

Chapter 8.30A
CHRONIC PUBLIC NUISANCE

[PROPOSED – August 14, 2018 DRAFT]

Sections:

- 8.30A.10 Scope and purpose.
- 8.30A.020 Definitions.
- 8.30A.030 Declaration of chronic nuisance property and procedures.
- 8.30A.040 Owner cooperation.
- 8.30A.050 Correction agreement.
- 8.30A.060 Enforcement.
- 8.30A.070 Additional remedies.
- 8.30A.080 Appeals to the Hearing Examiner.
- 8.30A.090 Successive owners liable.
- 8.30A.100 Joint and several Liability.
- 8.30A.110 Severability.

TMC 8.30A.010 Scope and purpose.

Chronic nuisance properties present grave health, safety, and welfare concerns and have a tremendous negative impact upon the quality of life, safety, and health of their neighborhoods and on those persons that live, work, visit, engage in commerce, or otherwise seek to enjoy property rights therein. Such properties are a financial burden to the City and the necessary services rendered to and at such properties often result in a disproportionate consumption of City resources. Therefore, any chronic nuisance property located in the City is in violation of this chapter and subject to its remedies. This chapter is enacted to remedy nuisance activities that repeatedly occur or exist at chronic nuisance properties by providing a process for lawfully reducing or eliminating said activities. While the City seeks to promote cooperative and voluntary compliance, the remedies provided herein are not exclusive and the City may pursue any available option in law or equity to remedy a chronic nuisance property.

The purpose of this chapter is to protect the health, safety, and welfare of the general public by: (1) establishing standards and recommendations for reducing criminal activity and improving building conditions; (2) working in cooperation with property owners to accomplish these goals; and (3) establishing a framework of judicial and administrative processes against which the City can seek to alleviate chronic nuisance conditions.

TMC 8.30A.020 Definitions.

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 department director, or designee, determines is necessary in the interest of the general health, safety, and welfare of the community.

2. “Chronic nuisance property” means a property:

(a) on which three or more nuisance activities as defined herein exist or have occurred during any sixty-day period; or

(b) on which four or more nuisance activities as defined herein exist or have occurred during any sixth month period; or

(c) on which six or more nuisance activities as defined herein exist or have occurred during any twelve-month period; or

(d) that upon request for execution of a search warrant has been the subject of a determination by a court two or more times within a twelve-month period that probable cause exists that illegal possession, manufacture, or delivery of a controlled substance or related offenses as defined in Chapter 69.50 RCW has occurred on the property; or

(e) ~~which meet either (a), (b), or (c) above and which the City can demonstrate by a preponderance of the evidence is the cause of nuisance activities occurring on property adjacent to or in proximity to the property itself~~ that the City can demonstrate by a preponderance of the evidence is the cause of nuisance activities that are occurring on other property adjacent to or in proximity to the property itself, where such nuisance activities occurring on such other property meet the definition of (a), (b), (c), or (d) above.

3. “Correction agreement” means a contract between the City and the owner and, if different than the owner, the person in control of the chronic nuisance property, in which such person(s) agrees to promptly take all reasonable actions, which shall be set forth in the agreement, to abate the nuisance activities within a specified time and according to specified conditions.

4. “Nuisance activity” includes a violation for any of the following:

a. A “most serious offense” as defined in chapter 9.94A RCW;

b. Drug-related activity, including unlawful manufacture, delivery, sale, storage, possession, or giving away of any controlled substance, as defined in Revised Code of Washington (RCW hereinafter) RCW 69.50; illegal drugs, as defined in RCW 69.41; precursor drugs, as defined in RCW 69.43; or imitation controlled substances, as defined in RCW 69.52;

c. “Gang-related activity” as defined in RCW 59.18.030;

d. Drive-by shooting as defined in RCW 9A.36.045;

e. Reckless endangerment as defined in RCW 9A.36.050;

f. Alcoholic beverage control violations, as defined in chapter RCW 66.44.

g. Violation of the Minimum Building and Structures Code, Tacoma Municipal Code (TMC hereinafter) Chapter 2.01;

- h. Fireworks, TMC 3.12;
- i. Tax and License Code, TMC Title 6;
- j. Disorderly Conduct; TMC 8.12;
- k. Obstructing Pedestrians or Traffic, TMC 8.13;
- l. Narcotics, TMC 8.28;
- m. Drug Paraphernalia, TMC 8.29;
- n. Public Nuisances, TMC 8.30;
- o. Indecent Acts, TMC 8.32;
- p. Urinating in Public, TMC 8.33;
- q. Prostitution, TMC 8.46;
- r. Unlawful Assembly, TMC 8.60;
- s. Weapons, TMC 8.66;
- t. Firearms, TMC 8.67;
- u. Drug-related Loitering, TMC 8.72;
- v. Assault in the Fourth Degree, TMC 8.76;
- w. Harassment, TMC 8.80;
- x. Gambling, TMC 8.100;
- y. Domestic Violence, TMC 8.105;
- z. Curfew Hours for Minors, TMC 8.109;
- aa. Graffiti, TMC 8.120;
- bb. Noise Enforcement, TMC 8.122;
- cc. Regulation of Purchase/Sale of Ephedrine, TMC 8.140;
- dd. Stay Out of Drug Areas (SODA) Orders, TMC 8.160;
- ee. Stay Out of Areas of Prostitution (SOAP) Orders, TMC 8.170;
- ff. Solid Waste, Recycling and Hazardous Waste, TMC 12.09;
- gg. Animal Control TMC Title 17;
- hh. Fire Prevention Code, TMC 3.02;
- ii. Any similar violation of the Revised Code of Washington or the United States Code;
- jj. Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors, or conduct shall also be considered a nuisance activity.

5. “Director” means any City of Tacoma Department Director, or designee.

6. “Landlord” means the owner, lessor, or sublessor 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.

7. “Owner” means any person having any interest in the real estate in question as indicated in the records of the office of the Pierce County Assessor, or whose ownership interest is otherwise established.

8. “Person” means natural person, joint venture, partnership, association, club, company, corporation, business trust, or organization or the manager, lessee, agent, officer, or employee of any of them.

9. “Person in control” of a property means any person, in actual or constructive possession of a property, including, but not limited to, an owner, occupant, agent, business owner, business manager or property manager of a property under his or her control.

10. “Property” means any building, lot, tax parcel, dwelling, rental unit, real estate, or land, or portion thereof, including property used as residential or commercial property.

11. “Violation” means a criminal conviction, civil judgment, issuance of a civil penalty, issuance of a Notice of Violation, or any act or conduct which the City can establish by a preponderance of the evidence exists or has occurred regardless of whether such act resulted in a criminal charge or civil penalty. Copies of police incident reports, reports of other City departments documenting nuisance activities, evidence of a property's general reputation, and the reputation of persons residing in or frequenting the property shall be admissible in proceedings under this chapter. A civil infraction or criminal charge which is deferred or subject to pretrial diversion, or a verdict of not guilty on a criminal charge, may be counted as a violation if the violation is proved by a preponderance of the evidence; provided, however, that a finding of not committed on a civil infraction precludes use of that act as a basis for a violation under this chapter.

12. “Service by mail” shall be deemed complete upon the third day following the day upon which the Notice of Violation is placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

TMC 8.30A.030 Declaration of chronic nuisance property and procedures.

A. If the Director determines a property is a chronic nuisance property, the City shall send a notice of violation and proposed correction agreement to the owner of the property, and to the person in control of the property, if different. The Notice of Violation and proposed correction agreement shall be sent by first-class mail or personally served, and a copy shall be sent by certified mail. The City may also elect to post an additional copy of the Notice of Violation and proposed correction agreement in a conspicuous place on or at the property.

B. The Notice of Violation shall include the following:

1. The street address or a legal description sufficient for identification of the property;

2. A statement that the property has been determined to be a chronic nuisance property and a concise description of the chronic nuisance activities that exist or that have occurred on the property;
3. A copy of the proposed correction agreement;
4. A requirement that the owner or person in control of the property, if different, shall respond to the Director within ten (10) calendar days of the date of service of the notice of violation and meet at the designated time, unless otherwise agreed to by the City, to discuss the nuisance activities and the proposed correction agreement in order to abate the chronic nuisance; and
5. A notice that if the owner of the property, or person in control of the property, if different, does not respond to the Director as required by this chapter, or does not voluntarily correct the chronic nuisance, the City may initiate legal action to abate the chronic nuisance property.

TMC 8.30A.050 Correction agreement.

A. When an owner of a chronic nuisance property, or person in control thereof, if different, responds to a Notice of Violation as required by this chapter and agrees to abate the chronic nuisance activity, a correction agreement shall be entered into wherein the owner or person in control, if different, agrees to promptly take all reasonable actions, as set forth in the correction agreement to abate the nuisance activities within specific time frames and according to specified conditions. The agreement shall be signed by the owner and the person in control, if different.

B. The correction agreement shall include the following:

1. The name and address of the owner and/or person in control of the property;
2. The street address or a description sufficient for identification of the property, building, structure, or land upon or within which the nuisance is occurring;
3. A concise description of the chronic nuisance activities existing or which have occurred;
4. The necessary corrective action to be taken, and a date or time by which correction must be completed;

5. An agreement by the person in charge that the City may inspect the property as may be necessary to determine compliance with the correction agreement;
6. An agreement by the owner and person in control of the property, if different, to promptly take all acts and pursue all remedies requested by the Director.
7. An agreement for a compliance review period to assure the property remains in compliance for a certain period of time after the actions in the correction agreement have been completed.

TMC 8.30A.060 Enforcement

A. Upon an owner's, or person in control's, failure to correct the chronic nuisance violations in accordance with the Notice of Violation or the correction agreement, the City may initiate an action in a court of competent jurisdiction to abate a chronic nuisance property, or may seek alternative remedies under local and state law, including, but not limited to, a receivership pursuant to Chapter 7.60 RCW, or condemnation of blighted property proceedings as authorized under Chapter 35.80A RCW.

B. In an action by the City before a court of competent jurisdiction to abate the chronic nuisance property in accordance with this chapter, 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 and is in violation, as defined herein.

C. Once the court determines the property to be a chronic nuisance property under this chapter, the court may order any relief deemed appropriate to abate the chronic nuisance activity consistent with Chapter 7.48 RCW, including issuing a warrant of abatement, and assessing the costs of abatement against the owner or the property consistent with local and state law.

D. Where a Director has sent a notice of violation and correction agreement to the owner or person in control of a chronic nuisance property the Director, or his/her designee, shall review the status of that property within thirty (30) days of sending such notice of violation and correction agreement to determine whether additional enforcement actions should be taken or if the matter as to that property has been successfully resolved.

TMC 8.30A.070 Additional remedies.

A. At any time after the City initiates a chronic nuisance action, the City may record a Certificate of Complaint with the Pierce County Auditor to be attached to the title of the property. A copy of the Certificate of Complaint shall be sent to the property owner.

B. If an owner, or person in the control of the property, if different, fails to comply with this section, the business license may be suspended until compliance is with this chapter is achieved. Revocation or suspension of a business license may be appealed as provided in TMC 6B.10.140.

C. Any violation of this chapter is a gross misdemeanor and may be punished by a fine up to \$5000 and up to 364 days in jail, or both.

D. The remedies of this chapter are not exclusive and do not affect any other enforcement actions taken by the City under another section of the Tacoma Municipal Code or state law, or enforcement actions taken by a different jurisdiction.

TMC 8.30A.080 Appeals to the Hearing Examiner.

A. A person to whom a Notice of Violation has been issued may request a hearing before the Hearing Examiner to appeal the Director's determination of the property as a chronic nuisance property within ten (10) calendar days of the issuance of the notice of violation. The request for hearing shall be in writing and shall be filed with the Office of the Hearing Examiner with a copy served on the Director who issued the original Notice of Violation.

B. The appeal hearing shall be conducted in accordance with TMC Chapter 1.23 and the Hearing Examiner's Rules of Procedure. The City shall have the burden of proof to establish, by a preponderance of the evidence, that the property is a chronic nuisance property and that the proposed corrective action is reasonable.

C. The Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that the property is a chronic nuisance property and that the proposed corrective action is reasonable. The Hearing Examiner shall affirm, modify, or vacate the Director's decisions regarding the alleged violation and the proposed correction agreement.

TMC 8.30A.090 Successive owners liable.

Every successive owner of property, or person in control, who neglects to abate a continuing chronic nuisance upon, or in the use of such property caused by a former owner, is liable therefor in the same manner as the one who first created it.

TMC 8.30A.100 Joint and several liability.

Any owner or person in control of a chronic nuisance property shall be in violation of this chapter and subject to its remedies. The person in control and the owner are jointly liable for any chronic nuisance. Both the owner and person in control are subject to the provisions and remedies of this chapter. Application of this chapter against one party does not preclude application to another party who is an owner or person in control of a chronic nuisance property.

TMC 8.30A.110 Severability.

If any portion of this ordinance, or its application to any person or circumstances, is held invalid,

the validity of the ordinance as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.