CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
ORDINANCE NO. 15- 17

AN ORDINANCE AMENDING CHAPTER 7.42 OF THE TIGARD MUNICIPAL CODE "CHRONIC NUISANCE PROPERTY" WITH UPDATED AND ADDITIONAL LANGUAGE.

WHEREAS, staff recommends that Tigard Municipal Code 742 Chronic Nuisance Property be revised with updated definitions and additional language and;

WHEREAS, the City Council wishes to update the content of Tigard Municipal Code 742.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code 7.42 is amended as shown in Exhibit A; text to be deleted is shown in ~~strikethrough~~ and text to be added is shown in underline. Updated definitions and language include:

7.42.020 Definitions

Item "C": "Chronic Nuisance Property" means property upon which ~~four (4)~~ three (3) or more distinct occurrences of any of the following acts or behavior take place during any ~~sixty (60)~~ one hundred twenty (120) day period.

Item "1": Property for which a court has issued a search warrant based on probable cause that possession, manufacture or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through ORS 475.285 and/or ORS 475.940 through ORS 475.995 has occurred within the previous one hundred twenty (120) days, and the Chief of Police has determined that the search warrant was based on evidence of continuous or repeated chronic nuisance activities at the property.

Item "10": "Prostitution" or related offenses as defined in ORS 167.007 through ORS 167.017.

Item "11": "Theft" as defined in ORS 164.015 through ORS 164.140.

Item "12": "Arson" or related offenses as defined in ORS 164.315 through ORS 164.335.

Item "13": "Sexual Abuse, Contributing to the Sexual Delinquency of a Minor, or Sexual Misconduct" as defined in ORS 163.415 through ORS 163.445.

Item "14": "Alcoholic Liquor" violations as defined in ORS 471.105 through ORS 471.482.

Item "15": "Offensive Littering" as defined in ORS 164.805.

Item "16": "Illegal Gambling" as defined in ORS 167.117, and/or ORS 167.122 through ORS 167.127.

Item "17": "Animal Abuse or Neglect" as defined in ORS 167.315 through ORS 167.330; "Animal Abandonment" as defined in ORS 167.340; "Animal Fighting" as defined in ORS 167.335; or "Dog Fighting" as defined in ORS 167.365.

7.42.040 Prefilling Notification Procedure

Item "B": After ~~three (3)~~ two (2) occurrences of any of the acts or behaviors listed in Section 7.42.020.C of this chapter within a ~~sixty~~ one hundred twenty (120) day period, the Chief of Police shall provide notification via certified mail, stating the times and places of the alleged occurrences and the potential liability for violation of this chapter, to all responsible parties for the property. Responsible parties for a given property shall be presumed from the following:

Item "C": After ~~three (3)~~ two (2) occurrences of any of the acts or behaviors listed in Section 7.42,020.C of this chapter within a ~~60 day~~ one hundred twenty (120) day period, notification shall be provided as described in subsection B of this section. (Ord. 12-01 §2; Ord. 94-11).

7.42.050 Remedies

Item "2": ~~Access a civil penalty not to exceed $500; and/or~~ If the court determines a property to be a Chronic Nuisance Property, the court may impose a civil penalty of up to $1,000.00 per day for each day a nuisance activity occurred on the property after three (3) occurrences within a one hundred twenty (120) day time period.

SECTION 2: This ordinance shall be effective 30 days after its passage by council, signature by the mayor and posting by the city recorder.

PASSED: By Unanimous vote of all council members present after being read by number and title only, this 10th day of November, 2015.

Carol A Krager
Carol A. Krager, City Recorder

APPROVED: By Tigard City Council this 10th day of November, 2015.

John L. Cook, Mayor

Approved as to form:

City Attorney

11.11.2015
Date

Chapter 7.42 CHRONIC NUISANCE PROPERTY

Sections:

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7.42.010 Short Title

The ordinance codified in this chapter shall be known as the "Chronic Nuisance Ordinance," and may also be referred to herein as "this chapter." (Ord. 94-11)

7.42.015 Incorporation of State Statute

Any reference to state statute incorporated into this chapter refers to the statute in effect on the effective date of the ordinance codified in this chapter. (Ord. 94-11)

7.42.020 Definitions

As used in this chapter, or any code provision referenced by this chapter, the following definitions apply.

A. "Chief of police" means the chief of the Tigard Police Department or his/her designee.

B. "City manager" means the city manager or his/her designee.

C. "Chronic nuisance property" means property upon which ~~four~~ three (3) or more distinct occurrences of any of the following acts or behaviors take place during any ~~60-day~~ one hundred twenty day (120) period.

1. Property for which a court has issued a search warrant based on probable cause that possession, manufacture or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through ORS 475.285 and/or ORS 475.940 through ORS 475.995 has occurred within the previous 120 days and the Chief of Police has determined that the search warrant was based on evidence of continuous or repeated chronic nuisance activities at the property.

2. "Harassment," as described in ORS 166.065;

3. "Fire or discharge of a gun or weapon," as described in Section 7.32.120 of this code;

4. "Disorderly conduct," as described in ORS 166.025;

5. "Public indecency," as described in Section 7.32.110 of this code;

6. "Unlawful use or possession of weapons or firearms," as described in ORS 166.210 through 166.275;

7. "Violation of the Uniform Controlled Substances Act," as described in ORS Chapter 475;

8. "Assault," as described in ORS

163.160, 163.165, 163.175, or 163.185;

9. "Menacing," as described in ORS 163.190.

10. "Prostitution" or related offenses as described in ORS 167.007 through ORS 167.017.

11. "Theft" as described in ORS 164.015 through ORS 164.140.

12. "Arson" or related offenses as described in ORS 164.315 through ORS 164.335.

13. "Sexual Abuse, Contributing to the Delinquency of a Minor, or Sexual Misconduct" as described in ORS 163.415 through ORS 163.445.

14. Alcoholic liquor violations as described in ORS 471.105 thorough ORS 471.482.

15. "Offensive Littering" as described in ORS 164.805.

16. "Illegal Gambling" as described in ORS 167.117, and/or ORS 167.122 through ORS 167.127.

17. "Animal Abuse or Neglect", ORS 167.315 through ORS 167.330; "Animal Abandonment", ORS 167.340; "Animal Fighting", ORS 167.355; or "Dog Fighting", ORS 167.365.

D. "Code enforcement officer" means the chief of police or the city attorney, as designated by the city manager.

E. "Hearings officer" or "civil infractions hearings officer" means the municipal judge of the City of Tigard.

F. "Owner" means the person or persons having legal or equitable title to the property.

G. "Property" means any real property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any premises, room, apartment, house, building or structure or any separate part or portion thereof, whether permanent or not.

H. "Responsible party" includes each of the following:

1. The owner of the property, or the owner's manager or agent or other person in control of the property on behalf of the owner; or

2. The person occupying the property, including bailee, lessee, tenant or other person having possession. (Ord. 03-08; Ord. 94-11)

7.42.030 Chronic Nuisance Property

A. The acts or omissions described herein are hereby declared to be public nuisances of the sort that commonly recur in relation to a given property, thereby requiring the remedies set out in this chapter.

B. Any property within the City of Tigard which becomes chronic nuisance property is in violation of this chapter and subject to its remedies.

C. Any person who is a responsible party for property which becomes a chronic nuisance property shall be in violation of this chapter and subject to its remedies. (Ord. 94-11)

7.42.040 Prefiling Notification Procedure

A. Except as otherwise noted herein, notwithstanding Section 1.16.060.B of this code, this section sets out procedures to be used in processing an infraction of this chapter.

B. After ~~three~~ two (2) occurrences of any of the acts or behaviors listed in Section 7.42.020.C of this chapter within a ~~sixty (60)~~ 120-day period, the chief of police shall provide notification via certified mail, stating the times and places of the alleged occurrences and the potential liability for violation of this chapter, to all responsible parties for the property. Responsible parties for a given property shall be presumed from the following:

1. The owner and the owner's agent, as shown on the tax rolls of Washington County;

2. The resident of the property, as shown on the records of the water department.

C. After ~~three~~ two occurrences of any of the acts or behaviors listed in Section 7.42.020.C of this chapter within a ~~60-day~~ 120 day period, notification shall be provided as described in subsection B of this section. (Ord. 12-01 §2; Ord. 94-11)

7.42.045 Commencement of Actions—Summons and Complaint

A. A uniform infraction summons and complaint, containing the following parts, may be served upon any responsible party for chronic nuisance property, citing that party into municipal court.

1. The summons;

2. The complaint; and

3. A description of the alleged occurrences leading to violation of this chapter, stating the times and places of those occurrences.

B. The uniform infraction summons shall contain the following information:

1. The file number;

2. The name and address of each respondent;

3. The infraction with which the respondent is charged;

4. The date, time, and place at which the hearing on the infraction is to take place;

5. An explanation of the respondent's obligation to appear at this hearing, and that failure to appear may result in a default judgment being taken against the respondent;

6. An explanation of the respondent's right to a hearing, right to representation by counsel at personal expense, right to cross examine adverse witnesses, and right to compulsory process for the production of witnesses;

7. Notice that the cost of the hearing, including witness fees, may be charged to the respondent if the final order of the court finds that the property is a chronic nuisance property.

C. The uniform infraction complaint shall contain the following information:

1. The date, time, and place the alleged infractions occurred;

2. The date on which the complaint was issued;

3. A notice to the respondent that a civil complaint has been filed with the Municipal Court.

D. Service of the summons and complaint shall be accomplished as described in Section 1.16.230 of this code. In addition to the affidavit described in subsection G of that section, a return receipt of certified mailing which indicates

delivery of the summons and complaint to the respondent's last known address, or a certified mailing which has been returned by the post office "unclaimed," shall also create a rebuttable presumption that the respondent had the required notice.

E. The hearing for determination as to whether an infraction has been committed shall take place in the manner described in Sections 1.16.250 through 1.16.300 and 1.16.320 of this code.

F. Subject to the limitations of Section 1.16.230.G of this code, a default judgment may be entered against a respondent who fails to appear at the scheduled hearing. Upon such judgment, the court may prescribe the remedies described in this chapter. (Ord. 12-01 §2; Ord. 94-11)

7.42.050 Remedies

A. Upon finding that the respondent has violated this chapter, the court may:

1. Require that the chronic nuisance property be closed and secured against all use and occupancy for a period of not less than 30, but not more than 180, days; and/or

2. ~~Assess a civil penalty not to exceed $500; and/or~~ If the court determines a property to be a Chronic Nuisance Property, the court may impose a civil penalty of up to $1,000.00 per day for each day a nuisance activity occurred on the property after three (3) nuisance activities have occurred on the property within a 120 day time period.

3. Employ any other remedy deemed by the court to be appropriate to abate the nuisance.

B. In lieu of closure of the property pursuant to subsection A of this section, the respondent may file a bond acceptable to the court. Such bond shall be in an amount set by the court not to exceed the value of the property closed as determined by the court, and shall be conditioned upon the non-recurrence of any of the acts or behaviors listed at Section 7.42.020.C of this chapter for a period of one year after the judgment. Acceptance of the bond described herein is further subject to the court's satisfaction of the respondent's good faith commitment to abatement of the nuisance. (Ord. 94-11)

7.42.060 Defenses—Mitigation of Civil Penalty

A. It is a defense to an action brought pursuant to this chapter that the responsible party at the time in question could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the finding that the property is chronic nuisance property. However, it is no defense under this subsection that the party was not at the property at the time of the incidents leading to the chronic nuisance situation.

B. In implementing the remedies described in this chapter, the court may consider any of the following factors, as they may be appropriate, and shall cite those found applicable:

1. The actions taken by the owner(s) to mitigate or correct the problem at the property;

2. The financial condition of the owner;

3. Whether the problem at the property was repeated or continuous;

4. The magnitude or gravity of the problem;

5. The cooperativeness of the owner(s) with the city in remedying the problem;

6. The cost to the city of investigating and correcting or attempting to correct the condition;

7. Any other factor deemed by the court to be relevant. (Ord. 94-11)

7.42.070 Closure During Pendency of Action—Emergency Closures

In addition to any other remedy available to the city under this chapter, in the event that the chief of police finds that a property constitutes an immediate threat to the public safety and welfare, the city may apply to any court of competent jurisdiction for such interim relief as is deemed by the city manager to be appropriate. In such event, the notification and commencement of action procedures set forth in Sections 7.42.040 and 7.42.045 need not be complied with. (Ord. 03-08; Ord. 94-11)

7.42.080 Enforcement of Closure Order—Costs—Civil Penalty

A. The court may authorize the city to physically secure the property against use or occupancy in the event that the owner(s) fail to do so within the time specified by the court.

B. The court may assess on the property owner the following costs incurred by the city in effecting a closure of property:

1. Costs incurred in actually physically securing the property against use;

2. Administrative costs and attorney's fees in bringing the action for violation of this chapter.

C. The city manager may, within 14 days of written decision by the court, submit a signed and detailed statement of costs 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 copy of the statement, including a legal description of the property, shall be forwarded to the office of the city finance director who thereafter shall enter the same in the city's lien docket in the same manner prescribed by Section 1.16.710 of this code.

D. Persons assessed the costs of closure and/or civil penalty pursuant to this chapter shall be jointly and severally liable for the payment thereof to the city. (Ord. 12-01 §2; Ord. 03-08; Ord. 94-11)

7.42.085 Tenant Relocation Costs

A "tenant" (as defined by ORS 90.100(16)) of chronic nuisance property may be entitled to reasonable relocation costs, if without actual notice the tenant moved into the property after the property owner or his/her agent received notice of an action brought pursuant to this chapter. Any allowable costs will be determined by the city, and shall be a liability upon the owner of the chronic nuisance property. (Ord. 94-11)

7.42.090 Attorney Fees

In any action brought pursuant to this chapter, the court may, in its discretion, award reasonable attorney's fees to the prevailing party. (Ord. 94-11)

7.42.100 Severability

If any provision of this chapter, or its application to any person or circumstance, is held to be invalid for any reason, the remainder of the chapter, or the application of its provisions to other persons or circumstances, shall not in any way be affected. (Ord. 94-11)

7.42.110 Nonexclusive Remedy

The remedy described in this chapter shall not be the exclusive remedy of the city for the acts and behaviors described in Section 7.42.020.C. (Ord. 94-11) ■