

ORDINANCE No. 3740

AN ORDINANCE PROVIDING FOR THE ABATEMENT OF
PROPERTY WHICH CONTRIBUTES TO THE EXISTANCE OF
CERTAIN NUISANCES IN PENDLETON.

CITY OF PENDLETON ORDAINS AS FOLLOWS:

GENERAL PROVISIONS

SECTION 1. Title. This Ordinance shall be known as the "City of Pendleton Chronic Nuisance Property Ordinance."

SECTION 2. Definitions. For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. "Chronic Nuisance Property"

- (1) Property on which three or more nuisance activities exist or have occurred during any 90-day period; or
- (2) Property on which or within 400 feet of which any person associated with the property has engaged in three or more nuisance activities during any 90-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 does exist that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, 475.005 through 475.285 or ORS 475.940 through 475.995 has occurred within the previous 90 days, and the city Police Chief 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 divisions (7), (8), (13) and (14) of that definition, exist or have occurred.

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

"Nuisance Activities" means any of the following activities, behaviors or conduct:

- (1) Harassment as defined in ORS 166.065(l)(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 163.190.
- (5) Sexual abuse, contributing to the delinquency of a minor or sexual misconduct as defined in ORS 163.415 through 163.445.

- (6) Public indecency as defined in ORS 163.465 and City Ordinance 3409, Section 4.
- (7) Prostitution or related offenses as defined in ORS 167.007 through 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) Criminal trespass as defined in ORS 164.243 through 164.265.
- (11) Theft as defined in ORS 164.015 through 164.140.
- (12) Arson or related offenses as defined in ORS 164.315 through 164.335.
- (13) 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 ORS 475.940 through 475.995.
- (14) Illegal gambling as defined in ORS 167.117, or ORS 167.122 through 167.127.
- (15) Criminal mischief as defined in ORS 164.345 through 164.365.
- (16) Any attempt to commit (as defined in ORS 161.405), or conspiracy to commit (as defined in ORS 161.450), any of the above activities, behaviors or conduct.
- (17) Fire or discharge of a firearm as defined in City Ordinance 3409, Section 5.
- (18) Unlawful operation of sound producing or reproducing equipment as defined City Ordinance 3409, Section 3(5).
- (19) Curfew as defined in City Ordinance 3409, Section 23.

“Person” means any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using property in the city.

“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.

“Person in charge” means 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 ownership or control.

“Police Chief” means the Pendleton Chief of Police or the chief’s designee.

“Property” means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, 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 may be 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.

SECTION 3. VIOLATION.

A. Any property determined by the Police Chief to be chronic nuisance property is in violation of this ordinance and subject to its remedies.

B. Any person in charge of property determined by the Police Chief to be chronic nuisance property is in violation of this ordinance and subject to its remedies.

SECTION 4. PROCEDURE.

A. When the Police Chief receives two or more reports documenting the occurrence of nuisance activities on or within 400 feet of a property, the reports shall be reviewed to determine whether they describe the activities, behaviors or conduct enumerated under Section 2 of this ordinance "nuisance activities." Upon such a finding, the Police Chief may 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:

- (1) The street address or a legal description sufficient for identification of the property.
- (2) A statement that the Police Chief has information that the property may be chronic nuisance property, with a concise description of the nuisance activities that exist, or that have occurred. The Police Chief shall offer the person in charge an opportunity to propose a course of action that the Police Chief agrees will abate the nuisance activities giving rise to the violation.
- (3) Demand that the person in charge respond to the city Police Chief within thirteen days to discuss the nuisance activities. The thirteen-day grace period begins the day the notice is mailed.

B. When the Police Chief receives a police report documenting the occurrence of additional nuisance activity on or within 400 feet of a property after notification as provided by division (A); or, in the case of "chronic nuisance property" as defined in Section 2, subsection (3) of this ordinance or (4), for which notice under subsection (A) is not required, the Police Chief shall notify the person in charge in writing that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:

- (1) The street address or a legal description sufficient for identification of the property.
- (2) A statement that the Police Chief has determined the property to be chronic nuisance property with a concise description of the nuisance activities leading to his/her determination.
- (3) Demand that the person in charge respond within ten days to the city Police Chief and propose a course of action that the Police Chief agrees will abate the nuisance activities giving rise to the violation.

- (4) Service shall be made either personally or by first class mail, postage prepaid, addressed to the person in charge at the address of the property determined 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 Police Department.
- (5) A copy of the notice shall be served on the owner at the address shown on the tax rolls of the county in which the property is located, 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.
- C. If the person in charge fails to respond as required by subsection (B)(3), the Police Chief may refer the matter to the City Attorney. Prior to referring the matter to the City Attorney, the notice required by subsection (B) shall also be posted at the property.
- D. If the person in charge responds as required by subsection (B)(3) and agrees to abate nuisance activities giving rise to the violation, the Police Chief may postpone referring the matter to the City Attorney. If an agreed course of action does not result in the abatement of the nuisance activities within 60 days; or, if no agreement concerning abatement is reached within 60 days, the Police Chief may refer the matter to the City Attorney.
- E. When a person in charge makes a response to the Police Chief as required by subsections (A)(3) or (B)(3) any conduct or statement made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have occurred or are occurring. This section does not require the exclusion of any evidence, which is otherwise admissible or offered for any other purpose.
- F. The failure of any person to receive notice as provided by subsections (A) or (B) shall not invalidate or otherwise affect the proceedings under this ordinance.

SECTION 5. COMMENCEMENT OF ACTIONS; REMEDIES; BURDEN OF PROOF.

- A. The city Police Chief may request the City Attorney to commence legal proceedings in a court to 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 relief deemed appropriate.
- B. If the court determines the 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 30 days, nor more than one year. The order shall be entered as part of the final judgment. The court shall retain jurisdiction during any period of closure.
- C. If the court determines a property to be chronic nuisance property, the court may impose a civil penalty of up to \$100 per day for each day nuisance activities occurred on the property, following notice pursuant to Section 3(B) of this ordinance; or the cost to the city to abate the nuisance activities at the

property whichever is greater. The amount of the civil penalty shall be assessed against the person in charge and/or the property and may be included in the city's money judgment.

D. If satisfied of the good faith of the person in charge, the court shall not award civil penalties if the court finds 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.

E. In establishing the amount of any civil penalty, 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) Repeated or continuous nature of the problem;
- (4) The magnitude or gravity of the problem;
- (5) The cooperation 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 relevant by a court.

F. The city shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.

G. Evidence of a property's general reputation and/or the reputation of persons residing in or frequenting it shall be admissible.

SECTION 6. SUMMARY CLOSURE. Any summary closure proceeding shall be based on evidence showing that nuisance activities exist or 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 summary closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders. In the event of summary closure, the city is not required to comply with the notification procedures set forth in Section 4(A) and (B) of this ordinance.

SECTION 7. ENFORCEMENT.

A. The court may authorize the city to physically secure the property against all unauthorized 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, the city shall recover all costs reasonably incurred by the city to physically secure the property as provided by this section. 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 as provided by ORCP 68.

B. The person in charge shall pay reasonable relocation costs of a tenant as defined by ORS 90.100(28), if, without actual notice, the tenant moved into the property a person in charge received notice of the determination of the Police Chief pursuant to Section 3(B) of this ordinance.

C. A lien shall be created against the property for the amount of the city's judgment. In addition, any person who is assessed penalties under Section 4(C) or costs under Section 4(A) shall be personally liable for payment thereof to the city. Judgments imposed by this ordinance shall bear interest at the statutory rate.

PASSED by the City Council and approved by the Mayor ~~January~~ ^{February} 6, 2007

APPROVED: Phillip W. Houk
Phillip W. Houk
Mayor

ATTEST: Judi A. Zoske
Judi Zoske
City Recorder

APPROVED AS TO FORM:
Peter H. Wells
Peter H. Wells
City Attorney