

ORDINANCE NO. 225**AN ORDINANCE DECLARING SPECIFIED CRIME PROPERTY TO BE A NUISANCE, ESTABLISHING PENALTIES THEREFOR, AND DECLARING AN EMERGENCY.**

The City of Coos Bay Ordains as follows:

Section 1. Definitions.

Costs. Those costs actually incurred by the City for the physical securing of real property, court costs, and other expenses incurred in enforcing this ordinance.

Enforcement Officer. The Chief of Police for the City of Coos Bay, or his or her designee.

Owner. Any person holding or claiming to hold title to 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, control or possession of real property by any method or manner whatsoever; an occupant of any real property who is engaging or has engaged in any criminal activity on the real property which may be the basis for a determination the property is specified crime property, and who is known by the person holding or claiming title to the real property or who otherwise has or claims to have lawful care, custody, control or possession of the property to be engaging or to have engaged in such criminal activity.

Person. Any natural person, association, partnership or corporation, or other form of legal entity or entity in fact capable of owning or using property.

Specified Crime Property. Any kind of real property where a crime involving controlled substances as defined in ORS Chapter 475, gambling as defined in ORS 167.117, or prostitution as defined by ORS 167.007 has occurred or is occurring.

Real Property. 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.

Tenant. 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.

Section 2. Specified Crime Property Prohibited.

- A. It is unlawful for any real property to be used or maintained as specified crime property within the City of Coos Bay.
- B. It is unlawful for any owner to use or maintain or to allow the use or maintenance of real property as specified crime property.
- C. It is unlawful for an owner to use or occupy or to allow or permit any person to use or occupy, by lease or otherwise, any real property during any period such property is subject to an order of closure pursuant to Section 6.

Section 3. Preliminary Notice.

- A. When the enforcement officer has reasonable grounds to believe real property has been or is being used or maintained in violation of Section 2, the enforcement officer may institute proceedings against the owner for the closure of the real property and the imposition of civil penalties.
- B. The enforcement officer shall provide preliminary notice of the institution of proceedings in the following manner:
 - 1. The enforcement officer shall notify the owner in writing that the structure is believed to be specified crime property. The notice shall contain the following information:
 - a. The street address and a legal description sufficient for identification of the structure;
 - b. A statement the structure is specified crime property, along with specific findings supporting this determination. The findings shall contain a concise description of the conditions establishing a violation of this ordinance.
 - 2. A copy of the notice shall be served on the owner at least 10 days prior to the filing of a complaint. 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 from 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 the filing of a complaint. Notice shall be made by mailing a copy of the notice by first class mail, or by personal delivery to the occupant or occupants at the real property.

4. A copy of the notice may be posted at the real property if 10 days has elapsed from the service or mailing of the notice to the owner, and no response has been received by the City during that time.

5. The enforcement officer shall send a copy of the notice to the District Attorney for Coos County, as well as any other documentation supporting closure and the imposition of civil penalties.

B. After notice has been given pursuant to this section, the City Manager may authorize the filing of a complaint. Nothing in this section shall limit the power of the City Manager to enter into an agreement with the owner for the voluntary abatement of conditions giving rise to the violation.

Section 4. Complaint; Burdens of Proof; Defenses; Stay of Proceedings.

A. An action shall be commenced by the filing of a complaint alleging facts constituting a violation, containing a legal description of the real property and alleging that the owner has been notified of the violation at least ten days prior to the filing of the complaint.

B. The City shall have the initial burden to show, by a preponderance of the evidence, the real property is specified crime property.

C. Evidence of the real property's general reputation and the reputation of persons residing in or frequenting the real property shall be admissible and competent.

D. It is a defense to an action seeking closure of the real property that the owner, at the time in question, could not in the exercise of reasonable care or diligence determine that the real property was being used or maintained as specified crime property.

E. If prior to trial, the owner and the City enter into an agreement, stipulating to the abatement of the conditions giving rise to the complaint, the court upon motion by the City 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 to in the agreement, the City may apply for release at any time prior to the end of the stay.

Section 5. Emergency Closures.

If the enforcement officer determines real property is an immediate threat to the public safety and welfare by virtue of activity which would establish a violation of this ordinance, the City may apply to the court for a preliminary injunction ordering closure of the real property. In such event, no preliminary notice required under Section 3 need be given.

Section 6. Closure Order and Civil Penalties; Costs.

A. If real property is determined to be specified crime property, the court may order closure of such property for a period of up to 1 year, and assess a civil penalty against the owner of up to \$500 for each day the owner had knowledge of activities or conditions constituting the violation. A person shall be deemed to have had knowledge at a date no later than the date preliminary notice is provided pursuant to Section 3. In establishing the amount of any civil penalty, the court may consider the following factors:

1. The actions taken by the owner or owners 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 benefit 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 the City;
7. The cost to the City 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 City 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 City in such action shall be a lien upon the property.

C. The City 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 fourteen 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 City's lien docket. Liens shall bear interest at the rate of 9 percent per annum, commencing with the date of entry of judgment or order of closure.

Section 7. Relocation Costs. Any tenant required to relocate by a closure order is entitled to reasonable relocation costs, to be paid by the owner, if the tenant moved into the real property after either:

- A. The owner received preliminary notice of the under Section 3; or
- B. The owner was served with summons and complaint for a preliminary injunction under Section 5.

In any action to recover relocation costs, the tenant shall be entitled to reasonable attorney's fees associated with recovery.

Section 8. Relief from Closure Order.

- 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 an amount not less than the tax-assessed value of the structure; and keeps such bond in force for a period of not less than 1 year; and
 - 3. Enters into a stipulation with the City to immediately abate the conditions, to make every effort to prevent the same or similar conditions from occurring at any time.
- B. If the owner violates any term of the stipulation entered into according to Subsection A, the entire bond shall be forfeited.

Section 9. Severability.

If any provision of this ordinance is held to be invalid for any reason by a court of competent jurisdiction, the remainder shall not in any way be affected.

Section 10. Emergency.

The City Council of the City of Coos Bay finds that the health, safety and welfare of the City of Coos Bay requires this ordinance to have immediate effect. Therefore, the City Council hereby declares the existence of an emergency, and that this ordinance shall be in full force and effect from the time of its passage and approval.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay the 19th day of March, 1996.