

ORDINANCE NO. 554**AN ORDINANCE ESTABLISHING CHRONIC NUISANCE PROPERTY REGULATIONS WITHIN THE CITY OF AUMSVILLE.**

The city of Aumsville ordains as follows:

Section 1. Title of Provisions. This ordinance shall be known as the “Chronic Nuisance Property Ordinance” for the city of Aumsville.

Section 2. Incorporation of State Statute and Aumsville Ordinances. Any reference to state law or statute (Oregon Revised Statutes – ORS) or provisions of the Aumsville City Ordinances incorporated into this ordinance refers to the state statute or ordinance provisions in effect on the effective date of this ordinance.

Section 3. Definitions. As used in this ordinance, the following definitions apply:

1. Chief of Police means the chief of the Aumsville Police Department or designee.
2. City Administrator means the city administrator of the city of Aumsville 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) 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, during any 180 consecutive day period:
 - A. Manufacture, distribution or possession of a controlled substance;
 - B. Rape in the First Degree;
 - C. Menacing;
 - D. Intimidation;
 - E. Harassment;
 - F. Disorderly conduct;
 - G. Discharge of weapons;
 - H. Unnecessary noise (Ordinance No. 369, Sections 3A and 14);
 - I. Drinking in public (Ordinance No. 405);
 - J. Minor in possession of alcohol (Ordinance No. 369, Section 14);
 - K. Assault;
 - L. Sexual abuse;
 - M. Public indecency;
 - N. Public urination or defecation (Ordinance No. 369, Section 14);
 - O. Criminal mischief;
 - P. Criminal mistreatment;
 - Q. Criminal trespass;
 - R. Unlawful use of a weapon; or
 - S. Criminal homicide or any type of attempted criminal homicide.

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 or 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 Marion County.
 2. The resident or occupant of the property, as shown on the records (including utilities records) of the city of Aumsville.
6. Court means a court of competent jurisdiction, which may address the respective issue.

Section 4. Chronic Nuisance Property.

1. The behavior, acts or omissions described in this ordinance 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 ordinance.
2. Any property within the city of Aumsville, which is found to be a chronic nuisance property, shall be in violation of this ordinance 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 ordinance and subject to its remedies.

Section 5. Pre-Filing Notification Procedure. After two occurrences on or near the property (as defined in this ordinance), of any of the prohibited acts or behaviors listed in this ordinance, within a consecutive 180-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 ordinance. The city administrator and city attorney shall be provided copies of the notice.

Section 6. 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 ordinance ("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 administrator.
2. In proposing the compliance agreement, the chief of police or designee shall consider the factors outlined in Section 9, subsection 2 below.

3. The compliance agreement is strictly optional and 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 Aumsville ordinances or Oregon law.
4. If the compliance agreement is not followed as agreed, the city may proceed with civil action as provided in this ordinance or the provisions of the ORS or the Aumsville ordinances.

Section 7. Commencement of Actions; Summons and Complaint. In the event there occurs on or near (as defined in this ordinance), the property three or more continued prohibited acts or behavior as listed in Section 3 of this ordinance, contrary to the terms of the compliance agreement and/or in violation of this ordinance, the Aumsville City Council shall be advised and, upon deliberation, may direct that the city proceed to initiate court action pursuant to the provisions of this ordinance or take such other action as the council deems appropriate.

Section 8. Remedies; Fines; Civil Penalty; Enforcement Order.

1. In the event the respondent(s) is found by a preponderance of the evidence to have violated this ordinance, 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 fine of not more than \$250.00 for each offense.
 - C. Subsequent acts and behavior in violation of the provisions of this ordinance, 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 ordinance is established, the chronic nuisance property may be closed in accordance with this section, and the court may impose a civil penalty of a fine of not more than \$1,000.
 - 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 11.
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 3 of this ordinance. 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.

Section 9. Defenses; Mitigation.

1. It is a defense to an action brought pursuant to this ordinance, 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 ordinance) 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.

Section 10. Emergency Remedy. In addition to any remedy available to the city under this ordinance or otherwise, in the event the city administrator 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.

Section 11. 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. Cost 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 attorney fees 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 administrator may, within 14 days of the court's entry of judgment and order against the respondent(s), submit a signed detailed statement of costs, including attorneys' fees, to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rules of Civil Procedure, Rule 67, 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 Marion County Clerk for filing.

3. Persons assessed the costs and/or civil penalty pursuant to this ordinance shall be jointly and severally liable for the payment thereof to the city.

Section 12. Attorney Fees. In any action brought pursuant to this ordinance, the court may, in its discretion, award reasonable attorneys fees to the prevailing party.

Section 13. Severability. If any provision of this ordinance, or its application to any person or circumstance, is held to be invalid for any reason, the remainder of the ordinance, or the application of its provisions to other persons or circumstances, shall not in any way be affected.

Section 14. Non-Exclusive Remedy. The remedies described in this ordinance shall not be the exclusive remedies of the city in enforcement of the prohibition of the acts and behaviors described in Section 3.

Section 15. Effective Date. This ordinance shall take effect on the thirtieth day after its enactment.

PASSED by the council September 26, 2005 and signed by the mayor September 27, 2005.