



**9.10.010 Declaration of purpose.**

(1) Repeated unlawful activities occurring on, or resulting from the use of, certain real property within the City create unreasonable disruptions of the peace and may create unsafe conditions in the neighborhoods where these real properties are located;

(2) These repeated unlawful activities degrade neighborhoods;

(3) Existing state criminal statutes and City ordinances are inadequate to address, control, or remedy the adverse impacts of chronic unlawful activity occurring at these specific real properties;

(4) Civil regulation of these real properties will provide a remedy to the problems caused by these chronic behaviors and will promote and protect the public health, safety and welfare; and therefore,

(5) Real properties where those chronic unlawful activities occur, or where those chronic unlawful activities result from the use of the real property, are hereby declared to be public nuisances, and are subject to the abatement procedures and other remedies set forth within this chapter.

(Ord. \_\_\_\_\_).

**9.10.020 Chronic nuisance property.**

(1) Any property within the City that becomes a chronic nuisance property, as defined herein, is in violation of this chapter and subject to its remedies.

(2) Any person who permits property under their ownership or control to be a chronic nuisance property, as defined herein, shall be in violation of this chapter and subject to its remedies.

(Ord. \_\_\_\_\_).

**9.10.030 Definitions.**

(1) “Abate” includes affirmative actions to remove, to stop, or to prevent a nuisance property but is not limited to:

(a) Restricting or limiting noise, loitering, parking, or access to the property, including posting the property with signs indicating such restrictions;

(b) Ordering a time limit to abate the property;

(c) Closing the property for not less than 30 days or more than six months; or

(d) Entering premises for purposes of removing, compelling the removal or destruction of the structure, thing, substance, condition, or property constituting a nuisance.

(2) “Chronic nuisance property” is:

(a) Property on which three or more Nuisance Activities exist or have occurred during any (30) thirty-day period; or,

(b) Property on which or within 200 feet of which any Person Associated With The Property has engaged in (3) three or more Nuisance Activities during any (30) thirty-day period; or,

(c) Any combination of separate incidents as specified in subsections (2)(a) or (b) of this section which amounts to three or more Nuisance Activities occurring within any 30-day period.

(d) “Nuisance Activities.” For the purposes of this subsection the following offenses shall constitute incidents which would support a finding of chronic nuisance property:

(i) Harassment as defined in ORS [166.065](#)(1)(a),

(ii) Bias Crime as defined in ORS [166.155](#) through [166.165](#),

(iii) Disorderly conduct as defined in ORS [166.025](#),

(iv) Assault or menacing as defined in ORS [163.160](#) through [163.190](#),

(v) Public indecency as defined in ORS [163.465](#) and TMC 9.08

(vi) Prostitution or related offenses as defined in ORS [167.007](#) through [167.017](#),

(vii) Alcoholic liquor violations as defined in ORS Chapter 471 and TMC 9.04.090,

(viii) Offensive littering as defined in ORS [164.805](#), Depositing rubbish or debris upon (TMC 12.10.090), Junk, Garbage and Rubbish (TMC 8.04.110)

(ix) Criminal trespass as defined in ORS [164.245](#) through [164.265](#),

(x) Theft by receiving as defined in ORS [164.095](#),

(xi) Arson or related offenses as defined in ORS [164.315](#) through [164.335](#),

(xii) Possession, manufacturing, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS Chapter 475,

(xiii) Illegal gambling as defined in ORS 167.117 and ORS [167.122](#) through [167.127](#),

(xiv) Criminal mischief as defined in ORS [164.345](#) through [164.365](#),

- (xv) Firing or discharge of a firearm as defined in TMC 9.04.110,
  - (xvi) Unnecessary noise as defined in TMC 9.04.100,
  - (xvii) Manufacture, distribution, possession, sale, or detonation of explosives and fireworks as defined in ORS Chapter 480.
  - (xviii) Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as defined in ORS 163.415 through ORS 163.445.
  - (xix) Frequenting a place where controlled substances are used as defined in ORS [167.222](#),
  - (xx) Nuisances affecting the public health and safety as defined in TMC 8.04.060,
  - (xxi) Menacing as defined in ORS [163.190](#),
  - (xxii) Reckless endangering as defined in ORS [163.195](#),
  - (xxiii) Violations of City of Toledo Criminal Code TMC 9.04
  - (xxiv) Any attempt to commit (as defined in ORS [161.405](#)), and/or conspiracy to commit (as defined in ORS [161.450](#)), any of the above activities, behaviors, or conduct.
- (3) “Control” means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on property.
- (4) “Good cause” means circumstances beyond the ability of a person acting with reasonable care and diligence to control.
- (5) “Incident” means an occurrence of one of the nuisance activities set forth in subsection (2)(d) of this section, whether or not the conduct resulted in arrest, as described in:
- (a) Personal observation of a law enforcement officer; or
  - (b) A determination by a law enforcement officer after an investigation that there are reasonable grounds to conclude that the alleged incident did, in fact, occur.
- (6) “Owner” means any person, association of persons, agent, firm, business entity, or trustee having a legal or equitable or management interest in a property. Owner includes, but is not limited to:
- (a) A mortgagee in possession in whom is vested:
    - (i) All or part of the legal title to the property; or

(ii) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or

(b) A person who has the legal authority to control or to obtain authority to control what occurs on that property.

(7) “Permit” means to suffer, allow, consent to, or acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

(8) “Person” means any natural person, agent, association, firm, partnership, corporation or other entity, or trustee, owning, capable of owning, occupying, capable of occupying, or using Property in the City of Toledo.

(9) “Person Associated With” means any Person who, on the occasion of a Nuisance Activity, has entered, patronized, visited, or attempted to enter, patronize, or visit a Property or a Person present on the Property, including without limitation any officer, director, customer, agent, employee, guest, invitee, employee, or independent contractor of a Property, Person In Charge, or Owner of Property.

(10) “Person In Charge” means any Person, in actual or constructive possession, or under the ownership or control, of a Property, including but not limited to an Owner or Person.

(11) “Property” means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, premises, dwelling unit, room, house, building, or structure or any separate part, dwelling unit, or portion thereof, or any business equipment, whether permanent or not. For Property consisting of more than one part, dwelling unit, or portion, Property may be limited to the unit or the portion of the Property on which any Nuisance Activity has occurred or is occurring, but includes areas of the Property used in common by all the units of Property including without limitation other structures erected on the Property and areas used for parking, loading, and landscaping.

(12) “Police Chief” means the official responsible for enforcement of state and City laws or departmental designee.

(13) “Structure” means that which is built or constructed, an edifice or building of any kind including units thereof or mobile homes, any of which is an addition to or a fixture on real property.

(Ord. \_\_\_\_\_).

#### **9.10.040 Police Chief’s determination.**

(1) If the Police Chief determines that property may be a chronic nuisance property, the Police Chief shall notify the owner and the owner’s registered agent, if known, in writing. In deciding whether to proceed, the Police Chief shall consider whether the owner has reported the incidents

and otherwise acted reasonably in response to the nuisance activities, and also whether proceeding would discourage future reporting and cooperation in discouraging unlawful behavior. The notice shall contain the following information:

- (a) The street address or description sufficient for identification of the property;
  - (b) That the Police Chief is considering whether the property is a Nuisance Property together with a concise description of the information upon which the Police Chief is relying. If any of the incidents relied on occurred on property other than that which is subject of the notice, the notice may include a concise description of the location and the causal relationship between the subject property and the incident; and
  - (c) A direction that the owner has 15 days from the date of mailing the notice to provide information to the Police Chief demonstrating that the property is not a Chronic Nuisance Property and to inform the Police Chief of the actions the owner intends to take to address the allegations, or indicate good cause as to why the owner cannot do so.
- (2) If the owner fails to respond or to demonstrate to the Police Chief that further action should not be taken, the Police Chief may issue a determination of chronic nuisance and direct the owner to abate the nuisance within 30 days. The notice shall state that:
- (a) Permitting chronic nuisance property is a violation of this chapter; and
  - (b) Failure to abate the nuisance condition within 30 days will result in a citation into Toledo Municipal Court under this Chapter; and
  - (c) If found to be in violation of this ordinance, the Toledo Municipal Court can impose penalties, including fines and the closure of the property; and
  - (d) The above remedies are in addition to those otherwise provided by law.
- (3) Service of the notice to the property owner provided for in this chapter is completed upon delivery in person or upon mailing the notice by certified mail addressed to:
- (a) The owner's registered agent, if any is known; or
  - (b) The owner at the address of the property believed to be a chronic nuisance property, or to such other address as shown on the tax rolls of the county in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Police Chief.
- (4) A copy of the notice shall be served on occupants of the property, if different from the owner. Service shall be completed upon delivery in person, affixing notice on the door of the dwelling unit, or upon mailing the notice first class addressed to occupant of each unit of the property believed to be a chronic nuisance property.

(5) In addition, a copy of the Police Chief's determination that the property is a chronic nuisance shall be posted on the main entrance of the property in a conspicuous manner.

(6) The failure of any person or owner to receive actual notice of the determination by the Police Chief shall not invalidate or otherwise affect the proceedings under this chapter.

(Ord. \_\_\_\_\_).

### **9.10.050 Determination of Municipal Court Judge.**

(1) The City has the initial burden of showing by a preponderance of the evidence that the property is a chronic nuisance property. If the City is relying on an incident that occurred on property other than the property that is the subject of the chronic nuisance determination, the City shall demonstrate some causal relationship between activities occurring on the property and the incident. The activities must have contributed to, but need not be the sole or predominant cause of, the incident. Evidence demonstrating a causal connection may include, but is not limited to:

(a) That the owner knew or reasonably should have known that the resident or other person associated with the property would engage in conduct listed in TMC 9.10.030; or

(b) Activities on the subject property that encouraged, engendered, promoted, contributed to, or otherwise made the incident more likely to occur.

(2) It shall be an affirmative defense to an action under this chapter that the owner could not, in spite of the exercise of reasonable care and diligence, control the activities on the subject property that constituted the incident or made the incident more likely to occur or otherwise remedy the situation leading to the finding that the property is a chronic nuisance. The owner has the burden of proving this defense by a preponderance of the evidence. The action shall be dismissed if the Municipal Court Judge determines that the owner has proven this defense.

(3) Prior to issuing any order of abatement, closure, or imposition of fines for civil infraction, a Municipal Court Judge may consider the following factors:

(a) The actions taken by the owner(s) to mitigate or correct the problem at the property;

(b) The financial position of the owner;

(c) Whether the problem at the property was repeated or continuous;

(d) The magnitude or gravity of the problem;

(e) The level of cooperation of the owner in addressing the problem, including whether the owner reported the incidents;

(f) The time and cost to the City in attempting to correct the problem; and

(g) Any other factor deemed relevant by the Municipal Court Judge. These factors are guidelines to inform the decision-making process, but the presence or absence of any factors shall not control the decision by the Municipal Court Judge.

(4) The order may include conditions under which abatement or closure is to occur.

(5) Upon a determination by the Municipal Court Judge that the property is a chronic nuisance, the Police Chief may file a notice of the proceedings to be placed with the county property records.

(6) The remedies in this section are in addition to those otherwise provided by law. The City may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including but not limited to authorizing a civil complaint in a court of competent jurisdiction.

(Ord. \_\_\_\_\_).

### **9.10.060 Multi-unit property.**

(1) Except as provided in subsection (2) of this section, in the case of multi-unit residential property, such as apartment complexes under one ownership, the chronic nuisance determination and closure remedy shall be directed only to the unit or units that are the source or location of the incidents.

(2) A chronic nuisance determination and remedy may be applied to multiple units, up to and including the entire property, if the Municipal Court Judge determines that:

(a) The incident occurred in the common areas of the property or otherwise are not reasonably attributable to a particular unit;

(b) The nature or scope of the incidents is such that they cannot reasonably be attributed to a particular unit; or

(c) Incidents continue to occur despite previous imposition of remedies on specific units and the owner has demonstrated an inability or unwillingness to mitigate or correct the nuisance.

(Ord. \_\_\_\_\_).

### **9.10.080 Violation and Civil Penalty.**

(1) Violation of this code is a Class B infraction and may be adjudicated as a continuing violation. If the Municipal Judge finds that a property is a chronic nuisance property and orders the owner to take some action to abate the nuisance, the Judge may impose upon the owner a civil penalty of up to \$500.00 per day, payable to the City, and in addition, may impose the fine as a continuing penalty of \$500 per for each day after the deadline that the owner fails to take the action ordered.

(2) Any subsequent nuisance activity occurring within six months of the determination by the municipal court judge that a property is Chronic Nuisance property is a Class A infraction. If the Municipal Court Judge determines that a property is a Chronic Nuisance and orders abatement, the Judge may impose upon the owner a civil penalty of \$1000.00 for each subsequent Nuisance Activity that occur within six months of the determination. The Municipal Court Judge may impose the fine as a continuing penalty of \$1000 per for each day from the date of the Nuisance Activity, or from the date after a deadline to take the action ordered by the Municipal Court Judge under TMC 9.10.080(1). Notice of subsequent nuisance activities will be given to the owner in the form of a citation referencing this subpart, and a time for appearance in municipal court.

(3) A civil penalty is assessed by issuing written notice of penalty to the owner of the chronic nuisance property and the owner's registered agent, if any is known. The notice shall contain the following information:

(a) The street address or description sufficient for identification of the property;

(b) That the Municipal Court Judge has found that the property is a chronic nuisance property;

(c) That the owner has failed to take the action ordered by the Chief of Police, that the owner has failed to take action required by the Judge to remedy the nuisance, or that after an order to abate the nuisance, a subsequent nuisance activity has occurred, with a concise description of the conditions leading to the Judge's findings;

(4) The Municipal Court Judge shall not impose more than 10 days of civil penalties at a time. The Judge may impose additional civil penalties after 10 days by reissuing notice of imposition of penalties.

(Ord. \_\_\_\_\_).

### **9.10.090 Penalty and costs of abatement as lien.**

(1) The assessments for penalties, cost of abatement and, if ordered by the Municipal Court Judge, hearing costs and attorney's fees shall be referred to the City of Toledo Finance Director. The Finance Director shall notify the owner by mail of the sum of money due to the City. If the sum is not paid within 45 days from the billing date the sum shall be a lien upon the real property involved, to be entered in the lien docket, and enforced against the property, in the same manner provided for enforcement of liens.

(2) Nothing in this section shall be construed as restricting the authority of the City to enter into a settlement of the dispute, including waiving some or all amounts due to the City.

(Ord. \_\_\_\_\_)

### **9.10.100 Closure of property.**

If the Municipal Court Judge orders the closure of a property the City shall take steps to physically secure the property against all use and post conspicuous notices that the property has been closed. All costs reasonably incurred by the City in securing the property shall be made an assessment lien upon the real property in the manner described in TMC 9.10.090. Costs may include but are not limited to staff time and materials. Prior to physically closing the property, the City may, but is not required to, provide the owner with a brief opportunity to physically secure the property against all use at the owner's expense.

(Ord. \_\_\_\_\_).

#### **9.10.110 Entering closed property.**

It is unlawful for any person to enter, use, or remain in or on property that has been ordered closed pursuant to this chapter.

(Ord. \_\_\_\_\_).

#### **9.10.130 Liability.**

Nothing herein shall be relied on or construed as establishing any City responsibility, obligation or liability to any third party, for damages or otherwise arising from the actions or inactions of the City in applying this chapter. Nothing herein lessens or otherwise alters the property owner's responsibility to third parties arising from use and condition of the property.

(Ord. \_\_\_\_\_).

#### **9.10.140 Severability.**

Invalidity of a section or part of a section of this code shall not affect the validity of the remaining sections or parts of sections.

(Ord. \_\_\_\_\_).