorded in the county where the structure is located and as may be otherwise known to the Chief of Police. If no address appears or is known to the Chief of Police, then a copy shall be mailed first class, postage prepaid, addressed to such person at the address of the structure believed to be specified crime property.
- 3) A copy of the notice shall be served on the occupant of the structure if that person is different than the owner and shall occur not less than 5 days prior to the commencement of any judicial proceeding and be made either personally or by mailing a copy of the notice by first class mail, postage prepaid, to them at the structure. A copy of the notice may be posted at the property if 10 days has elapsed from the service or

mailing of the notice to the owner(s), and no contact has been received by the City from them during that period of time.

4) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this ordinance.

B) Concurrent with the notification procedures set forth above, the Chief of Police shall send a copy of the notice to the Mayor as well as any other documentation which he/she believes supports the closure of the structure and the imposition of civil penalties. The Mayor may then authorize the City Attorney to commence civil proceedings in a court of competent jurisdiction seeking the closure of the structure as well as the imposition of civil penalties against any or all of the owners thereof, and any such other relief as may be deemed appropriate. Nothing contained in this subsection shall be construed to limit the ability of the Mayor prior to the institution of judicial proceedings to enter into agreements with an owner willing to voluntarily abate the condition(s) giving rise to the violation.

Section 5. Commencement of actions; Burdens of proof; Defenses; Mitigation of Civil Penalty.

A) Except in a proceeding under Section 6, if after the commencement but, prior to the trial of an action brought by the City pursuant to this ordinance, an owner specifically stipulates with the City that they will pursue a course of action as the parties agree will necessarily abate the conditions giving rise to the violation(s), the City shall agree to stay proceedings for a period of not less than 10 nor more than 60 days. The owner or the City may thereafter petition the court for such additional like periods of time as may be necessary to complete the action(s) contemplated by the stipulation. It may then apply to the court for a release from the stay seeking some relief as is deemed appropriate.

B) In an action seeking the closure of a structure as specified crime property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the structure is a specified crime property.

C) In an action seeking civil penalties from an owner, the City shall have the initial burden of proof to show by a preponderance of the evidence that the owner had knowledge of activities or conditions at the structure constituting a violation of this ordinance.

D) In any action brought to enforce the terms of Section (2), evidence of a structure's general reputation and the reputation of persons residing in or frequenting it shall be admissible as competent.

E) Except in an action brought pursuant to Section (6)(B), it is a defense to an action seeking the closure of a structure that the owner of a structure at the time in question could not, in the exercise of reasonable care or diligence, determine that the structure was being used or maintained as a specified crime property.

F) In establishing the amount of any civil penalty requested, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:

- 1) the actions(s) taken by the owner(s) to mitigate or correct the problem at the structure
- 2) the financial condition of the owner
- 3) whether the problem at the structure was repeated or continuous
- 4) the magnitude or gravity of the problem
- 5) the economic or financial benefit accruing or likely to accrue to the owner(s) as a result of the conditions of the structure
- 6) the cooperativeness of the owner(s) with the City
- 7) the cost to the City of investigating and correcting or attempting to correct the condition
- 8) any other factor deemed by the court to be relevant

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

A) In the event that it is determined that the structure is an immediate threat to the public safety and welfare, the City may apply to the court for such interim relief that is deemed by the Mayor and/or City Attorney to be appropriate. In such an event, the notification procedures set forth in Section (4)(A) and the limitation of Section (5)(A) need not be complied with.

B) In the event the Chief of Police determines a structure is, or has been, used as the locale for the manufacture of controlled substances that involve the use of toxic, flammable, or explosive substances as defined in 49 CFR 172 (1988) and/or processes that, in the opinion of Police Department or Fire Department personnel, present a continuing threat to the public's safety or welfare, the City may obtain an order from the court preventing that structure's use or occupancy for a period of 60 days.

1) No person shall enter the structure during the first 20 days of this 60-day period without first obtaining the prior written approval of the City or an order of the court. After the expiration of this 20-day period, the owner may enter the structure to clean and decontaminate it in accordance with guidelines established by the Oregon Department of Human Resources, Health Division.

2) After cleaning and/or decontaminating the structure, the owner shall attest in writing on a form to be provided by the City and sent to the Hazardous Materials Coordinator of the St. Helens Fire department that the structure has been cleaned and/or decontaminated in accordance with the guidelines aforementioned in above Subsection (1) of this section. At this time, the structure may be reused or reoccupied, provided it is not otherwise subject to the provisions of this ordinance.

3) In the event the owner fails to comply with the provisions of Subsection (2) above, the City may seek an order preventing the use or

occupancy of the structure for such further time as, under the circumstances it deems appropriate, unless the owner shows to the satisfaction of the court that the structure no longer presents a continuing threat to the public's safety or welfare from the toxic, flammable, or explosive substances and/or processes.

Section 7. Enforcement of Closure Order; Costs; Civil Penalty.

A) In the event that a court finds that a structure constitutes specified crime property as defined in this ordinance, the court may order that it be closed for any period of up to 1 year and that the owner(s) pay to the City a civil penalty of up to \$500 for each day the owner had knowledge of activities or conditions at the structure constituting a violation of this ordinance.

B) The court may also authorize the City to physically secure the structure against use or occupancy in the event that the owner(s) 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 effect a closure shall be made an assessment lien upon the property. As used in this subsection, "costs" means those costs actually incurred by the City for the physical securing of the structure, as well as tenant relocation costs given pursuant to Subsection (B)(3) of this section.

1) The City shall prepare a statement of costs, 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, a certified copy of the statement, including a legal description of the property, shall be entered into the docket of a court of competent jurisdiction.

2) Liens imposed by this ordinance shall be collected as street improvement liens and shall bear interest at the rate of 9 percent per year from 10 days after the entry in the court docket.

3) A tenant as defined by ORS 91.705(13) is entitled to their reasonable relocation costs as those are determined by the City, if without actual notice the tenant moved into the structure after either:

a) An owner(s) or agent received notice of the Chief of Police's determination pursuant to Section (4)(A); or

b) An owner(s) or their agent received notice of an action brought pursuant to Section (6).

C) Any person who is assessed the costs of closure and/or a civil penalty by the court shall be personally liable for the payment thereof to the City.

Section 8. Relief from Closure Order. An owner of a structure determined to be specified crime property may obtain relief from the court's judgment if;

A) They appear and pay all costs associated with the proceedings under this ordinance.

B) They file a bond in such a place and form as the court may by order direct in an amount not less than the tax assessed value of the structure; and keep said bond in force for a period of not less than 1 year or for such period as the courts direct.

C) They enter into a stipulation with the City that they will immediately abate the conditions giving rise to the specified crime property and prevent the same from being established or maintained thereafter. The stipulation will then be made part of the court's file. In the event that the owner violates the terms of the stipulation, the City may thereafter apply to the court for an order awarding up to the entire amount of the aforementioned bond to the City as a penalty as well as such other relief, including closure for any additional period of up to 1 year, that is deemed by the court as appropriate.

Section 9. Attorney Fees. In any action seeking the closure of the structure pursuant to this ordinance, the court may, in its discretion, award attorneys fees to the prevailing party.

[Section 10. Severability.]

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