

Ordinance No. 376

AN ORDINANCE DEFINING CHRONIC NUISANCES, PROVIDING FOR THEIR ABATEMENT, PROVIDING REMEDIES AND PENALTIES, AND AMENDING CHAPTER 1 OF TITLE 4, IDAHO CITY CODE AS ENACTED BY ORDINANCE 350.

WHEREAS, the City Council has determined that the health, safety, and welfare of the citizens of Idaho City would best be served by adding a new Section 7 of Chapter 1 of Title 4 to define a Chronic Nuisance Property and set forth specific procedures to address such a condition.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO CITY,

SECTION 1: The City Code of Idaho City, Section 4-1-3 be amended as follows:

A. Definition: "Person" and "person in charge" ~~includes, for purposes of this chapter, an individual, firm, corporation, trust, and other organized group, or any government~~ have the same meaning as in Section 7 of this Chapter.

B. Notice Required: Upon being notified of an existing violation of this section, the Chief of Police or his designee shall advise the ~~person in charge-occupant~~ and/or owner of the property of such violation and request that immediate action be taken to ~~remove the unsightly condition~~ abate the nuisance. In the event that ~~any person fails to remove the violation~~ the nuisance is not abated within ten (10) days after notice provided for herein, the Chief of Police, or their designees, are hereby authorized to issue a citation.

C. Contents Of Notice To Abate: The notice to abate shall contain:

1. An order to abate the nuisance and the date the ten (10) days have expired.
2. Location of the nuisance if stationary.
3. Description of what constitutes the nuisance.
4. Statement of act or acts necessary to abate the nuisance.

5. Statement that if the nuisance is not abated as directed within the time prescribed, a citation will be issued and the City may abate it and assess the cost against such person.

D. Method Of Service: The notice to abate shall be served personally, where practical, by United States mail, by verifiable electronic means, or by posting such notice to abate on the premises. Return service shall be made as provided by law for returns of personal service.

SECTION 2: That a new Section 7 of Chapter 1 of Title 4 Idaho City Code is adopted to read as follows:

4-1-7 : Chronic Nuisance Property

A. Purpose

Chronic nuisance properties present grave health, safety, and welfare concerns, and occur when the property owners or persons in charge of such properties have failed to take corrective action to abate the nuisance conditions. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety, and health of the neighborhoods where they are located. Additionally, chronic nuisance properties are a financial burden to the city due to the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such properties.

This section of the Idaho City Code is a means to ameliorate those conditions by providing a process for abatement and hold responsible the owners or persons in charge of such properties. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

B. Chronic Nuisance Property Violation

1. Any property within the City of Idaho City which becomes chronic nuisance property is in violation of this section and subject to its remedies,
2. Any person who permits property under his or her ownership or control to be a chronic nuisance property shall be in violation of this section and subject to its remedies.

C. Definitions

For purposes of this section, the following words or phrases shall have the meanings prescribed below:

1. "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this section 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 any property upon which three or more of the below listed behaviors occur during any sixty-day period as a result of three separate factual incidents that have been independently investigated by the Idaho City Police Department.
3. "Control" means the ability to regulate, restrain, dominate, counteract, or govern property, or conduct that occurs on a property.
4. "Nuisance activity" means and includes:

(a) Any nuisance as defined by Idaho Code or Idaho City Code occurring around or near the property, or;

(b) Any of the following activities, behaviors, or criminal conduct:

- (1) Any felony;
- (2) Domestic battery, I.C. § 18-918;
- (3) Stalking, I.C. § 18-7905;
- (4) Battery, I.C. § 18-903;
- (5) Assault, I.C. § 18-901;
- (6) Violation of a protection order, I.C. § 39-6312;
- (7) Violation of a no contact order, I.C. § 18-920;
- (8) Disturbing the peace, I.C. § 18-6409;
- (9) Refusal to disperse, I.C. § 18-6410;
- (10) Indecent exposure, I.C. § 18-4116;
- (11) Any firearms violation listed in I.C. §§ 18-3301 through 3324;
- (12) Any drug-related activity listed in I.C. §§ 37-2701 through 2751;
- (13) False alarms, I.C. § 18-6711A;
- (14) Resisting and obstructing officers, I.C. § 18-705, and;
- (15) Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors, or conduct.

5. "Owner" means any person having any interest in the real estate in question, as indicated in the records of the office of the Boise County Assessor. "Owner" further means any tenant, renter or lessee, or any person, agent, firm, or corporation having a legal or equitable interest in a property.
6. "Person" means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer, or employee of any of them.
7. "Person associated with a property" means any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize, or visit, or waited to enter, patronize, or visit a property or a person present on property, including without limitation, any officer, director, customer, agent, employee, or any independent contractor of a property, or a person in charge of or owner of a property.

8. "Person in charge" of a property means any person in actual or constructive possession of a property, including but not limited to an owner, occupant, agent, or property manager of a property under his or her control.
9. "Premises and property" may be used by this section interchangeably and means any building, lot, parcel, dwelling, rental unit or units, real estate or land, or portion thereof, including property used as residential or commercial property.
10. "Rental unit" means any structure or that part of a structure, including but not limited to single family home, trailer, mobile home, room, or apartment, which is rented to another and used as a home, residence, or sleeping place by one or more persons, or for commercial purposes,

D. Procedure

1. When the Chief of Police, or his designee, receives police documentation confirming the occurrence of three or more nuisance activities within a sixty-day period on the property, the Chief of Police, or his designee, may review such reports to determine whether they describe the nuisance activities enumerated above. For the purposes of this section, an arrest or conviction of an individual for the above-described nuisance activities shall not be necessary to qualify said activity as a nuisance. Upon a finding of the occurrence of three or more nuisance activities within a sixty-day period on the property, the Chief of Police, or his designee, shall notify a property owner at the address shown on the Boise County Assessor records and shall notify the person in charge of the property in writing that the property is in danger of being declared a chronic nuisance property.
2. The notice shall contain:
 - (a) The street address or a legal description sufficient for identification of the property;
 - (b) A concise description of the nuisance activities that exist, or that have occurred on the property;
 - (c) A demand that the owner or person in charge respond to the Chief of Police, or his designee, within fifteen days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;
 - (d) Offer the person in charge an opportunity to abate the nuisance activities giving rise to the violation, and;
 - (e) A statement describing that if legal action is sought, the property could be subject to closure, civil penalties and costs assessed up to one hundred dollars (\$100.00) per day after the notice of the chronic nuisance property is received.

3. Such notice shall be either: (a) personally served, or; (b) delivered by first class mail to the person in charge of the property, with a copy mailed to the owner at the address indicated by the Boise County Assessor, if different than the person in charge of the property.
4. If the person in charge fails to respond to the notice within the time prescribed, the Chief of Police, or his designee, shall post such notice at the property. If the person in charge fails to respond to the notice of chronic nuisance, the matter shall be referred to the City Attorney for further action.
5. If the person in charge responds as required by the notice and agrees to abate the nuisance activity, the Chief of Police, or his designee, and the person in charge and/or property owner, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the City Attorney for enforcement action.
6. It is a defense to an action for chronic nuisance property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.

E. Commencement of Action — Enforcement

1. Once the matter is referred to the City Attorney, the City Attorney will review and make a determination whether to initiate legal action authorized under this section or state statute or may seek alternative forms of abatement of the nuisance activity. The City Attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in district court for the abatement of the nuisance.
2. In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, 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. The City may submit official police reports and other affidavits outlining the information that led to the investigation of nuisance activities occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.
3. Once a district court determines the property to be a chronic nuisance under this section the court may impose a civil penalty against any or all of the persons in charge of the property and/or the owner of the property and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars (\$100.00) per day for each day the nuisance activity continues to occur following the date of the original notice by the Chief of Police, or his designee, as described above. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:

- (a) The actions taken by the person in charge and/or owner to mitigate or correct the nuisance activity;
 - (b) The financial condition of the persons in charge;
 - (c) The repeated or continuous nature of the nuisance activity;
 - (d) The cost to the City of investigating and correcting or attempting to correct the condition;
 - (e) The statements of the neighbors or those affected by the nuisance activity,
 - (f) Any other factor deemed relevant by the court.
4. The district court which determines the property to be a chronic nuisance property shall also assess costs against the person in charge and/or owner in the amount it costs the City to abate, or attempt to abate, the nuisance activity.
5. If the district court determines the property to be a chronic nuisance property, the district court may order the property closed and secured against all unauthorized access, use and occupancy for a period up to six months, and may impose a civil penalty and costs.
6. Once a determination has been made by the district court that the chronic nuisance property shall be subject to closure, the court may authorize the City to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the Court for review, Any civil penalty and/or costs awarded to the City may be filed with the City Treasurer, who shall cause the same to be filed as a lien on the property with the Boise County Assessor,
7. The district court shall retain jurisdiction during any period of closure or abatement of the property.

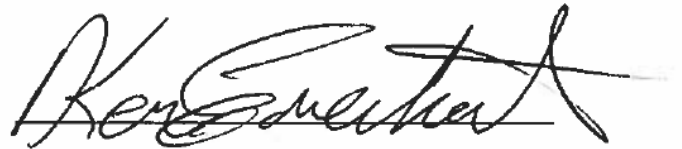
F. Severability

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.

SECTION 3: If any one or more sections or subsections of this Chapter are for any reason held to be invalid or unconstitutional, such shall not affect the validity of the remaining portions of this Chapter and the same are and shall remain in full force and effect.

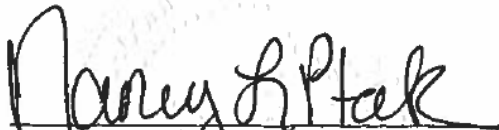
SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval, and publication thereof.

SECTION 5: PASSED by the City Council and **APPROVED** by the Mayor of the City of Idaho City, Idaho, this 10th day of May, 2023.



Kenneth Everhart, Mayor

ATTEST:



Nancy L. Ptak, City Clerk - Treasurer