

ORDINANCE NO. 1872

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BY 3/11/05 CODIFIED
Date 6-22-05

(An ordinance amending Chapter 8.08—Nuisances to the Hood River Municipal Code)

WHEREAS, the City occasionally experiences ongoing problems with certain properties and those problems constitute nuisances under the Hood River Municipal Code;

WHEREAS, the existing remedies for abating a nuisance under Chapter 8.08 of the Hood River Municipal Code are not adequate for properties with chronic nuisance problems;

WHEREAS, the City should have the ability to obtain a court order closing a property to use and/or occupancy when the property poses a chronic nuisance;

WHEREAS, the following amendments to Chapter 8.08 provide for a fair procedure for the city to seek closure of a chronic nuisance property;

NOW, THEREFORE, THE CITY OF HOOD RIVER ORDAINS AS FOLLOWS:

Chapter 8.08 of the Hood River Municipal Code is amended to read as follows (additions in underline and deletions in strikeout):

CHAPTER 8.08 - NUISANCES

Sections:

- 8.08.010 Definitions
- 8.08.020 Acts constituting nuisances
- 8.08.030 Specific nuisances designated
- 8.08.040 Permit from city council required for certain potential nuisances
- 8.08.050 Abatement of nuisance
- 8.08.060 Abatement by person responsible
- 8.08.070 Abatement by city
- 8.08.080 Assessment of costs
- 8.08.090 Objection to assessment of costs
- 8.08.100 Assessment as lien against property
- 8.08.110 Summary abatement
- 8.08.120 ~~Penalties~~ Chronic nuisance property—definitions
- 8.08.130 Notice of chronic nuisance property
- 8.08.140 Burden of proof, defenses
- 8.08.150 Closure of property; civil penalties
- 8.08.160 Enforcement lien
- 8.08.170 Penalties

8.08.010 Definitions.

“Owner” means any person having a legal or equitable interest in property.

—A. "Person" means any ~~every~~ individual, firm, company, association, partnership or ~~and~~ corporation.

—B. "Person in charge of property" means an agent, occupant, lessee, contract purchaser, or person other than an owner, having possession or control of the property.

—C. "Person responsible" means the person responsible for abating a nuisance and shall include:

1. The owner;
2. The person in charge of property, as defined in this section;
3. In the case of sidewalks in the city, the owner as defined in Section 13.20.010;

4.—D. The person who causes to come into or continue in existence a nuisance, as defined in Sections 8.08.020 and 8.08.030 or in any other city ordinance. (Ord. 1614 (part), 1989).

"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, house, building or structure or any separate part or portion thereof, whether permanent or not.

8.08.020 Acts constituting nuisances. A public nuisance is any act or omission which is determined by the chief of police, city manager or their designees, to be injurious or detrimental to the public health, safety or welfare of the residents of the city. (Ord. 1614 (part), 1989).

8.08.030 Specific nuisances designated. In addition to any act or omission determined to be a nuisance pursuant to Section 8.08.020, the following are declared to be a public nuisance:

A. To tolerate or permit the accumulation of any snow, ice, sleet, rainwater, gravel, garbage or other debris on any sidewalk for a period longer than twenty-four hours;

B. To place any debris offensive to the public and allow the same to remain for a longer period than twelve hours upon any public street or public premises or any private premises;

C. To construct or maintain any structure upon any City owned premises without permission from the City;

D. To place upon any public thoroughfare any substance tending to mar the appearance or detract from the cleanliness or safety of such thoroughfare;

E. To place any part of an animal carcass or any other offensive substance into any stream, well, spring, brook, ditch, pond or other waters within the City;

F. To permit any portion of any premises to become or continue to be in a state which causes an offensive odor or unsanitary condition;

G. To create or permit any loud or disturbing noise;

H. To permit any machinery, equipment, structure or device of any kind which is likely to attract children without providing adequate safeguards;

I. To allow any pit, quarry, cistern, open well or excavation of any kind to exist on any premises without adequate safeguards;

J. To permit any weeds or dried grass of any kind to go to seed on any lot, block, premises or parking strip between the property boundary and curb line;

K. To permit any water from any ditch, canal, flume, reservoir, pipe or conduit, above or below the ground, to leak, seep, flow, overflow or run upon any public property and thereby endanger the public health, safety, welfare or convenience;

L. To place or allow on any public thoroughfare any article or structure which obstructs a public thoroughfare without first having a permit to do so from the city manager; provided, however, that this subsection shall not apply to goods or merchandise placed for less than five hours upon a public thoroughfare or public place in the process of delivery to or from any business or residence. (Ord. 1614 (part), 1989).

8.08.040 Permit required for certain potential nuisances. A. No person responsible shall permit any excavation or demolition or any alteration, erection or repair of any building other than between the hours of seven a.m. and seven p.m. unless a prior permit is issued by the city manager or his designee.

B. No sound amplifying device may be utilized to broadcast music, news, speeches or any entertainment without a permit from the city manager or his designee.

C. All permits issued under this section shall clearly specify the date(s), time(s) and hour(s) that the permit is valid. (Ord. 1614 (part), 1989).

8.08.050 Abatement of nuisance.

A. Upon determination by the chief of police, city manager or their designees, that a nuisance exists, personal notice shall be given to the person responsible for property to abate the nuisance immediately. If immediate abatement of the nuisance is not practical or if personal notice cannot be served on the person responsible, a notice shall be posted on the premises where the nuisance exists, directing the person responsible to abate the nuisance.

B. At the time of posting, notice shall be sent by registered mail, postage prepaid, to the person responsible at the person's last known address.

C. The notice to abate shall contain:

1. A description of the real property, by street address or otherwise, on which the nuisance exists;
2. A description of the nuisance;
3. A direction to abate the nuisance within five days from the date of the notice;

4. A statement that unless the nuisance is abated, the City may abate the nuisance and the cost of abatement will be charged to the person responsible;

5. A statement that the person responsible may protest the notice of abatement by giving written notice to the city recorder within five days from the date of the notice.

D. If the person responsible is not the owner, an additional notice shall be sent to the owner stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien against the property.

E. Upon completion of the posting and mailing, the person posting and mailing the notice shall execute and file a certificate with the city recorder stating the date and place of the mailing and posting.

F. An error in the name or address of the owner or person responsible or the use of a name other than that of the owner or person responsible shall not make the notice void, and in such a case the posted notice shall be sufficient. (Ord. 1614 (part), 1989).

8.08.060 Abatement by person responsible.

A. Within five days of the date of the notice required in Section 8.08.050, the person responsible shall remove the nuisance or provide written objection to the notice to abate with the city recorder. The written objection shall specify the basis for the objection.

B. A written objection to the notice to abate shall be referred to the Council as a part of the Council's regular agenda at the next scheduled Council meeting. At the time set for consideration of the written objection to the notice to abate, the person protesting may appear and be heard by the Council, and the Council shall determine whether or not a nuisance in fact exists and whether or not the nuisance should be abated. The determination shall be entered in the official minutes of the Council. Council determination shall be required only after written notice of objection to the notice to abate has been filed with the city recorder.

C. If the Council determines that a nuisance does in fact exist and should be abated, the person responsible shall, within five days after Council determination, abate the nuisance. (Ord. 1614 (part), 1989).

8.08.070 Abatement by City. A. If, within the time allowed, the nuisance has not been abated by the owner or person in charge of the property, the administrator may cause the nuisance to be abated.

B. The city employee or designee charged with abatement of the nuisance shall have the right at reasonable times to enter into or upon property to investigate or cause the removal of a nuisance.

C. The administrator shall keep an accurate record of the total cost of abatement which shall include any expenses incurred by the City in investigating and abating the nuisance, including total personnel services, costs, materials, and an additional charge of twenty percent for administrative overhead. (Ord. 1614 (part), 1989).

8.08.080 Assessment of costs. Notice shall be sent to the owner and the person responsible stating:

A. The total cost of abatement;

B. That the total cost of abatement will be assessed against and become a lien on the property unless paid within thirty days from the date of notice of assessment of costs. (Ord. 1614 (part), 1989).

8.08.090 Objection to assessment of costs.

A. If the owner or person responsible objects to the total cost of abatement, a notice of objection may be filed with the city recorder not more than ten days from the date of the notice of assessment of costs.

B. Upon expiration of ten days after the date of the notice of assessment, the Council in the regular course of business shall hear any objections to the notice of assessment of costs. The Council may amend the amount to be charged the person responsible for the total cost of abatement for good cause shown in the written notice of objection or at the hearing before the Council. (Ord. 1614 (part), 1989).

8.08.100 Assessment as lien against property.

A. If the total cost of abatement, as amended by the City Council, is not paid within thirty days from the date of notice of assessment, the Council shall assess the total cost of abatement as amended against the real property by resolution and shall enter the assessment resolution in the docket of City liens and record the same in the real property records of Hood River County. From the date of filing the assessment resolution in the real property records of Hood River County, the assessment shall constitute a lien upon the real property from which the nuisance was removed or abated.

B. Interest shall accrue on the amount of the assessment at the rate of twelve percent per annum from the date the assessment is filed in the real property records of Hood River County.

C. The lien shall be enforced in the same manner as assessments for public improvements.

D. An error in the name of the owner or person responsible shall not void the assessment, nor shall a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. (Ord. 1614 (part), 1989).

8.08.110 Summary abatement. The procedure provided in Sections 8.08.040 to 8.08.090 is not exclusive, but is in addition to any other procedure provided by any other City ordinance or applicable state law. The administrator, chief of police, building official, fire administrative officer, fire chief or their designees may proceed summarily to abate any nuisance which unmistakably exists and from which there is imminent danger to human life or property. (Ord. 1614 (part), 1989).

8.08.120 Chronic nuisance property—definitions. For the purposes of Sections 8.08.120 through 8.08.170, the following words have the following meanings:

“Chronic Nuisance Property” means property upon which three or more of the following listed offenses occur during any 30 day period as a result of three separate factual incidents that have been independently investigated by any law enforcement agency:

1. All felony drug offenses enumerated in ORS 475.992
2. Assault as defined in ORS 163.160 through 163.185
3. Disorderly conduct as defined in ORS 166.025 excluding subsection 1(b)
4. Discharge of a firearm in violation of HRMC 9.36.020
5. Unlawful furnishing or unlawful possession of alcoholic beverages to minors as defined in ORS 471.410(1) and (2) and ORS 471.430(1) and (2)
6. Loud or disturbing noise in violation of HRMC Chapter 8.09

“Control” means the ability to regulate, restrain, dominate, counteract, or govern conduct that occurs on that property.

“Permit” means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing or omission of an act.

8.08.130 Notice of chronic nuisance property.

A. When the chief of police, or their designee, determines that property within the City of Hood River has become chronic nuisance property, the chief of police shall notify the owner in writing that the property has been determined to be chronic nuisance property subject to closure..

B. The notice shall contain the following information:

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

2. A statement that the chief of police, or their designee, has found the property to be chronic nuisance property with a concise description of the conditions leading to the finding.

3. A statement that the owner shall have the opportunity to respond to the notice, within 15 days from the date of the notice, describing what steps the owner has taken or will take to remedy the chronic nuisance on the property, or the property may be closed and penalties assessed.

4. If the owner’s response to the notice is not satisfactory to the chief of police, or if the owner does not respond, then the same notice shall be served on the owner and their agent, if known, and occupant, if different from the owner or agent, at least 10 days prior to the commencement of any judicial action against the property. Service shall be by certified mail, return receipt requested, at the property, at the owner’s address as shown on the tax rolls, and to any other address that is believed to give the owner actual notice.

5. A copy of the notice shall be posted at the property at least 3 days prior to the commencement of any judicial action against the property.

C. The failure of the owner, agent or occupant to receive the notice described in this section does not invalidate or otherwise affect any proceedings under this Chapter.

D. After notice is provided, the chief of police may then authorize the city attorney to commence civil proceedings in a court of competent jurisdiction seeking closure of the chronic nuisance property, or any part thereof, the imposition of civil penalties against any or all of the owners of the property, and any other appropriate relief.

8.08.140 Burden of proof, defenses.

A. In an action seeking the closure of chronic nuisance property, the city has the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property. If the City is seeking penalties under Section 8.08.150(), the City has the initial burden of proof to show by a preponderance of the evidence that the conditions of that section are satisfied.

B. It is a defense to an action seeking closure of chronic nuisance property that the owner of the property at the time(s) 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.

C. In establishing the amount of any civil penalty requested, the court may consider the following factors:

1. The actions taken by the owner(s) to mitigate or correct the problem at the property;
2. Whether the problem at the property was repeated or continuous;
3. The magnitude or gravity of the problem;
4. The cooperativeness of the owner with the city;
5. The cost to the city of investigating and handling the problem;
6. Any other factor the court deems relevant.

8.08.150 Closure of property; civil penalties.

A. If the court determines property to be chronic nuisance property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than 30, but not more than 180, days. The court may employ any other remedy(s) it deems appropriate to abate the nuisance in addition to or instead of closure of the property.

1. If requested by the city, the court may authorize the city to physically close the property against use or occupancy if the owner fails to do so within the time specified in the court's order.

B. In addition to the remedies provided in subsection (A) above, the court may impose upon the owner of the property a civil penalty in the amount of up to \$250 per day, payable to the city, for each day the owner had actual knowledge that the property was chronic nuisance property and permitted the property to remain chronic nuisance property. The owner is considered to have actual knowledge if notice was provided to the owner in accordance with

Section 8.08.130. The penalties shall be set forth as part of the court's judgment.

C. If the property is an immediate threat to the public safety and/or welfare, the city may apply for and the court may order such interim relief as may be appropriate. The court may order interim relief even if the city has not yet provided notice under Section 8.08.130.

8.08.160 Enforcement lien. If the city is authorized to close the property against use or occupancy by court order and the city does close the property, all reasonable costs incurred by the city to close the property shall be entered in a judgment against the owner, which judgment shall become a lien against the property.

A. The Police Department shall prepare a statement of costs and the city shall thereafter submit the statement to the court for review, and serve a copy on the owner. If no objection is made within the period of time described in Oregon Rule of Civil Procedure 68, the costs shall be allowed and judgment entered against the owner.

8.08.170 Violation—Penalty. Any person who causes to come in to or continue in existence a nuisance, shall be guilty of a violation and shall be punished by a fine of not less than fifty dollars and not more than five hundred dollars. (Ord. 1614 (part), 1989).

Read for the first time: May 23, 2005.

Read for the second time and passed: June 13, 2005, to become effective thirty (30) days hence.

Signed June 14, 2005.


Linda Rouches, Mayor

ATTEST:


Jean M. Hadley, City Recorder