



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: July 27, 2022

Department: Board of Commissioners Agenda Planning Date: Time required: 5 Mins.

Audio/Visual aids

Contact: Tanisha Bush Phone: 503-302-8440

Department Head Signature: [Handwritten Signature]

TITLE Consider adoption of an amendment to Chapter 9.20 of the Marion County Code.

Issue, Description & Background Chapter 9.20 has been fairly limited in scope and in use. Through joint effort between the Board of Commissioners' office, the Sheriff's office, and Legal Counsel it was determined that Chapter 9.20 of the Marion County Code could be more effective with additional amendments.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Adopt the amendment to chapter 9.20 of the Marion County Code. 2. Do not adopt the amendment to chapter 9.20 of the Marion County Code

Recommendation: Staff recommends that the Board adopt the amendment

List of attachments: 1. Amendment to Chapter 9.20

Presenter: Tanisha Bush Jeremy Landers Jane Vetto

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to:

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

An ordinance amending Chapter 9.20)
of the Marion County Code, and)
declaring an emergency.)

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. PURPOSE

The purpose of this ordinance is to amend Chapter 9.20 of the Marion County Code to better address issues presented by chronic nuisance properties.

SECTION 2. AMENDMENTS TO CHAPTER 9.20 OF THE MARION COUNTY CODE

A. Section 9.20.010 is amended to read as follows:

This chapter shall be known as the Marion County chronic nuisance ordinance and shall be so cited and pleaded.

B. Section 9.20.020 is amended to read as follows:

The Marion County board of commissioners 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 county, and detrimental to the health, safety and welfare of the people of Marion County.

The Marion County board of commissioners has also determined that this chapter is necessary to preserve and protect the habitability of real property in Marion County, and the peaceable, safe, sanitary, and secure occupancy and use of real property in Marion County.

C. Section 9.20.030 is amended to read as follows:

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

"Abate" means affirmative actions to remove, to stop, or to prevent a nuisance including but not limited to:

1. Restricting or limiting noise, loitering, parking or access to the property, including posting the property with signs indicating such restrictions;
2. Limiting the hours of operation of a business;
3. Closing the real property for not less than thirty days or more than one year;

4. Entering premises for purposes of removing, compelling the removal or destruction of the structure, thing, substance, condition or property constituting a nuisance;
5. Filing a civil complaint in a court of competent jurisdiction.

“Chronic nuisance property” means:

1. Real property upon which three or more instances of any combination of the below listed behaviors occur, or whose patrons, employees, residents, owners or occupants engage in three or more instances of any combination of the below listed behaviors within 400 feet of the real property, during any 30-day period as a result of three or more separate factual incidents; or real property upon which four or more instances of any combination of the below listed behaviors occur, or whose patrons, employees, residents, owners or occupants engage in four or more instances of any combination of the below listed behaviors within 400 feet of the property, during any 90-day period as a result of four or more separate factual incidents. Each day (24-hour period) the below listed behaviors (the “nuisance activities”) occur shall constitute a separate instance.
 - a. Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS Chapter 475;
 - b. Any activity on the real property, the commission of which constitutes a misdemeanor or felony criminal offense, even if criminal charges have not been issued or a criminal case is pending but not yet resolved.
 - c. Arrests for criminal activity based on a warrant of any kind.
 - d. Noise disturbance as defined in Chapter 8.45 MCC;
 - e. Ordinance or code violations, including but not limited to violations of the solid waste ordinance, where the violations appear to an enforcement officer, the building official, or the fire marshal to be reasonably likely to pose a threat to the health or safety of occupants or neighbors of the property or to the public at large.
 - f. Illegal occupation, camping, or squatting by individuals without authority or right to be on the property.
2. To qualify, all nuisance activities must be based on either:
 - a. Personal observation of the sheriff or designee; or
 - b. A determination by the sheriff or designee, either after an investigation or following a sworn statement of a person who personally witnessed the alleged incident and a determination that there are reasonable grounds to conclude that the alleged nuisance activities did, in fact, occur.

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

“Enforcement officer” means the sheriff of Marion County or his or her designee.

“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.

“Person associated with the property” 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 any person present on a property. Person associated with the property includes, without limitation, any officer, director, customer, agent, employee, or any independent contractor of a property, the person in charge, or an owner of a property.

“Person in charge” means any person with actual or constructive possession of a real property, including but not limited to an owner or occupant of property under his or her ownership or control.

“Property” or “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 lease.

D. Section 9.20.040(A) is amended to read as follows:

A. Any real property used or maintained as a chronic nuisance property within Marion County, Oregon, is declared to be a nuisance and shall be abated.

E. Section 9.20.040(B) is amended to read as follows:

B. No owner, occupant, or person in charge shall use or maintain or allow the use or maintenance of real property as chronic nuisance property.

F. Section 9.20.050 is amended to read as follows:

A. When the enforcement officer has reasonable grounds to believe that real property is being used or maintained in violation of MCC 9.20.040, the enforcement officer may institute proceedings against the owner for the closure of the real property and the imposition of civil penalties. In deciding whether to proceed, the enforcement officer shall consider whether the owner has reported the incidents

and otherwise acted responsibly and whether proceeding would discourage future reporting and cooperation in discouraging unlawful behavior.

- B. The enforcement officer shall provide preliminary notice of the institution of proceedings in the following manner:
1. The enforcement officer shall notify the person in charge in writing that the real property is believed to be a chronic nuisance property. The notice shall contain the following information:
 - a. The street address and legal description sufficient for identification of the real property;
 - b. A statement the real property is a chronic nuisance property, along with specific findings supporting the determination. The findings shall contain a concise description of the conditions establishing a violation of this chapter.
 - c. A demand that the person in charge respond within 10 days to the enforcement officer by either describing the actions the person in charge intends to take to abate the nuisance activities, or indicating good cause as to why the person in charge cannot abate the nuisance activities, or contesting the determination of the enforcement officer to the sheriff.
 - d. That an agreed abatement plan must be reached with the sheriff or designee within 30 days from the date of the notice of determination of chronic nuisance property.
 - e. That if the nuisance activities are not abated and good cause for failure to abate is not shown, the matter may be referred by the sheriff to the Board of Commissioners with a recommendation that the Board of Commissioners authorize the county counsel to seek any remedy deemed to be appropriate to abate the nuisance activities.
 - f. That permitting chronic nuisance property is a violation of this chapter.
 - g. That the above remedies are in addition to those otherwise provided by law.
 2. A copy of the notice shall be served on the person in charge at least 10 days prior to commencement of an enforcement action. 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 tax 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 be different than the above.
 3. A copy of the notice shall be served on the occupant or occupants of the real property not less than 10 days prior to commencement of an enforcement action. Notice shall be made by mailing a copy of the notice by first class mail, or by personal delivery to the occupant or occupants of the real property.
 4. A copy of the notice may be posted at the real property if 10 days have elapsed from the service of the person in charge or mailing of the notice to the owner, and no response has been received by the enforcement officer during that time.

5. The enforcement officer shall send a copy of the notice to the district attorney of Marion County and the Marion County office of legal counsel, as well as any other documentation supporting closure and imposition of civil penalties.
- C. After notice has been given pursuant to this section, the sheriff or his or her designee may request the Board of Commissioners authorize the filing of a complaint in the Marion County Circuit Court to restrain and enjoin the nuisance. Nothing in this section shall limit the power of Marion County to enter into an agreement with the owner of the real property for voluntary abatement of the conditions giving rise to the violation.
- G. Section 9.20.060 is amended to read as follows:
- A. This chapter shall be enforced by a Marion County enforcement officer. Enforcement shall be accomplished through procedures outlined herein and through Chapter 1.25 MCC, Enforcement.
- B. If, prior to the trial, the owner and the county enter into an agreement, stipulating to the abatement of the conditions giving rise to the enforcement action, the court upon motion by the county 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 county may apply for release at any time prior to the end of the stay.
- H. Section 9.20.080 is amended to read as follows:
- A. If an enforcement action is commenced in Circuit Court and the 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 assess a civil penalty against the owner of up to \$500.00 for a noncontinuing offense and up to \$1,000 for a continuing offense upon finding the owner had knowledge of activities or conditions constituting the violation. A person shall be deemed to have knowledge at a date no later than the date notice is provided pursuant to MCC 9.20.050. In establishing the amount of any civil penalty, 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 county;
 7. The costs to the county of investigating and correcting or attempting to correct the condition;

- 8. Any other factors deemed material by the court.
- B. If an order of closure is granted, the county 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 county in such action shall be a lien upon the property from the time notice specifying the costs is filed on record.
- C. The county 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 with the court within 14 days of the date of service, the statement of costs shall be entered as part of the judgment, and a certified copy filed as a lien against the real property in the county's lien docket.
- D. A notice of pendency of an action may be filed pursuant to ORS 93.740.
- E. Any prevailing party may be entitled to reasonable attorney fees.
- I. Section 9.20.100 is amended to read as follows:
 - 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 one year; and
 3. Enters into a stipulation with the county 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 (A) of this section, the entire bond shall be forfeited.

SECTION 3. SEVERABILITY

Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, that decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.

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SECTION 4. DECLARATION OF EMERGENCY

This ordinance being necessary for the preservation of the health, safety, and welfare of the community, an emergency is declared to exist, and this ordinance will take effect immediately.

Adopted this _____ day of _____ 20____.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary