

ORDINANCE NO. 4823

AN ORDINANCE ESTABLISHING ALBANY MUNICIPAL CODE CHAPTER 7.96, SPECIFIED CRIME PROPERTY, WHICH DECLARES STRUCTURES USED FOR CERTAIN ILLEGAL CONDUCT INVOLVING CONTROLLED SUBSTANCES, GAMBLING, AND PROSTITUTION TO BE SPECIFIED CRIME PROPERTY AND ALLOWING FOR THEIR CLOSURE FOR A PERIOD OF UP TO ONE (1) YEAR; DEFINING TERMS; ALLOWING FOR THE IMPOSITION OF CIVIL PENALTIES AGAINST THE OWNERS THEREOF; SETTING UP A PROCEDURE FOR THE IMPLEMENTATION OF THESE REGULATIONS; AND SETTING THE RESPECTIVE BURDENS OF PROOF.

WHEREAS, there are certain properties in the City of Albany that are being utilized or maintained in violation of the criminal laws relating to prostitution and related conduct, gambling, and the unauthorized delivery and manufacture of controlled substances, all of which seriously interferes with the interest of the public in the quality of life and total community environment, commerce in the city, property values and the public health, safety, and welfare, and

WHEREAS, the continued occurrence of such activities and violation is detrimental to the health, safety, and welfare of the people of the City of Albany and of the businesses thereof and the visitors thereto, and

WHEREAS, it is the purpose of the Council to impose sanctions and penalties for structures which are locations for such deleterious activity, and such powers may be exercised either in conjunction with, or apart from, the powers contained in other laws without prejudice to the use of procedures and remedies available under such other laws, and

WHEREAS, the sanctions and penalties that may be imposed pursuant to this chapter constitute an additional and appropriate method of law enforcement in response to the proliferation of the above mentioned public nuisances, and

WHEREAS, the necessity in the public interest for provisions and prohibitions hereinafter contained in this chapter is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained are in pursuance of promoting public health, comfort, convenience, safety, welfare, and prosperity of the City of Albany and its inhabitants.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Albany Municipal Code Chapter 7.96, Specified Crime Property, is established to read as follows:

Sections:

- 7.96.010 Definitions.
- 7.96.020 Specified crime property prohibited.
- 7.96.030 Commencement of proceedings.
- 7.96.040 Commencement of actions; burdens of proof, defenses; mitigation of civil penalty.
- 7.96.050 Closure during pendency of action.
- 7.96.060 Enforcement of closure order; costs; civil penalty.
- 7.96.070 Relief from closure order.
- 7.96.080 Attorneys fees.

7.06.090 Severability.
7.96.100 Violation.

7.96.010 Definitions. (1) "Chief of Police" As used in this chapter, includes the Chief of Police or any person designated by the Albany Chief of Police as his delegate in the enforcement of this chapter.

(2) "City Manager" The City Manager of the City of Albany.

(3) "Specified Crime Property" Any kind of structure, edifice, building or unit(s) thereof where activity involving the unauthorized delivery or manufacture of a controlled substance and 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.

(4) "Owner"

(a) Any person, agent, firm, corporation, association or partnership including a mortgagee in possession in whom is vested:

(1) All or part of the legal title to the property, or

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

(b) An occupant of that structure.

(5) "Person" Any natural person, association, partnership or corporation capable of owning or using property in the city of Albany.

7.96.020 Specified crime property prohibited. (1) It is unlawful for structures to be employed or used as specified crime property within the city of Albany. If property is found to be used or employed as such, it is subject to closure for a period of up to one (1) year.

(2) It is unlawful for any person to employ, use, maintain, or allow the employment, use or maintenance of specified crime property under their ownership and/or control. If a person is found in violation of this subsection, they may be subject to a civil penalty of up to \$500.00 per day for each day the property has been used as specified crime property as specified in Section 7.96.030.

(3) It is unlawful for any person to use or occupy any structure determined to be specified crime property after service of notice has been made pursuant to Section 7.96.030.

(4) Any occupant who fails to voluntarily cease the use or occupancy of a structure as required by subsection (3) may be removed only pursuant to a court order after notice and an opportunity to be heard by the court having jurisdiction of an action brought pursuant to this chapter.

7.96.030 Commencement of proceedings. (1) When the Chief of Police believes that a structure has been or is being used or maintained in violation of Section 7.96.020, the Chief of Police may commence proceedings to cause the closure of the structure as well as the imposition of civil penalties against any or all of its owners. In the event the Chief of Police wishes to commence proceedings:

(a) The Chief of Police shall notify the owner(s) of record in writing that the structure has been determined to be specified crime property. The notice shall contain the following information:

(1) The street address and a legal description sufficient for identification of the premises on which the structure is located;

(2) A statement that the Chief of Police has found the structure to be in violation of this chapter with a concise description of the conditions leading to his/her findings.

(b) A copy of the notice shall be served on the owner and/or their

agent, if known, at least ten (10) days prior to the commencement of any judicial action by the City. Service shall be made either personally or by mailing a copy of the notice by registered or certified mail, postage prepaid, return receipt requested, to each person at their last known address as it appears on the last equalized assessment of the tax roll as well as on the last instrument of conveyance as recorded in the county where the structure is located, and as may be otherwise known to the Chief of Police. If no address appears or is known to the Chief of Police, then a copy shall be mailed first class, postage prepaid, addressed to such person at the address of the structure believed to be specified crime property.

(c) A copy of the notice shall be served on the occupant of the structure if that person is different than the owner. Service of this notice shall occur not less than five (5) days prior to the commencement of any judicial proceeding and be made either personally or by mailing a copy of the notice by first class mail, postage prepaid, to them at the structure.

Furthermore, a copy of the notice may be posted at the property if ten (10) days have elapsed from the service or mailing of the notice to the owner(s), and no contact has been received by the City from them during that period of time.

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

(e) Actual notice of any owner or occupant or other person or entity to whom notice must be given is adequate to satisfy any notice requirement set forth in this chapter.

(2) Concurrent with the notification procedures set forth above, the Chief of Police shall send a copy of the notice to the City Manager as well as any other documentation which he/she believes supports the closure of the structure and the imposition of civil penalties. The City Manager may then authorize the City Attorney's office to commence civil proceedings in a court of competent jurisdiction seeking the closure of the structure as well as the imposition of civil penalties against any or all of the owners thereof, and any such other relief as may be deemed appropriate.

(3) Nothing contained in (2) above shall be construed to limit the ability of the City Attorney prior to the institution of judicial proceedings to enter into agreements with an owner willing to voluntarily abate the condition(s) giving rise to the violation.

7.96.040 Commencement of actions; burdens of proof, defenses; mitigation of civil penalty. (1) Except in a proceeding under Section 7.96.050, if after the commencement but prior to the trial of an action brought by the City pursuant to this chapter, an owner specifically stipulates with the City that they will pursue a course of action as the parties agree will necessarily abate the conditions giving rise to the violation(s), the City shall agree to stay proceedings for a period of not less than 10 nor more than 60 days. The owner or the City may thereafter petition the court for such additional like periods of time as may be necessary to complete the action(s) contemplated by the stipulation, however, in the event that the City reasonably believes the owner is not diligently pursuing the action(s) contemplated by the stipulation, it may then apply to the court for a release from the stay seeking some relief as is deemed appropriate.

(2) In an action seeking the closure of a structure as specified crime property, the City shall have the initial burden of proof to show by a preponderance of the evidence that the structure is a specified crime property.

(3) In an action seeking civil penalties from an owner, the City shall have the initial burden of proof to show by a preponderance of the evidence that the owner had knowledge of activities or conditions at the structure constituting a violation of this chapter.

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

(5) In establishing the amount of any civil penalty requested, the court shall consider any of the following factors, if appropriate, and shall cite those found applicable:

- (a) The actions taken by the owner(s) to mitigate or correct the problem at the structure;
- (b) The financial condition of the owner;
- (c) Whether the problems at the structure was repeated or continuous;
- (d) The magnitude or gravity of the problem;
- (e) The economic or financial benefit accruing or likely to accrue to the owner(s) as a result of the conditions at the structure;
- (f) The cooperativeness of the owner(s) with the City;
- (g) The cost to the City of investigating and correcting or attempting to correct the condition;
- (h) Any other factor deemed by the court to be relevant.

7.96.050 Closure during pendency of action. In the event that it is determined that the structure is an immediate threat to the public health, safety, and welfare, the City may apply to the court for such interim relief as it deems appropriate. In such an event, the notification procedures set forth at Section 7.96.030 and the limitation of Section 7.96.040(1) need not be complied with.

7.96.060 Enforcement of closure order; costs; civil penalty. (1) In the event that a court finds that a structure constitutes specified crime property as defined in this chapter, the court may order that it be closed for any period of up to one (1) year, and that the owner(s) pay to the City a civil penalty of up to \$500.00 for each day the owner had knowledge of activities or conditions at the structure constituting a violation of this chapter.

(2) The court may also authorize the City to physically secure the structure against use or occupancy in the event that the owner(s) fail to do so within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to effect a closure shall be made an assessment lien upon the property. As used in this subsection, "costs" means those costs actually incurred by the City for the physical securing of the structure, as well as tenant relocation costs given pursuant to subsection (5) of this section. Notwithstanding the foregoing, the City shall not be obligated to pay tenant relocation costs.

(3) The City Recorder effecting the closure shall prepare a statement of costs and the City shall thereafter submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rule of Civil Procedure 68, a certified copy of the statement, including a legal description of the property, shall be forwarded to the office of the City Recorder who thereafter shall enter the same in the City's lien docket.

(4) Liens imposed by this chapter shall be collected in all respects as provided for street improvement liens, and shall bear interest at the rate of nine percent (9%) per year from ten (10) days after the entry in the lien docket.

(5) A tenant as defined by ORS 91.705(13) may, at the option of the City, be paid their reasonable relocation costs as those are determined by the City, if without actual notice the tenant moved into the structure after either:

(a) An owner or agent received notice of the Chief of Police's determination pursuant to Section 7.96.030(1); or

(b) An owner or their agent received notice of an action brought pursuant to Section 7.96.040.

(6) Any person who is assessed the costs of closure and/or a civil penalty by the court shall be personally liable for the payment thereof to the City.

7.96.070 Relief from closure order. An owner of a structure determined to be specified crime property may obtain relief from the court's judgment if:

(1) They appear and pay all costs associated with the proceedings under this chapter.

(2) They file a bond in such a place and form as the court may, by order, direct in an amount not less than the tax assessed value of the structure; and keep said bond in force for a period of not less than (1) year or for such period as the court directs.

(3) They enter into a stipulation with the City that they will immediately abate the conditions giving rise to the specified crime property and prevent the same from being established or maintained thereafter. The stipulation will then be made part of the court's file.

7.96.080 Attorneys fees. In an action seeking the closure of the structure pursuant to this chapter, the court may, in its discretion, award attorneys fees to the prevailing party.

7.96.090 Severability. If any provision of this chapter, or its application to any person or circumstances is held to be invalid for any reason, its provisions to other persons or circumstances shall not in any way be affected.

7.96.100 Violation. Violation of any of the provisions of this chapter is a misdemeanor punishable as provided by AMC 1.04.010.

Passed by Council: July 27, 1988

Approved by Mayor: July 28, 1988

Effective Date: August 27, 1988

Dale Rouse

Council President

ATTEST:

Debbie Andrews

Deputy City Recorder