



ORDINANCE NO. 5996

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE (AMC) TITLE 8, BY THE CREATION OF CHAPTER 8.25 SPECIFIED CRIME PROPERTY.

WHEREAS, the City of Albany is adding AMC Chapter 8.21, Specified Crime Property, to allow individuals simplified access to the community livability codes; and

WHEREAS, community livability codes were found throughout multiple titles of the Albany Municipal Code; and

WHEREAS, reorganizing the code will allow for greater transparency.

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

Section 1. Chapter 7.96, Specified Crime Property, is hereby repealed.

Section 2. Amending AMC Title 8, Community Livability. AMC Title 8 is hereby amended to add Chapter 8.25 AMC titled Specified Crime Property:

Chapter 8.25 SPECIFIED CRIME PROPERTY

Sections:

- [8.25.010](#) Definitions.
- [8.25.020](#) Specified crime property prohibited.
- [8.25.030](#) Commencement of proceedings.
- [8.25.040](#) Commencement of actions – Burdens of proof, defenses – Mitigation of civil penalty.
- [8.25.050](#) Closure during pendency of action.
- [8.25.060](#) Enforcement of closure order – Costs – Civil penalty.
- [8.25.070](#) Relief from closure order.
- [8.25.080](#) Attorneys fees.
- [8.25.090](#) Severability.
- [8.25.100](#) Violation.

8.25.010 Definitions.

- (1) “Chief of Police,” as used in this chapter, includes the Chief of Police or any person designated by the Albany Chief of Police as his/her delegate in the enforcement of this chapter.
- (2) “City Manager” means the City Manager of the City of Albany.
- (3) “Specified crime property” means any kind of structure, edifice, building or unit(s) thereof where activity involving the unauthorized delivery or manufacture of a controlled substance and defined in ORS Chapter 475, gambling as defined in ORS 167.117, or prostitution as defined by ORS 167.007 has occurred or is occurring.
- (4) “Owner” means:
 - (a) Any person, agent, firm, corporation, association or partnership including a mortgagee in possession in whom is vested:
 - (i) All or part of the legal title to the property, or
 - (ii) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or
 - (b) An occupant of that structure.
- (5) “Person” means any natural person, association, partnership or corporation capable of owning or using property in the City of Albany.

8.25.020 Specified crime property prohibited.

(1) It is unlawful for structures to be employed or used as specified crime property within the City of Albany. If property is found to be used or employed as such, it is subject to closure for a period of up to one year.

(2) It is unlawful for any person to employ, use, maintain, or allow the employment, use or maintenance of specified crime property under their ownership and/or control. If a person is found in violation of this subsection, they may be subject to a civil penalty of up to \$500.00 per day for each day the property has been used as specified crime property as specified in AMC [8.25.030](#).

(3) It is unlawful for any person to use or occupy any structure determined to be specified crime property after service of notice has been made pursuant to AMC [8.25.030](#).

(4) Any occupant who fails to voluntarily cease the use or occupancy of a structure as required by subsection (3) of this section may be removed only pursuant to a court order after notice and an opportunity to be heard by the court having jurisdiction of an action brought pursuant to this chapter.

8.25.030 Commencement of proceedings.

(1) When the Chief of Police believes that a structure has been or is being used or maintained in violation of AMC [8.25.020](#), the Chief of Police may commence proceedings to cause the closure of the structure as well as the imposition of civil penalties against any or all of its owners. In the event the Chief of Police wishes to commence proceedings:

(a) The Chief of Police shall notify the owner(s) of record in writing that the structure has been determined to be specified crime property. The notice shall contain the following information:

(i) The street address and a legal description sufficient for identification of the premises on which the structure is located;

(ii) A statement that the Chief of Police has found the structure to be in violation of this chapter with a concise description of the conditions leading to his/her findings.

(b) A copy of the notice shall be served on the owner and/or their agent, if known, at least 10 days prior to the commencement of any judicial action by the City. Service shall be made either personally or by mailing a copy of the notice by first class mail, postage prepaid, return receipt requested, to each person at their last known address as it appears on the last equalized assessment of the tax roll as well as on the last instrument of conveyance as recorded in the County where the structure is located, and as may be otherwise known to the Chief of Police. If no address appears or is known to the Chief of Police, then a copy shall be mailed first class, postage prepaid, addressed to such person at the address of the structure believed to be specified crime property.

(c) A copy of the notice shall be served on the occupant of the structure if that person is different than the owner. Service of this notice shall occur not less than five days prior to the commencement of any judicial proceeding and be made either personally or by mailing a copy of the notice by first class mail, postage prepaid, to them at the structure.

Furthermore, a copy of the notice may be posted at the property if 10 days have elapsed from the service or mailing of the notice to the owner(s), and no contact has been received by the City from them during that period of time.

(d) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this chapter.

(e) Actual notice of any owner or occupant or other person or entity to whom notice must be given is adequate to satisfy any notice requirement set forth in this chapter.

(2) Concurrent with the notification procedures set forth above, the Chief of Police shall send a copy of the notice to the City Manager as well as any other documentation which he/she believes supports the closure of the structure and the imposition of civil penalties. The City Manager may then authorize the City Attorney's office to commence civil proceedings in a court of competent jurisdiction seeking the closure of the structure as well as the imposition of civil penalties against any or all of the owners thereof, and any such other relief as may be deemed appropriate.

(3) Nothing contained in subsection (2) of this section shall be construed to limit the ability of the City Attorney prior to the institution of judicial proceedings to enter into agreements with an owner willing to voluntarily abate the condition(s) giving rise to the violation.

8.25.040 Commencement of actions – Burdens of proof, defenses –Mitigation of civil penalty.

(1) Except in a proceeding under AMC [8.25.050](#), if after the commencement but prior to the trial of an action brought by the City pursuant to this chapter, an owner specifically stipulates with the City that they will pursue a course of action as the parties agree will necessarily abate the conditions giving rise to the violation(s), the City shall agree to stay proceedings for a period of not less than 10 nor more than 60 days. The owner or the City may thereafter petition the court for such additional like periods of time as may be necessary to complete the action(s) contemplated by the stipulation, however, in the event that the City reasonably believes the owner is not diligently pursuing the action(s) contemplated by the stipulation, it may then apply to the court for a release from the stay seeking some relief as is deemed appropriate.

(2) In an action seeking the closure of a structure as specified crime property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the structure is a specified crime property.

(3) In an action seeking civil penalties from an owner, the City shall have the initial burden of proof to show by a preponderance of the evidence that the owner had knowledge of activities or conditions at the structure constituting a violation of this chapter.

(4) It is a defense to an action seeking the closure of a structure that the owner of a structure at the time in question could not, in the exercise of reasonable care or diligence, determine that the structure was being used or maintained as specified crime property.

(5) In establishing the amount of any civil penalty requested, the court shall consider any of the following factors, if appropriate, and shall cite those found applicable:

- (a) The actions taken by the owner(s) to mitigate or correct the problem at the structure;
- (b) The financial condition of the owner;
- (c) Whether the problems at the structure are repeated or continuous;
- (d) The magnitude or gravity of the problem;
- (e) The economic or financial benefit accruing or likely to accrue to the owner(s) as a result of the conditions at the structure;
- (f) The cooperativeness of the owner(s) with the City;
- (g) The cost to the City of investigating and correcting or attempting to correct the condition;
- (h) Any other factor deemed by the court to be relevant.

8.25.050 Closure during pendency of action.

In the event that it is determined that the structure is an immediate threat to the public health, safety, and welfare, the City may apply to the court for such interim relief as it deems appropriate. In such an event, the notification procedures set forth at AMC [8.25.030](#) and the limitation of AMC [8.25.040](#)(1) need not be complied with.

8.25.060 Enforcement of closure order – Costs – Civil penalty.

(1) In the event that a court finds that a structure constitutes specified crime property as defined in this chapter, the court may order that it be closed for any period of up to one year, and that the owner(s) pay to the City a civil penalty of up to \$500.00 for each day the owner had knowledge of activities or conditions at the structure constituting a violation of this chapter.

(2) The court may also authorize the City to physically secure the structure against use or occupancy in the event that the owner(s) fail to do so within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to effect a closure shall be made an assessment lien upon the property. As used in this subsection, “costs” means those costs actually incurred by the City for the physical securing of the structure, as well as tenant relocation costs given pursuant to subsection (5) of this section. Notwithstanding the foregoing, the City shall not be obligated to pay tenant relocation costs.

(3) The City Recorder effecting the closure shall prepare a statement of costs and the City shall thereafter submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rule of Civil Procedure 68, a certified copy of the statement, including a legal description of the property, shall be forwarded to the office of the City Recorder who thereafter shall enter the same in the City’s lien docket.

(4) Liens imposed by this chapter shall be collected in all respects as provided for street improvement liens, and shall bear interest at the rate of nine percent per year from 10 days after the entry in the lien docket.

(5) A tenant as defined by ORS 91.705(13) may, at the option of the City, be paid their reasonable relocation costs as those are determined by the City, if without actual notice the tenant moved into the structure after either:

(a) An owner or agent received notice of the Chief of Police's determination pursuant to AMC 8.25.030(1); or

(b) An owner or their agent received notice of an action brought pursuant to AMC 8.25.040.

(6) Any person who is assessed the costs of closure and/or a civil penalty by the court shall be personally liable for the payment thereof to the City.

8.25.070 Relief from closure order.

An owner of a structure determined to be specified crime property may obtain relief from the court's judgment if:

(1) They appear and pay all costs associated with the proceedings under this chapter.

(2) They file 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 structure; and keep said bond in force for a period of not less than one year or for such period as the court directs.

(3) They enter into a stipulation with the City that they will immediately abate the conditions giving rise to the specified crime property and prevent the same from being established or maintained thereafter. The stipulation will then be made part of the court's file.

8.25.080 Attorneys fees.

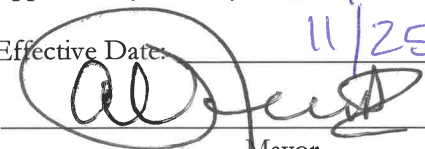
In any action seeking the closure of the structure pursuant to this chapter, the court may, in its discretion, award attorneys fees to the prevailing party.

8.25.090 Severability.

If any provision of this chapter, or its application to any person or circumstances is held to be invalid for any reason, its provisions to other persons or circumstances shall not in any way be affected.

8.25.100 Violation.

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

Passed by the Council: 10/26/2022
Approved by the Mayor: 10/26/2022
Effective Date: 11/25/2022


Mayor

ATTEST:



City Clerk

