

AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE (AMC) TITLE 7 BY ADDING A NEW CHAPTER 7.85 TITLED CHRONIC NUISANCE PROPERTY.

WHEREAS, the City of Albany is adding AMC Chapter 7.85, Chronic Nuisance Property, to address repeated unlawful activities occurring on certain real property; and

WHEREAS, a chronic nuisance property can create an unsafe condition in neighborhoods and impacts the livability of the community; and

WHEREAS, Chapter 7.85 will allow public safety personnel to address chronic nuisance properties; and

WHEREAS, civil regulation of chronic nuisance properties will promote and protect the public health, safety, and welfare of City of Albany residents.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1. Amending AMC Title 7, Public Peace, Morals, and Safety. AMC Title 7 is hereby amended to add Chapter 7.85 titled Chronic Nuisance Property:

Sections:

- 7.85.010 Declaration of Purpose.
- 7.85.020 Chronic Nuisance Property.
- 7.85.030 Definitions.
- 7.85.040 Police Chief's Determination.
- 7.85.050 Determination of Hearing Officer.
- 7.85.060 Remedies.
- 7.85.070 Multi-Unit Property.
- 7.85.080 Civil Penalty.
- 7.85.090 Penalty and Costs of Review as Lien.
- 7.85.100 Closure of Property.
- 7.85.110 Entering Closed Property.
- 7.85.120 Liability.
- 7.85.130 Violation.

7.85.010 Declaration of Purpose.

- (1) Repeated unlawful activities (specifically enumerated in Section 7.85.030, below) occurring on, or resulting from the use of, certain real property within the City create unreasonable disruptions of the peace and may create unsafe condition in the neighborhoods where these real properties are located;
- (2) These repeated unlawful activates degrade neighborhoods;
- (3) Existing state criminal statutes and City ordinances are inadequate to address, control, or remedy the adverse impacts of chronic unlawful activity occurring at these specific real properties;
- (4) Civil regulation of these real properties will provide a remedy to the problems caused by these chronic behaviors and will promote and protect the public health, safety and welfare; and therefore,
- (5) Real properties where those chronic unlawful activities specifically enumerated in Section 7.85.030 below occur, or where those chronic unlawful activities result from the use of the real property, are hereby declared to be public nuisances, and are subject to the abatement procedures and other remedies set forth within this Chapter.

7.85.020 Chronic Nuisance Property.

- (1) Any property within the City that becomes a chronic nuisance property, as defined herein, is in violation of this Chapter and subject to its remedies.
- (2) Any person who permits property under his or her ownership or control to be a chronic nuisance property, as defined herein, shall be in violation of this Chapter and subject to its remedies.

7.85.030 Definitions.

- (1) "Abate" includes affirmative actions to remove, to stop, or to prevent a nuisance property but is not limited to:
 - (a) Restricting or limiting noise, loitering, parking, or access to the property, including posting the property with signs indicating such restrictions;
 - (b) Closing the property for not less than 30 days or more than 6 months; or
 - (c) Entering premises for purposes of removing, compelling the removal or destruction of the structure, thing, substance, condition, or property constituting a nuisance.
- (2) "Chronic Nuisance Property" is:
 - (a) Property upon which the owner permits three or more separate incidents listed below to occur within any 30-day period, or five or more separate incidents listed below within any 90-day period, in which at least one separate incident results in a citation or arrest;
 - (b) Property, the use of which has a causal relation to three or more separate incidents listed below occurring within any 30-day period, or five or more separate incidents listed below within any 90-day period, in which at least one incident results in a citation or arrest, and all of which occur within 100 feet of the boundary line of the subject property;
 - (c) Any combination of separate incidents as specified in Section 7.85.030(2) (a) or (b) which amounts to three or more separate incidents listed below occurring within any 30-day period or five or more separate incidents listed below within any 90-day period, in which at least one incident results in a citation or arrest; or
 - (d) For the purposes of 7.85.030(2) the following offenses shall constitute incidents which would support a finding of chronic nuisance property;
 - (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 and AMC 7.08,
 - (4) Assault or menacing as defined in ORS 163.160 through 163.190,
 - (5) Public indecency as defined in ORS 163.465,
 - (6) Prostitution or related offenses as defined in ORS 167.007 through 167.017,
 - (7) Provision of alcohol to a minor or to a person visibly intoxicated as defined in ORS 471.410,
 - (8) Offensive littering as defined in ORS 164.805,
 - (9) Criminal trespass as defined in ORS 164.245 through 164.265,
 - (10) Theft by receiving as defined in ORS 164.095,
 - (11) Arson or related offenses as defined in ORS 164.315 through 164.335,
 - (12) Possession, manufacturing, or delivery of a controlled substance or related offenses as defined in ORS 475.906 through 475.912 and 475.940 through 475.979,
 - (13) Illegal gambling as defined in ORS 167.122 through 167.127,
 - (14) Criminal mischief as defined in ORS 164.345 through 164.365,
 - (15) Firing or discharge of a firearm as defined in AMC 7.16.030,
 - (16) Unnecessary noise as defined in AMC 7.08.050,
 - (17) Sexual abuses as defined in ORS 163.415 through 163.427,
 - (18) Sexual misconduct as defined in ORS 163.445,
 - (19) Frequenting a place where controlled substances are used as defined in ORS 167.222,
 - (20) Keeping junk and trash as defined in AMC 7.84.030,
 - (21) Menacing as defined in ORS 163.190, 166.155, and 166.165,

(22) Reckless endangering as defined in ORS 163.195,

(23) 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.

- (3) "Control" means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on property.
- (4) "Good cause" means circumstances beyond the ability of a person acting with reasonable care and diligence to control.
- (5) "Incident" means an occurrence of one of the nuisance behaviors set forth in Section 7.85.030(2)(c) as described in:
 - (a) Personal observation of a law enforcement officer, or
 - (b) A determination by a law enforcement officer after an investigation that there are reasonable grounds to conclude that the alleged incident did, in fact, occur.
- (6) "Owner" means any person, agent, firm, or corporation having a legal or equitable or management interest in a property. Owner includes, but is not limited to;
 - (a) A mortgagee in possession in whom is vested:
 - (1) All or part of the legal title to the property; or
 - (2) All or part of the beneficial ownership and a right to present use and enjoyment of the premises;or
 - (b) A person who has the legal authority to control or to obtain authority to control what occurs on that property.
- (7) "Permit" means to suffer, allow, consent to, or acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
- (8) "Property" means any residential property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, room, house, building, or structure or any separate part or portion thereof, whether permanent or not.
- (9) "Police Chief" means the official responsible for enforcement of State and City laws or departmental designee.
- (10) "Structure" means that which is built or constructed, an edifice or building of any kind including units thereof or mobile homes, any of which is an addition to or a fixture on real property.

7.85.040 Police Chief's Determination.

- (1) If the Police Chief suspects that property may be a chronic nuisance, the Police Chief may notify the owner and the owner's registered agent, if known, in writing. In deciding whether to proceed, the Police Chief shall consider whether the owner has reported the incidents and otherwise acted responsibly and whether proceeding would discourage future reporting and cooperation in discouraging unlawful behavior. The notice shall contain the following information:
 - (a) The street address or description sufficient for identification of the property;
 - (b) That the Police Chief is considering whether the property is a chronic nuisance property together with a concise description of the information upon which the Police Chief is relying. If any of the incidents relied on occurred on property other than that which is subject of the notice, the notice may include a concise description of the location and the causal relationship between the subject property and the incident; and
 - (c) A direction that the owner has 15 days from the date of mailing the notice, to provide information to the Police Chief demonstrating that the property is not a chronic nuisance, inform the Police Chief of the actions the owner intends to take to address the allegations, or indicate good cause as to why the owner cannot do so.

- (2) If the owner fails to respond or to demonstrate to the Police Chief that further action should not be taken, the Police Chief may issue a determination of chronic nuisance and direct the owner to abate the nuisance within 30 days, or show good cause to the Police Chief why the owner cannot meet the deadline. The notice shall state that:
 - (a) If the nuisance is not abated within the 30-day period, and good cause for failure to abate is not shown, the Circuit Judge may order abatement or closure of the property with appropriate conditions. The Circuit Judge may also employ any other remedy deemed by the judge to be appropriate to abate the nuisance, including but not limited to authorizing a civil complaint in a court of competent jurisdiction;
 - (b) If the Circuit Judge orders the property owner to take some action to abate the nuisance, the owner may be required to pay to the City a civil penalty of \$250.00 a day for each day the owner fails to take action;
 - (c) If the Circuit Judge orders the owner to abate the nuisance, the owner may be required to pay a civil penalty of \$500.00 per incident for subsequent incidents, as defined by Section 7.85.030(2)(c), occurring on the property within six months of the order;
 - (d) Permitting chronic nuisance property is a violation of this Chapter; and
 - (e) The above remedies are in addition to those otherwise provided by law.
- (3) Service of the notice to the property owner provided for in this Chapter is completed upon delivery in person or upon mailing the notice by certified mail addressed to:
 - (a) The owner's registered agent, if any is known; or
 - (b) The owner at the address of the property believed to be a chronic nuisance property, or to such other address as shown on the tax rolls of the county in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Police Chief.
- (4) A copy of the notice shall be served on occupants of the property, if different from the owner. Service shall be completed upon delivery in person or upon mailing the notice first class addressed to "occupant" of each unit of the property believed to be a chronic nuisance property.
- (5) In addition, a copy of the Police Chief's determination that the property is a chronic nuisance shall be posted on the main entrance of the property in a conspicuous manner.
- (6) The failure of any person or owner to receive actual notice of the determination by the Police Chief shall not invalidate or otherwise affect the proceedings under this Chapter.

7.85.050 Determination of Hearing Officer.

- (1) If the Police Chief determines that the owner has failed to abate the chronic nuisance or demonstrate good cause as to why the owner cannot do so, the Police Chief may refer the matter to the Circuit Judge for a hearing. The Circuit Judge may give notice of the hearing to the owner and occupants, if different from the owner, and post notice of the hearing on the main entrance of the property. At the time set for the hearing, the owner and occupants may appear and be heard. The Circuit Judge may determine *de novo* whether the property is a chronic nuisance property, whether the nuisance has been abated, and whether the owner has shown good cause or otherwise has a valid defense.
- (2) The City has the initial burden of showing by a preponderance of the evidence that the property is a chronic nuisance property. If the City is relying on an incident that occurred on property other than the property that is the subject of the chronic nuisance determination, the City shall demonstrate some causal relationship between activities occurring on the property and the incident. The activities must have contributed to, but need not be the sole or predominant cause of the incident. Evidence demonstrating a causal connection may include, but is not limited to:
 - (a) That the owner knew or reasonably should have known that the resident or other person associated with the property would engage in conduct listed in Section 7.85.030(2); or
 - (b) Activities on the subject property that encouraged, engendered, promoted, contributed to, or otherwise made the incident more likely to occur.

- (3) It shall be an affirmative defense to an action under this Chapter that the owner 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 that the property is a chronic nuisance. The owner has the burden of proving this defense by a preponderance of the evidence. The action shall be dismissed if the Circuit Judge determines that the owner has proven this defense.
- (4) If the owner can prove by a preponderance of the evidence that the owner is unable to remedy the chronic nuisance within the time frames required by this Chapter, the Circuit Judge may elect to grant more time and continue its final determination as the Circuit Judge determines is just.

7.85.060 Remedies.

- (1) If the Circuit Judge determines that property is a chronic nuisance and the owner has not demonstrated a valid defense, the Judge may order that the nuisance be abated or close and secure the property against all use and occupancy for a period of not less than 30 days and not more than 6 months.
- (2) Prior to issuing any order of abatement or closure, a Circuit Judge may consider the following factors:
 - (a) The actions taken by the owner(s) to mitigate or correct the problem at the property;
 - (b) The financial position of the owner;
 - (c) Whether the problem at the property was repeated or continuous;
 - (d) The magnitude or gravity of the problem;
 - (e) The level of cooperation of the owner in addressing the problem, including whether the owner reported the incidents;
 - (f) The time and cost to the City in attempting to correct the problem; and
 - (g) Any other factor deemed relevant by the Circuit Judge. These factors are guidelines to inform the decision-making process, but the presence or absence of any factors shall not control the decision by the Circuit Judge.
- (3) The order may include conditions under which abatement or closure is to occur.
- (4) Upon a determination by the Circuit Judge that the property is a chronic nuisance, the Police Chief may file a notice of the proceedings to be placed with the county property records.
- (5) The remedies in this section are in addition to those otherwise provided by law. The City may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing a civil complaint in a court of competent jurisdiction.

7.85.070 Multi-Unit Property.

- (1) Except as provided in Section 7.85.070(2), in the case of multi-unit residential property, such as apartment complexes under one ownership, the chronic nuisance determination and closure remedy shall be directed only to the unit or units that are the source or location of the incidents.
- (2) A chronic nuisance determination and remedy may be applied to multiple units, up to and including the entire property, if the Circuit Judge determines that:
 - (a) The incident occurred in the common areas of the property or otherwise are not reasonably attributable to a particular unit;
 - (b) The nature or scope of the incidents is such that they cannot reasonably be attributed to a particular unit;
or
 - (c) Incidents continue to occur despite previous imposition of remedies on specific units and the owner has demonstrated an inability or unwillingness to mitigate or correct the nuisance.

7.85.080 Civil Penalty.

- (1) If the Circuit Judge finds that a property is a chronic nuisance property and orders the owner to take some action to abate the nuisance, the Judge may impose upon the owner a civil penalty of up to \$250.00 per day, payable to the City, for each day after the deadline that the owner fails to take the action ordered.
- (2) If the Circuit Judge orders the owner to abate the nuisance, the Judge may impose upon the owner a civil penalty of \$500.00 per incident for subsequent incidents, as defined by Section 7.85.030(2), occurring on the property within six months of the order.
- (3) A civil penalty is assessed by issuing written notice of penalty to the owner of the chronic nuisance property and the owner's registered agent, if any is known. The notice shall contain the following information:
 - (a) The street address or description sufficient for identification of the property;
 - (b) That the Circuit Judge has found that the owner has failed to take the action required by the Judge, or that after an order to abate the nuisance, a subsequent nuisance activity has occurred, with a concise description of the conditions leading to the Judge's findings;
 - (c) That the owner may request a hearing on the validity of the assessment of the penalty by filing a request with the Circuit Judge within 14 days of the notice. The request must specifically state the grounds upon which the owner believes that the penalty is not valid;
 - (d) The penalty is final when 14 days have elapsed from the date of the notice if a request for hearing is not filed, or upon entry of an order upholding the penalty by the Circuit Judge after hearing.
- (4) The Circuit Judge shall not impose more than ten (10) days of civil penalties at a time. The Judge may impose additional civil penalties after ten (10) days by reissuing notice of imposition of penalties.

7.85.090 Penalty and Costs of Review as Lien.

- (1) The Police Chief may forward a statement of the assessments for penalties, cost of abatement and, if ordered by the Circuit Judge, hearing costs and attorney's fees to the Finance Director. The Finance Director shall notify the owner by mail of the sum of money due to the City. If the sum is not paid within 45 days from the billing date, the Director shall file with the Circuit Judge a statement of the sum due, plus an additional charge of thirty (30) percent to cover administrative expenses. The owner shall be notified by mail of the time and place the Circuit Judge will consider the statement of penalties and costs, and will be given a reasonable opportunity to be heard in objection thereto. The Judge will only determine if the statement of penalties and cost is correct, and will not reconsider the decision as to whether the penalties and costs of the hearing should be imposed. The Judge shall determine the correct amount of penalties and cost and shall declare the same to be a lien upon the property involved, to be entered in the minor lien docket and enforced against the property, in the same manner provided for enforcement of liens for street improvement.
- (2) Nothing in this Section shall be construed as restricting the authority of the City to enter into a settlement of the dispute, including waiving some or all amounts due to the City.

7.85.100 Closure of Property.

If the Circuit Judge's order of closure of a property is not appealed, or if the Judge upholds an appeal of an order which has been challenged, the City shall take steps to physically secure the property against all use, and post conspicuous notices that the property has been closed. All costs reasonably incurred by the City in securing the property shall be made an assessment lien upon the property in the manner described in AMC 7.85.100. Costs may include but are not limited to staff time and materials. Prior to physically closing the property, the City may, but is not required to, provide the owner with a brief opportunity to physically secure the property against all use at the owner's expense.

7.85.110 Entering Closed Property.

It is unlawful for any person to enter, use, or remain in or on property that has been ordered closed pursuant to this Chapter.

7.85.120 Liability.

Nothing herein shall be relied on or construed as establishing any City responsibility, obligation or liability to any third party, for damages or otherwise arising from the actions or inactions of the City in applying this Chapter. Nothing herein lessens or otherwise alters the property owner's responsibility to third parties arising from use and condition of the property.


7.85.130 Violation.

Violation of any of the provisions of this Chapter is a misdemeanor punishable as provided by AMC 1.04.010.

Passed by Council: Nov 9, 2016

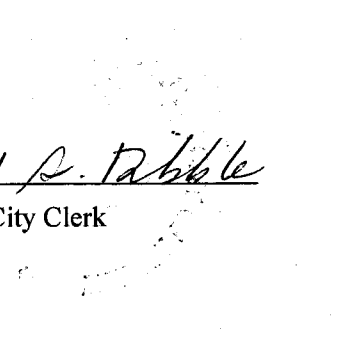
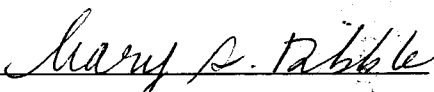
Approved by Mayor: Nov 9, 2016

Effective Date: Dec 9, 2016



Mayor

ATTEST:

City Clerk