



TO: Elizabeth Pauli, City Manager
FROM: The Tacoma Police Department.
COPY: Community Vitality and Safety Committee; Jacques Colon, Executive Liaison.
PRESENTER: Keith A. Echterling, Deputy City Attorney, City Attorney’s Office; Captain Corey Darlington, Tacoma Police Department.
SUBJECT: Proposed changes to update and strengthen Chapter 8.30A of the Tacoma Municipal Code, Chronic Public Nuisance.
DATE: June 8, 2023

PRESENTATION TYPE:

Please select the type of presentation you will be making to the Council Committee.
Request for Ordinance

SUMMARY:

The purpose of this memorandum is to provide recommendations to the Committee to update Chapter 8.30A Tacoma Municipal Code [hereinafter TMC] to add additional criminal conduct to qualifying nuisance violations under TMC 8.30A.020(F). Additionally, staff is recommending including a date certain for execution of any correction agreement. These proposed changes will expand the qualifying nuisance violations into needed enforcement areas and will assist in the administration of any chronic nuisance case. The attached includes the proposed additions to the code. Staff recommends adopting these proposed additions and respectfully requests forwarding this proposal to the full City Council for consideration.

BACKGROUND:

The Chronic Nuisance Code was overhauled in 2018 and is currently housed at Chapter 8.30A of the Tacoma Municipal Code. It was most recently updated to remove domestic violence as a qualifying nuisance activity in 2020. On February 9, 2023, City staff provided an informational briefing to this Committee regarding the Chronic Nuisance code and indicated a full recommendation for consideration would be forthcoming. City staff have utilized the Chronic Nuisance Code to declare two separate properties as Chronic Nuisances under the new code. A coalition of City staff also regularly meets to discuss emerging property issues and consider how best to remedy complaints, including nuisance violations. Staff have considered the application of this tool in a multitude of other contexts, though have often leveraged other resources to resolve such cases, including the summary suspension of business license process.

To strengthen and update this code, the Tacoma Police Department [TPD] is recommending adding the specified nuisance violations which will allow for consideration of chronic nuisance application under expanded circumstances. Further, TPD is recommending adding a deadline for execution of the required correction agreement, which will provide clarity and timeliness for administration of any chronic nuisance case.

ISSUE:

The issue is the need to update the list of what qualifies as a “Nuisance activity” under TMC 8.30A.020(F) for chronic nuisance properties. Additionally, there is a need to clarify the administration of the chronic nuisance action by adding a due date for signing the correction agreement itself.



ALTERNATIVES:

Council could take no action and the code would remain unchanged. This alternative would leave out certain criminal offenses that could otherwise qualify as nuisance activities for consideration of application of the Chronic Public Nuisance code.

FISCAL IMPACT:

There is no anticipated fiscal impact from this recommendation.

RECOMMENDATION:

The recommendation for amending Chapter 8.30A TMC as proposed herein will help update the list of qualifying nuisance activities under the code, which will facilitate additional considerations of application of the Chronic Public Nuisance code itself to properties generating complaints, but that may not currently fall within the purview of Chp. 8.30A TMC. Additionally, adding a requirement that the Correction Agreement be signed and executed within a certain timeframe will assist in the administration of this code and help facilitate purposeful and continued engagement with property owners and representatives. Staff recommends that this Committee vote to forward this proposal to the full City Council for consideration.

CHAPTER 8.30A¹ CHRONIC PUBLIC NUISANCE

Sections:

- 8.30A.010 Scope and purpose.
- 8.30A.020 Definitions.
- 8.30A.030 Declaration of chronic nuisance property and procedures.
- 8.30A.040 Correction agreement.
- 8.30A.050 Enforcement.
- 8.30A.060 Additional remedies.
- 8.30A.070 Appeals to the Hearing Examiner.
- 8.30A.080 Successive owners liable.
- 8.30A.090 Joint and several liability.
- 8.30A.100 Severability.

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:

- A. Establishing standards and recommendations for reducing criminal activity and improving building conditions;
- B. Working in cooperation with property owners to accomplish these goals; and
- C. Establishing a framework of judicial and administrative processes against which the City can seek to alleviate chronic nuisance conditions.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.020 Definitions.

A. “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.

B. “Chronic nuisance property” means a property:

1. on which three or more nuisance activities as defined herein exist or have occurred during any 60-day period; or
2. on which four or more nuisance activities as defined herein exist or have occurred during any six-month period; or
3. on which six or more nuisance activities as defined herein exist or have occurred during any 12-month period; or
4. 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 12-month period that probable cause exists that illegal possession, manufacture, or delivery of a controlled substance or related offenses, as defined in Revised Code of Washington (“RCW”) 69.50, has occurred on the property; or

¹ Repealed and reenacted per Ord. 28530; passed Sept. 25, 2018. Ordinances referenced in repealed section include: Ord. 27904; passed Jul. 20, 2010; Ord. 27466; passed Jan. 17, 2006; Ord. 27153; passed Oct. 21, 2003).

5. 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 1, 2, 3, or 4 above.

C. "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.

D. "Director" means any City of Tacoma Department Director, or designee.

E. "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.

F. "Nuisance activity" includes a violation for any of the following:

1. A "most serious offense," as defined in RCW 9.94A;
2. "Alcoholic beverage control violations," as defined in RCW 66.44;
3. "Drive-by shooting," as defined in RCW 9A.36.045;
4. "Drug-related activity," including unlawful manufacture, delivery, sale, storage, possession, or giving away of any controlled substance, as defined in 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;
- 5 "Gang-related activity," as defined in RCW 59.18.030;
6. "Reckless endangerment," as defined in RCW 9A.36.050;
7. Animal Control, Tacoma Municipal Code ("TMC") Title 17;
8. Assault in the Fourth Degree, TMC 8.76;
9. Curfew Hours for Minors, TMC 8.109;
10. Disorderly Conduct, TMC 8.12;
11. Drug Paraphernalia, TMC 8.29;
12. Drug-related Loitering, TMC 8.72;
13. Fire Prevention Code, TMC 3.02;
14. Firearms, TMC 8.67;
15. Fireworks, TMC 3.12;
16. Gambling, TMC 8.100;
17. Graffiti, TMC 8.120;
18. Harassment, TMC 8.80;
19. Indecent Acts, TMC 8.32;
20. Minimum Building and Structures Code, TMC 2.01;
21. Narcotics, TMC 8.28;
22. Noise Enforcement, TMC 8.122;
23. Obstructing Pedestrians or Traffic, TMC 8.13;
24. Prostitution, TMC 8.46;
25. Public Nuisances, TMC 8.30;
26. Regulation of Purchase/Sale of Ephedrine, TMC 8.140;
27. Stay Out of Areas of Prostitution ("SOAP") Orders, TMC 8.170;

- 28. Stay Out of Drug Areas (“SODA”) Orders, TMC 8.160;
- 29. Solid Waste, Recycling and Hazardous Waste, TMC 12.09;
- 30. Tax and License Code, TMC Title 6;
- 31. Unlawful Assembly, TMC 8.60;
- 32. Urinating in Public, TMC 8.33;

33. Weapons, TMC 8.66;

34. Possession of stolen vehicle, RCW 9A.56.068;

35. Possessing stolen property, RCW 9A.56.140 – RCW 9A.56.170;

36. Possessing a stolen firearm, RCW 9A.56.310;

37. Trafficking in stolen property in the first degree, RCW 9A.82.050;

38. Trafficking in stolen property in the second degree, RCW 9A.82.055.

~~39~~4. Any similar violation of the RCW or the United States Code;

~~40~~35. Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors, or conduct shall also be considered a nuisance activity.

G. “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.

H. “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.

I. “Person in control” 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 the person’s control.

J. “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.

K. “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.

L. “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.

(Ord. 28659 Ex. A; passed Feb. 25, 2020; Ord. 28530 Ex. A; passed Sept. 25, 2018)

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 of the property or person in control of the property, if different, shall respond to the Director within ten 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.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.040 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, within 30 days of the required initial meeting under TMC 8.30A.030(B)(4).

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.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.050 Enforcement.

A. Upon the failure of an owner or person in control, if different, 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 RCW 7.60, or condemnation of blighted property proceedings as authorized under RCW 35.80A.

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 RCW 7.48, 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, if different, the Director, or designee, shall review the status of that property within 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.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.060 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 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 \$5,000 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 TMC or state law, or enforcement actions taken by a different jurisdiction.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.070 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 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 1.23 and the Hearing Examiner's Rules of Procedure for Hearings. 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 decision regarding the alleged violation and the proposed correction agreement.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.080 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.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.090 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.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)

8.30A.100 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.

(Ord. 28530 Ex. A; passed Sept. 25, 2018)