

ORDINANCE NO. 826

AN ORDINANCE CREATING A CRIME PROPERTY NUISANCE AND AMENDING THE SCAPPOOSE MUNICIPAL CODE

WHEREAS the City Council of the City of Scappoose has determined that any real property employed as the site of repeated criminal activity or nuisance activity is a nuisance and detrimental to the civil peace of the city, and detrimental to the health, safety and welfare of the people of The City of Scappoose; and

WHEREAS, abatement of a single nuisance or suppression of a single crime may be ineffective to protect public health and welfare when conditions or activities relating to use of property enable multiple crimes or public nuisances to occur over time; and

WHEREAS this chapter is necessary to preserve and protect the habitability of real property in the city, and the peaceable, safe, sanitary, and secure occupancy, and productive use of real property in the city; and

WHEREAS the City of Scappoose has the authority to declare such real property a nuisance and regulate and abate the nuisance created by use of the real property.

NOW, THEREFORE, THE CITY OF SCAPPOOSE HEREBY ORDAINS:

SECTION 1. CRIME PROPERTY NUISANCE

The language set forth below, incorporated herein and made a part of this Ordinance, shall be added to the Scappoose Municipal Code as Chapter 8.22 to Title 8 and may be known and cited as the “Crime Property Nuisance Ordinance.”

8.22.010 Definitions. As used in this chapter, except as the context otherwise requires:

“Costs” means those costs actually incurred by the city for the physical securing of real property, court costs, attorney fees, and other expenses incurred in enforcing this chapter

“Enforcement officer” means City of Scappoose Police Chief and or a designee from his or her command staff.

“Owner” means any person holding or claiming to hold any legal or equitable title or interest in real property, including, but not limited to, a mortgagee in possession, a vendee under a land sale contract, or a beneficiary under a deed of trust; any person having or claiming to have lawful care, custody, or control of real property; or any lien holder or holder of any security interest in the real property.

“Person” means any natural person, association, partnership, or corporation, or other form of legal entity or entity in fact capable of owning or using property.

“Specified crime property” means any kind of real property upon which three or more separate factual incidents occur during any 90 day period that involve any of the below listed behaviors occurring under state law or municipal code classified as a Felony or Class A Misdemeanor, and that have been independently investigated by any law enforcement agency:

1. Crimes involving controlled substances as defined in ORS Chapter 475;

2. Gambling offenses as defined in ORS 167.108 -167;
3. Prostitution and related offenses as defined by ORS 167.002-.017;
4. Unlawful use of a weapon as defined by ORS 166.220;
5. Sexual offenses as defined by ORS 163.305-.479;
6. Illegal drug manufacturing site as defined by ORS 475.405(9) or other analogous provision of law.

A factual incident supplies grounds towards finding that a property is specified crime property if there is probable cause that one of the behaviors listed above has occurred, and that a person is identified as responsible for the behavior. It is not necessary that an owner be a person responsible for any of the behavior that qualifies for this definition.

“Real property” means any real property, including but not limited to, lots, parcels, buildings, houses, rooms, structures, or any separate part or portion thereof, whether temporary or permanent, and whether or not on the ground itself and any conveyance or any part or portion thereof.

”Tenant” means a residential tenant as defined by the Oregon Residential Landlord and Tenant Act, and any other person holding real property under the terms of a rental agreement.

8.22.020 Nuisance Declared.

A. Any real property used or maintained as a specified crime property within the City of Scappoose is declared to be a nuisance and shall be abated.

B. No owner or occupant shall use or maintain or allow the use or maintenance of real property as specified crime property.

C. No owner or occupant shall use or occupy or allow or permit any person to use or occupy, by rental agreement or otherwise, any real property during any period such property is subject to an order of closure pursuant to Section 8.22.060.

8.22.030 Notice.

A. When an enforcement officer has reasonable grounds to believe that real property is being used or maintained as a nuisance under Section 8.22.020, the enforcement officer may institute proceedings against the owner for the closure of the real property and the imposition of a fine.

B. The enforcement officer shall provide preliminary notice of the institution of proceedings in the following manner:

1. The enforcement officer shall notify the owner in writing that the real property is believed to be a specified crime property. The notice shall contain the following information:
 - a. The street address and legal description sufficient for identification of the property;
 - b. A statement the property is specified crime property, along with specific findings supporting the determination. The findings shall contain a concise description of the conditions establishing a violation of this

chapter.

2. A copy of the notice shall be served on the owner at least 10 days prior to filing of the complaint. Service of the notice shall be made by personal delivery or by mailing a copy of the notice by certified mail to the owner at the address as it appears on the Columbia County property tax assessment rolls and the address as it appears on the last recorded instrument of conveyance, if different from the address specified on the tax rolls, and to the owner's actual address, if known to the enforcement officer at the time of mailing to be different than the above.
3. A copy of the notice shall be served on the occupant or occupants of the real property not fewer than 10 days prior to the filing of the complaint. Notice shall be made by mailing a copy of the notice by first class mail, or by personal delivery to an occupant of the real property.
4. A copy of the notice may be posted at the real property if 10 days has elapsed from the service or mailing of the notice to the owner, and no response has been received by the enforcement officer from the owner during that time.
5. The chief of police shall send a copy of the notice to the city attorney, as well as any other documentation supporting closure and imposition of civil penalties.

C. After notice has been given pursuant to this section, the City of Scappoose may authorize the filing of a complaint in a court of competent jurisdiction, including the Scappoose Municipal Court, to restrain and enjoin the nuisance. Nothing in this section shall limit the power of the City of Scappoose to enter into an agreement with the owner of the real property for voluntary abatement of the conditions giving rise to the violation.

8.22.040 Abatement Proceedings.

A. An action shall be commenced by the filing of a complaint in the Scappoose Municipal Court or the Columbia County Circuit Court and prosecuting the action as provided in ORS 105.565 through 105.600.

B. If, prior to the trial, the owner and the city enter into an agreement, stipulating to the abatement of the conditions giving rise to the complaint, the court upon motion by the city may stay proceedings for a period not to exceed 60 days. The owner may thereafter petition the court for additional periods of time as may be necessary to complete the actions stipulated to in the agreement. If the owner is not diligently pursuing the actions stipulated in the agreement, the city may apply for release at any time prior to the end of the stay.

8.22.050 Emergency Closures

A. If the chief of police determines real property is an immediate threat to the public safety and welfare by virtue of activity which would establish a violation of this chapter, the city may apply to the court for a preliminary injunction ordering closure of the real property. In such event, no preliminary notice required under Section 8.22.030 need be given.

8.22.060 Closure Order, Violation, Fines, and Costs.

A. If real property is determined to be a nuisance, the court may order closure of such property for a period of up to one year, and fine the owner up to \$500 for each violation and up to \$1,000 for each violation upon finding the owner had knowledge of activities or conditions constituting the violation. A person shall be deemed to possess such knowledge at a date no later than the date the city delivers or otherwise provides notice pursuant to Section 8.22.030. In establishing the amount of any fine, the court may consider the following factors:

1. The actions taken by the owner to mitigate or correct the problem at the real property;
2. The financial condition of the owner;
3. Whether the problem at the real property was repeated or continuous;
4. The magnitude or gravity of the problem;
5. The economic or financial benefits accruing or likely to accrue to the owner as a result of the failure to correct conditions at the real property;
6. The cooperativeness of the owner with city employees, officials, and agents who participate in the investigation and abatement process;
7. The costs to the city of investigating and correcting or attempting to correct the condition;
8. Any other factors deemed appropriate by the court.

B. No order of abatement as to an owner shall be entered if the court finds that the owner satisfied the conditions set forth in ORS 105.580(3).

C. If an order of closure is granted, the city may physically secure the real property against use or occupancy if the owner fails to do so within the time specified by the order. All costs reasonably incurred by the city in investigating and obtaining an order of closure shall be a lien upon the real property as provided by law.

D. The city shall prepare a statement of costs, which shall be served on the owner and filed with the court. If no objection to the statement is filed as provided by law, the statement of costs shall be entered as part of the judgment, as a general judgment lien against the real property.

E. The lien shall have priority as set forth in ORS 105.585(1).

F. A notice of pendency of an action may be filed pursuant to ORS 93.740.

8.22.070 Relocation Costs.

A. Except as provided in subsection C of this section, any tenant required to relocate by closure order is entitled to reasonable relocation costs, to be paid by the owner, if the tenant moved into the real property after either:

1. The owner received notice under section 8.22.030; or
2. The owner was served with summons and complaint for a preliminary injunction under section 8.22.050.

B. In any action to recover relocation costs, the tenant shall be entitled to reasonable attorney fees associated with the recovery.

C. A tenant shall not be entitled to relocation costs if:

1. The owner provided the tenant with a copy of the notice given to the owner under section 8.22.030 or a copy of the complaint for a preliminary injunction filed pursuant to section 8.22.050, before the tenant moved into the real property; or
2. The tenant took part in any of the behavior that constituted an incident within the definition of specified crime property on the real property.

D. The recovery of costs provided in this section constitutes a private right of action that is personal to the tenant. The tenant may bring an action for recovery under this section in any court of competent jurisdiction. Responsibility for damages awarded under this section is joint and several.

8.22.080 Relief from Closure Order.

A. The owner of real property may obtain relief from a closure order if the owner:

1. Appears and pays all costs associated with the proceedings;
2. Files a bond, in the amount not less than the tax assessed value of the real property; and keeps such bond in force for a period of not less than 1 year; and
3. Enters into a stipulation with the city to immediately abate the conditions and to make every reasonable effort to prevent the same or similar conditions from occurring for a period of one year.

B. If the owner violates any term of the stipulation entered into according to subsection (1), the entire bond shall be forfeited. Such forfeiture shall not limit the owner's liability under this Chapter.

C. Nothing in this section shall alter the abatement provisions of ORS 105.580 (4) and (5), where abatement was ordered on the basis of manufacture of a controlled substance.

8.22.090 Sufficiency of Complaint and Service.

A. It is no defense to any action under this chapter that real property is owned by more than one owner and the city or any other plaintiff has not named all owners in a complaint, nor filed complaints against all such owners.

B. Rule 7 of the Oregon Rules of Civil Procedure, relating to service of summons, shall apply to any action commenced in Scappoose Municipal Court under this chapter, except that Rule 7's prohibition against service of summonses by parties shall not apply. Rule 7 does not apply to the preliminary notice required under section 8.22.030.

8.22.100 Other Remedies.

A. Nothing in this chapter shall limit the authority of the City of Scappoose and its public officials from taking any other action to restrain or enjoin a nuisance which may be provided by state or local law.

SECTION 2 No duty created

A. Nothing in this Ordinance requires the city to abate a crime property nuisance or vacant building nuisance. Failure of any person to receive a notice described in this Ordinance does not invalidate any action taken under the notice.

SECTION 3 Severability

A. If any provision of this Ordinance is held to be invalid for any reason by a court of competent jurisdiction, the remainder shall not in any way be affected.

Adopted by the Scappoose City Council and approved by the Mayor this 18th day of March 2013.

CITY OF SCAPPOOSE, OREGON


Mayor Scott Burge

First Reading: March 4, 2013

Second Reading: March 18, 2013

Asst: 
Susan M. Reeves, MMC, City Recorder