

A BILL FOR AN ORDINANCE CONCERNING) ORDINANCE BILL NO. 2
CHRONIC NUISANCE PROPERTY AND CREATING) For 2009
A NEW CHAPTER 8.06 CHRONIC NUISANCE) ORDINANCE NO. 2772
PROPERTY

Sections:

- 8.06.010 Definitions.**
- 8.06.020 Violation.**
- 8.06.030 Procedure.**
- 8.06.040 Commencement of Actions; Remedies; Burden of Proof.**
- 8.06.050 Summary Closure.**
- 8.06.060 Enforcement.**
- 8.06.070 Attorneys' Fees.**

8.06.010 Definitions. For the purposes of this ordinance, the following definitions shall apply:

A) Chronic Nuisance Property. Property on which three or more Nuisance Activities exist or have occurred during any thirty (30) day period; or,

1. Property on which or within 200 feet of which any Person Associated With the Property has engaged in three or more Nuisance Activities during any thirty (30) day period; or,

2. Property on which continuous or repeated Nuisance Activities, as defined herein and in LMC 8.04.030-.180, exist or have occurred.

B) Control. The ability to regulate, restrain, dominate, counteract or govern Property, or conduct that occurs on a Property.

C) Nuisance Activities. Any of the following activities, behaviors or conduct:

- 1. Harassment as defined in ORS 166.065(1)(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 ORS 163.190.
- 5. Sexual abuse, contributing to the sexual delinquency of a minor, or sexual misconduct as defined in ORS 163.415 through ORS 163.445.
- 6. Public indecency as defined in ORS 163.465.
- 7. Prostitution or related offenses as defined in ORS 167.007 through ORS 167.017.
- 8. Alcoholic liquor violations as defined in ORS Chapter 471.105 through 471.482 and LMC 5.10.060.15.
- 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 relate offenses as defined in ORS 167.203, ORS 475.005 through 475.285, and/or 475.940 through 475.995.
- 14. Illegal gambling as defined in ORS 167.117, and/or ORS 167.122 through ORS 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 Lebanon Municipal Code 9.20.030.
- 18. Excessive noise as defined in Lebanon Municipal Code Chapters 8.10.
- 19. Unlawful behavior or activities as defined in Lebanon Municipal Code 5.10.060.15.
- 20. Indecent exposure as defined in Lebanon Municipal Code 9.16.070.
- 21. Granting business services to any person excluded from an Alcohol Impact and Enhanced Enforcement Area (AIEEA) provided the property is located with an AIEEA as described in LMC 9.18.
- 22. Failure to obtain a Business Registration or Exemption Certificate as may be required by City ordinance.

D) Person. Any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using Property in the City of Lebanon.

E) 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.

F) 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 ownership or Control.

G) Chief of Police. The designated or acting Chief of Police or Captain of Police.

H) 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 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.

8.06.020 Violation.

A) Any Property determined by the Chief of Police to be a Chronic Nuisance Property is in violation of this Chapter and subject to its remedies.

B) Any Person in Charge of Property determined by the Chief of Police to be a Chronic Nuisance Property is in violation of this Chapter and subject to its remedies.

8.06.030 Procedure.

A) When the Chief of Police receives two or more police reports documenting the occurrence of Nuisance Activities on or within 200 feet of a Property, the Chief of Police shall independently review such reports to determine whether they describe the activities, behaviors or conduct enumerated under Lebanon Municipal Code 8.06.010. Upon such a finding, the Chief of Police may notify the Person in Charge in writing that the Property is in danger of becoming 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 Chief of Police 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 Chief of Police shall offer the Person in Charge an opportunity to propose a course of action that the Chief of Police agrees will abate the Nuisance Activities giving rise to the violation.

3. Demand that the Person in Charge respond to the Chief of Police within ten (10) days to discuss the Nuisance Activities.

B) When the Chief of Police receives a police report documenting the occurrence of additional Nuisance Activity on or within 200 feet of a Property after notification has been provided the Chief of Police 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 Chief of Police 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 (10) days to the Chief of Police and propose a course of action that the Chief of Police 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, 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 Chief of Police.

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, 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 fails to respond as required by this section, the Chief of Police may refer the matter to the City Attorney. Prior to referring the matter to the City Attorney, the notice required by this ordinance shall also be posted in a conspicuous place at the property.

D) If the Person in Charge responds as required the notice of the Chief of Police and agrees to abate Nuisance Activities giving rise to the violation, the Chief of Police 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 sixty (60) days of the date of the notice; or, if no agreement concerning abatement is reached within sixty (60) days of the date of the notice, the Chief of Police may refer the matter to the City Attorney.

E) When a Person in Charge makes a response to the Chief of Police as required by this section, 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 Subsection 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 this Lebanon Municipal Code shall not invalidate or otherwise affect the proceedings under this Chapter.

8.06.040 Commencement of Actions; Remedies; Burden of Proof.

A) The City Attorney may commence legal proceedings in the Municipal Court to abate a Chronic Nuisance Property and to seek closure, and/or 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 six (6) months, or 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 a civil penalty of up to \$100 per day for each day Nuisance Activities occurred on the Property, following notice pursuant to Lebanon Municipal Code 8.06.030; 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 a 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 in the General Judgment:

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 the 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.

8.06.050 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 or 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 Lebanon Municipal Code 8.06.030, but shall follow those requirements of ORCP 79 as to notice.

8.06.060 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 hereafter 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 after either:

1. A Person in Charge received notice of the determination of the Chief of Police pursuant to Lebanon Municipal Code 8.06.030; or

2. A Person in Charge received notice of an action brought pursuant to this chapter of the Lebanon Municipal Code .

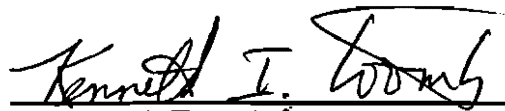
C) A lien shall be created against the Property for the amount of the City's money judgment. In addition, any Person who is assessed penalties under this Chapter and/or costs shall be personally liable for payment thereof to the City. Judgments imposed by this Chapter shall bear interest at the statutory rate.

8.06.070 Attorneys' Fees.

The Court may award attorney fees to the prevailing party.

Passed by the Lebanon City Council with a vote of 6 in favor and 0 in opposition and approved by the Mayor on this 14th day of January, 2009.

CITY COUNCIL OF LEBANON, OREGON



Kenneth I. Toombs, Mayor

ATTEST:



Linda Kaser, City Clerk/Recorder