

ORDINANCE NO. 1241

AN ORDINANCE FOR ESTABLISHING OFFENSE OF CHRONIC NUISANCE PROPERTY

WHEREAS, Chapter II, Section 4 of the City of Prineville Charter provides:

Powers. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as this charter specifically enumerated each of those powers.

WHEREAS, State law codified as ORS 105.550 to 105.600, Abatement of Nuisance, provides the City of Prineville specific authority to abate certain public nuisance activities that affects the health, safety and welfare of its community; and

WHEREAS, violation of certain city ordinances affects the health, safety and welfare of the community at large and are therefore such activity is reasonably deemed as a public nuisance and in some cases a private nuisance to those directly impacted by the nuisance activity; and

WHEREAS, through enforcement of its ordinances, the City finds that abatement of a single nuisance is ineffective in protecting the health, safety, and welfare of the community at large when conditions or activities related to the use of property give rise to a series of public nuisances over time otherwise referred to as a “Chronic Nuisance”; and

WHEREAS, ORS 105.550 to 105.600, Abatement of Nuisance, does not specifically address Chronic Nuisance activity, yet provide it common and tested procedures that make enforcement of an abatement remedy more efficient and reliable thereby reducing costs to the City to administer and reduces the risk of challenges by parties subject to the abatement process; and

WHEREAS, the City wishes to utilize the form of ORS 105.550 to ORS 105.600, Abatement of Nuisance, to include and prosecute certain city ordinance regulations likely giving rise to Chronic Nuisance while tailoring the statutes to address city concerns for specific citizens potentially affected unfairly and adversely by the abatement process.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AS FOLLOWS:

1. The Council hereby adopts proposed Chapter 98, Chronic Nuisance Property, attached to this Ordinance, the Prineville City Code.
2. The Ordinance shall be effective 30 days following its passage by the City Council.

Presented for the first time at a regular meeting of the City Council held on July 10, 2018, and the City Council finally enacted the foregoing ordinance this ____ day of July, 2018.

Betty J. Roppe
Mayor

ATTEST:

Lisa Morgan, City Recorder

Chapter 98
Chronic Nuisance Property

Sections:

- 98.10 Chronic Nuisance Property
- 98.20 Definitions
- 98.30 Remedy
- 98.40 Procedure
- 98.50 Commencement of Actions; Burdens of Proof; Defenses; Mitigation of Civil Penalty
- 98.60 Closure During Pendency of Action; Emergency Closures
- 98.70 Enforcement of Closure Order; Costs; Civil Penalty
- 98.80 Severability
- 98.90 Attorney Fees

98.10 Chronic Nuisance Property

A. Any property within the City of Prineville which becomes a chronic nuisance property is in violation of this chapter and subject to its remedies.

B. Any person who permits property under his or her ownership or control to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

98.20 Definitions

A. **Chronic Nuisance Property** means

1. Property on which three or more Nuisance Activities exist or have occurred during any thirty (30) day period; or
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 through 475.285 and/or 475.940 through 475.995 has occurred within the previous thirty (30) days, and the Chief of Police has determined that the search warrant was based on evidence of continuous or repeated Nuisance Activities at the Property; or
4. Property on which continuous or repeated Nuisance Activities as defined in Prineville City Code 98.10(D) 6, 7,8, 10, 12 and/or 13 and/or 14 exist or have occurred.

B. **Chief** means the City of Prineville Chief of Police or the Chief's designee.

C. **Control** means the ability to regulate, restrain, dominate, counteract, or govern conduct that occurs on that property.

D. **Nuisance Activities** means any of the following activities, behaviors, or conduct:

1. Harassment as defined in ORS 166.065(1)(a);
2. Intimidation as defined in ORS 166.155 through 166.165;
3. Disorderly conduct as defined in ORS 166.025;
4. Assault or menacing as defined in ORS 163.160 through ORS 163.190;
5. Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as defined in ORS 163.415 through ORS 163.445;
6. Public indecency as defined in ORS 163.465;
7. Prostitution or related offenses as defined in ORS 167.007 through ORS 167.017;
8. Alcoholic liquor violations as defined in ORS Chapter 471.105 through 471.482;
9. Offensive littering as defined in ORS 164.805;
10. Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through 475.285, and/or 475.940 through 475.995;
11. Illegal gambling as defined in ORS 167.117 and/or ORS 167.122 through ORS 167.127;
12. Unlawful Use of Weapon as defined in ORS 166.220;
13. Any attempt to commit (as defined in ORS 161.405) and/or conspiracy to commit (as defined in ORS 161.450), any of the above activities, behaviors or conduct; and
14. Excessive Noise as defined in Prineville City Code 93.58.

E. **Owner** means any tenant, renter or lessee or any person, agent, firm, or corporation having a legal or equitable interest in a property. Owner also includes, but is not limited to:

1. A mortgagee in possession in whom is vested:
 - a. All or part of the legal title to the 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 who can control what occurs on that property.
3. Any person authorized to enter into a rental agreement

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

G. **Person** means any actual person, association, partnership, or corporation capable of owning or using property in the City of Prineville.

H. **Person Associated With** means 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 a Property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a Property, Person in Charge, or Owner of a Property.

I. **Property** means any real property including land and that which is affixed, incidental, or appurtenant to land, including but not limited to any premises, room, house, building or structure, or any separate part or portion thereof, whether permanent, or not.

98.30 Remedy

A. In the event a court determines property to be chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for not more than 180 days, or the court may employ any other remedy deemed by it to be appropriate to abate the nuisance.

In establishing the length of closure of the property, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:

1. The actions taken by the owner(s) to mitigate or correct the problem at the property;
 2. Whether the problem at the property was repeated or continuous;
 3. The magnitude or gravity of the problem;
 4. The cooperativeness of the owner(s) with the City;
 5. For rental properties, wither a responsible tenant is ready to occupy the property;
- or
6. Any other factor deemed by the court to be relevant.

B. In addition to the remedies provided for in paragraph A above, the court may impose upon the owner of the property a civil penalty in any amount up to \$100.00 a day, payable to the City, or each day the owner had actual knowledge that the property was a chronic nuisance property and permitted the property to remain a chronic nuisance property.

98.40 Procedure

A. When the Chief of Police receives two or more police reports documenting the occurrence of Nuisance Activities on or within 200 feet of a Property, the Chief shall notify the owner(s) of record and the occupant(s) of the property of the incidences that have occurred and the remedies available to the City under this ordinance. Notice under this provision is sufficient if it sent certified mail, return receipt requested, addressed to such person at the address of the property where the incidences occurred, and to such other address as shown on the tax rolls of Crook County or such other place which is believed to give the owner actual notice.

B. When the Chief believes in good faith that property has become chronic nuisance property, the Chief shall notify the owner(s) of record in writing that the property has been determined to be chronic nuisance property. The notice shall contain the following information:

1. The street address and a legal description sufficient for identification of the property;
2. A statement that the Chief has found the property to be a chronic nuisance property with a concise description of the conditions leading to these findings;
3. A copy of the notice shall be served on the owner at least 10 days prior to the commencement of any judicial action by the City. Service shall be mailed first class, postage prepaid, addressed to such person at the address of the property believed to be a chronic public nuisance property, and to such other address as shown on the tax rolls of Crook County or such other place which is believed to give the owner actual notice of the determination by the Chief.
4. A copy of the notice shall be served on the occupant of the property if that person is different than the owner and shall occur not less than 10 days prior to the commencement of any judicial proceedings and be made either personally or by mailing a copy of the notice by first-class mail, postage prepaid, to them at the property. Notwithstanding any other provision of this ordinance commencement of judicial proceedings shall occur not less than 30 days from the date of the mailing of the notice described in Section 98.40(A), except as provided in Section 98.60.

Furthermore, a copy of the notice shall 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.

5. The failure of any person or owner to receive actual notice of the determination by the Chief shall not invalidate or otherwise affect the proceedings under his chapter.

C. Concurrent with the notification procedures set forth above, the Chief shall send a copy of the notice to the City Attorney as well as any other documentation which the Chief believes supports the closure of the property and the imposition of civil penalties. The City Attorney may then 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.

98.50 Commencement of Actions; Burdens of Proof; Defenses; Mitigation of Civil Penalty

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

B. It is a defense to an action seeking the closure of a chronic nuisance property that the owner of the property at the time in question 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 finding that the property is chronic nuisance property.

C. In an action seeking civil penalties pursuant to Section 98.30(B), the City shall have the initial burden of proof to show by a preponderance of the evidence that the conditions of that subsection are specified.

D. 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 taken by the owner(s) to mitigate or correct the problem at the property;
2. Whether the problem at the property was repeated or continuous;
3. The magnitude or gravity of the problem;
4. The cooperativeness of the owner(s) with the City;
5. The cost to the City of investigating and correcting or attempting to correct the condition; and
6. Any other factor deemed by the court to be relevant.

98.60 Closure During Pendency of Action; Emergency Closures

In the event that it is determined that the property 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 Chief or

City Attorney to be appropriate. In such an event, the notification procedures set forth in Section 98.40(A) need not be complied with.

98.70 Enforcement of Closure Order; Costs; Civil Penalty

A. In the event that a court finds that property constitutes a chronic nuisance property as defined in this chapter, the court may order the remedies set out in Section 98.30. In addition, in the event the court also finds that the owner had knowledge of activities or conditions at the property constituting a violation of this chapter and nonetheless permitted the activities to occur, the court may utilize the penalties provided for in Section 98.30(B).

B. The court may authorize the City to physically secure the property against use or occupancy in the event that the owner(s) fail 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" mean those costs actually incurred by the City for the physical securing of the property, as well as tenant relocation costs given pursuant to subsection B(4) of this Section.

1. The City Department effecting the closure 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 Rules of Civil Procedure 68, a certified copy of the statement including a legal description of the property, shall be forwarded to the City Recorder who thereafter shall enter the same in the City's lien docket.

2. Liens imposed by this chapter shall be collected in all respects for street improvement liens and shall bear interest at the rate of nine (9) percent per year from ten (10) days after entry in the lien docket.

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

4. A tenant, as defined in ORS 90.100 is entitled to reasonable relocation costs as those are determined by the City, if without actual notice the tenant moved into the property after either:

a. An owner(s) or agent received notice of any determination pursuant to Section 98.40(A); or

b. An owner(s) or their agent received notice of an action brought pursuant to Section 98.50.

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98.80 Severability

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

98.90 Attorney Fees

The Court may, in its discretion, award reasonable attorney's fees to the prevailing party regarding any action brought under this Chapter.