

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 132, "PUBLIC PEACE AND SAFETY," OF THE CITY OF POMPANO BEACH CODE OF ORDINANCES BY AMENDING SECTION 132.38, "CHRONIC NUISANCE PROPERTY CODE," TO PROVIDE FOR A STREAMLINED PROCESS THAT IS CONSISTENT WITH OTHER CITY CODES FOR IDENTIFYING CHRONIC NUISANCE PROPERTIES AND ENFORCEMENT PROCEDURES FOR THE ABATEMENT OF CHRONIC NUISANCE ACTIVITY OCCURRING AT BOTH RESIDENTIAL AND COMMERCIALY-OWNED PROPERTIES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission finds that there is a relative amount of police use, fire rescue and community standards services use to which each parcel of real property is entitled as a taxpayer of the City; and

WHEREAS, the City Commission also finds that some real properties, hereinafter described as "chronic nuisance properties" require disproportionate police, fire rescue, and community standards services and cause an unnecessary burden on those public services and therefore on all taxpayers of the City; and

WHEREAS, property owners are ultimately responsible for the conduct and actions that occur on their property; and

WHEREAS, the Florida Constitution, Municipal Home Rule Powers Act and Charter of the City of Pompano Beach, Florida, authorize the City Commission to exercise any power for the municipal purpose, except when expressly prohibited by law; and

WHEREAS, the City Commission finds that the provision of chronic nuisance services by the City provides a direct, special benefit to assessed real property; and

WHEREAS, the abatement of chronic nuisances by the City is a municipal service; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct.

SECTION 2. That Section 132.38, "Chronic Nuisance Property Code," of Chapter 132, "Public Peace and Safety," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

§ 132.38 CHRONIC NUISANCE PROPERTY CODE.

(A) *Statement of Legislative Intent.* Chronic nuisance properties present health, safety and quality of life concerns and exist when the persons responsible for such properties fail to take corrective action to abate nuisance activities or nuisance conditions. Chronic nuisance properties have a significant adverse effect on the quality of life, safety and health of the neighborhoods where they are located. Chronic nuisance properties are a financial and operational burden to the city by generating repeated calls for service to the properties. Chronic nuisance properties adversely affect the value of adjacent properties. The City of Pompano Beach's Chronic Nuisance Property Code is enacted to address and reduce nuisance activities and/or nuisance conditions that disrupt quality of life and repeatedly occur or exist at properties. The nuisance abatement process hereinafter set forth may be used by the city in conjunction with any and all legal actions available to the city. It is the city's intent:

(1) To identify chronic nuisance activities and chronic nuisance conditions.

...

(C) *Definitions.* For the purpose of this section, the following definitions shall apply.

(1) ***ACTION PLAN.*** A plan ~~prepared by the city,~~ imposed by the Nuisance Abatement Board and incorporated in ~~the a nuisance abatement agreement order and agreed to by the owner~~ to address and eliminate nuisance activity on the owner's property by the implementation of proactive steps by the property owner;

(2) ***CHRONIC NUISANCE PROPERTY.*** A property on which one or more continuing nuisance activities occurs or re-occurs, as demonstrated by a pattern of nuisance activity as defined herein.

(3) ***CHRONIC NUISANCE SERVICES.*** Remedial action[s] taken by the city to eliminate or mitigate a nuisance condition that threatens public health, safety or welfare.

(4) ***NUISANCE ACTIVITY.*** Nuisance activity, or combination thereof as listed below, means any activity occurring upon a property relating to the following violations, whenever engaged in by the property owner, operator, agent, tenant, or invitee of the property owner, operator, agent or tenant:

(a) Chapter 110 – Alcoholic beverages.

...

~~(5) ***NUISANCE ABATEMENT AGREEMENT.*** An agreement entered into between the city and property owner that contains an "Action Plan" to be implemented by the property owner to address and abate the nuisance activity.~~

(5) NUISANCE ABATEMENT BOARD. Designated board consisting of members from a cross-section of the community authorized to hear evidence and address issues relating to the existence of Chronic Nuisance Properties. Said board retains jurisdiction to impose corrective action plans to abate the chronic nuisances within a specified time period. Failure to comply with the ordered action plan grants the board authority to impose any and all fines in accordance with § 33.130 (4) (e) of the City Code.

...

(8) **PATTERN OF NUISANCE ACTIVITY.** Real property shall be deemed to exhibit a pattern of nuisance activity when:

(a) The city's law enforcement agency has responded to ~~three~~ two or more nuisance activities at the property within 30 days;

(b) The city's law enforcement agency has responded to ~~seven~~ four or more nuisance activities at the property within six months;

(c) The city's law enforcement agency, fire, medical or other emergency personnel have responded to ~~three~~ two or more calls for service within 30 days, or ~~seven~~ four or more calls for service within six months to the same property to assist an individual who displays the symptoms of an overdose of a controlled substance;

(d) An alcoholic beverage establishment where the city's law enforcement agency has responded to ~~five~~ three or more nuisance activities at the property within 30 days or ~~20~~ 10 or more nuisance activities at the property within six months;

...

(E) *Declaration of Chronic Nuisance; ~~Action Plan.~~*

(1) *Declaration.* If a pattern of nuisance activity exists upon real property, the city may bring the petition to the Nuisance Abatement Board for a hearing to determine if the property should be declared a chronic nuisance ~~declare the property to be a chronic nuisance property.~~ The city's ~~declaration of chronic nuisance shall be~~ shall present evidence to the board during a publicly noticed hearing which support the city's petition for a chronic nuisance declaration. ~~If the board determines, based on the evidence presented by all parties involved, that a chronic nuisance exists, the board's declaration of a chronic nuisance shall be made during the publicly noticed meeting and shall be memorialized in writing in a final order and sent to the property owner by hand delivery or certified mail, return receipt requested, to the address listed on the ad valorem tax roll. The city's declaration of a chronic nuisance constitutes a notice of violation which, if unaddressed in an executed nuisance abatement agreement, may be prosecuted by the city before the City's Special Magistrate.~~ If said order is not complied within the given timeframe, the city may prosecute the matter before the city's Special Magistrate in the Circuit Court of Broward County.

(2) *Mailing.* Mailing to the property owner at the address listed on the ad valorem roll shall be prima facie proof of delivery. Notice shall also be posted at the property where the nuisance activities occurred. Removal of the posted notice without written approval from the city is prohibited, and a violation

punishable under § 10.99 of this Code. The notice of violation shall be sent containing the following information:

(a) A reference to Chapter 132, Section 132.38 (the “City of Pompano Beach Chronic Nuisance Property Code”);

(b) The address and parcel control number of the property, as listed in the county’s Public Records;

(c) The dates that the nuisance activities occurred on the property;

(d) A description of the nuisance activities;

~~(e) A proposed nuisance abatement agreement which outlines the corrective action to be taken by the property owner to remedy the nuisance activity;~~

~~(f) A statement that the property owner’s failure to enter into the nuisance abatement agreement within 15 days of the Declaration of Chronic Nuisance will result in a violation of this Code and further prosecution and enforcement action by the city before the city’s Special Magistrate including the entry of a chronic nuisance service order or by any other legal actions available to the city;~~

~~(ge) A statement that unless the property owner files a timely request for hearing the matter will be set for hearing before the Nuisance Abatement Board within 45 days from the notice mailing. Failure of the property owner or representative of the property owner to attend said hearing shall be deemed a waiver of pursuant to § 132.38 (G) (4), the property owner shall be deemed to have waived the right to contest the notice of violation;~~

~~(hf) A statement that the costs of any chronic nuisance services provided by the city to a property that has been declared to be a chronic nuisance may be levied against the property as a non-ad valorem assessment superior to all other private rights, interests, liens, encumbrances, titles and claims upon the property and equal in rank and dignity with a lien for ad valorem taxes;~~

~~(ig) A statement that unpaid assessments may be certified to the tax collector for collection pursuant to the uniform method provided in F.S. § 197.3632; and~~

~~(jh) A warning that the posted notice cannot be removed except with written permission by the city.~~

~~(3) — *Development of a corrective action plan.* — A nuisance abatement agreement shall set for the corrective action plan with specific measures that the property owner must take to curtail or eliminate the reoccurrence of nuisance activities at the property. The nuisance abatement agreement shall contain a timetable for corrective action. The Property Owner shall provide the action plan to the city no later than 15 days from the date of the declaration of the chronic nuisance property. Failure to provide the city with a timely action plan shall be a violation of this article. The corrective action plan may include abatement measures which must be taken by the property owner such as:~~

~~(a) — Commencement of an eviction action by the property owner pursuant to F.S. Chapter 83 to remove from the property those individuals engaged in the nuisance activity;~~

~~(b) — Implementation of "crime prevention through environmental design" (CPTED) measures;~~

~~(c) — Frequency of site visits and inspections by the owner or owner's agents at various times of both day and night;~~

~~(d) — Hiring of property management;~~

~~(e) — Hiring of private security;~~

~~(f) — Installation of security cameras;~~

~~(g) — Use of a written lease agreement which delineates prohibited tenants or tenant invitee conduct;~~

~~(h) — Criminal background checks for prospective tenants and lease renewals;~~

~~(i) — Posting of "no trespassing" signs at the property and execution of a "no trespass affidavit" authorizing the police department to act as an agent of the property owner to enforce trespass statutes on the property;~~

~~(j) — Regular requests to the city's law enforcement agency for offense and incident reports relating to the property. Reports are available through the records custodian of the police department records division;~~

~~(k) — Written documentation of any and all efforts to curtail or eliminate the reoccurrence of nuisance activities on the property; or~~

~~(l) — Other action that the city determines is reasonable sufficient to curtail or eliminate the reoccurrence of nuisance activities on the subject property.~~

~~(4) — The city may agree to modify the proposed or finalized nuisance abatement agreement when the property owner demonstrates that modification will improve nuisance abatement action.~~

~~(5) — When a nuisance abatement agreement is entered into, a memorandum of agreement specifying the property address shall be recorded by the city in the official records of Broward County, Florida.~~

~~(6) — The city, through its Code Enforcement and/or the city's law enforcement agency, shall periodically monitor the property to assure compliance for a period of one year following execution of the nuisance abatement agreement. If the property owner complies with the agreement, as determined by the city's Code Enforcement and/or the city's law enforcement agency, the declaration of chronic nuisance will be rescinded, the city will issue and record a notice of compliance related to the memorandum of agreement that was previously recorded, and no further action by the property owner shall be required. Nothing contained herein shall prevent the city from requiring the property owner to enter into a new agreement if the nuisance activity re-occurs.~~

~~(7) — If the city, through its Code Enforcement or the city's law enforcement agency, determines during the monitoring period that the action plan is not adequate to curtail or eliminate the reoccurrence of nuisance activities on the property, the city may require the property owner to revise the action plan. The property owner shall provide the revised action plan to the city no later than ten days from the date that the action plan is determined to be inadequate. The determination as to whether or not the monitoring period is adequate is in the sole and exclusive discretion of the city, based on the totality of the circumstances for the specific property. Failure to revise the action plan or to provide the city with a timely revised action plan shall be a violation of this section.~~

~~(F) — *Refusal to Sign or Violation of Agreement.* If a property owner refuses to timely enter into a nuisance abatement agreement or subsequently violates the terms of an agreement, the city, through its code enforcement or the city's law enforcement agency, may bring forth for prosecution, its declaration of chronic nuisance at a publicly noticed hearing before the city's Special Magistrate.~~

~~(G) — *Request for a Hearing.*~~

~~(1) — *Request.* A request for a hearing before the city's Special Magistrate shall be filed by the city's Code Enforcement or the city's law enforcement agency within 15 days from the deadline for entry into a nuisance abatement agreement or any violation of a provision of an existing agreement or action plan.~~

~~(2) — *Hearing by special magistrate.* The city, through its Code Enforcement Department, shall schedule the hearing before the city’s Special Magistrate. Said hearing shall be limited to the review of the record or evidence upon which the city based the declaration of chronic nuisance or the failure by the property owner to implement the agreement/action plan. The property owner shall have the opportunity to present any rebuttal evidence. All testimony presented during said hearing shall be under oath and the city and the property owner shall be afforded the opportunity to call and cross-examine any witness.~~

~~(3) — *Decision of special magistrate.* Upon the conclusion of the presentation of evidence from both the city and the property owner, the Special Magistrate shall either uphold or reject (i) the city’s declaration of chronic nuisance or (ii) the Notice of Violation regarding the Action Plan, as appropriate.~~

~~(4) — The decision of the Special Magistrate shall be memorialized in a final order.~~

~~(H-F) *Entry of Chronic Nuisance Order.*~~

~~(1) If the decision of the Special Magistrate Nuisance Abatement Board upholds the notice of violation, the Special Magistrate board shall enter a chronic nuisance order which shall include:~~

~~(a) Findings of fact(s) establishing a pattern of nuisance activity and a violation of this section;~~

~~(b) Authorize the appropriate city personnel to provide chronic nuisance services to the property;~~

~~...~~

~~(f) Provide for the continuing jurisdiction over the chronic nuisance property.~~

~~(g) Order abatement procedures to include but are not limited to the following:~~

~~(i) Commencement of an eviction action by the property owner pursuant to Chapter 83 Florida Statutes to remove from the property those individuals engaged in the nuisance activity;~~

~~(ii) Implementation of “crime prevention through environmental design” (CPTED) measures;~~

~~(iii) Frequency of site visits and inspections by the owner or owner’s agents at various times of both day and night;~~

- (iv) Hiring of property management;
- (v) Hiring of private security;
- (vi) Installation of security cameras;
- (vii) Use of a written lease agreement which delineates prohibited tenants or tenant invitee conduct;
- (viii) Criminal background checks for prospective tenants and lease renewals;
- (ix) Posting of “no trespassing” signs at the property and execution of a “no trespass affidavit” authorizing the police department to act as an agent of the property owner to enforce trespass statutes on the property;
- (x) Regular requests to the city’s law enforcement agency for offense and incident reports relating to the property. Reports are available through the records custodian of the police department records division;
- (xi) Written documentation of any and all efforts to curtail or eliminate the reoccurrence of nuisance activities on the property; or
- (xii) Other action that the city determines is reasonable sufficient to curtail or eliminate the reoccurrence of nuisance activities on the subject property.

(2) The board may agree to modify the final nuisance abatement order when the property owner demonstrates that modification will improve nuisance abatement action.

(3) The nuisance abatement order shall be recorded by the city in the official records of Broward County, Florida.

(4) The city, through its code enforcement and/or the city’s law enforcement agency, shall periodically monitor the property to assure compliance for a period of one year following execution of the nuisance abatement order. If the property owner complies with the order, as determined by the Nuisance Abatement Board, the declaration of chronic nuisance will be rescinded, the city will issue and record a notice of compliance related to the order that was previously recorded, and no further action by the property owner shall be required. Nothing contained herein shall prevent the city from requiring the property owner to appear before the Nuisance Abatement Board if the nuisance activity re-occurs.

~~(25)~~ If the ~~Special Magistrate board~~ rejects the city's declaration of ~~chronic nuisance~~ of chronic nuisance notice of violation, the ~~Special Magistrate board~~ shall identify the factual procedural or legal error upon which the decision is based.

~~(36)~~ An order rejecting the city's declaration of chronic nuisance shall not bar the city from recommencing the chronic nuisance process.

~~(4)~~—A property owner may request a hearing before the Special Magistrate upon receipt of a Declaration of Chronic Nuisance. A request for a hearing shall be filed with the city and shall include the following:

~~(a)~~—Said request shall be in writing;

~~(b)~~—Provide a short, plain statement identifying the factual, procedural or legal error upon which the request for hearing is based; and

~~(c)~~—Include a copy of the Declaration of Chronic Nuisance for the subject property.

~~(d)~~—If the property owner of a chronic nuisance property fails to file a timely request for hearing, the property owner shall be deemed to have waived the right to contest the declaration of chronic nuisance property or notice of violation.

~~(IG)~~ *Appeal of ~~Special Magistrate Nuisance Abatement Board~~ Orders.* The property owner or the city may appeal a final order of the ~~Special Magistrate Nuisance Abatement Board~~ to the Broward County Circuit Court. Such appeal shall not be a hearing de novo, but shall be limited to the appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

~~(JH)~~ *Finality and Duration of a Chronic Nuisance Order.*

(1) An order is final 30 days following entry. Entry shall mean that the order is executed by the ~~Special Magistrate board chair~~ and filed with the City Clerk.

(2) The chronic nuisance order entered in accordance with this section shall be terminated by subsequent order of the ~~Special Magistrate board~~ when either the city or the Property Owner request reconsideration of the original order and the ~~magistrate board~~ finds that the nuisance activities have been abated at the property for a period of one year. It is the responsibility of the property owner to contact the city to document the abatement. If the city determines that the

nuisance has been abated, the one-year time period specified herein shall commence as of the date of the city's abatement determination.

~~(K)~~ *Abatement of Chronic Nuisances; Provision of Services; Apportionment.*

(1) *Abatement by the city.* The property owner shall be responsible for abatement of nuisances on the property. If the Code Compliance Officer or the city's law enforcement agency or any designee thereof, determine, upon consulting with the City Attorney's Office, that ~~the~~ conditions exists on the property that constitute health and safety issues and the property owner has not taken remedial action, the city, through its Code and/or the city's law enforcement agency or any designee thereof, may act in the interest of public health safety and welfare and take remedial action. The city may also take abatement action when authorized or ordered by a ~~Special Magistrate~~ the Nuisance Abatement Board or Judge. The city's costs associated with taking such remedial action shall be billed to the property owner and said costs may be collected by the city by any legal means.

...

~~(L)~~ *Establishment of Costs; Billing of Costs; Notice of Delinquency.*

(1) *Establishment.* Chronic nuisance service or remediation costs are established by City Commission Resolution.

...

(4) *Construction of chronic nuisance costs.* Chronic nuisance service(s) or costs shall not include any amount attributable to general law enforcement activities or the general enforcement of municipal codes upon a property that has not been declared by the city to be a chronic nuisance and that has not received a chronic nuisance service order from the ~~Special Magistrate~~ Nuisance Abatement Board.

~~(M)~~ *Change in Title to Chronic Nuisance Property.* Any new purchaser, persons or business entity who takes title to the property which has been declared a chronic nuisance property shall provide the city with an action plan to abate the chronic nuisance within 45 days of taking lawful title.

~~(N)~~ *Unpaid Chronic Nuisance Service Costs; Non-Ad Valorem Assessment.* Any chronic nuisance service costs that remains delinquent and unpaid as of June 1 of each year shall be a special assessment levied against the benefitted real property as a non-ad valorem assessment superior to all other private rights, interests, lines, encumbrances, titles and claims upon the benefitted real property and equal in rank and dignity with a lien for ad valorem taxes.

(~~OM~~) *Initial Assessment Roll.*

...

(~~PN~~) *Notice of Public Hearing.*

...

(~~QO~~) *Public Hearing; Adoption of Final Assessment Roll.*

...

(~~RP~~) *Lien of Chronic Nuisance Service Assessments.*

...

(~~SQ~~) *Correction of Errors and Omissions.*

...

(~~FR~~) *Method of Collection*

...

(~~US~~) *Alternative Method of Collection.*

(1) In lieu of utilizing F.S. §197.3632 collection methods, the city may elect to collect a chronic nuisance service assessment by any other method authorized by law or under the alternative collection method provided by this section.

...

(3) Notwithstanding the city's use of an alternative method of collection, the finance director shall have the same power and authority to correct errors and omissions as provided in this ~~division~~ section.

SECTION 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2022.

PASSED SECOND READING this _____ day of _____, 2023.

REX HARDIN, MAYOR

ATTEST:

KERVIN ALFRED, CITY CLERK

TAL:jrm
12/5/22
L:ord/ch132/2023-69