

Title 8 - HEALTH AND SAFETY  
CHAPTER 8.22 CHRONIC NUISANCE PROPERTIES

## CHAPTER 8.22 CHRONIC NUISANCE PROPERTIES

### Sec. 8.22.10. Definitions.

A. *Chronic Nuisance Property.*

1. Property on which three or more Nuisance Activities exist or have occurred during any ~~30~~180-day period; or
2. Property on which or within 200 linear feet of any portion of which any person associated with the property has engaged in three or more Nuisance Activities during any ~~30~~180-day period; or
3. Property that, 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, and ORS 475.005 through ~~475.285 and/or 475.940 through 475.995~~80 has occurred within the previous ~~30~~180 days, and the City Manager or Chief of Police has determined that the search warrant was based on evidence of continuous or repeated Nuisance Activities at the property; or
4. Property on which continuous or repeated Nuisance Activities as defined in Subsection C. below 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~~-Bias crime as defined in ORS 166.155 through 166.165.
3. Disorderly conduct as defined in ORS 166.023 through 166.025.
4. Assault, strangulation, or menacing as defined in ORS 163.160 through 163.190.
5. Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as defined in ORS 163.415 through 163.445.
6. Public indecency as defined in ORS 163.465.
7. Prostitution or related offenses as defined in ORS 167.007 through 167.017.
8. Alcoholic liquor violations as defined in ORS Chapter 471.105 through 471.482.
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 164.1430.
12. Arson or related offenses as defined in ORS 164.3015 through 164.33542.
13. Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, and ORS 475.005 through ~~475.285, and/or 475.940 through 475.995~~80.
14. Illegal gambling and related offenses as defined in ORS 167.117, and ~~for~~ ORS 167.122 through ORS 167.1247.

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- 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 conspire to commit (as defined in ORS 161.450), any of the above activities, behavior or conduct.
- 17. Fire or discharge of a firearm as defined in ORS 166.
- 18. Disorderly conduct as defined in [SMC 9.02.1](#) or ORS 166.023 and 166.025.
- 19. [Animal abuse, neglect, abandonment, or fighting, unlawful tethering, sexual assault of an animal, or dog fighting as defined in ORS 167.315 through 167.330, 167.333, 167.340, 167.343, 167.355, and 167.365.](#)

- D. *Person.* Any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying, or using property in the ~~C~~city of Sandy.
- 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. *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.

(Ord. No. 03, 2011; Ord. No. 16, 2014)

**Sec. 8.22.20. Violation.**

- A. Any property determined by the [City Manager or e](#)Chief of ~~p~~P~~o~~lice to be chronic nuisance property is in violation of this Chapter and subject to its remedies.
- B. Any person in charge of property determined by the [City Manager or e](#)Chief of ~~p~~P~~o~~lice to be a chronic nuisance property is in violation of this chapter and subject to its remedies.

(Ord. No. 03, 2011)

**Sec. 8.22.30. Procedures.**

- A. When the [City Manager or e](#)Chief of ~~p~~P~~o~~lice ~~receives~~becomes aware of two or more police reports documenting the occurrence of nuisance activities on or within 200 feet of a property which appear to meet the requirements of SMC 8.22.10, the [City Manager or e](#)Chief of ~~p~~P~~o~~lice shall independently review such reports to determine whether they describe the activities, behaviors or conduct enumerated under SMC 8.22.10.~~C.1. — C.19.~~ Upon such a finding, the [City Manager or e](#)Chief of ~~p~~P~~o~~lice may notify the person in charge in writing that the property is in danger of becoming chronic nuisance property. The notice shall contain the following information:

- 1. The street address or a legal description sufficient for identification of the property.

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2. A statement that the [City Manager or eChief of pPolice](#) 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 [City Manager or eChief of pPolice](#) shall offer the person in charge an opportunity to propose a course of action that the [City Manager or eChief of pPolice](#) agrees will abate the nuisance activities giving rise to the violation.
  3. Demand that the person in charge respond to the [City Manager or eChief of pPolice](#) within ten days to discuss the nuisance activities.
- B. When the [City Manager or eChief of pPolice](#) receives a police report documenting the occurrence of additional nuisance activity on or within 200 [linear](#) feet of a property after notification as provided by ~~s~~[Subsection A.](#) of this section; or, in the case of chronic nuisance property as defined in SMC 8.22.10.A.3. or A.4., for which notice under ~~s~~[Subsection A.](#) of this section is not required, the [City Manager or eChief of pPolice](#) 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 [City Manager or eChief of pPolice](#) 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 days to the [City Manager or eChief of pPolice](#) and propose a course of action that the [City Manager or eChief of pPolice](#) 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 certified first class mail, postage prepaid.~~
  - ~~6.— The chief of police or his delegate shall prepare an affidavit of mailing for any mailing of notice required under this subsection.~~
- C. [The following additional provisions shall apply to notice provided under Subsection B above:](#)
- [1. 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 City Manager or Chief of Police.](#)
  - [2. 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 certified first class mail, postage prepaid.](#)
  - [3. A copy of the notice shall also be posted at the property.](#)
  - [4. The City Manager or Chief of Police or their delegate shall prepare an affidavit of mailing for any mailing of notice required under Subsection B.](#)

~~If the person in charge fails to respond as required by subsection B.3. of 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 subsection B. of this section shall also be posted at the property.~~

- D. ~~If the person in charge fails to respond as required by Subsection B.3. of this section, the City Manager or Chief of Police may refer the matter to the City Attorney.~~ If the person in charge responds as required by ~~s~~Subsection B.3. of this section and agrees to abate nuisance activities giving rise to the violation, the ~~City Manager or~~ ~~e~~Chief of ~~p~~Police may postpone referring the matter to the ~~e~~City ~~a~~Attorney. If an agreed course of action does not result in the abatement of the nuisance activities within 60 days; or, if no agreement concerning abatement is reached within 60 days, the ~~City Manager or~~ ~~e~~Chief of ~~p~~Police may refer the matter to the ~~e~~City ~~a~~Attorney.
- E. When a person in charge makes a response to the ~~City Manager or~~ ~~e~~Chief of ~~p~~Police as required by ~~s~~Subsections A.3. or B.3. of 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 that is otherwise admissible or offered for any other purpose.
- F. The failure of any person to receive notice as provided by ~~s~~Subsections A.3. or B.3. of this section shall not invalidate or otherwise affect the proceedings under this chapter.

(Ord. No. 03, 2011)

#### **Sec. 8.22.40. Commencement of actions; remedies; burden of proof.**

- A. The ~~e~~City ~~a~~Attorney may commence legal proceedings in any court of competent jurisdiction, including Sandy Municipal Court and Clackamas Circuit Court, to abate chronic nuisance property and to seek closure, 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 property to be chronic nuisance property, the court ~~shall~~ may order that the property be closed and secured against all unauthorized access, use and occupancy for a period of not less than six months, nor more than one 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 \$200.00~~ equivalent to a Class A Violation under SMC 1.18 per nuisance activity per day for each day nuisance activities occurred on the property, following notice pursuant to SMC 8.22.30.B.; or, the cost to the ~~e~~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 the ~~e~~City's money judgment. The civil penalties assessed under this section shall be in addition to and not in lieu of any penalties for the underlying activities otherwise established by law.
- 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:
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;

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5. The cooperation of the person in charge with the eCity;
  6. The cost to the eCity of investigating and correcting or attempting to correct the nuisance activities;
  7. Any other factor deemed relevant by the court.

~~8.F.~~ The eCity 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.

(Ord. No. 03, 2011)

### **Sec. 8.22.50. 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 and 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 eCity is not required to comply with the notification procedures set forth in SMC 8.22.30.

(Ord. No. 03, 2011)

### **Sec. 8.22.60. Enforcement.**

- A. The court may authorize the eCity 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 the court authorizes the eCity to secure the property, the eCity shall recover all costs reasonably incurred by the eCity to physically secure the property as provided by this section. The eCity shall prepare a statement of costs incurred in physically securing the property and the eCity shall thereafter 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(248), if, without actual notice, the tenant moved into the property after either:

1. A person in charge received notice of the determination of the City Manager or eChief of pPolice pursuant to SMC 8.22.30.B.; or
2. A person in charge received notice of an action brought pursuant to SMC 8.22.50.

- C. A lien shall be created against the property for the amount of the eCity's money judgment. In addition, any person who is assessed penalties under SMC 8.22.40.C. and/or costs under SMC 8.22.60.A. shall be personally liable for payment thereof to the eCity. Judgments imposed by this chapter shall bear interest at the statutory rate.

(Ord. No. 03, 2011)

### **Sec. 8.22.70. Attorney fees.**

The court may, in its discretion, award attorneys' fees to the prevailing party.

(Ord. No. 03, 2011)