

ORDINANCE NO. 2090

**AN ORDINANCE AMENDING IN PART CENTRAL POINT MUNICIPAL CODE CHAPTER 8.02 REGARDING CHRONIC NUISANCE PROPERTY AND CHAPTER 8.45 REGARDING PUBLIC NUISANCE REMEDY**

Recitals:

- A. Pursuant to CPMC, Chapter 1.01.040, the city Council, may from time to time make revisions to its municipal code which shall become part of the overall document and citation.
- B. The city has authority to protect the health, safety and welfare of the community and to abate violations of the Code which are declared to be a public nuisance either through fines, requiring the owner to abate the nuisance or abating the nuisance when the owner fails to do so. In addition, pursuant to the City's Chronic Nuisance Ordinance, the city can address repeated nuisances, when abatement of a single nuisance is insufficient to protect the health, safety and welfare of the community.
- C. Upon review, staff determined that significant amendments to the Chronic Nuisance Ordinance are recommended, in order to allow the city to address chronic nuisances in a more efficient manner, including the ability to address conditions or activities that create public nuisances over time, to clarify the process by which such nuisances may be brought by the city and/or challenged by the property owner, to better organize the code sections for easier review, and to clarify miscellaneous items in the code.
- D. Words ~~lined through~~ are to be deleted and words **in bold** are added.

**THE PEOPLE OF THE CITY OF CENTRAL POINT DO ORDAIN AS FOLLOWS:**

SECTION 1. Chapter 8.02 of the Central Point Municipal Code is hereby amended to add section 8.02.000:

**8.02.000 Intent and Purpose of Chronic Nuisance Ordinance.**

**(1) By virtue of its authority to protect the health, safety, and welfare of the community, the city has the power to abate a violation of the Code declared to be a public nuisance by imposing a fine on the owner of the property, requiring the owner to abate the nuisance, or abating the nuisance if the owner fails to do so. However, the 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.**

(2) A process to hold property owners and other persons in charge of property accountable for adverse conditions and activities that repeatedly occur in connection with the property is needed to help maintain and improve the quality of life in the city.

(3) Pursuant to the city's authority to protect the health, safety, and welfare of the community, this ordinance is enacted to establish the rights, duties, and procedures necessary to hold property owners and other persons in charge of property accountable for adverse conditions and activities that repeatedly occur in connection with the property.

SECTION 2. Chapter 8.02.010 of the Central Point Municipal Code is hereby amended in part:

### **8.02.010 Definitions.**

For purposes of this chapter, the following definitions apply:

**"Chronic Nuisance Abatement Plan (CNAP)" means a plan required to be submitted by a person in charge in response to a notice authorized under chapter 8.02.030 that includes actions to abate, correct, or eliminate the occurrence of chronic nuisance activities on or around the property. A CNAP may include, but is not limited to the following: actions to remedy building code, fire code, property maintenance code, and nuisance code violations; eviction of problem tenants responsible for causing chronic nuisance activities; or hiring security guards to monitor the property. A CNAP shall include an implementation timeline.**

~~"Chronic nuisance property" means property on which: two or more nuisance activities (as defined below) have occurred during any thirty-day period; property on which, or within two hundred feet of, any person associated with the property has engaged in two or more nuisance activities during any thirty-day period; or property which, upon request for execution of a search warrant, has been the subject of a determination by a court that probable cause that possession, manufacture, or delivery of a controlled substance or related offenses under Oregon law have occurred within the previous thirty days; and the execution of the search warrant has resulted in the discovery of such controlled substances and/or property on which two or more citations for violations of the nuisance ordinance Chapter 8.04 have been served on the owner, tenant, agent, guest or licensee of the property in any consecutive thirty-day period.~~

**(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 that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through ORS 475.285 and/or ORS 475.752 through 475.980 has occurred within the previous thirty (30) days, and the execution of the search warrant has resulted in the discovery of such controlled substances.

~~“Nuisance activities” means any of the following activities, behaviors or criminal conduct, as defined under Oregon state law: harassment; intimidation; disorderly conduct; assault or menacing; sexual abuse, contributing to the delinquency of a minor, or sexual misconduct; public indecency; prostitution or related offenses; alcoholic liquor violations; theft; arson or related offenses; possession, manufacture, or delivery of a controlled substance or related offenses; illegal gambling; criminal mischief; any attempt to commit (as defined by ORS 161.405), or conspiracy to commit (as defined by ORS 161.455), any of the above offenses; unlawful discharge of a firearm; unlawful operation of sound-producing or reproducing equipment or unnecessary noise.~~

**“Nuisance Activities” means any of the following activities, behaviors, or criminal conduct that occurs on or within 200 feet of a property:**

- (a) harassment as provided in ORS 166.065;
- (b) intimidation as provided in ORS 166.155 through 166.165;
- (c) disorderly conduct as provided in ORS 166.025 and/or Central Point Municipal Code Chapter 9.50;
- (d) assault as provided in ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185 and/or Central Point Municipal Code Chapter 9.20;
- (e) strangulation as provided in ORS 163.187;
- (f) menacing as provided in ORS 163.190;
- (g) recklessly endangering another person as provided in ORS 163.195;
- (h) public and private indecency as provided in ORS 163.465 and ORS 163.467 and/or Central Point Municipal Code Chapter 9.34;
- (i) prostitution or related offenses as provided in ORS 167.007 through ORS 167.017 and/or Central Point Municipal Code Chapter 9.44;
- (j) alcoholic liquor violations as provided in the Oregon Liquor Control Act;
- (k) theft as provided in ORS 164.015 through 164.140;

- (l) arson or related offenses as provided in ORS 164.315 through 164.335;
- (m) possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS 167.203, ORS 475.005 through 475.285, and ORS 475.752 through 475.980;
- (n) illegal gambling as provided in ORS 167.118, ORS 167.122, and ORS 167.127;
- (o) criminal mischief as provided in ORS 164.345 through 164.365;
- (p) any attempt to commit (as defined by ORS 161.405), or conspiracy to commit (as defined by ORS 161.455), any of the above offenses;
- (q) marijuana-related offenses as provided in the Control and Regulation of Marijuana Act (ORS 475B.010 through ORS 475B.395), the Oregon Medical Marijuana Act (ORS 475B.400 through ORS 465B.525), or Central Point Municipal Code Chapter 8.45;
- (r) hindering prosecution as provided in ORS 162.325;
- (s) discharge of weapons or airguns as provided in Central Point Municipal Code Chapter 9.88 and 9.92.010;
- (t) public urination as provided in Central Point Municipal Code Chapter 9.38.020;
- (u) unnecessary noise as provided in Central Point Municipal Code Chapter 8.04.080;
- (v) unlawful accumulation of junk as provided in Central Point Municipal Code Chapter 8.04.035;
- (w) failure to control dangerous dog as provided in Central Point Municipal Code Chapter 6.08.040;
- (x) maintaining prohibited animals as provided in Central Point Municipal Code Chapter 6.06; and
- (y) nuisances affecting public health as set forth in chapter 8.04.040.

"Control" means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on a property.

"Person in charge" means any person, in actual or constructive possession of a property, including but not limited to an owner, **tenant**, or occupant of property under his or her dominion, ownership or control.

"Permit" means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the commission of an act.

"Person" means any natural person, agent, association, firm, partnership or corporation capable of owning, occupying or using property in the city of Central Point.

"Property" means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residential premises, room, house, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property is limited to the unit or the portion of the property on which any nuisance abatement has occurred or is occurring, but includes areas of the property used in common by all units of property including without limitation other structures erected on the property and areas used for parking, loading and landscaping.

"Person associated with" means any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner thereof.

SECTION 3. Chapter 8.02.020 of the Central Point Municipal Code is hereby amended in part:

**8.02.020 Violation.**

A. Any property within the city of Central Point which is a chronic nuisance property is in violation of these provisions and subject to the remedies prescribed herein.

B. Any person in charge who permits property to be a chronic nuisance property shall be in violation of these provisions and subject to the remedies prescribed herein.

**C. The following actions constitute a violation of this ordinance:**

**(1) failing to submit a CNAP as required by chapter 8.02.035.A;**

**(2) failing to submit an approved CNAP as required by chapter 8.02.035D;**

**(3) failing to implement the CNAP in accordance with the timeline and terms set forth within the plan as required by chapter 8.02.035.E; or**

**(4) a report of an additional nuisance activity at the property after service of the notice described in chapter 8.02.030.**

**D. A violation of subsection C of this section constitutes a violation. Every day in which the violation exists constitutes a separate violation.**

SECTION 4. Chapter 8.02.030 of the Central Point Municipal Code is hereby amended in part:

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### 8.02.030 Procedure--Notice.

A. When the chief of police receives a police report documenting **that a property has become a chronic nuisance property** ~~the occurrence of a nuisance activity on or within two hundred feet of a property within the city, the chief or the chief's designee shall independently review such reports to determine whether they describe any acts enumerated under nuisance activities above. Following such review, the chief may~~ **shall** notify the person in charge in writing that the property is ~~in danger of becoming~~ **is a** chronic nuisance property. The notice shall contain the following information:

1. The street address or a legal description sufficient for identification of the property.
2. A statement that the chief **or designee** has information **determined** that the property ~~may be~~ **is a** chronic nuisance property, with a concise description of the nuisance activities **upon which the statement is based.** ~~that may exist or that have occurred. The chief shall offer the person in charge an opportunity to propose a course of action that the chief agrees will abate the nuisance activities giving rise to the violation.~~
3. Demand that the person in charge respond to the chief within ten days to discuss the nuisance activities.

B. ~~After notification of nuisance activities to a person in charge, when the chief receives a police report documenting the occurrence of a second nuisance activity at or within two hundred feet of a property and determines that the property has become a chronic nuisance property, the chief shall notify the person in charge in writing that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:~~

1. ~~The street address or legal description sufficient for identification of the property.~~
2. ~~A statement that the chief has determined the property to be a chronic nuisance property with a concise description of the nuisance activities leading to his findings.~~
3. ~~Demand that the person in charge respond within ten days to the chief and propose a course of action that the chief agrees will abate the nuisance activities giving rise to the violation.~~
4. ~~Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property, or such other place which is likely to give the person in charge notice of the determination by the chief.~~
5. ~~A copy of the notice shall be served on the owner at such address as shown on the tax rolls of the county, and/or the occupant at the address of the property, if these persons~~

~~are different than the person in charge, and shall be made either personally or by first class mail, postage prepaid.~~

~~6. A copy of the notice shall also be posted at the property if ten days have elapsed from the service or mailing of the notice to the person in charge and the person in charge has not contacted the chief.~~

~~7. The failure of any person to receive notice that the property may be a chronic nuisance property shall not invalidate or otherwise affect the proceedings under these provisions.~~

**3. A statement that the person in charge shall submit a CNAP to the Chief or designee within ten (10) days from the date the notice was personally served or mailed.**

**4. Service shall be made either personally or by certified mail-restricted delivery, addressed to the person in charge at the address of the property, or such other place which is reasonably calculated, under all the circumstances, to notify the person in charge of the city's determination. A copy of the notice shall be served on the owner of the property at such address shown on the tax rolls of the county, if that person is different than the person in charge, and shall be made either personally or by certified mail-restricted delivery.**

**5. At or near the same time of the delivery of the notice set forth in subsection (4), the city shall post a copy of the notice at the property.**

~~C. If after the notification, but prior to the commencement of legal proceedings by the city pursuant to these provisions, a person in charge stipulates with the chief that the person in charge will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the chief may agree to postpone legal proceedings for a period of not less than ten nor more than thirty days.~~

~~D. B. Concurrent with any notification procedures set forth above, the chief shall send copies of the notice, as well as any other documentation which supports legal proceedings against the property, to the city attorney.~~

~~E. C. When a person in charge makes a response to the chief, any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have or are occurring. This section does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.~~

SECTION 5. Chapter 8.02 of the Central Point Municipal Code is hereby amended in part to add section 8.02.035.

### **8.02.035 Chronic Nuisance Abatement Plan**

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A. A person in charge shall respond to the Chief or designee within ten (10) days of the date the notice described in chapter 8.02.030 was served by submitting a CNAP describing the actions that the person in charge will take to abate, correct, or eliminate the occurrence of chronic nuisance activities.

B. The Chief or designee shall review the CNAP submitted by the person in charge and shall approve or deny it in writing within ten (10) days of it being submitted.

C. The Chief or designee shall approve the plan if it is determined that the actions proposed are likely to substantially decrease the incidence of chronic nuisance activities on or around the property.

D. In the event the CNAP is denied, the reasons for the denial shall be included and the person in charge shall have ten (10) days to resubmit a plan for approval.

E. After the Chief or designee approves a CNAP, the person in charge shall implement it in accordance with the timeline and terms set forth within the CNAP.

SECTION 6. Chapter 8.02.040 of the Central Point Municipal Code is hereby amended in part:

#### **8.02.040 Commencement of action—Remedies & Defenses.**

~~A. The city council may, by resolution after affording the person in charge of the property an opportunity to be heard before the council, authorize the city attorney to commence legal proceedings in a court of competent jurisdiction to enjoin or abate chronic nuisance property and to seek closure, the imposition of civil penalties against any or all of the persons in charge thereof, and any such other relief deemed appropriate. Proof shall be by a preponderance of the evidence.~~

A. If the person in charge fails to submit and implement a CNAP as required, or the approved CNAP does not result in the abatement of the chronic nuisance activity, the city manager may refer the matter to the city attorney to commence legal proceedings to seek closure of the property, the imposition of civil penalties, and any such other relief deemed appropriate. The action shall be brought in any court of competent jurisdiction, including the City of Central Point Municipal Court. The court may award attorney fees to the prevailing party.

B. The action shall be commenced by the filing of a complaint alleging facts constituting the nuisance activities, 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 activities at least ten (10) days prior to the filing of the action with the court.

C. The complaint shall be served as provided in Oregon Rules of Civil Procedure (ORCP) 7. No service need be made prior to an application for a temporary restraining order,

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**provided the procedures of ORCP 79B are followed with regard to all persons entitled to service under this section.**

**B.D.** If, after the commencement but prior to the trial of any action or suit brought by the city, a person in charge of chronic nuisance property stipulates with the city that he or she will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the city may agree to stay proceedings for a period of not less than ten **(10)** nor more than sixty **(60)** days, ~~except in the case of nuisance activity involving drugs where a search warrant was executed at the property.~~ The person in charge or the city may thereafter petition the court for such additional periods of time as may be necessary to complete the action(s) to abate the nuisance activities. However, in the event that the city reasonably believes the person in charge of a property is not diligently pursuing the action(s) necessary to abate the nuisance activities, the city may apply to the court for release from the stay and may seek such relief as is deemed appropriate.

**E. If the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the judgment in the case. The order may contain any or all of the following remedies:**

**1. Order that the property be closed and secured against all access, use, and occupancy for a period of not less than six (6) months, nor more than one (1) year. The court shall retain jurisdiction during any period of closure. The person in charge may petition the court for an order reducing the period of closure if the person in charge and the city stipulate that the nuisance has been and will continue to be abated. 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.**

**2. Impose a civil penalty of up to \$250 per day for each day nuisance activities occurred on the property following notice.**

**3. Any other relief prayed for and deemed appropriate.**

**F. A property shall no longer be determined to be a chronic nuisance property either after the passage of one year from the date of the last reported chronic nuisance activity or the date the chronic nuisance abatement plan was approved, whichever is later.**

**G. 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.**

**€. H.** It is an **affirmative** defense to an action for chronic nuisance property that the person in charge at all material times 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 chronic nuisance property.

~~D. In the event a court determines property to be chronic nuisance property, the court shall order that the property be closed and secured against all access, use and occupancy for a period of not less than six months, nor more than one year. The court shall retain jurisdiction during any period of closure. The person in charge may petition the court for an order reducing the period of closure if the person in charge and the city stipulate that the nuisance has been and will continue to be abated.~~

~~E. If a property is found to be chronic nuisance property, the person in charge of the chronic nuisance property is subject to a civil penalty of up to one hundred dollars per day for each day nuisance activities occurred on the property following notice.~~

~~F.I. In establishing the amount of any civil penalty requested, the court may consider any of the following factors and shall cite those found applicable:~~

- ~~1. The actions taken by the person in charge to mitigate or correct the nuisance activities at the property;~~
- ~~2. The financial condition of the person in charge;~~
- ~~3. Whether the problem at the property was repeated or continuous;~~
- ~~4. The magnitude or gravity of the problem;~~
- ~~5. The cooperativeness of the person in charge with the city;~~
- ~~6. The cost of the city of investigating and correcting or attempting to correct the nuisance activities; and~~
- ~~7. Any other factor deemed by the court to be relevant.~~

~~G.J. The provisions of this chapter **8.02** are separate and distinct remedies from those specified in Central Point Code chapters 8.01, and 8.03 through 8.45. Nothing in these provisions shall require any conviction for criminal activities prior to the commencement of any action provided herein.~~

SECTION 7. Chapter 8.02.060 of the Central Point Municipal Code is hereby amended in part:

#### **8.02.060 Enforcement—Costs and Attorney Fees.**

A. The court may authorize the city to physically secure the property against all access, use or occupancy in the event that the person in charge fails to do so within the time specified by the court. In the event that the city is authorized to secure the property, all costs reasonably incurred by the city to physically secure the property shall be paid to the city by the person in

charge and may be included in the city's money judgment. As used in this section, "costs" means those costs actually incurred by city for physically securing the property, as well as tenant relocation costs pursuant to this section. **The judgment shall also include an award of the city's other costs and disbursements and attorney fees, if applicable.**

B. The city department(s) physically securing the property shall prepare a statement of costs and the city shall thereafter submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rule of Civil Procedure 68, the statement of costs shall be included in the city's money judgment.

C. Judgments imposed by this chapter shall bear interest at the rate of nine percent per year from the date the judgment is entered.

D. Any person who is assessed the costs **and disbursements and/or attorney fees under this chapter** of physically securing the property by the court shall be personally liable for the payment thereof to the city.

E. The person in charge shall pay reasonable relocation costs of a tenant as defined by ~~ORS 90.100(31)~~ **as determined by the court** if, without actual notice, the tenant moved into the property after either:

1. A person in charge received a notice from the chief **or chief's designee** determination that the property ~~may be~~ **has become a chronic** nuisance property; or
2. A person in charge received notice of an action brought **was served with a complaint** to close a chronic nuisance property.

SECTION 8. Chapter 8.45.040 of the Central Point Municipal Code is hereby amended in part:

#### **8.45.040 Public nuisance remedy.**

A. Any household, housing unit, premises, property, building, structure or place of any kind where medical or homegrown marijuana is grown, processed, manufactured, bartered, distributed or given away in violation of state law or this chapter, or any place where medical or homegrown marijuana is kept or possessed for sale, barter, distribution or gift in violation of state law or this chapter, is a public nuisance per Chapter 8.04.

~~B. In addition to the foregoing, two or more violations in a thirty-day period may be deemed a chronic nuisance property subject to the provisions of Chapter 8.02.~~

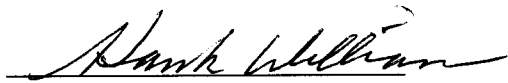
€. **B.** In addition to any remedies provided in Chapters 8.02 and 8.04, the city may institute an action in municipal or circuit court in the name of the city to abate, and to temporarily and

permanently enjoin, such nuisance. The court has the right to make temporary and final orders as in other injunction proceedings. The city shall not be required to give bond in such an action.

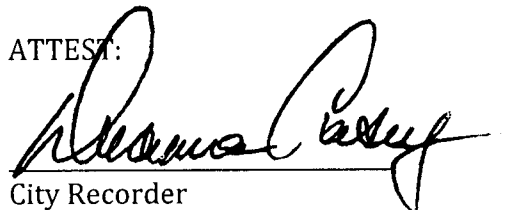
SECTION 9. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Recitals A-C) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

SECTION 10. Effective Date. The Central Point City Charter states that an ordinance enacted by the Council shall take effect on the thirtieth day after its enactment. The effective date of this ordinance will be the thirtieth day after the second reading.

**PASSED** by the Council and signed by me in authentication of its passage this \_\_\_ day of \_\_\_\_\_ 2022.

  
Mayor Hank Williams

ATTEST:

  
City Recorder