

IN AND FOR THE CITY OF BROOKINGS

STATE OF OREGON

ORDINANCE 18-0-773

IN THE MATTER OF ORDINANCE 18-O-773, AN ORDINANCE AMENDING CHAPTER 8.15, NUISANCES, OF BROOKINGS MUNICIPAL CODE.

Sections:

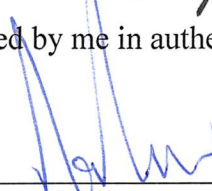
- Section 1. Ordinance Identified.
- Section 2. Amend Chapter 8.15, Nuisances.

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance amends Chapter 8.15, Nuisances, of Brookings, Municipal Code.

Section 2. Amend Chapter 8.15. Chapter 8.15, Nuisances, is hereby amended to read as presented in Exhibit A attached hereto with additions designated in bold and underlined and deletions being bold and struck out.

First Reading: September 24, 2018 Passage: September 24, 2018
Second Reading: September 24, 2018 Effective Date: October 23, 2018
Signed by me in authentication of its passage this 24th day of September, 2018



Mayor Jake Pieper

ATTEST:


City Recorder Teri Davis

Exhibit A

Chronic Disorderly Property Ordinance

Changes to BMC:

[Additions are bold and underlined, Deletions are ~~bold and strikeout~~]

AMEND 8.15.010:

8.15.010 Definitions.

A. "Chronic disorderly property" means:

(1) Any real property on which three or more prohibited activities have occurred during any 60-day period; .or

(2) Any real property within 200 feet of which any person associated with the property has engaged in three or more prohibited activities during any 60-day period; or

(3) Any combination of (1) and (2) totaling three occurrences during any 60-day period.

AB. "Code enforcement officer" means any city employee authorized by the city manager to enforce the provisions of this chapter, including but not limited to building inspectors, police officers, public works inspectors and fire department employees.

BC. "Construction" includes, but is not limited to, constructing any of the following: a building, an addition to a building, landscaping, sidewalks, or driveways, irrespective of size.

CD. "Contaminant" means any substance or material such as, but not limited to, oil, gasoline, antifreeze, animal waste, lawn and yard fertilizers, defoliants, paint, or chemicals intended for insect control, that could cause harm, or otherwise have an adverse effect on the city's storm drain system.

E. "Controlled substance" has the same definition as is contained in ORS 475.005.

DF. "Debris" means any foreign material such as, but not limited to, trackout, sediment from erosion, landscaping supplies, lawn clippings, leaves, brush, tree trimmings, household trash, litter, and concrete.

EG. "Landscaping" means the process of arranging soil, trees, shrubs, grass, irrigation systems, or other commonly used landscaping materials on a piece of property. For this chapter, landscaping does not include routine lawn or yard maintenance such as grass mowing.

F. Repealed by Ord. 14-O-736.

GH. "Person" means a natural person, firm, partnership, association or corporation.

HI. "Person in charge of property" means an agent, occupant, lessee, contract purchaser, tenant or other person having possession or control of property.

IJ. "Person responsible for abatement" means the person responsible for abating a nuisance and liable for any penalties imposed hereunder and shall include, jointly and severally, the following:

1. The owner;
2. The person in charge of property;
3. The person who caused to come into or continue in existence a nuisance as defined in this chapter.

~~K. Public Nuisance. It is expressly found and determined by the city of Brookings that the conditions and objects specifically enumerated within this chapter do, in one or more particulars, promote blight, deterioration, unsightliness, plundering, fire hazards, flood hazards, hazards to the health and safety of minors, disruption of the public peace, harborage for rodents, insects and vermin, and circumstances generally injurious or detrimental to the health, safety and general welfare of the inhabitants and occupants of the city of Brookings.~~

K. "Prohibited activity" means any of the following:

- (1) Harassment as defined in ORS 166.065(l)(a);**
- (2) Intimidation as provided in ORS 166.155 through 166.165;**
- (3) Disorderly conduct as provided in ORS 166.025;**
- (4) Assault or menacing as provided in ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185, or ORS 163.190;**
- (5) Sexual abuse, contributing the delinquency of a minor, or sexual misconduct as provided in ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435, or ORS 163.445;**
- (6) Public indecency as provided in ORS 163.465;**
- (7) Prostitution or related offenses as provided in ORS 167.007, ORS 167.012, and ORS 167.017;**
- (8) Alcoholic liquor violations as provided in ORS 471.105 through 471.482;**
- (9) Offensive littering as provided in ORS 164.805;**
- (10) Criminal trespass as provided in ORS 164.243, 164.255, 164.265;**
- (11) Theft as provided in ORS 164.015 through 164.140;**
- (12) Possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS 167.203, ORS 475.005 through 475.285, or 475.940 through 475.980;**
- (13) Illegal gambling as provided in ORS 167.117, ORS 167.122, ORS 167.127;**
- (14) Criminal mischief as provided in ORS 164.345 through 164.365;**
- (15) Property which, in addition to or in combination with the prescribed number and duration of prohibited activities, 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, 475.285 or 475.940 to 475.980 have occurred;**

(16) Violation of BMC 8.15.020 (D), dog fighting;

(17) Violation of BMC 9.10.040, discharge of firearms;

(18) Frequenting a place where controlled substances are used as provided in ORS 167.222; or

(19) Violation of BMC 8.15.080, noise prevention.

JL. "Public place" means a building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

~~**K. Public Nuisance. It is expressly found and determined by the city of Brookings that the conditions and objects specifically enumerated within this chapter do, in one or more particulars, promote blight, deterioration, unsightliness, plundering, fire hazards, flood hazards, hazards to the health and safety of minors, disruption of the public peace, harborage for rodents, insects and vermin, and circumstances generally injurious or detrimental to the health, safety and general welfare of the inhabitants and occupants of the city of Brookings.**~~

LM. "Recreational vehicle" or "travel trailer" means a self-propelled or towable mobile unit used for temporary dwelling purposes by travelers.

MN. "Recreational vehicle park" means a commercially developed lot upon which two or more recreational vehicles occupied for living or sleeping purposes are located, regardless of whether a fee is paid for such service or accommodations.

NO. "Responsible party" or "person responsible" means an owner, occupant or other person entitled to possession.

OP. "Storm drainage system" means the system of pipes, manholes, curbs, gutters, curb inlets, catch basins, canals, ditches, detention basins, ponds and streams intended to convey storm water runoff.

PQ. "Trackout" means the tracking of mud, soil, debris, or contaminant onto any street, alley, sidewalk, or public way. [Ord. 16-O-761 § 2; Ord. 14-O-736 § 2; Ord. 13-O-713 § 3; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 2; Ord. 86-O-406 § 1.]

ADD 8.15.015:

8.15.015 Policy

It is expressly found and determined by the city of Brookings that the conditions and objects specifically enumerated within this chapter do, in one or more particulars, constitute a public nuisance by promoting blight, deterioration, unsightliness, plundering, fire hazards, flood hazards, hazards to the health and safety of minors, disruption of the public peace, harborage for rodents, insects and vermin, and other circumstances generally injurious or detrimental to the health, safety and general welfare of the inhabitants and occupants of the city of Brookings.

ADD 8.15.083:

8.15.083 Chronic Disorderly Property.

A. When the chief of police receives two or more police reports documenting the occurrence of prohibited activity on or within 200 feet of a property in a residential neighborhood within the city, the chief of police will independently review the reports to determine whether they describe prohibited activities enumerated in BMC 8.15.010. Upon such a finding, the chief of police may take the following actions:

(1) Notify the person in charge of property, in writing, that the property is in danger of becoming a chronic disorderly property. The notice must contain the following information:

(a) The street address or legal description sufficient for identification of the property.

(b) A statement that the chief of police has information that the property may be a chronic disorderly property, with a concise description of the prohibited activities that may exist, or that have occurred.

(c) Demand that the person in charge of property respond to the chief of police within 10 days to discuss the prohibited activities.

B. After notification of the occurrence of prohibited activities to the person in charge of property, when the chief of police receives a police report documenting the occurrence of a third prohibited activity at or within 200 feet of a property within a 60-day period and determines that the property has become a chronic disorderly property, the chief of police must:

(1) Notify the person in charge of property in writing that the property is a chronic disorderly property. The notice must contain the following information:

(a) The street address or legal description sufficient for identification of the property.

(b) A statement that the chief of police has determined the property to be a chronic disorderly property with a concise description of the prohibited activities leading to the finding.

(c) Demand that the person in charge of property respond within 14 days to the chief of police and propose a course of action ("abatement plan") to abate the prohibited activities giving rise to the violation. The abatement plan may include actions such as measures to increase security, evict problem tenants, or change business practices, such as operating hours. The abatement plan must also include a timeline for implementation.

(d) Service must be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge of property at the address

of the property determined to be a chronic disorderly property, or any other place which is likely to give the person in charge of property notice of the determination.

(e) A copy of the notice must also be served on the owner at the address shown on the tax rolls of the county in which the property is located, the occupant, at the address of the property, if these persons are different from the person in charge of property, and must be made either personally or by first class mail, postage prepaid.

(f) A copy of the notice must also be posted at the property.

(g) The failure of any person to receive notice that the property may be a chronic disorderly property, if notice was given in accordance with subparagraphs (d), (e) and (f), will not invalidate or otherwise affect the proceedings under section 8.15.083.

(2) Chronic disorderly property, as defined by BMC 8.15.010, is entitled only to the notification requirements of subsection (B) of this section.

(3) The chief of police will review and approve or deny the abatement plan within 10 days of its receipt. If the abatement plan is approved, the person in charge of property must proceed in accordance with the plan. If the abatement plan does not result in the abatement of the prohibited activity(s) or if no plan for abatement is approved within the time allowed, then the chief of police may refer the matter to the city attorney to commence a legal proceeding to abate the nuisance caused by the chronic disorderly property.

(4) Concurrent with the notification procedures set forth in subsections (A) and (B), the chief of police will send copies of the notice, as well as any other documentation which supports legal proceedings against the property, to the city attorney.

(C) When a person in charge of the property makes a response to the chief of police as required by subsection (B)(1)(c) above, any conduct or statements made in connection with the furnishing of that response do not constitute an admission that any prohibited activities have occurred or are occurring. This subsection does not require the exclusion of any evidence that is otherwise admissible or offered for any other purpose.

ADD 8.15.084:

8.15.084 Chronic Disorderly Property – Enforcement.

A. Commencement of Action.

(1) In an action seeking the closure of a chronic disorderly property, the city will have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic disorderly property.

(2) It is a defense to an action for chronic disorderly property that neither the owner nor the person in charge of property at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic disorderly property, or could

not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic disorderly property.

(3) In establishing the amount of any civil penalty requested, the court may consider the following factors:

(a) The actions taken by the owner, or other person in charge of property, to mitigate or correct the problem at the property;

(b) Whether the problem at the property was repeated or continuous;

(c) The magnitude or gravity of the problem;

(d) The cooperativeness of the owner, or other person in charge of property, with the city;

(e) The cost to the city of investigating and handling the problem;

(f) Any other factor the court deems relevant.

B. Closure During Pendency of Action.

If it is determined that the property is an immediate threat to the public health, safety and welfare, the city may apply to the court for interim relief deemed by the city to be appropriate, including the temporary closure of the property.

C. Enforcement of Closure Order; Civil Penalties.

(1) If the court determines property to be chronic disorderly property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than 30, but not more than 180, days. The court may employ any other remedy(s) it deems appropriate to abate the prohibited activity(s) in addition to or instead of closure of the property. The court may authorize the city to physically close the property against use or occupancy if the owner fails to do so within the time specified in the court's order. The court will retain jurisdiction during any period of closure.

(2) In addition to the remedies provided in subsection (1) above, the court may impose upon the owner of the property / person in charge of property a civil penalty in the amount of up to \$500 per day, payable to the city, for each day the owner / person in charge of property had actual knowledge that the property was a chronic disorderly property and permitted the property to remain a chronic disorderly property. The owner / person in charge of property is considered to have actual knowledge if notice was provided to the owner / person in charge of property in accordance with Section 8.15.083. The penalties must be set forth as part of the court's judgment.

(3) If the city is authorized to secure the property, all costs reasonably incurred by the city to effect the closure will be awarded to the city as part of the judgment.

(a) "Costs" means those costs actually incurred by the city for the physical securing of the structures on the property and any attorneys' fees awarded by the court.

(b) The city manager may prepare a statement of costs and submit it to the court for its review as prescribed by Oregon Rule of Civil Procedure 68.

(4) Any monetary judgment imposed pursuant to this chapter will bear interest at the statutory rate.

(5) A lien will be created against the property for the amount of the city's monetary judgment and will be entered in the city's lien docket.

(6) Unless otherwise specifically ordered by the court, all persons who are assessed a civil penalty by the court will be jointly, severally and personally liable for payment to the city.

D. Relief from Closure Order.

(1) An owner of property determined to be a chronic disorderly property may obtain relief from the court's order if:

(a) The owner of the property appears and pays all costs associated with proceedings under this ordinance;

(b) The owner of the property files a bond in such a place and form as the court may by order direct in an amount not less than the tax-assessed value of the property, and maintains said bond in force for a period of not less than one year or for such period as the court directs; and

(c) The owner enters into a stipulation with the city that he or she will immediately abate the conditions giving rise to the chronic disorderly property and prevent the same from being established or maintained for a period of one year thereafter. The stipulation will then be made part of the court's order.

(2) If the owner violates the terms of the stipulation, the city may apply to the court for an order awarding up to the entire amount of the bond to the city as a penalty and such other relief, including closure for an additional period of up to one year.

E. Attorneys' Fees

In an action seeking closure of the property under this ordinance, the court may, in its discretion, award attorneys' fees to the prevailing party.

F. Cumulative Remedies

The rights and penalties provided in this chapter are cumulative and not exclusive, and are in addition to any other rights, remedies and penalties available to the city under other provision of law. The city's actions in pursuit of remedies under this chapter is not to be construed as an election of remedies and such other remedies as may be available by law may also be pursued.