

**CITY OF PHOENIX
PHOENIX, OREGON**

ORDINANCE NO. 994

**AN ORDINANCE OF THE CITY OF PHOENIX
FOR ESTABLISHING OFFENSE OF CHRONIC NUISANCE**

WHEREAS, Chapter II. Section 4 of the City of Phoenix, 2015 Phoenix Charter provides:

Powers. The city has all powers that the constitutions, statutes, and common law of the United States and of this state now or hereafter expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.

WHEREAS, State law codified as ORS 105.500 to 105.600, Abatement of Nuisance, provides the City of Phoenix specific authority to abate certain public nuisance activities that affects the health, safety and welfare of its community; and

WHEREAS, violation of certain city ordinances affects the health, safety and welfare of the community at large and are therefore such activity is reasonably deemed as a public nuisance and in some cases a private nuisance to those directly impacted by the nuisance activity; and

WHEREAS, through enforcement of its ordinances, the City finds that abatement of a single nuisance is ineffective in protecting the health, safety, and welfare of the community at large when conditions or activities related to the use of property give rise to a series of public nuisances over time otherwise referred to as a "Chronic Nuisance"; and

WHEREAS, ORS 105.500 to 105.600, Abatement of Nuisance, does not specifically address Chronic Nuisance activity, yet provide it common and tested procedures that make enforcement of an abatement remedy more efficient and reliable thereby reducing costs to the City to administer and reduces the risk of challenges by parties' subject to the abatement process; and

WHEREAS, the City wishes to utilize the form of ORS 105.500 to 105.600, Abatement of Nuisance, to include and prosecute certain city ordinance regulations likely giving rise to Chronic Nuisance while tailoring the statutes to address city concerns for specific citizens potentially affected unfairly and adversely by the abatement process.

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

SECTION 1. CHAPTER 8.22 CHRONIC NUISANCE

8.22.010 Adoption of state law. Specific provisions of ORS 105.500 to 105. 597, Abatement of Nuisance as provided herein are adopted as city law and, where necessary and permissible, the City promulgates additional regulation of activities that hold property owners and persons in charge of property accountable for adverse conditions and nuisance activities that repeatedly occur in connection with their property that are detrimental to the quality of life in the

community.

8.22.020 Jurisdiction of municipal court over offense of Chronic Nuisance. Pertaining to matters specifically related to the offense and remedies provided under this chapter, the City acknowledges the authority provided under ORS 221.339 giving the municipal court concurrent jurisdiction with circuit courts and justice courts over all violations and misdemeanors committed or triable in the City.

8.22.505 (ORS 105.505) Remedies available for private nuisance. Any person whose property or personal enjoyment thereof is affected by a private nuisance, may maintain an action for damages therefor not exceeding \$10,000.00. If judgment is given for the plaintiff in the action, the plaintiff may, on motion, in addition to the execution to enforce the judgment, obtain an order allowing a warrant to issue to the Phoenix Police Chief or his or her designee ("Enforcement Officer") to abate the nuisance. The motion must be made at the time at which judgment is given, and shall be allowed of course, unless it appears on the hearing that the nuisance has ceased or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may proceed to have the defendant enjoined.

8.22.510 (ORS 105.510) Procedure for abating a nuisance. Not more than six months after an order to abate is entered under PMC 8.22.505, the plaintiff may file a request with the clerk of court for the issuance of a warrant to the Enforcement Officer that directs the Enforcement Officer to abate the nuisance. The Enforcement Officer may require that the plaintiff pay all Enforcement Officer's fees as established by City resolution before executing the warrant and may require that the plaintiff also pay all expenses of the Enforcement Officer incurred in executing the warrant.

8.22.515 (ORS 105.515) Stay of issuance of warrant to abate. At any time before an order to abate is made or a warrant to abate is issued, the defendant may, on motion to the court or judge thereof, have an order to stay the issuing of the warrant for such period as may be necessary, not exceeding six months, to allow the defendant to abate the nuisance, upon giving an undertaking to the plaintiff in a sufficient amount, in the form of an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, or a bond with one or more sureties, to the satisfaction of the court or judge thereof, that the defendant will abate the nuisance within the time and in the manner specified in the order.

8.22.520 (ORS 105.520) Justification of sureties; proceedings when nuisance is not abated. If the plaintiff is not notified of the time and place of the application for the order provided for in PMC 8.22.515, the sureties therein provided for shall justify as bail upon arrest, otherwise the justification may be omitted unless the plaintiff requires it. If the order is made and undertaking given, and the defendant fails to abate the nuisance within the time specified in the order, at any time within six months thereafter, the warrant for the abatement of the nuisance may issue as if the warrant had not been stayed.

8.22.550 (ORS 105.550) Definitions for PMC 8.22.550 to 8.22.595. As used in PMC 8.22.550 to 8.22.595, unless the context requires otherwise:

(1) "Of record" means:

- (a) With regard to real property, that an owner's interest is recorded in the public records provided for by Oregon statutes where the owner's interest must be recorded to perfect a lien or security interest or provide constructive notice of the owner's interest; or
 - (b) With regard to personal property, that an owner's interest is recorded in the public records under any applicable state or federal law where the owner's interest must be recorded to perfect a lien or security interest, or provide constructive notice of the owner's interest.
- (2) "Owner" means a person having any legal or equitable interest in property, including, but not limited to, a purchaser, lienholder or holder of any security interest in such property.
- (3) "Place" or "property" includes, but is not limited to, any premises, room, house, building or structure or any separate part or portion thereof whether permanent or not or the ground itself or any conveyance or any part or portion thereof.
- (4) "Nuisance Activity" means any of the following activities, behaviors, or criminal conduct that occurs on or within 200 feet of a property:
- (a) Offenses enumerated in PMC Title 8: HEALTH AND SAFETY:
 - 1. PMC 8.04 Nuisances
 - 2. PMC 8.06 Dangerous and Derelict Structures;
 - 3. PMC 8.08 Campground and Campers;
 - 4. PMC 8.16 Fire Prevention and Protection;
 - 5. PMC 8.20 Woodheating Regulations;
 - (b) Offenses enumerated in PMC Title 9: PUBLIC PEACE, MORALS AND WELFARE:
 - 1. PMC 9.04 Offenses Against Government;
 - 2. PMC 9.12 Offenses Against Public Peace;
 - 3. PMC 9.16 Offenses Against Public Indecency;
 - 4. PMC 9.20 Offenses Involving Minors;
 - 5. PMC 9.24 Weapons
 - (c) Offenses enumerated in PMC Title 10: VEHICLES AND TRAFFIC:
 - 1. PMC 10.28 Dismantled, Unused and Inoperative Vehicles.
 - (d) Notwithstanding enumeration of those offenses in this section, any reasonable suspicion that activities, behaviors, or criminal conduct are related to or associated with circumstances of domestic violence or family violence as defined under ORS 409.290 are not subject to this chapter.

8.22.555 (ORS 105.555) Places declared nuisances subject to abatement. (1) The following are declared to be nuisances and shall be enjoined and abated as provided in PMC 8.22.550 to 8.22.595:

- (1) Any place on which:
 - a. Three or more Nuisance Activities have occurred during any 30-day period;
 - b. Four or more Nuisance Activities have occurred during any 120-day period;
 - c. Six or more Nuisance Activities have occurred during any 365-day period; or

- d. A court has issued a search warrant based upon probable cause for criminal conduct that has occurred within the previous thirty (30) days, and the execution of the search warrant has resulted in the discovery of the fruits of a crime.

8.22.560 (ORS 105.560) Action to restrain or enjoin nuisance; jurisdiction; remedies.

(1) An action to restrain or enjoin a Nuisance Activity described in PMC 8.22.550 shall only be brought by the Enforcement Officer, city attorney if defendant retains an attorney, or a person residing or doing business in the City of Phoenix. The action shall be brought in the City of Phoenix Municipal Court.

(2) In addition to any other remedy that may be available under PMC 8.22.550 to 8.22.595, a plaintiff in an action brought to restrain or enjoin a nuisance described in PMC 8.22.550 to 8.22.595 may seek damages for mental suffering, emotional distress, inconvenience and interference with the use of property suffered by the plaintiff by reason of the activities constituting a nuisance.

(3) The court may consolidate all actions that relate to the same property and that are brought to restrain or enjoin a nuisance described in PMC 8.22.550 to 8.22.595. Consolidation in the court shall be for purposes of trial only. A separate judgment shall be entered for each action in the court.

8.22.565 (ORS 105.565) Complaint; service; jury trial; admissibility of reputation as evidence.

(1) Any action shall be commenced by the filing of a complaint alleging facts constituting the nuisance and containing a legal description of the property involved and an allegation that the owners of record of the property have been notified of the facts giving rise to the alleged nuisance at least 10 days prior to the filing of the action with the court. The complaint must specify whether the plaintiff will seek the remedy provided in PMC 8.22.580(2).

(2) The complaint shall be served on owners of record as provided in ORCP 7. No service need be made prior to an application for a temporary restraining order, provided the procedures of ORCP 79 B are followed with regard to all persons entitled to service under this section.

(3) On the issue of whether property is used in violation of PMC 8.22.550 to 8.22.595, evidence of its general reputation and the reputation of persons residing in or frequenting it shall be admissible.

8.22.575 (ORS 105.575) Precedence of action on court docket. An action under PMC 8.22.550 to 8.22.595 shall have precedence over all other actions, except prior matters of the same character, criminal proceedings and election contests.

8.22.580 (ORS 105.580) Order of abatement; cancellation.

(1) Except as provided in subsection (3) of this section, if the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the general judgment in the case.

(2) The order of abatement may direct the effectual closing of the premises, building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. The court shall not include provisions for the closing of the

premises under the provisions of this subsection unless that relief is specifically requested in the complaint.

(3) The court, if satisfied of an owner's good faith, shall enter no order of abatement as to that owner if the court finds that the owner:

- (a) Had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance;
- (b) Has not been guilty of any contempt of court in the proceedings; and
- (c) Will make best efforts to immediately abate any nuisance that may exist and prevent it from being a nuisance for a period of one year thereafter.

8.22.585 (ORS 105.585) Costs of securing or decontaminating property as lien; priority of lien; filing notice of pendency.

(1) Any costs associated with securing the property under PMC 8.22.550 to 8.22.595 shall constitute a lien against the property declared to be a nuisance from the time a notice specifying the costs is filed of record.

(2) A notice of pendency of an action may be filed pursuant to ORS 93.740 with respect to any action filed under ORS 105.550 to 105.600.

8.22.590 (ORS 105.590) Penalty for intentional violation of restraining order. An intentional violation of a restraining order, preliminary injunction or order of abatement under PMC 8.22.550 to 8.22.595 the court may issue an order that requires the defendant to appear and show cause why the defendant should not be held in contempt and upon such finding, the court may administer any appropriate penalty within its authority.

8.22.595 (ORS 105.595) Action to abate nuisance not to affect other remedies; exception; relocation costs.

(1) Except to the extent that a judgment has been entered in the action for damages under ORS 105.560(2), the abatement of a nuisance under ORS 105.550 to 105.600 does not prejudice the right of any person to recover damages for its past existence.

(2) A "tenant" (as defined by ORS 90.100(16)) of chronic nuisance property brought under PMC 8.22.560 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.

(3) A Victim of Abuse is entitled to relief from violation of a Chronic Nuisance subject to PMC 8.22.560 if shown by preponderance of the evidence that the Owner is the primary cause of the Nuisance Activity.

(a) "Victim of Abuse" is defined as a person or the person's child as presently protected under restraining order as provided in ORS 107.718 against the owner of the chronic nuisance property; or is a person in the victim's situation for whom it is objectively reasonable to be alarmed for his or her health or safety by actions of the owner of the chronic nuisance property or the owner's agent.

(b) A Victim of Abuse entitled to relief from prosecution under this section but who is otherwise forced to move from the Chronic Nuisance Property as a result of a Chronic Nuisance determination may be entitled to reasonable relocation

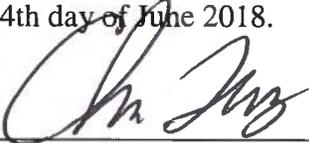
costs. Any allowable costs will be determined by the city and shall be a liability upon the owner of the chronic nuisance property.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

EFFECTIVE DATE OF THIS AMENDMENT. The provisions added or removed herein by amendment to the ordinance are effective 30 days following its passage by the City Council.

PASSED AND ADOPTED by the City Council and signed by me in authentication thereof on this 4th day of June 2018.



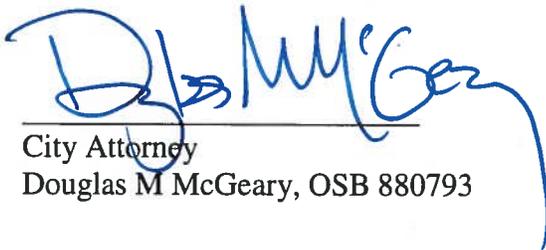
Chris Luz, Mayor

ATTEST:



Kimberlyn Collins, City Recorder

Approved as to form:



City Attorney
Douglas M. McGeary, OSB 880793