

ORDINANCE NO. 5039

AN ORDINANCE of the City Council of the City of Bremerton, Washington, repealing Chapter 9.92 of the Bremerton Municipal Code entitled "Criminal Activity Nuisance" and enacting a new Chapter 9.92 entitled "Chronic Nuisance Properties" providing a new process for enforcement and abatement of certain nuisance activities that repeatedly occur or exist at chronic nuisance properties.

WHEREAS, the current provisions of Chapter 9.92 of the Bremerton Municipal Code relating to Criminal Activity Nuisance do not provide an adequate tool for abating nuisance properties; and

WHEREAS, the City Council desires to repeal Chapter 9.92 entitled "Criminal Activity Nuisance" and enact a new Chapter 9.92 entitled "Chronic Nuisance Properties" to provide a new process for enforcement and abatement of nuisance activities that repeatedly occur or exist at chronic nuisance properties; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BREMERTON, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.92 of the Bremerton Municipal Code entitled " Criminal Activity Nuisance" is hereby repealed in its entirety and replaced with a new Chapter 9.92 entitled " Chronic Nuisance Properties" to read as follows:

**Chapter 9.92
CHRONIC NUISANCE PROPERTIES**

9.92.010 PURPOSE.

(a) Chronic nuisance properties present grave health, safety and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This chapter is enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties by providing a process for abatement. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

(b) Also, chronic nuisance properties are a financial burden to the city by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property. This chapter is a means to ameliorate those conditions and hold accountable those persons responsible for such property.

9.92.020 DEFINITIONS.

For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

(a) "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the applicable city department director or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community;

(b) "Control" means the ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property;

(c) "Chronic nuisance property" means property on which any combination of three or more nuisance activities occur or exist during any sixty-day period;

(d) "Drug-related activity" means any unlawful activity at a property which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined in chapter 69.50 RCW, legend drug as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW;

(e) "Nuisance activity" means and includes:

(1) Any nuisance as defined by state law or local ordinance occurring on, around or near a property, including but not limited to, violations of the following laws and regulations:

(a) Unauthorized and Junk Vehicles, BMC 9.08;

(b) Fire Code, BMC Title 18,

(c) Health and Sanitation, BMC Title 6;

(2) Any criminal conduct as defined by state law or local ordinance occurring on, around or near a property, including, but not limited to, the following activities or behaviors:

(a) Stalking, BMC 9A.32.110;

(b) Harassment, BMC 9A.32.050;

(c) Failure to Disperse, BMC 9A.44.030;

(d) Disorderly Conduct, BMC 9A.44.020;

(e) Assault, BMC 9A.32.010;

(f) Any Domestic Violence Crimes, BMC 9A.32.070;

(g) Reckless Endangerment, BMC 9A.32.020;

(h) Prostitution, BMC 9.24.020;

(i) Patronizing a Prostitute, BMC 9.24.040

(j) Public Disturbance Noises, BMC 6.32.120(a);

(k) Lewd Conduct, BMC 9A.44.070;

(l) Any Firearms/Dangerous Weapons violations, BMC 9A.24.010

through BMC 9A.24.220

(m) Drug related loitering, BMC 9.89.101;

(n) Any Dangerous Animal violations, BMC 7.12.040

(o) Any Drug related activity.

(3) For purposes of this chapter, "Nuisance Activity" shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act.

(f) "Person responsible for property" or "Person responsible" means, unless otherwise defined, any person who has titled ownership of the property or structure which is subject to this chapter, an occupant in control of the property or structure which is subject to this chapter, a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this chapter and/or any person who has control over the property and allows a violation of this chapter to continue.

(g) "Person" means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them;

(h) "Premises and property" may be used by this chapter interchangeably and means any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property;

(i) "Rental unit" means any structure or that part of a structure, including but not limited to single family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons;

9.92.030 Violation.

(a) Any property within the City of Bremerton which is a chronic nuisance property is in violation of this Chapter and subject to its remedies; and

(b) Any person responsible for property who permits property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

9.92.040 Procedure.

(a) When the Chief of Police, or his/her designee(s), receives documentation confirming the occurrence of three or more nuisance activities within a sixty day period on any property, the Chief of Police, or his/her designee(s), may review such documentation to determine whether it describes the nuisance activities enumerated in 9.92.020. Upon such a finding, the Chief of Police, or his/her designee(s), shall warn the person responsible for such property, in writing, that the property is in danger of being declared a chronic nuisance property.

(b) The warning shall contain:

(1) the street address or a legal description sufficient for identification of the property;

(2) a concise description of the nuisance activities that exist, or that have occurred on the property;

(3) a demand that the person responsible for such property respond to the Chief of Police or his/her designee(s) within ten days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;

(4) offer the person responsible an opportunity to abate the nuisance activities giving rise to the violation; and

(5) a statement describing that if legal action is sought, the property could be subject to closure and civil penalties and/or costs assessed up to one hundred dollars per day if the property is declared a chronic nuisance property.

(c) The Chief of Police or his/her designee(s) shall serve or cause to be served such warning upon the person responsible in accordance with the procedures set forth in BMC 1.04.040(e) and 1.04.040(f).

(d) If the person responsible fails to respond to the warning within the time prescribed, the Chief of Police, or his/her designee(s) shall issue a notice declaring the property to be a chronic nuisance property and post such notice at the property and issue the person responsible a civil infraction, punishable by a maximum penalty of One Thousand Dollars (\$1,000.00). If the person responsible fails to respond to the issued infraction and/or continues to violate the provisions of this chapter, the matter shall be referred to the Office of the City Attorney for further action.

(e) If the person responsible responds as required by the notice and agrees to abate the nuisance activity, the Chief of Police, or his/her designee(s), and the person responsible, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the Office of the City Attorney for enforcement action. Provided, that in the event the Chief of Police or his/her designee(s) or the City Attorney determines that the person responsible has taken reasonable steps to abate the nuisance activity, the City Attorney shall not commence an enforcement action under this Chapter, notwithstanding the continuance of the nuisance activity.

(f) It is a defense to an action for chronic nuisance property that the person responsible, at all material times, could not, in the exercise of reasonable care or diligence, determine that the property had become a 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 chronic nuisance property.

9.92.050 Commencement of Action–Enforcement.

(a) Once the matter is referred to the City Attorney, the City Attorney shall immediately review and make a determination to initiate legal action authorized under this chapter or state statute, or may seek alternative forms of abatement of the nuisance activity. The City Attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in superior court for the abatement of the nuisance.

(b) In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The City may submit official police reports and other affidavits outlining the information that led to arrest(s), and other chronic nuisance activity occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.

(c) Once a superior court determines the property to be a chronic nuisance under this Chapter the court may impose a civil penalty against any or all of the persons responsible for the property, and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars per day for each day the nuisance activity continues to occur following the date of the original warning by the Chief of Police, or his/her designee(s), as described in BMC 9.92.040. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:

- (1) the actions taken by the person responsible to mitigate or correct the nuisance activity;
- (2) the repeated or continuous nature of the nuisance activity;

(3) the statements of the neighbors or those affected by the nuisance activity;
and

(4) any other factor deemed relevant by the court.

(d) The superior court which determined the property to be a chronic nuisance property shall also assess costs against the person responsible in the amount it costs the City to abate, or attempt to abate, the nuisance activity.

(e) If the superior court determines the property to be a chronic nuisance property, the superior court shall order the property closed and secured against all unauthorized access, use and occupancy for a period up to one year, and may impose a civil penalty and costs.

(f) Once a determination has been made by the superior court that the chronic nuisance property shall be subject to closure the court may authorize the City to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the Court for review. Any civil penalty and/or costs awarded to the City may be filed with the city treasurer who shall cause the same to be filed as a lien on the property with the County Treasurer. The City shall file a formal lis pendens notice when an action for abatement is filed in the superior court.

(g) The superior court shall retain jurisdiction during any period of closure or abatement of the property.

(h) Bremerton Municipal Court is to have jurisdiction of all civil infractions issued pursuant to this chapter.

9.92.060 Summary Closure.

Nothing in this chapter prohibits the City from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety. The City may take summary action to close the property without complying with the notification provisions of Section 9.92.040, but shall provide such notice as is reasonable under the circumstances.

9.92.070 Severability.

If any portion of this ordinance, or its application to any person or circumstances, is held invalid, the validity of the ordinance as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

SECTION 2. Severability. If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall take effect and be in force ten (10) days from and after its passage, approval and publication as provided by law.

PASSED by the City Council the 16th day of January, 2008

WILL MAUPIN, Council President

Approved this _____ day of _____, 2008

CARY BOZEMAN, Mayor

ATTEST:

APPROVED AS TO FORM:

CAROL ETGEN, City Clerk

ROGER A. LUBOVICH, City Attorney

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