



ORDINANCE NO. 3091-08

An Ordinance relating to Chronic Nuisance Properties,
Adding a new Chapter to Title 9 of the Everett
Municipal Code (Public Peace, Morals & Welfare).

Whereas, the State of Washington legislature has enacted legislation related to nuisances and has also empowered first class cities to define and abate nuisances and punish practices dangerous to public health and safety; and

Whereas, the Everett City Council desires to enact local legislation to supplement state legislation and define and provide penalties for chronic nuisance properties; and

Whereas, the Everett City Council finds that nuisance activities can greatly impact quality of life, that chronic criminal conduct, illegal use of property, weapons, noise, animal complaints and health and safety-related violations can convey the message that an area may be vulnerable to crime, that violence and drug trafficking and the existence of dilapidated buildings, unkempt streets and overgrown vegetation are associated with areas of high crime and deteriorating property values, and that controlling nuisances enhances safety and quality of life in communities; and

Whereas, the Everett City Council desires to prevent and prohibit Chronic Nuisance Properties that reduce the value of property, interfere with the enjoyment of public and private property, create and constitute fire and other safety and health hazards, and generally create a degradation of the character of neighborhoods; and

Whereas, the Everett City Council finds that the provisions of this Ordinance are necessary for the public health, safety and welfare;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1: Intent. Title 9 of the Everett Municipal Code is amended by the addition of the following section:

People should be able to enjoy ownership, use and possession of property without negative interference from chronic nuisance properties. The intent of the Everett City Council in enacting this ordinance is to exercise specific powers granted by the State of Washington to first class cities to prevent and abate nuisances, declare what shall be a nuisance, and abate the same, and to impose fines upon parties who create, continue, or suffer nuisances to exist. In addition, the Council intends to exercise the specific power granted by the State to provide for the punishment of all practices dangerous to public

health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating City ordinances.

Section 2: Definitions. Title 9 of the Everett Municipal Code is amended by the addition of the following section:

For purposes of this ordinance:

- A. A “Chronic Nuisance Property” is:
 - 1. Property that, within any sixty-day period:
 - a. Has had three or more Nuisance Activities occur or exist upon the property; or
 - b. Has had three or more Nuisance Activities occur within 200 feet of the property that involve the Person in Charge of the property and/or any person associated with the Person in Charge of the property; or
 - c. Has had either Nuisance Activities occur or exist upon the property or has had Nuisance Activities occur within 200 feet that involved the Person in Charge of the property and/or any person associated with the Person in Charge of the property for a combined total of three or more times.
 - 2. Buildings or portions thereof which are substandard or dangerous as defined in the City of Everett Housing Code (Chapter 16.08 EMC) or Dangerous Building Abatement Code (Chapter 16.12 EMC) as in effect at the date of enactment of this ordinance or as thereafter amended.
 - 3. For the purposes of this section and Section 3.C of this ordinance, a person is associated with the Person in Charge of the property if he/she is on the property or within 200 feet of the property as a guest or invitee of the Person in Charge of the property.
- B. “Chief of Police” means the City of Everett Chief of Police or his designee.
- C. “City Attorney” means the City of Everett City Attorney or his designees.
- D. “RCW” means the Revised Code of Washington, as in effect at the date of enactment of this ordinance or as thereafter amended.
- E. “EMC” means the Everett Municipal Code, as in effect at the date of enactment of this ordinance or as thereafter amended.
- F. “Nuisance Activity” means:
 - 1. Any of the following activities, behaviors or conduct:
 - a. Harassment offenses as defined in Chapter 10.23 EMC
 - b. Assault or Reckless Endangerment as defined in Chapter 10.16 EMC
 - c. Disorderly Conduct as defined in EMC 10.48.010
 - d. Disorderly House as defined in EMC 10.52.010
 - e. Indecent Exposure and Prostitution offenses as defined in Chapter 9A.88 RCW and Chapter 10.24 EMC
 - f. Liquor-related offenses as defined in Chapters 66.28 and 66.44 RCW and in Chapters 10.42 and 10.74 EMC
 - g. Offensive Littering as defined in EMC 10.70.010
 - h. Fraud-related offenses as defined in Chapter 9A.60 RCW

- i. Possession, manufacture or delivery of a controlled substance or related offenses as defined in Chapter 69.50 RCW
 - j. Precursor drug-related offenses as defined in Chapter 69.43 RCW and Chapter 10.30 EMC
 - k. Marijuana and drug paraphernalia offenses as defined in Chapter 10.35 EMC
 - l. Loitering for the Purpose of Engaging in Drug-Related Activity as defined in Chapter 10.37 EMC
 - m. Violation of felony drug off-limits orders as defined in Chapter 10.66 RCW and EMC 10.38.020, court order violations as defined in Chapter 10.13 EMC, and violation of Stay Out of Areas of Prostitution Orders as defined in EMC 10.24.210
 - n. Gambling-related offenses as defined in Chapters 9.46 and 9.47 RCW
 - o. Firearms and Dangerous Weapons offenses as defined in Chapter 9.41 RCW and Chapter 10.78 EMC
 - p. Public Disturbance Noises as defined in Chapter 20.08 EMC
 - q. Any attempt, solicitation or conspiracy to commit any of the above activities, behaviors or conduct, as defined in Chapter 10.10 EMC
2. Activities, behavior or conduct that is contrary to any of the following City of Everett regulatory codes:
 - a. License Code (Title 5 EMC)
 - b. Animal Control Code (Title 6 EMC)
 - c. Health and Safety Code (Title 8 EMC)
 - d. Zoning Code (Title 19 EMC)
 - e. Fire Code (Chapter 16.03 EMC)
 - f. Building Code (Chapter 16.01 EMC)
 - g. Land Division Code (Title 18 EMC)
 - h. Noise Control Code (Chapter 20.08 EMC)
 - i. Washington State Clean Air Act violations
 3. Nuisance-related activities as defined in Chapter 7.48, 7.48A, 9.66 and 35.22 RCW
 4. Gang-related activity as defined in RCW 59.18.030 and/or in the EMC.
- G. "Control" means the power or ability to direct or determine conditions and/or activities located on or occurring on a Property.
- H. "Person" means an individual, group of individuals, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
- I. "Person in Charge of the property" means any Person in actual or constructive possession of the Property, including but not limited to an Owner, lessee, tenant or occupant with Control of the Property.
- J. "Owner" means one or more persons, jointly or severally, in whom is vested all or any part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the property, including any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or a part of such building or land.

K. "Property" means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, grounds, vacant lots, facilities, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent.

Section 3: Determination of Chronic Nuisance – Notice & Demand. Title 9 of the Everett Municipal Code is amended by the addition of the following section:

A. When the Chief of Police receives police reports documenting the existence of a Chronic Nuisance Property, he may independently review such reports to determine whether the property is a Chronic Nuisance Property as defined in this ordinance.

B. If, following the review described in subsection A of this section, the Chief of Police determines that the property is a Chronic Nuisance Property, he shall notify the Person in Charge of the property in writing that the Property is a Chronic Nuisance Property and demand that he/she cease and desist from allowing Nuisance Activities, as defined in this ordinance, to continue.

1. The Notice & Demand shall contain substantially the following information:
 - a. The name and address of the person to whom the letter is issued
 - b. The location of the subject property by address or other description sufficient for identification of the subject property;
 - c. A statement that the Chief of Police has determined the property to a Chronic Nuisance Property
 - d. A concise description of the documented Nuisance Activities upon which the determination was based;
 - e. A warning that there is potential civil and/or criminal liability for continuing to allow Nuisance Activities, as defined in this ordinance, to occur upon and/or within 200 feet of the property; and
 - f. Name and telephone number of the Police Department representative who is responsible for handling inquiries from the person in charge of the property or others with an interest in the property.
2. The Notice & Demand shall be served by means of personal service, or by mailing a copy of the notice to the Person in Charge of the property at his/her last known address certified mail return receipt requested, or by posting a copy of the Notice & Demand conspicuously upon the subject property.
3. Proof of service shall be made by a written declaration under penalty of perjury by the person effecting the service, declaring the time and date of service and the manner by which service was made.
4. A copy of the Notice & Demand shall be served upon the Owner at the address shown on the tax rolls of the county in which the property is located and/or the occupant at the address of the property, if these persons are different than the Person in Charge of the property.

C. The Chief of Police may refer the matter to the City Attorney for enforcement if, within a six-month period from issuance of the Notice & Demand, the Chief of Police receives an additional police report documenting the occurrence of a Nuisance Activity:

1. Upon the Property or
2. Within 200 feet of the Property and involving the Person in Charge of the property or any person associated with the Person in Charge of the property.

Section 4: Violation - Penalty. Title 9 of the Everett Municipal Code is amended by the addition of the following section:

A. Any Property within the City that is a Chronic Nuisance Property is in violation of this ordinance and subject to the remedies described herein, and to the enforcement procedures, remedies and penalties set forth in Chapter 1.20 EMC, and to the enforcement procedures, remedies and penalties set forth in Title 5 of the EMC.

B. Any Person in Charge of property that is a Chronic Nuisance Property is in violation of this ordinance and subject to the remedies described herein, and to the enforcement procedures, remedies and penalties set forth in Chapter 1.20 EMC, and to the enforcement procedures, remedies and penalties set forth in Title 5 of the EMC unless he/she can show that he/she is in compliance with a written plan of action that he/she has entered into with the City to abate the nuisance, as described in Section 7 of this ordinance.

C. Whenever the City issues a Violation Citation to more than one person because of a violation of this ordinance, those Persons shall be jointly and severally liable.

Section 5: Enforcement – City Attorney

A. Notwithstanding any other provision of the Everett Municipal Code, the City Attorney, on behalf of the City, is authorized to take appropriate action to enforce compliance with the provisions this ordinance. Said enforcement action may include, but is not limited to, any of the following remedies:

1. Issuance of a Violation Citation under Chapter 1.20 EMC. A Violation Citation issued for a violation of the provisions of this ordinance may include in its corrective action suspension or revocation of any license issued under Title 5 of the EMC, and the Violations Hearing Examiner is hereby granted specific authority to so order license suspension or revocation; or
2. Application to any court of competent jurisdiction for injunction, mandamus or other appropriate action or proceeding to prevent continuing Nuisance Activities at the Property and/or restraining any Person from violating any of the provisions of this ordinance and compelling compliance with the provisions herein. The Person shall pay all City costs, as defined in EMC 1.20.090.B, of seeking such relief in the event the City is successful in obtaining the relief. Said costs and/or other penalties may be collected by assessment lien in accordance with Chapter 1.20 EMC.

B. Nothing in this ordinance shall be construed to prevent or prohibit the City from pursuing immediate relief from Nuisance Activities at a Property by any other means available by law, including but not limited to emergency relief under Chapter 1.20 and an order of the fire code official under the Everett Fire Code. Penalty and

enforcement provisions provided in this ordinance shall not be deemed exclusive and the City may pursue any remedy or relief it deems appropriate.

C. The failure to prosecute and/or convict an individual for the violation(s) constituting the Nuisance Activities is not a defense to an action under this ordinance.

Section 6: Continuing Nuisance Activities – Permitting a Chronic Nuisance.

- A. It shall be unlawful for any person to Permit a Chronic Nuisance.
- B. Permitting a Chronic Nuisance occurs when a person:
 - 1. Has been issued a Violation Citation under this ordinance; and
 - 2. Has allowed any additional Nuisance Activity on the property within 60 days of issuance of the Violation Citation; and
 - 3. At the time the additional Nuisance Activity occurred, the Violation Citation had not resulted in a Hearing Examiner’s Order.
- C. Permitting a Chronic Nuisance is a misdemeanor.
- D. Each Nuisance Activity that is allowed on the property as described in this Section shall constitute a separate offense.
- E. It shall be a defense to Permitting a Chronic Nuisance if the Person in Charge of the property can show that he/she is in compliance with a written plan of action that he/she has entered into with the City to abate the nuisance, as described in Section 7 of this ordinance.

Section 7: Diversion. Title 9 of the Everett Municipal Code is amended by the addition of the following section:

If satisfied of the good faith of the Person in Charge of the property, the City Attorney, in coordination with the Chief of Police, may enter into a stipulated agreement and/or order for abatement of Nuisance Activities with the Person in Charge of the property.

Section 8: General duty.

It is expressly the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance. It is the specific intent of this ordinance that no provision nor any term used in this ordinance is intended to impose any duty whatsoever upon the city or any of its officers or employees. Nothing contained in this ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the city, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the city related in any manner to the enforcement of this ordinance by its officers, employees or agents.

Section 9: Savings.

The enactment of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or before the City or in any way modify any obligation, right or liability, civil or criminal, which may exist by virtue of any of the ordinances herein amended.

