

CITY COUNCIL OF THE CITY OF SEAT PLEASANT, MARYLAND

Ordinance No.: O-10-11
Introduced by: City Council
Date Introduced: June 7, 2010
First Reading: June 7, 2010
Second Reading: June 14, 2010
Date Adopted: June 14, 2010
Date Effective: July 9, 2010

AN ORDINANCE concerning

Chronic Nuisance Properties

FOR the purpose of revising certain regulations relating to chronic nuisance properties and the owners, persons in charge of, and persons associated with such properties in the City of Seat Pleasant; revising certain definitions, violations and penalties, procedures for enforcement of violations, and procedures for summary closure of such properties; and generally relating to a revision of City laws relating to chronic nuisance properties.

BY repealing and reenacting, with amendments,
Chapter 155, REGULATION OF ACTIVITIES
Article I, Chronic Nuisance Properties
Sections 155-10 through 155-70
Code of the City of Seat Pleasant (1994 Edition, as amended by Ordinance 05-04)

SECTION 1. BE IT ORDAINED BY THE SEAT PLEASANT CITY COUNCIL that Sections 155-10 through 155-70, of the Code of the City of Seat Pleasant (1994 Edition, as amended by Ordinance 05-04) be and they hereby are repealed and reenacted, with amendments, to read as follows:

Chapter 155 REGULATION OF ACTIVITIES

**Article I
Chronic Nuisance Properties**

155-((10))1 Purpose.

Chronic nuisance properties present grave health, safety and welfare concerns((, which)) WHEN the property owners or persons in charge of such properties have failed to((,)) take corrective action to abate ((the)) nuisance ((condition)) **CONDITIONS ON SUCH PROPERTIES.** 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)) ARTICLE is enacted to remedy nuisance activities that repeatedly occur or exist at chronic nuisance properties by providing a process for abatement((; and this remedy is not an exclusive remedy)) TO SUPPLEMENT REMEDIES available under ((any)) OTHER state or local laws and may be used in conjunction with such other laws.

Also, chronic nuisance properties are a financial burden to the ((city)) CITY by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such ((property)) PROPERTIES((, and this chapter)) THIS ARTICLE is a means to ameliorate those conditions and hold responsible the owners or persons in charge of such ((property)) PROPERTIES.

155-((20))2 Definitions.

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

1. "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 administrator or designee determines is necessary in the interest of the general health, safety and welfare of the community including but not limited to:
 - i. Restricting or limiting noise, loitering, parking or access to the property, including posting the property with signs indicating such restrictions;
 - ii. Limiting the hours of operation of a business;
 - iii. Closing the property for not less than ten days or more than six months;
 - iv. Entering premises for purposes of removing, compelling the removal or destruction of the structure, thing, substance, condition or property constituting a nuisance;
 - v. Filing a civil complaint in a court of competent jurisdiction.
2. "Control" means the ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property ((;)).
3. "Chronic nuisance property" means property on which three or more nuisance activities occur within any thirty-day period, or five or more separate incidents listed below within any sixty-day period, at least one of which separate incidents must have resulted in a citation or arrest.
4. "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.
5. "Landlord" means the owner, lessor, or sublesor of the dwelling unit or the property of which it is a part, and in addition, means any person designated as a representative of the landlord((;)).
6. "Nuisance activity" means and includes:
 - a. a nuisance as defined by state law or local ordinance occurring around

- or near the property; or
- b. any of the following activities, behaviors or criminal conduct:
 - i. stalking;
 - ii. discharge of a firearm in violation;
 - iii. minor in possession of alcohol;
 - iv. public urination and indecent exposure;
 - v. endangering the welfare of a minor;
 - vi. criminal mischief;
 - vii. harassment;
 - viii. failure to disperse;
 - ix. disorderly conduct;
 - x. assault, including domestic violence assault;
 - xi. reckless endangerment;
 - xii. prostitution;
 - xiii. patronizing a prostitute;
 - xiv. begging;
 - xv. public consumption of alcohol;
 - xvi. disorderly house, as ((defined by_)) PROHIBITED BY § 10-202 OF THE CRIMINAL LAW ARTICLE OF THE MARYLAND ANNOTATED CODE;
 - xvii. indecent exposure;
 - xviii. lewd conduct;
 - xix. any firearms violation listed in (())TITLE 4 OF THE CRIMINAL LAW ARTICLE OF THE MARYLAND ANNOTATED CODE;
 - xx. noise;
 - xxi. loitering for the purpose of engaging in drug related activity;
 - xxii. drug related activity((; possession, manufacture, or delivery of a controlled substance or related offenses));
 - xxiii. gang ((related activity (as defined in_)) AS PROHIBITED BY TITLE 9 OF THE CRIMINAL LAW ARTICLE OF THE MARYLAND ANNOTATED CODE; and
 - xxiv. any attempt to commit and/or conspiracy to commit any of the above activities, behaviors or conduct((;)).
 7. "Owner" means any person having any interest in the real estate in question as indicated in the records of the ((office of the)) Maryland ((State))DEPARTMENT OF ((Assessment))ASSESSMENTS & Taxation ((Office)), or who establishes under this ((chapter,))ARTICLE their ownership interest therein((;)).
 8. "Person" means A natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, LIMITED LIABILITY COMPANY, or the manager, lessee, agent, officer or employee of any of them((;)).
 9. "Person associated with a 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 a person present on THAT property, including without limitation, any officer, director, customer, agent, employee, or any independent contractor of THAT property, or a person in charge of or owner of ((a))THAT property(;;).

10. "Person in charge" of a property means any person, in actual or constructive possession of a property, including but not limited to an owner, occupant, agent, or property manager of a property under his or her control(;;).
11. "Premises" and "property" may be used by this ((chapter))ARTICLE interchangeably and means any building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof ((including property used as residential or commercial property;)).
12. "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(;; Properties)).

155-((30))3 Violation.

1. Any property within the City of Seat Pleasant which is a chronic nuisance property is in violation of this ((Chapter))ARTICLE and subject to its remedies(;; and)).
2. Any OWNER AND person in charge who permits property to be a chronic nuisance property shall be in violation of this ((chapter)) and subject to its remedies AND PENALTIES.
3. A FAILURE OF THE OWNER OR PERSON IN CHARGE TO PROVIDE FOR A DISCONTINUANCE OF NUISANCE ACTIVITY ON A PROPERTY IN ACCORDANCE WITH SECTION 155-4 IS A MUNICIPAL INFRACTION, SUBJECT TO A PENALTY OF \$100 FOR EACH INITIAL VIOLATION AND \$100 FOR EACH REPEAT VIOLATION OR EACH DAY THAT A VIOLATION CONTINUES.

155-((40))4 Procedure.

1. ((When the Chief of Police, or his designee, receives police documentation confirming the occurrence of))IF three or more nuisance activities OCCUR within a sixty day period on ((the)) A property, the Chief of Police, or his designee, ((may review such reports to determine whether they describe the nuisance activities enumerated in section 155-20. Upon such a finding, the Chief of Police, or his designee,)) shall notify ((a))THE property owner at the address shown on the ((County Auditor)) records OF THE MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION and ((shall notify)) the person in charge of the property in writing that the property is in danger of being declared a chronic nuisance property.

2. The notice shall contain:
 - a. the street address or a legal description sufficient for identification of the ((Property))PROPERTY;
 - b. a concise description of the nuisance activities that exist, or that have occurred on the property;
 - c. a demand that the owner or person in charge respond to the ((chief)) CHIEF or his designee within ten days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;
 - d. offer the OWNER AND person in charge an opportunity to ((abate))ARRANGE FOR THE DISCONTINUANCE OF the nuisance activities giving rise to the violation; and
 - e. a statement describing that if THE NUISANCE ACTIVITIES ARE NOT DISCONTINUED AND legal action is sought, the NUISANCE ACTIVITIES WOULD BE SUBJECT TO ABATEMENT, THE property could be subject to closure, AND THE VIOLATION WOULD CONSTITUTE A MUNICIPAL INFRACTION COMMENCING FROM THE DATE OF THE NOTICE ((civil penalties and/or costs assessed up to one hundred dollars per day after the notice of the chronic nuisance property is received)).
3. ((Such))THE notice shall be either (a) personally served, or (b) delivered by first class mail to the OWNER AND person in charge of the property ((with a copy mailed to the owner at the address indicated by the City of Seat Pleasant Treasurer, if different than the person in charge of the property)).
4. If the OWNER OR person in charge fails to respond to the notice within the time prescribed, the Chief of Police, or his designee shall post such notice at the property and issue the OWNER AND person in charge a ((class one civil))MUNICIPAL infraction CITATION, TO BE SERVED AS REQUIRED BY ARTICLE 23A, §3, OF THE MARYLAND ANNOTATED CODE. ((If the person in charge fails to respond to the issued infraction the matter shall be referred to the Office of the City Attorney for further action.))
5. If the OWNER OR person in charge responds as required by the notice and agrees to ((abate)) PROVIDE FOR THE DISCONTINUANCE OF the nuisance activity, the Chief of Police, or his designee, and the person in charge and/or property owner, may work out an agreed upon course of action which would ((abate)) RESULT IN THE DISCONTINUANCE OF the nuisance activity. If an agreed course of action does not result in the ((abatement))DISCONTINUANCE of the nuisance ((activities)) ACTIVITY or if no agreement ((concerning abatement)) is reached, the CHIEF OF POLICE OR HIS DESIGNEE MAY ISSUE THE OWNER AND PERSON IN CHARGE A MUNICIPAL INFRACTION CITATION AND THE matter shall be forwarded to the City Administrator for POSSIBLE ADDITIONAL enforcement action, INCLUDING

REFERRAL OF THE MATTER TO THE CITY ATTORNEY TO INITIATE A CIVIL ACTION FOR INJUNCTIVE AND OTHER RELIEF.

6. It is a defense to ((an action for chronic nuisance property))A MUNICIPAL INFRACTION CITATION ISSUED UNDER THIS SECTION that the OWNER OR person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the ((Property))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 A chronic nuisance property.

155-((50))5 Commencement of Action-Enforcement.

1. Once the matter is referred to the City Attorney, the City Attorney shall ((immediately))PROMPTLY review and make a ((determination))RECOMMENDATION TO THE CITY ADMINISTRATOR WHETHER TO INITIATE AN ACTION FOR INJUNCTIVE OR OTHER RELIEF TO ABATE THE NUISANCE ACTIVITIES AT THE PROPERTY AND TO OBTAIN FOR THE CITY SUCH DAMAGES AS MAY BE APPROPRIATE. THE CITY ADMINISTRATOR, IN CONSULTATION WITH THE CITY COUNCIL, SHALL DETERMINE WHETHER TO AUTHORIZE THE CITY ATTORNEY 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.
2. 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.
3. 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 in charge of the property and/or the owner of 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 notice by the Chief of Police, or his designee, as described in Section 155-40 In assessing the civil penalty, the court may consider the following factors, citing to those found applicable: (a) the actions taken by the person in charge and/or owner to mitigate or correct the nuisance activity; (b) the financial condition of the persons in charge; (c) the repeated or continuous

nature of the nuisance activity; (d) the statements of the neighbors or those affected by the nuisance activity; and (e) any other factor deemed relevant by the court.

- 4.)2. ((The superior court which determined)) IF THE COURT DETERMINES THAT the property ((to be))IS a chronic nuisance property, THE COURT shall also assess costs against the person in charge and/or owner in the amount it costs the City to abate, or attempt to abate, the nuisance activity.
- ((5.))3. If the ((superior) court determines THAT the property ((to be))IS a chronic nuisance property, the ((superior)) court ((shall))MAY 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.
6. 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.
7. The superior court shall retain jurisdiction during any period of closure or abatement of the property.
8. Spokane Municipal Court is to have jurisdiction of all civil infractions issued pursuant to this chapter.))

155-((60))6 Summary Closure.

Nothing in this ((chapter))article prohibits the City of Seat Pleasant from taking any emergency action for the summary AND TEMPORARY closure of ((such))A property when ((it))IMMEDIATE CLOSURE is necessary to avoid an immediate threat to public HEALTH, welfare ((and))OR safety. The City may take summary action to close the ((Property))PROPERTY without complying with the notification provisions of Section 155-((30))4, but shall provide such notice as is reasonable under the circumstances. THE SUMMARY CLOSURE OF A PROPERTY SHALL LAST ONLY AS LONG AS REASONABLY NECESSARY TO ADDRESS THE IMMEDIATE THREAT TO PUBLIC HEALTH, WELFARE OR SAFETY THAT NECESSITATED THE CLOSURE.

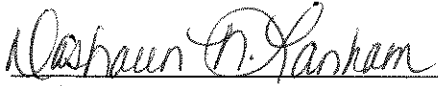
155-((70))7 Severability.

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

SECTION 2. AND BE IT FURTHER ORDAINED BY THE SEAT PLEASANT CITY COUNCIL that the City Clerk shall certify to the adoption of this ordinance, and cause the same to be published as required by law; and that this Ordinance shall become effective twenty (20) days following approval by the Mayor or passage by the Council after the veto by the Mayor.

ATTEST:

**COUNCIL OF THE CITY OF
SEAT PLEASANT**



Dashaun N. Lanham
City Clerk



LaTasha C. Gatling
President

APPROVED:

This Ordinance was presented to the Mayor for his approval of disapproval pursuant to Section C-313 of the Charter of the City of Seat Pleasant this 15th Day of June, 2010



Dashaun N. Lanham
City Clerk

In accordance with Section C-313 of the Charter of the City of Seat Pleasant, I hereby ~~(APPROVE)~~ ~~(DISAPPROVE)~~ this Ordinance this 16th Day of June, 2010.



Eugene W. Grant, Mayor

EXPLANATION:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

((Double Parenthesis)) indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-Out~~ indicates matter stricken from bill by amendment or deleted from the law by amendment.