

ORDINANCE BILL NO. 2 FOR 2014

ORDINANCE NO. 1238

AN ORDINANCE PERTAINING TO CHRONIC NUISANCE PROPERTY AND CODIFICATION OF SAID ORDINANCE IN THE SWEET HOME MUNICIPAL CODE

The City of Sweet Home does ordain as follows:

Section 1. Chapter 8.12 of the Sweet Home Municipal Code is hereby created to read as follows:

TITLE 8. HEALTH AND SAFETY

CHAPTER 8.12

CHRONIC NUISANCE PROPERTY ORDINANCE

SECTIONS

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8.12.010 TITLE OF PROVISIONS

This chapter shall be known as the "Chronic Nuisance Property Ordinance."

8.12.020 DEFINITIONS

As used in this ordinance, the following definitions apply:

1. CHIEF OF POLICE: means the Chief of Sweet Home Police Department or designee.
2. CITY MANAGER: means the City Manager of the City of Sweet Home or designee.
3. CHRONIC NUISANCE PROPERTY: means real property premises (including industrial, commercial or residential buildings), herein also referred to as the "property," "premises" or "subject property," upon, near (as hereinafter described in this section) or in which three or

more distinct occurrences of any of the below listed prohibited acts or behaviors (as defined in Oregon law or the SHMC) occur, or the patrons, employees, residents, owners or occupants thereof engage in three or more of said prohibited acts or behaviors on the property, or, in relation to the property within 400 feet of the property, and three or more citations are issued and/or arrests are made during any 90 consecutive day period:

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| A. | Criminal Homicide | ORS 163.005 |
| B. | Rape, Sodomy, and Unlawful Sexual Penetration | ORS 163.355 to ORS 163.411 |
| C. | Menacing and Recklessly Endangering Another Person | ORS 163.190 and ORS 163.195 |
| D. | Intimidation | ORS 166.155 and ORS 166.165 |
| E. | Harassment | ORS 166.065 |
| F. | Disorderly Conduct II | ORS 166.025 |
| G. | Discharge of Weapons | ORS 166.630 and ORS 166.635
SHMC 9.32.010, 9.32.020, 9.32.030
(See ORS 166.172) |
| H. | Unnecessary Noise | SHMC Section 9.20.020 |
| I. | Providing Liquor | ORS 471.410 |
| J. | Minor in Possession of Alcohol | ORS 471.430 |
| K. | Assault and Strangulation | ORS 163.160 to ORS 163.187 |
| L. | Sexual Abuse, Contributing to the Delinquency of a Minor And Sexual Misconduct | ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435, and ORS 163.445 |
| M. | Public Indecency | ORS 163.465 |
| N. | Controlled Substances | ORS 167.222, ORS 167.262 and ORS 475.525 to ORS 475.894 |
| O. | Criminal Mischief | ORS 164.345 to ORS 164.365 |
| P. | Criminal Mistreatment | ORS 163.200 and ORS 163.205 |
| Q. | Criminal Trespass | ORS 164.245 and ORS 164.255 |
| R. | Unlawful Use of a Weapon | ORS 166.220 |
| S. | Prostitution and Related Offenses | ORS 167.007 to ORS 167.017 |
| T. | Theft | ORS 164.015 to ORS 164.140 |
| U. | Placing Offensive Substances in Waters, on Highways or Other Property and Offensive Littering | ORS 164.785 and ORS 164.805 |

- V. Arson and Related Offenses ORS 164.315 to ORS 164.335
- W. Illegal Gambling ORS 167.122 and ORS 167.127
- X. Curfew SHMC 9.28.010
- Y. Purchasing Sex With a Minor ORS 163.413
- Z. Any attempt to commit (as defined by ORS 161.405) or conspiracy to commit (as defined by ORS 161.450 and ORS 161.455) any of the above offenses.

4. OWNER: means the person(s) (including individual(s), corporation, partnership or other entity) having legal or equitable title to the property. "Property" means any real property and any improvement thereon incidental or appurtenant, including but not limited to any room, apartment, house, building, structure or any separate part or portion thereof, whether permanent or not.

5. RESPONSIBLE PARTY includes:

- A. The owner of the property, or the owner's manager or agent or other person or entity in control of the property on behalf of the owner; and/or,
- B. The person of entity occupying the property, including, a bailee, lessee, tenant or other having possession.
- C. Responsible party for a specific property shall be presumed from the following:
 - (1) The owner and the owner's agent, as shown on the Assessor's tax rolls of Linn County.
 - (2) The resident or occupant of the property, as shown on the records (including utilities records) of the City of Sweet Home.

6. COURT: means a court of competent jurisdiction, which may address the respective issues.

8.12.030 CHRONIC NUISANCE PROPERTY

- 1. The behavior, acts or omissions described in this Chapter are hereby declared to be nuisances and if they commonly reoccur in relation to a specific property, such property may be declared 'chronic nuisance property', thereby requiring the application of remedies set out in this Chapter.
- 2. Any property within the City of Sweet Home, which is found to be a chronic nuisance property, shall be in violation of this Chapter and subject to its remedies.
- 3. Any person who is a responsible party for property, which is deemed a chronic nuisance property, shall be in violation of this Chapter and subject to its remedies.

8.12.040 PRE-FILING NOTIFICATION PROCEDURE

After two occurrences with citations and/or arrests on or near (as defined in this Chapter) the property, of any of the prohibited acts or behaviors listed in this Chapter, within a consecutive 90-day period, the Chief of Police or designee shall provide notification, via certified mail, return receipt requested, to all known responsible parties for the property, stating the times and places of the alleged occurrences and the potential liability for violation

of this Chapter. The City Manager and City Attorney shall be provided copies of the notice.

8.12.050 COMPLIANCE AGREEMENT WITH RESPONSIBLE PARTY (IES)

1. After providing notification to all known responsible parties, the Chief of Police or designee has the authority to solicit and obtain, on behalf of the City, a voluntary agreement with the party(ies) to comply with the provisions of this Chapter ("compliance agreement"). The compliance agreement shall be in writing and signed by all known responsible parties and the Chief of Police or designee on behalf of the City; a copy thereof shall be provided to the City Manager.
2. In proposing the compliance agreement, the Chief of Police or designee shall consider the factors outlined in Section 8.12.080(2) below.
3. The compliance agreement is strictly remedial in nature and shall not be interpreted to limit in any manner the authority of the City to commence an action against any responsible party or another for a violation of any provision of the Sweet Home Municipal Code or Oregon Law.
4. If the compliance agreement is not followed as agreed, the City may proceed with civil action as provided in this chapter or the provisions of the ORS or the Sweet Home Municipal Code.

8.12.060 COMMENCEMENT OF ACTIONS; SUMMONS AND COMPLAINT

1. In the event there occurs on or near (as defined in this Chapter) the property three or more continued prohibited acts or behavior with citations and/or arrests as listed in Section 8.12.020 of this Chapter, contrary to the terms of the compliance agreement and/or in violation of this Chapter, the Sweet Home City Council shall be advised and, upon deliberation, may direct that the City proceed to initiate court action pursuant to the provisions of this Chapter or take such other action as the Council deems appropriate.
2. The Sweet Home Municipal Court shall have jurisdiction to hear the civil action as provided for herein using its municipal powers, justice court powers or powers otherwise given or held by it.
3. Following the filing of an action in a Court of competent jurisdiction, upon verification of proper service of process of the Summons and Complaint, and a prima facie presentation to the Court, a default judgment and order may be entered against a respondent who fails to duly appear before that Court.

8.12.070 REMEDIES; CIVIL PENALTY; ENFORCEMENT ORDER

1. In the event the respondent(s) is found by a preponderance of the evidence to have violated this Chapter, the Court may, by judgment and order:
 - A. Require that the chronic nuisance property be closed against all use and occupancy for a period of not less than 30 days, but not more than 180 days; and/or,
 - B. Assess a civil penalty of up to \$500.00 per day for each day nuisance activities occur on (or near as defined herein) the property.
 - C. Subsequent acts and behavior in violation of the provisions of this Chapter, which occur within two years following the entry of any earlier judgment and order, may be actionable, at the direction of the City Council, and, if violation(s) of this Chapter

is established, the chronic nuisance property may be closed in accordance with this Section, and the Court may impose a civil penalty of up to \$1,000.00 per day nuisance activities occur on (or near as defined herein) the property.

- D. In addition to the above, the Court may employ any other remedy provided by law, deemed by the Court to be appropriate to abate the nuisance.
 - E. In addition to the above, the Court may assess costs and charges as described in Section 8.12.100.
- 2. In lieu of closure of the property, at the Court's discretion, the respondent may be permitted to file a bond with the City that is acceptable to the Court and subject to the Court's satisfaction of the respondent's good faith commitment to abatement of the nuisance. Such bond shall be in the amount of at least \$500 and shall be conditioned upon the non-recurrence, for a period of one year after entry of the judgment, of any of the acts or behaviors listed in Section 8.12.020 of this Chapter. Forfeiture of the bond is subject to Court review and order.
 - 3. The Court may authorize the City to physically secure the subject property against use or occupancy, in compliance with the judgment or order, in the event the owner(s) or the responsible party(ies) fail to do so within the time specified by the Court.

8.12.080 DEFENSES; MITIGATION

- 1. It is a defense to an action brought pursuant to this Chapter, that the responsible party, the respondent, at the time the alleged action or behavior occurred, 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 determination that the property is a chronic nuisance property. The assertion that the party, the respondent, was not present at the property at the time the alleged acts or behavior occurred upon which the property was deemed chronic nuisance property, shall not, alone, be a defense to the action.
- 2. The Court may consider any of the following factors, as appropriate, in its decision, and shall cite those found applicable:
 - A. The effort taken by the responsible party to mitigate or correct the alleged action or behavior which occurred at or near (as defined in this Chapter) and in relation to the property;
 - B. Whether the alleged action or behavior was repeated or continuous;
 - C. The magnitude or gravity of the alleged action or behavior;
 - D. The cooperativeness of the responsible party with the City in causing the abatement of the alleged action or behavior;
 - E. The cost to the City of investigating and abating action or behavior or attempting to correct the condition; or;
 - F. Any other factor deemed by the court to be relevant.

8.12.090 EMERGENCY REMEDY

In addition to any remedies available to the City under this Chapter or otherwise, in the event the City Manager finds that a property or its use constitutes an immediate threat to the public safety and welfare, upon review and approval by the City Council, the City may apply to the Court for such relief as is deemed appropriate.

8.12.100 COSTS; LIEN

1. The Court may assess the property owner(s) and the responsible party(ies) the following costs incurred by the City in the proceeding:
 - A. Costs incurred in the actual physical securing of the subject property against use or occupancy, including, but not limited to, the cost of personnel, materials, medical costs, consulting fees, notices and equipment charges;
 - B. The City's investigative costs; and,
 - C. Administrative costs and costs (collectively referred to as cost) incurred in pre-filing implementation of the abatement process, together with the cost of the initiation and conducting of the court action.
2. The City Manager may, within 14 days of the Court's entry of judgment and order against the respondent(s), submit a signed detailed statement of costs to the Court for its review. If no objection to the statement is made within 14 days after service on the respondent(s) of a copy of the statement, the amount submitted shall become a part of the judgment and a lien against the subject premises. A copy of the judgment and the statement of costs, together with a verified designation of the address and legal description of the property, shall be forwarded to the Sweet Home City Recorder, who shall enter the same in the Sweet Home City Lien Docket.
3. Persons assessed the costs and/or civil penalty pursuant to this Chapter shall be jointly and severally liable for the payment thereof to the City.

8.12.110 SEVERABILITY

If any provisions 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.

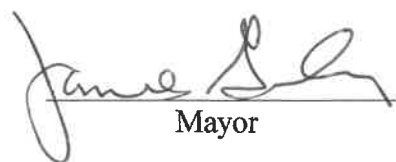
8.12.120 NONEXCLUSIVE REMEDY

The remedies described in this Chapter shall not be the exclusive remedies of the City in enforcement of the prohibition of the acts and behaviors described in Section 8.12.020.

PASSED by the Council and approved by the Mayor this 27th day of May, 2014.

ATTEST:


City Manager - Ex Officio City Recorder



Mayor