

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 894

An ordinance to amend the County code by adding Chapter 7.21 thereto, concerning chronic nuisance property and declaring an emergency.

Multnomah County ordains as follows:

Section I. Findings

A. Chronic unlawful activity on and near a property adversely affects the health, safety and welfare of citizens and diminishes the quality of life in neighborhoods where such activity occurs. Chronic unlawful activity constitutes a nuisance and should be subject to abatement.

B. The County has a substantial and compelling interest in protecting the health, safety and welfare of its citizens and the neighborhoods affected by chronic nuisance activity.

C. The legal processes presently available do not adequately control chronic nuisance activity nor its detrimental effects on citizens and neighborhoods.

D. To alleviate the problems created by nuisance activity through early intervention by the Sheriff, the Board of County Commissioners adopts the following ordinance.

Chapter 7.21. Chronic Nuisance Property

7.21.010. Definitions.

A. Chronic nuisance property means

1. Property on which three (3) or more nuisance activities exist or have occurred during any sixty (60) day period; or

2. Property on which or within two hundred (200) feet of which any person associated with the property has engaged in three (3) or more nuisance activities during any sixty (60) 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 ORS 475.940 through 475.999 has occurred within the previous sixty (60) days, and the Sheriff has determined that the search warrant was based on evidence of continuous or repeated nuisance activities at the property; or

4. Property which, upon request for execution of a search warrant, has been the subject of a determination by a court that probable cause that prostitution, promoting prostitution, or compelling prostitution as defined in ORS 167.002 through 167.027 has occurred within the previous sixty (60) days, and the Sheriff has determined that the search warrant was based on evidence of continuous or repeated nuisance activities at the property; or

5. Property on which continuous or repeated nuisance activities as defined in subsections (C.) (7), (8), (13) and/or (14) exist or have occurred.

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

C. Nuisance activities mean any of the following activities, behaviors or conduct;

1. Harassment as defined in ORS 166.065;
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;
7. Prostitution or related offenses as defined in ORS 167.007 through 167.017;
8. Alcoholic liquor violations as defined in ORS 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 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 through 167.212, ORS 167.262, ORS 475.005 through 475.285, and/or ORS 475.940 through 475.999;

14. Illegal gambling offenses as defined in ORS 167.117, and/or ORS 167.122 through 167.137;

15. Criminal mischief as defined in ORS 164.345 through 164.365;

16. 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;

17. Sound control violations defined in Multnomah County Code Chapter 7.30;

18. Curfew as defined in Multnomah County Code Chapter 7.45.

D. Person means any natural person, and any agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using property in Multnomah County.

E. 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 thereof.

F. Person in charge means any person in actual or constructive possession of a property, including but not limited to an owner or occupant or property under his or her dominion, ownership or control.

G. 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 the property including without limitation other structures erected on the property and areas used for parking, loading and landscaping.

H. Sheriff means the Sheriff of Multnomah County, or his or her designee.

7.21.020. Violation.

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

B. Any person in charge of property determined by the Sheriff to be a chronic nuisance property is in violation of this Chapter and subject to its remedies.

7.21.030. Procedure.

A. Notice.

1. When the Sheriff received two (2) or more police reports documenting the occurrence of nuisance activities on or within two hundred (200) feet of a property, the Sheriff shall independently review such reports to determine whether they describe the activities, behavior or conduct enumerated under Section 7.21.010(C). Upon such a finding, the Sheriff may notify the person in charge and occupant 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 Sheriff has information that the property may be chronic nuisance property, with a concise description of the nuisance activities that exist or that have occurred;

c. An offer that the person in charge propose a course of action to abate the nuisance activities;

d. A demand that the person in charge respond to the Sheriff within ten (10) days.

2. When the Sheriff receives a police report documenting the occurrence of additional nuisance activity on or within two hundred (200) feet of a property after notice as provided in Section 7.21.030(A)(1); or in the case of chronic nuisance property as defined in Section 7.21.010(A)(3)-(5), for which notice under Section 7.2.1.030(A)(1) is not required; the Sheriff shall notify the person in charge and occupant of property in writing that the property has been determined to be a 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 Sheriff has determined the property to be a chronic nuisance property, with a concise description of the nuisance activities leading to the determination;

c. A demand that the person in charge respond to the Sheriff within ten (10) days and propose a course of action to abate the nuisance activities.

3. Service of the notice described in Section 7.21.030(A)(1) and Section 7.21.030(A)(2) shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property which may be or which has been determined to be a chronic nuisance property or at such other place which is likely to give nuisance property or at such other place which is likely to give the person in charge notice of the Sheriff's information or determination.

4. A copy of the notice described in Section 7.21.030(A)(1) and section 7.21.030(A)(2) shall be served on the owner at the address shown on the Multnomah County tax rolls and/or on the occupant at the address of the property, if these persons are different than the person in charge, and service shall be made either personally or by first class mail, postage prepaid.

5. A copy of the notice described in Section 7.21.030(A)(1) and Section 7.21.030(A)(2) shall also be posted at the property if ten (10) days has elapsed from the service or mailing of the notice to the person in charge, and the person in charge has not contacted the Sheriff.

6. The failure of any person to receive notice as provided by Section 7.21.030(A) shall not invalidate or otherwise affect the proceedings under this Chapter.

B. Response or Failure to Respond.

1. If the person in charge fails to respond as required by Section 7.21.030(A)(2)(c), the Sheriff may refer the matter to County Counsel.

2. If the person in charge responds as required by Section 7.21.030(A)(2)(c), and agrees with the Sheriff on a course of action to abate the nuisance activities, the Sheriff may postpone referring the matter to County Counsel. If an agreed course of action does not result in the abatement of the nuisance activities, or if no agreement concerning abatement is reached within sixty (60) days of the initial response, the Sheriff may refer the matter to County Counsel.

3. When a person in charge makes a response to the Sheriff as required by Section 7.21.030(A)(1)(d) and Section 7.21.030(A)(2)(c), any conduct or statements 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 evidence which is otherwise admissible or is offered for any other purpose.

7.21.040. Commencement of Actions, Remedies, Burden of Proof.

A. County Counsel may commence legal proceedings in Circuit Court to abate chronic nuisance property and to seek closure, the imposition of civil penalties against any or all the persons in charge, and any other relief deemed appropriate.

B. If the Court determines property to be chronic nuisance property, the Court shall order that the property be closed and secured against all access, use and occupancy for a period of not less than six (6) months, nor more than one (1) 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 either:

1. A civil penalty of up to \$100 per day for each day following the notice furnished pursuant to Section 7.21.030(A)(2) when nuisance activities occurred on or within two hundred (200) feet of the property, or

2. The cost to the County 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 County'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 motions 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 cooperativeness of the person in charge with the County.

6. The cost to the County of investigating and correcting or attempting to correct the nuisance activities;

7. Any other factor deemed relevant by the Court.

F. The County 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 the general reputation of a property and/or of the general reputation of persons residing in or frequenting the property shall be admissible.

7.21.050. 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 Oregon Rules of Civil Procedure 79 for obtaining temporary restraining orders. In the event of summary closure, the County is not required to comply with the notice procedures set forth in Section 7.21.030(A).

7.21.060. Enforcement.

A. Costs of Securing Property.

1. The Court may authorize the County to secure the property against all access, use or occupancy in the event the person in charge fails to do so within the time specified by the Court. In the event that the County is authorized to secure the property, the County shall recover all costs reasonably incurred in doing so.

2. The County shall prepare a statement of costs and shall thereafter submit it to the Court for review, as provided in Oregon Rule of Civil Procedure 68.

B. Relocation Costs

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 after either.

1. A person in charge received notice of the Sheriff's determination pursuant to Section 7.21.030(A)(2), or

2. A person in charge received notice of an action brought pursuant to Section 7.21.050.

C. Lien Against Property, Penalties, Costs, Interest

1. A lien shall be created against the property for the amount of the County's money judgment.

2. In addition, any person who is assessed penalties under Section 7.21.040(c) and/or costs under Section 7.21.060(A) shall be personally liable for payment thereof to the County.

3. Judgments imposed pursuant to this Chapter shall bear interest at the statutory rate.

D. Attorney Fees

The Court may award attorney fees to the prevailing party.

7.21.070. 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 their application to any person or circumstances are held to be invalid for any reason, the remainder of the Chapter and its application to other persons and circumstances shall not in any way be affected.

Section II. Declaration of Emergency

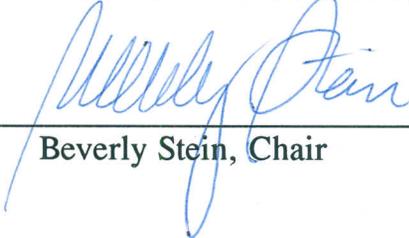
This ordinance, being necessary for the health, safety and general welfare of the people of Multnomah County, an emergency is declared, and the ordinance shall take effect upon its execution by the County Chair, pursuant to Section 5.50 of the Charter of Multnomah County.

Approved this 18th day of December, 1997, being the date of its first reading before the Board of County Commissioners of Multnomah County, Oregon.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

By

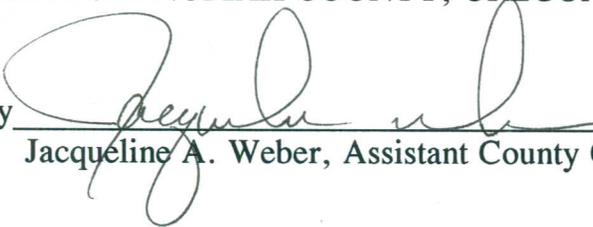


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By



Jacqueline A. Weber, Assistant County Counsel