

ORDINANCE NO. 2296

AN ORDINANCE AMENDING CHAPTER 134 OF THE HERMISTON CODE OF ORDINANCES, ENTITLED "CHRONIC NUISANCE PROPERTY."

Whereas, the staff of the City of Hermiston is conducting a major review of the City's Code of Ordinances, now, therefore,

The City of Hermiston ordains as follows:

(New language is in red and underlined and repealed language has ~~a line through it.~~)

Section 1. Section 134.01 of Chapter 134 of the Hermiston Code of Ordinances is amended to read:

134.01 DEFINITIONS.

For the purposes of this ~~chapter~~ **Chapter**, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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 precursor or related offenses as defined in ORS ~~467.203~~, 475.005 or through 475.285 and/or ORS 475.940 through 475.995 has occurred within the previous 90 days, and the ~~city~~ **City** Police Department 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~~ paragraphs (7), (8), (13) and (14) of that definition, exist or have occurred.

CONTROL. The ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property. In the case of an owner of the property, control includes the exercise of remedies under any rental agreement or the Oregon Landlord Tenant Act.

GOOD CAUSE. Circumstances beyond the ability of the person in charge and the owner of the property to control or abate the nuisance exercising reasonable care and diligence.

NUISANCE ACTIVITIES. 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.
- (7) Prostitution or related offenses as defined in ORS ~~167.007~~ 167.002 through 167.017.
- (8) Alcoholic liquor violations as defined in ORS Chapter ~~471.105~~ 471.001 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 precursor or related offenses as defined in ORS ~~167.203, ORS 475.005 through 475.285, and/or~~ or ORS 475.940 through 475.995.
- (14) Illegal gambling as defined in ORS 167.117, ~~and/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, ~~and/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 § 130.31.
- (18) Unlawful operation of sound producing or reproducing equipment as defined in § 92.28(L).
- (19) Curfew as defined by ORS 419C.680.
- (20) Curfew as defined in § 133.01.

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

PERSON ASSOCIATED WITH. 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. 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~~ their ownership or control.

PROPERTY. 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~~ shall be limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring or having a causal relationship with off-property nuisance activity unless the nuisance activities cannot be reasonably attributed to a particular unit. It shall include ~~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 if the nuisance activity is causally connected to such areas. (Ord. 2077, passed 10-27-03; Am. Ord. 2262, passed 9-24-18)

Section 2. Section 134.02 of Chapter 134 of the Hermiston Code of Ordinances is amended to read:

134.02 VIOLATION.

(A) Any property determined by the Police Department to be chronic nuisance property is in violation of this ~~chapter~~ Chapter and subject to its remedies.

(B) Any person in charge of property determined by the Police Department to be chronic nuisance property is in violation of this ~~chapter~~ Chapter and subject to its remedies. (Ord. 2077, passed 10-27-03)

Section 3. Section 134.03 of Chapter 134 of the Hermiston Code of Ordinances is amended to read:

134.03 PROCEDURE.

(A) When the Police Department receives two or more reports documenting the occurrence of nuisance activities on or within 400 feet of a property, within 90 days, the reports shall be reviewed to determine whether they describe the activities, behaviors or conduct enumerated under § 134.01 "nuisance activities" (1) through (20). Upon such a finding, the Police Department ~~may~~ shall notify the person in charge in writing that the property is in danger of

becoming chronic nuisance property. The notice shall be served either personally or by certified and first-class mail, return receipt requested, to the person in charge of the property or such other place which is likely to give the person in charge notice of the determination by the Police Department and to the owner of the property, if different and as shown in the current property tax records of Umatilla County. 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 City Police Department 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 City Police Department shall offer the person in charge and the owner an opportunity to propose a course of action that the Police Department agrees will abate the nuisance activities giving rise to the violation.
- (3) Demand that the person in charge and the owner respond to the ~~city~~ City Police Department within ~~ten~~ 10 days to discuss the nuisance activities.

(B) When the Police Department 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~~ paragraph (A); or, in the case of "chronic nuisance property" as defined in § 134.01, ~~division~~ (3) or (4), for which notice under division (A) is not required, the City Police Department shall notify the person in charge and the owner in writing that the property has been determined to be a chronic nuisance property.

- (1) The street address or a legal description sufficient for identification of the property.
- (2) A statement that the City Police Department has determined the property to be chronic nuisance property with a concise description of the nuisance activities leading to ~~his/her~~ their determination.
- (3) Demand that the person in charge, and the owner, respond within ~~ten~~ 10 days to the City Police Department and propose a course of action that the City Police Department agrees will abate the nuisance activities giving rise to the violation or show good cause as to why the nuisance does not exist or the person is unable to abate for reasons outside the person's reasonable control.
- (4) Service shall be made either personally or by certified and first class mail, ~~postage prepaid~~ return receipt requested, 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 and to the owner of the property, if different and as shown in the current property tax records of Umatilla County.
- (5) A copy of the notice shall be served on the owner at the address shown on the tax rolls of ~~the county~~ Umatilla County in which the property is located, and/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, or the owner, fails to respond as required by ~~division~~ paragraph (B)(3), the Police Department may refer the matter to the City Attorney. Prior to referring the matter to the City Attorney, the notice required by ~~division~~ paragraph (B) shall also be posted at the property.

(D) If the person in charge responds as required by ~~division~~ paragraph (B)(3) and agrees to abate nuisance activities giving rise to the violation, the Police Department 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 Department may refer the matter to the City Attorney.

(E) When a the person in charge, or owner, makes a response to the Police Department as required by ~~divisions~~ paragraph (A)(3) or (B)(3) 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 any evidence which is otherwise admissible or offered for any other purpose.

(F) The failure of any person to receive notice as provided by ~~divisions~~ paragraphs (A) or (B) shall not invalidate or otherwise affect the proceedings under this ~~chapter~~ Chapter. (Ord. 2077, passed 10-27-03)

Section 4. Section 134.04 of Chapter 134 of the Hermiston Code of Ordinances is amended to read:

134.04 COMMENCEMENT OF ACTIONS; REMEDIES; BURDEN OF PROOF.

(A) The City Police Department 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.~~

In an action for abatement based on an incident or incidents occurring off the property that is the subject of the proceeding, the City shall demonstrate a causal connection between the property and the incident(s). Evidence demonstrating a causal connection may include, but is not limited to what the owner or person in charge knew or reasonably should have known that an employee, customer, invitee or other person associated with the property would or did engage in the activity involved in the incident(s) or that activities on the subject property encouraged, engendered, promoted, contributed to or otherwise made the incident(s) more likely to occur.

(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 § 134.03(B); 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.~~

If the court determines the property to be a chronic nuisance property, the court shall order that the property be closed and secured against all unauthorized access, use and occupancy for such period as the court determines appropriate but not more than six months. In lieu of immediate closure, the court may provide a reasonable time prior to closure to abate the nuisance if the owner or occupant demonstrates a willingness and ability to do so within a reasonable time. The order shall be entered as part of the final judgment. The court shall retain jurisdiction during any period of closure.

~~(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.~~

It shall be an affirmative defense to an action under this Chapter that the owner and person in charge could not, in spite of the exercise of reasonable care and diligence, control the activities on the subject property that constituted the incident or made the incident more likely to occur or otherwise remedy the situation leading to the finding(s) that the property is a chronic nuisance property. The owner and person in charge have the burden of proving this defense by a preponderance of the evidence.

~~(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.~~

If the court determines a property to be chronic nuisance property, the court may, in addition to any other remedy, impose a civil penalty of up to \$100 per day for each day nuisance activities occurred on the property, following notice pursuant to §134.03(B); 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 or the owner, or both, and include in a money judgment in favor of the City.

~~(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.~~

If satisfied of the good faith of the person in charge, or owner, the court shall not award civil penalties if the court finds that such person at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become 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.~~

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 and owner to mitigate or correct the nuisance activities at the property;

(2) The financial condition of the person in charge and owner;

(3) Repeated or continuous nature of the problem;

(4) The magnitude or gravity of the problem;

(5) The cooperation of the person in charge and owner with the City;

(6) The cost to the City of investigating and correcting or attempting to correct the nuisance activities; and

(7) Any other factor deemed relevant by the court.

(H) The City shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.

(I) Evidence of a property's general reputation and/or the reputation of persons residing in or frequenting it shall be admissible. (Ord. 2077, passed 10-27-03)

Section 5. Section 134.05 of Chapter 134 of the Hermiston Code of Ordinances is amended to read:

134.05 SUMMARY CLOSURE.

~~Any summary closure proceeding shall be based on evidence showing that nuisance activities exist or have occurred on the property and~~ In lieu of the process provided above, if the Police Chief or designee determines that an emergency action is necessary to avoid an immediate threat to public welfare and safety, ~~Proceedings~~ the City may bring a proceeding to obtain an order of summary closure ~~shall be governed by the provisions of~~ as provided in 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 § 134.03(A) and (B).~~ (Ord. 2077, passed 10-27-03)

Section 6. Section 134.06 of Chapter 134 of the Hermiston Code of Ordinances is amended to read:

134.06 ABATEMENT BY CITY ENFORCEMENT.

(A) ~~The court may~~ At any time the City may request that the court authorize the city City to physically secure and close the property against all unauthorized access, use or occupancy or to otherwise abate the nuisance in the event that the ~~person in charge fails~~ court determines that the nuisance exists but the person in charge or owner is unwilling to do so or to do so within the time specified by the court. ~~In the event that the city is~~ In such event the City shall be authorized to ~~secure the property, the city shall~~ recover all costs reasonably incurred by the city City ~~to physically secure the property as provided by this section. The city~~ 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~~ and approval ~~as provided by ORCP 68.~~

(B) The court may also order that the owner or 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 and owner received notice of the determination of the Police Department pursuant to § 134.03(B); or

(2) A person in charge and owner received notice of an action brought pursuant to § 134.05.

(C) A lien shall be created against the property for the amount of the city's City's money judgment if the court determines that the owner is responsible for payment. In addition, any person who is assessed penalties ~~under § 134.04(C) and/~~ or costs under § ~~134.06(A)~~ this Chapter shall be personally liable for payment thereof to the city City. Judgments imposed by ~~under~~ this chapter Chapter § ~~134.06(A)~~ shall bear interest at the statutory rate. (Ord. 2077, passed 10-27-03)

Section 7. Section 134.07 of Chapter 134 of the Hermiston Code of Ordinances is amended to read:

134.07 ATTORNEY FEES.

The court may, in its discretion, award attorneys' fees to the prevailing party in an action to enforce this Chapter.

Section 8. Effective date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 10th day of February 2020.

SIGNED by the Mayor this 10th day of February 2020.

ATTEST:

Dr David Drotzmann, Mayor

Lilly Alacron-Strong, CMC City Recorder