

AN ORDINANCE ADDING PROVISIONS TO
CHAPTER FIVE OF THE BEAVERTON CODE AND
RELATING TO CHRONIC NUISANCE PREMISES.

WHEREAS, By virtue of its authority to protect the health, safety and welfare of the community, the City has the power to abate a public nuisance by way of an injunctive decree or order and to impose a penalty upon the person responsible for creating or maintaining a public nuisance; and

WHEREAS, The 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; and

WHEREAS, A process and means to hold property owners accountable for adverse conditions and activities that repeatedly occur in connection with their property is needed to help maintain and improve the quality of life in the city; and

WHEREAS, Pursuant to the City's regulatory authority to help maintain and improve the quality of life in the city, this ordinance is enacted to establish the rights, duties and procedures necessary to hold property owners and persons in charge of property accountable for adverse conditions and activities that repeatedly occur in connection with their property; now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. The Beaverton Code, Chapter Five, is hereby amended by adding the following section to read as follows:

"CHRONIC NUISANCE PREMISES

5.07.005 Short Title. BC 5.07.005 to 5.07.100 shall be known and may be cited as the 'Chronic Nuisance Ordinance' and may be referred to herein as 'this ordinance.'

5.07.010 Legislative Findings. The City Council finds that:

A. By virtue of its authority to protect the health, safety and welfare of the community, the City has the power to abate a public nuisance by way of an injunctive decree or order and to impose a penalty upon the person responsible for creating or maintaining a public nuisance.

B. The 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.

C. A process and means to hold property owners accountable for adverse conditions and activities that repeatedly occur in connection with their property is needed to help maintain and improve the quality of life in the city.

D. Pursuant to the City's regulatory authority to help maintain and improve the quality of life in the city, this ordinance is enacted to establish the rights, duties and procedures necessary to hold property owners and persons in charge of property accountable for adverse conditions and activities that repeatedly occur in connection with their property.

5.07.020 Definitions. As used in this ordinance, the following mean:

A. Chronic Nuisance. Premises at or near which any combination of:

1. Three or more of the nuisance activities listed in subsection B of this section occurs during any 30-day period; or
2. Four or more of the nuisance activities listed in subsection B of this section occurs during any 90-day period; or
3. Six or more of the nuisance activities listed in subsection B of this section occurs during any 365-day period.

If Nuisance Activity occurs near the Premises, acts or conditions on the Premises must have substantially contributed to bring about the Nuisance Activity.

B. Nuisance Activity. To commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Beaverton Code or the Oregon Revised Statutes:

1. BC 5.02.015(A) or ORS 471.410, relating to furnishing liquor to minors;
2. BC 5.02.015(B) or ORS 471.412, relating to serving liquor to visibly intoxicated persons;
3. BC 5.02.025 or ORS 471.430, relating to possession of liquor by minors;
4. BC 5.02.050 or ORS 471.478 to 471.482, relating to the sale of liquor by minors;
5. BC 5.02.055, 5.02.070 or ORS 471.405, relating to the unlicensed sale or delivery of liquor;
6. BC 5.02.083, relating to the consumption of liquor in public places;

7. BC 5.08.100 or ORS 163.160 through 163.185, relating to assault;
8. BC 5.08.105 or ORS 163.190, relating to menacing;
9. BC 5.08.110 or ORS 163.195, relating to reckless endangerment;
10. BC 5.08.115 or ORS 166.025, relating to disorderly conduct;
11. BC 5.08.127 or ORS 166.155 to 166.165, relating to intimidation;
12. BC 5.08.130 or ORS 166.065, relating to harassment;
13. BC 5.08.225 or ORS 166.630, relating to discharge of a weapon;
14. BC 5.08.300, relating to indecent exposure;
15. BC 5.08.305 or ORS 163.465, relating to public indecency;
16. BC 5.08.320 or ORS 163.415, relating to sexual abuse;
17. BC 5.08.325 or ORS 167.007 to 167.017, relating to prostitution;
18. BC 5.08.415 to 5.08.420 or ORS 164.345 to 164.365, relating to criminal mischief;
19. BC 5.08.424 or ORS 164.315 to 164.335, relating to arson and related offenses;
20. BC 5.08.500 or ORS 163.575, relating to the endangerment of the welfare of a minor;
21. BC 5.08.710 or ORS 164.805, relating to littering;
22. ORS 163.305 to 163.465, relating to sexual offenses;
23. ORS 167.117 or ORS 167.122 to 167.127, relating to gambling offenses;
24. ORS 475.005 to 475.285 and 475.940 to 475.995, relating to the Uniform Controlled Substances Act.

C. Person in Charge. A person, a representative or employee of the person who has lawful control of Premises by ownership, tenancy, official position or other legal relationship, including but not limited to:

1. A person authorized to manage Premises; and
2. A person authorized to enter into a rental agreement on behalf of another Person in Charge of Premises.

D. Premises. Includes any building and any real property, whether privately or publicly owned.

5.07.030 Chronic Nuisance Prohibited.

A. No Person in Charge of Premises shall allow those Premises to become a Chronic Nuisance.

B. No Person in Charge of Premises shall fail to prevent those Premises from becoming a Chronic Nuisance.

5.07.035 Penalty.

A. Any person who violates BC 5.07.030 commits a non-criminal offense punishable by a fine of not less than \$250 and not more than \$1250. Every combination of nuisance activities constituting a Chronic Nuisance is a separately punishable offense.

B. An action to impose a penalty for violation of BC 5.07.030 may be brought on behalf of the City by the city attorney. The action shall be brought in any court of competent jurisdiction, including the Beaverton Municipal Court. The trial of any alleged violation under this section shall be provided by Oregon Laws 1993, Chapter 379, sections 1 to 5. However, no action to impose a penalty under this ordinance may be commenced against a government or governmental subdivision or agency, including a county, city or special district.

C. In determining the appropriate amount of any fine under this section, and in addition to any other factor the court deems relevant to consider, the court shall consider the following:

1. The nature and location of the Chronic Nuisance;
2. The frequency of the conduct constituting or principally contributing to the Chronic Nuisance;
3. The effect of the Chronic Nuisance upon the enjoyment of life, health and property on members of the community;
4. The efforts of any Person in Charge of Premises to prevent, mitigate or eliminate the Chronic Nuisance;
5. The actual results of any actions taken by any Person in Charge of Premises to prevent, mitigate or eliminate the Chronic Nuisance; and
6. The cost to the City of investigating and correcting or attempting to correct the Chronic Nuisance, including bringing an enforcement proceeding.

5.07.040 Abatement of Chronic Nuisance.

A. A Chronic Nuisance is a public nuisance and may be enjoined or abated as provided by this ordinance.

B. An action to enjoin or abate a Chronic Nuisance within the city may be brought on behalf of the City by the city attorney. The action shall be brought in any court of competent jurisdiction, including the Beaverton Municipal Court. The action shall be commenced and the complaint shall be served as provided in ORS 105.565(1) and 105.565(2). However, no action to enjoin or abate a Chronic Nuisance under this ordinance may be commenced against a government or governmental subdivision or agency, including a county, city or special district. The trial of any action to enjoin or abate a Chronic Nuisance shall be by the court without a jury.

C. A pleading to enjoin or abate a Chronic Nuisance may include an additional or alternative count or claim that a person has

violated BC 5.07.030 and is subject to the penalty provided under BC 5.07.035(A).

D. A person residing or doing business in the city may not bring an action under this ordinance on behalf of the City to enjoin or abate a Chronic Nuisance. However, nothing herein limits any statutory or common-law right of a person to bring an action or other proceeding on the person's behalf related to such Chronic Nuisance.

E. If the existence of a Chronic Nuisance is established in an action under this section, the court may enjoin the use giving rise to the Chronic Nuisance and abate such use as a public nuisance. The court issuing any injunction or abatement order shall retain jurisdiction over the subject matter and parties of the case for all purposes connected with the subject matter in dispute.

F. The court may enjoin or abate a Chronic Nuisance under such terms and conditions, as it deems appropriate. An order, decree or judgment enjoining or abating a Chronic Nuisance under this section shall be in writing. The court shall prepare written findings of facts and conclusions of law to support the relief granted under this section to remedy the Chronic Nuisance.

G. An order enjoining or abating a Chronic Nuisance may direct that for up to 180 days, unless sooner released, the Premises be closed and that the Person in Charge of the Premises or their agent secure the Premises against all use and occupancy.

H. In determining the appropriate means to enjoin or abate a Chronic Nuisance, and in addition to any other factors the court deems relevant, the court shall consider the following:

1. The nature and location of the Chronic Nuisance;
2. The frequency of the conduct constituting or principally contributing to the Chronic Nuisance;
3. The effect of the Chronic Nuisance upon the enjoyment of life, health and property on members of the community;
4. The efforts of any Person in Charge of Premises to prevent, mitigate or eliminate the Chronic Nuisance;
5. The actual results of any actions taken by any Person in Charge of Premises to prevent, mitigate or eliminate the Chronic Nuisance; and
6. The cost to the City of investigating and correcting or attempting to correct the Chronic Nuisance, including bringing an enforcement proceeding.

5.07.050 Notice of Potential Chronic Nuisance.

A. When any lieutenant or other officer of greater rank of the Beaverton Police Department has reasonable grounds to believe any combination of:

1. Two or more of the nuisance activities listed in section 5.07.020(B) of this ordinance have occurred at or near a Premises during any 30-day period; or

2. Three or more of the nuisance activities listed in section 5.07.020(B) of this ordinance have occurred at or near a Premises during any 90-day period; or

3. Four or more of the nuisance activities listed in section 5.07.020(B) of this ordinance have occurred at or near a Premises during any 365-day period;

4. The lieutenant or other officer of greater rank may give written notice to a Person in Charge of the Premises that the Premises are in danger of becoming a Chronic Nuisance.

B. The notice allowed under this section shall contain information to the following effect:

1. The street address or a legal description sufficient to identify the Premises.

2. A statement that (a) the Premises are in danger of becoming a Chronic Nuisance, together with (b) a concise description of the Nuisance Activity upon which the statement is based and (c) a warning that failure to prevent the Premises from becoming a Chronic Nuisance may result in the closure of the business for up to 180 days under the provisions of this ordinance.

3. A statement that a Person in Charge of the Premises may meet with a representative of the Police Department and discuss ways that may prevent or eliminate the Nuisance Activity giving rise to the threatened Chronic Nuisance.

4. A statement that if a Person in Charge desires to meet and discuss the prevention or elimination of the Nuisance Activity giving rise to the threatened Chronic Nuisance, the person must respond to the lieutenant or other officer of higher rank within 10 days from the date of the notice to arrange the meeting.

5. A statement that a Person in Charge is not obligated to meet and discuss the prevention or elimination of the Nuisance Activity giving rise to the threatened Chronic Nuisance, but that the failure to promptly do so may increase the financial penalty or length of closure imposed by a court should the Premises ever become a Chronic Nuisance.

5.07.055 Notice of Existing Chronic Nuisance.

A. After providing notice of a potential Chronic Nuisance under BC 5.07.050, if the lieutenant or other officer of higher rank has reasonable grounds to believe the Premises have become a Chronic Nuisance, the lieutenant or other officer of higher rank shall give written notice to a Person in Charge of the Premises that the City considers the Premises a Chronic Nuisance. The notice shall contain the following information:

1. The street address or a legal description sufficient to identify the Premises.

2. A statement that the Premises are considered a Chronic Nuisance, together with a concise description of the Nuisance Activity upon which the statement is based.

3. A statement that a Person in Charge of the Premises may meet with a representative of the Police Department to devise a written plan to attempt to prevent or eliminate future Nuisance Activity at or near the Premises.

4. A statement that if a Person in Charge of the Premises desires to meet with a representative of the Police Department to devise a written plan to attempt to prevent or eliminate future Nuisance Activity at or near the Premises, the person must respond to the lieutenant or other officer of higher rank within 10 days from the date of the notice to arrange the meeting.

5. A statement that the failure of a Person in Charge of the Premises to promptly meet, discuss and devise a plan to prevent or eliminate future Nuisance Activity giving rise to a Chronic Nuisance may be a factor that increases the penalty or length of closure imposed by a court should the Premises be found to be a Chronic Nuisance.

6. If after notification as provided in this section, but prior to the commencement of any action by the City pursuant to this ordinance, a Person in Charge of the Premises prepare and submits to the City a written plan that the City believes is likely to prevent or eliminate future Nuisance Activity at or near the Premises, the City may delay commencement of an action related to the Chronic Nuisance for not more than 90 days.

a. The City may elect to indefinitely postpone commencement of any action to enjoin or abate the Chronic Nuisance if, while the City is delaying commencement of an action related to the Chronic Nuisance, no new Nuisance Activity occurs at or near the Premises. However, the decision to indefinitely postpone commencement of an action to enjoin or abate a Chronic Nuisance does not require the City to postpone commencement of an action to impose a penalty under this or any ordinance of the City.

b. The City may immediately commence an action to enjoin or abate the Chronic Nuisance and/or to impose a penalty under this ordinance if (1) a Person in Charge of the Premises fails to prepare and submit a written plan that the City believes is likely to prevent or eliminate future Nuisance Activity at or near the Premises, or (2) for any reason whatsoever, new Nuisance Activity occurs at or

near the Premises while the City is delaying commencement of an action related to the Chronic Nuisance.

B. The opportunity to meet and negotiate under this section does not compel a person to agree to a proposal or require the making of a concession. A Person in Charge of Premises has the burden to prepare and submit the written plan provided for in this section.

5.07.060 Notice; Manner of Service. Any notice required under this ordinance shall be delivered in a manner reasonably calculated, under all the circumstances, to apprise a Person in Charge of Premises of the contents of the notice and to afford the person a reasonable opportunity to respond to the notice.

A. Service of a notice may be made by:

1. Delivering the notice to the person to be served; or
2. Mailing the notice to the person to be served by first class mail, return receipt requested, postage prepaid, addressed to a Person in Charge at the address of the Premises believed to be a Chronic Nuisance.

B. A copy of the notice required under BC 5.07.055 of this ordinance shall be posted at the Premises if ten days has elapsed from the delivery or mailing of the notice to the Person in Charge and the Person in Charge has not responded.

C. Concurrent with the notice required under BC 5.07.055 of this section, the lieutenant or other officer of greater rank shall send a copy of the violation notice to the police chief. Any other documentation which the lieutenant or other officer of greater rank believes supports the closure of the Premises and the imposition of civil penalties may be sent as well. The police chief may then request the city attorney to commence civil proceedings in a court of competent jurisdiction seeking such relief as may be deemed appropriate.

D. Failure to comply with provisions of this section relating to the service of notice shall not affect the validity of the notice or the existence of jurisdiction over the parties or subject matter if the court determines that a Person in Charge of the Premises:

1. Had actual knowledge of the substance of the contents of the notice or
2. Deliberately avoided delivery or receipt of the notice.

5.07.065 Burdens of Proof; Affirmative Defenses.

A. In any action under this ordinance, the City shall first bear the burden of producing sufficient evidence that a reasonable fact finder could find by a preponderance of the evidence that a violation of the ordinance has occurred or that a Chronic Nuisance exists. The burden of producing evidence shall then shift to the defendant.

B. The City has the burden of proving by clear and convincing evidence its entitlement to a remedy enjoining the use giving rise to a

Chronic Nuisance and abating such use as a public nuisance. However, in all proceedings, the City has the burden of proving only by a preponderance of the evidence its entitlement to a fine for violation of this ordinance.

C. In any action under this ordinance, it is an affirmative defense to be established by a preponderance of the evidence by a defendant that:

1. The defendant had no knowledge of the existence of the alleged Chronic Nuisance and a reasonable person under similar circumstances likewise would not; and

2. The defendant had no control of the alleged underlying Nuisance Activity and that a reasonable person under similar circumstances likewise would not.

D. It is no defense under this section that the Chronic Nuisance is contributed to by the acts of others over whom defendant has no control, if there still would be a Chronic Nuisance without such contribution.

5.07.070 Closure During Pendency of Action; Emergency Closures. The City may institute an action for a temporary restraining order or preliminary injunction pursuant to ORCP 78 if a threatened or existing nuisance under this ordinance creates an emergency that requires immediate action to protect the public health, safety or welfare. In such instances, the notice requirements of this ordinance need not be fulfilled.

5.07.080 Enforcement of Closure Order; Costs. The court may authorize the City to physically secure the Premises against use or occupancy in the event that the Person in Charge of Premises fails to do so within the time specified by the court. In the event that the City is authorized to secure the Premises, all costs incurred by the City to effect a closure shall be allowed and recovered as provided under ORCP 68. As used in this subsection, "costs" include those reasonable and necessary expenses incurred by the City for the physical securing of the Premises.

5.07.090 Remedies Cumulative. Any penalty or remedy imposed pursuant to this ordinance is in addition to, and not in lieu of, any other civil, criminal or administrative penalty, sanction or remedy otherwise authorized by law. The abatement of a nuisance under this ordinance does not prejudice the right of any person to recover damages for its past existence.

5.07.100 Severability. The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or otherwise invalid, the remaining parts shall remain in

force unless:

A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or

B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent."

First reading this 13th day of July, 1998.

Passed by the Council this 20th day of July, 1998.

Approved by the Mayor this 21ST day of JULY, 1998.

ATTEST:

Darleen Cogburn
DARLEEN COGBURN, City Recorder

APPROVED:

Rob Drake
ROB DRAKE, Mayor