

ORDINANCE NO. 1813
MILWAUKIE, OREGON

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON AMENDING TITLE 9, PUBLIC SAFETY, OF THE MUNICIPAL CODE BY ADDING CHAPTER 9.20, CHRONIC NUISANCE PROPERTY.

WHEREAS, chronic criminal activity of various kinds adversely affects the health, safety and welfare of Milwaukie's citizens, and diminishes the quality of life in neighborhoods where this activity occurs. As such, chronic criminal activity constitutes a nuisance and should be subject to abatement; and

WHEREAS, the City has a substantial and compelling interest in protecting the health, safety and welfare of its citizens and the neighborhoods affected by chronic criminal activity; and

WHEREAS, the legal processes presently available to the City do not provide an adequate remedy for the control of chronic criminal activity; and

WHEREAS, it is necessary to have a method for the City to mitigate the deleterious impacts of chronic and persistent criminal activity that occurs at identifiable specific locales in the City; and now, therefore:

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1: Title 9 of the Milwaukie Municipal Code is amended by adding Chapter 9.20, Chronic Nuisance Property, to read as follows:

9.20.010 Definitions. As used in this Chapter, the following terms shall mean as set out below:

- A. Chronic Nuisance Property.
 - 1. Property on which three or more nuisance activities have occurred during any thirty (30) day period; or
 - 2. Property on 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, by 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, ORS 475.005 to ORS 475.285 and/or ORS 475.940 to ORS 475.995 has occurred within the previous thirty (30) days.

B. Nuisance Activities.

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 ORS 166.165.
3. Disorderly conduct as defined in ORS 166.025.
4. Assault or menacing as defined 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 defined in ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435, or ORS 163.445.
6. Public indecency as defined in ORS 163.465.
7. Prostitution or related offenses as defined in ORS 167.007, ORS 167.012, and ORS 167.017.
8. Alcoholic liquor violations as defined in ORS 471.105 through ORS 471.482.
9. Offensive littering as defined in ORS 164.805.
10. Criminal trespass as defined in ORS 164.243, ORS 164.245, ORS 164.255, ORS 164.265.
11. Theft as defined in ORS 164.015 through ORS 164.140.
12. Arson or related offenses as defined in ORS 164.315 through ORS 164.335.

13. Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 to ORS 475.285, or ORS 475.940 to ORS 475.995.
14. Illegal gambling as defined in ORS 167.117, ORS 167.122, and ORS 167.127.
15. Criminal mischief as defined in ORS 164.345 through ORS 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 as provided in MMC Chapter 9.12.
18. Curfew as provided in MMC Chapter 9.08.
19. Noise as provided in MMC Chapter 8.08.

C. Control.

The ability (exercised or not) to regulate, restrain, counteract or govern conduct that occurs on a property.

D. Person in Charge.

Any person, in actual or constructive possession of a property, including but not limited to an owner, lessee or other occupant of property who has such property under their dominion, ownership or control.

E. Permit.

To suffer, allow, consent to, or acquiesce to the doing (or failure to do) of an act.

F. Person.

Any natural person, agent, association, firm, partnership, limited liability company, corporation or other entity capable of owning, occupying or using property in the City of Milwaukie.

G. Property.

Any real property, and that which is affixed, incidental or appurtenant thereto, including but not limited to any commercial structure or residence, parking area, loading area, landscaping, building or structure (or any part, unit or portion thereof), used or intended to be used therefor. In the event the property consist of more than one unit, the term "property" may be limited locationally to the unit or the portion of the property where the nuisance activity has occurred or is occurring.

9.20.020 Violation.

- A. Any property within the City of Milwaukie which is chronic nuisance property is in violation of this Chapter and subject to its remedies.
- B. Any person in charge who permits property to be chronic nuisance property is in violation of this Chapter and subject to its remedies.

9.20.030 Procedure.

- A. When the Chief of the Milwaukie Police Department receives two or more reports documenting the occurrence of nuisance activity on a property, the Chief shall review said reports to determine whether they describe and act(s) enumerated under MMC §9.20.010(B). In the event it is determined that the reports describe such act(s), the Chief shall:
 - 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 has had at least two (2) reports of chronic nuisance activity, with a concise description of the activities, behaviors or conduct that have occurred;
 - c. An offer to the person in charge of an opportunity to propose a course of action, that the Chief agrees will abate the nuisance activities; or in the alternative,

- d. A demand that the person in charge respond to the Chief within ten (10) days to discuss the nuisance activities.
- B. In the event the Chief, after complying with the notification procedures set out above, receives a police report documenting the occurrence of one or more incidents of nuisance activity at a property within ninety (90) days of sending the notice referred to in subsection (A) above, and determines that as a result of this activity the property has become chronic nuisance property, the Chief shall notify the person in charge in writing that the property has been determined to be chronic nuisance property.
 1. 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 determined the property to be chronic nuisance property with a concise description of the activities, behaviors or conducts leading to this determination.
 - c. A demand that the person in charge respond within ten (10) days to the Chief and propose a course of action that the Chief agrees will abate the nuisance activities giving rise to the violation.
 2. Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at such place likely to give the person in charge notice of the determination by the Chief.
 3. A copy of the notice shall also be served on the owner of the property at address shown on the tax rolls of Clackamas County, and/or the occupant of the property, at the address of the alleged chronic nuisance property, (if these persons are different than the person in charge), and shall be made either personally or by first class mail, postage prepaid.
 4. A copy of the notice shall also be posted by the Milwaukie Police at the property in the event at least ten (10) days has elapsed from the service or mailing of the notice to the person in charge, and person has not contacted the Chief.

5. The failure of any person to receive notice referred to in (B)(1) through (4) above shall not invalidate or otherwise affect the proceedings under this Chapter.
6. If after notification, but prior to commencement of legal proceedings by the City, a person in charge stipulates with the Chief that they will pursue a course of action which will satisfactorily abate the activities giving rise to the violation, the Chief may agree to postpone the filing of legal proceedings. However, should the agreed upon course of action not result in the satisfactory abatement of the nuisance activity, the Chief may refer the matter to the City Manager and request authorization for the City Attorney to commence a legal proceeding to abate the nuisance.
7. Concurrent with the notification procedures set forth in MMC §9.20.030(B), the Chief shall send copies of the notice, as well as other background documentation, to the City Manager and to the City Attorney.

9.20.040 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 a 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.
- C. It is a defense to an action seeking civil penalties that the person in charge 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.
- D. On the issue of whether a property is a chronic nuisance property, evidence of its general reputation and the reputation of persons residing in or frequenting it shall be admissible.
- E. 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 attempt to correct the nuisance activities;
7. Any other factor deemed by the court to be relevant.

9.20.050 Closure During Pendency of Action; Emergency Closures.

The City may, in the event there is an immediate threat to the public at large, seek the immediate closure of a structure without the necessity of giving the notices referred to above in Section 9.20.030(A) and/or (B). However, the City, as part of its case, will have to prove that there are at least three (3) reports of nuisance activity at the property in question in no more than sixty (60) days all within 120 days of the filing of an action.

9.20.060 Commencement of Actions; Remedies.

- A. The City Manager 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 the closure, imposition of civil penalties and/or, such other relief as the Court may deem appropriate.
- B. 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 unauthorized 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.
- C. If a property is found to be chronic nuisance property in this Chapter, a person(s) deemed to be the person in charge is subject to a civil penalty of up to \$500.00 per day for each day nuisance activities occur on the property.

9.20.070 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 City for physically securing the property, as well as tenant relocation costs pursuant to subsection (A)(4) of this section.
1. The City Department(s) physically securing the property 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 ORCP 68, the statement of costs shall be included in the City's judgment.
 2. 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.
 3. The person in charge shall pay reasonable relocation costs of a tenant as defined in ORS 90.100(16), if, without actual notice, the tenant moved into the property after either:
 - a. A person in charge received notice from the Chief of the Milwaukie Police Department's determination pursuant to MMC §9.20.030(A);
or
 - b. A person in charge received notice of an action brought pursuant to MMC §9.20.060(A).

9.20.080 Attorney Fees.

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

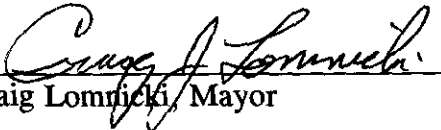
9.20.090 Severability.

The provisions of this Chapter are intended to be consistent with any applicable provisions of state law. If any provisions 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.

Read the first time on November 5, 1996 and moved to second reading by 4-0 vote of the City Council.

Read the second time and adopted by the City Council on November 5, 1996.

Signed by the Mayor on November 5, 1996.



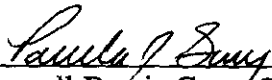
Craig Lomnicki, Mayor

ATTEST:



Pat DuVal, City Recorder

APPROVED AS TO FORM:



O'Donnell Ramis Crew Corrigan & Bachrach
pcr/acm/65021/chronic.or2(10/18/96)