

ORDINANCE NO. 1640

CITY OF LACEY

AN ORDINANCE OF THE CITY OF LACEY RELATED TO BEHAVIORAL NUISANCES, ADDING A NEW CHAPTER 14.41 TO THE LACEY MUNICIPAL CODE AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, There are various types of buildings and land in the City of Lacey that have potential for an elevated number of crimes attributable to the real property; and

WHEREAS, The repeated use of real property for illegal behaviors is deemed to have a negative impact on the public health, safety, and welfare of the community; and

WHEREAS, Such use of real property is a distinct form of public nuisance, warranting a municipal code chapter that focuses on the phenomenon; and

WHEREAS, The City Council finds it in the interest of the health, safety, and welfare of the residents of the City of Lacey to create a mechanism for addressing such behavioral nuisances;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, AS FOLLOWS:

Section 1. There is hereby adopted a new Chapter 14.41 of the Lacey Municipal Code, to read as follows:

Chapter 14.41

CHRONIC BEHAVIORAL NUISANCES ON LAND AND BUILDINGS

14.41.010 Definitions generally

The following words and phrases used in this chapter, unless the context otherwise clearly indicates, shall have the following meanings:

A. All definitions within Title 14 LMC shall apply to this Chapter. Where a term is defined in multiple places, for purposes of this Chapter, the definitions of this section shall apply.

B. "Chronic behavioral public nuisance" property means:

1. a property, or immediately adjoining right-of-way, on which three (3) or more nuisance activities as described in LMC 14.41.020 exist or have occurred during any ninety (90) day period. Every single activity after the first three (3) shall be considered an additional, separate violation; or

2. five (5) or more nuisance activities have occurred during any twenty-four (24) month period. Every single activity after the first five (5) shall be considered an additional, separate violation; or

3. a property which, upon a request for execution of a search warrant, has been the subject of a determination by a court two (2) or more times within a twelve (12) month period that probable cause exists that illegal possession, manufacture or delivery of a controlled substance or related offenses as defined in Chapter 69.50 RCW, as amended, has occurred on the property.

C. "The City" means the City of Lacey Chief of Police, the Chief of Police's designee, the Community and Economic Development Director, or the Community and Economic Development Director's designee.

D. "Owner" means and includes one or more owner and any legal agent or representative capable of making legal decisions on behalf of the owner. The owner is presumptively the person revealed by the records of the Thurston County Assessor. An owner has authority to sell the property and to authorize a lien be placed on the property. An owner or legal agent of the owner is deemed to have control if the owner or legal agent has actual or constructive knowledge of the behavior upon the premises of any behavioral nuisance as defined in this chapter.

E. "Person in charge" of the property means any person in actual or constructive possession of the property, including but not limited to an owner, lessee, tenant, manager, bank and similar business, receiver, trustee, or occupant with control of the property. More than one (1) person may be deemed a person in charge if they have actual or constructive possession of the property and have control over the property.

G. "Premises" means any building, lot, parcel, real estate, land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips and any lake, river, stream, drainage way, or wetland.

14.41.020 Behavioral public nuisance on land and buildings declared

The person in charge commits a violation of this chapter if they have actual or constructive knowledge of the following occurrences on their property that are reasonably preventable. Actual findings of prior criminal guilt or commitment of a civil infraction is not required. The City shall show by a preponderance of the evidence that chronic behavioral public nuisance violations have previously occurred on the property. Without limitation, the following acts are declared to be behavioral public nuisances:

A. Any rape or crimes against children, dependent persons and spouses, including but limited to chapters 9A.36, 9A.42, 26.40, 26.44 and 26.50 RCW;

B. Harassment, RCW 9A.46 or LMC 9.12.060;

C. Intimidation, RCW 9A.76.180;

- D. Disorderly conduct, RCW 9A.84.030 or LMC 9.24.010;
- E. Burglary and Trespass, chapter 9A.52 RCW, LMC 9.28.080 or 9.28.090 ;
- F. Gang activity, See RCW 9.101.010;
- G. Fraud, chapter 9A.60 RCW;
- H. Theft and Robbery, chapter 9A.56 RCW or LMC 9.28.050;
- I. Arson, reckless burning, and malicious mischief, chapter 9A.48 RCW or Chapter 9.28 LMC;
- J. Aiming, discharging, or unlawful possession of firearm, chapter 9.41 RCW or Chapter 9.36 LMC;
- K. Drug violations, Title 69 RCW or Chapter 9.44 LMC;
- L. Kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, and coercion of involuntary servitude, chapter 9A.40 RCW or LMC 9.12.040;
- M. Obstructing law enforcement, RCW 9A.76.020 or LMC 9.32.030;
- N. Intimidating a public servant, RCW 9A.76.180;
- O. Reckless Endangerment, RCW 9A.36.050 or LMC 9.12.020;
- P. Trafficking (property), Chapter 9A.82 RCW;
- Q. Indecent exposure, prostitution, chapter 9A.88 RCW or Chapter 9.16 LMC;
- R. Homicide, chapter 9A.32 RCW;
- S. Assault and physical Harm, chapter 9A.36 RCW or LMC 9.312.010; and
- T. Rendering Criminal Assistance, LMC 9.32.050.

14.41.030 Abatement of behavioral public nuisances

A. The City may use all processes authorized by law to abate behavioral public nuisances. In order to proceed with the process for seeking fines and additional abatement regulations under LMC 14.41.060 the City shall issue a written notice of violation that describes potential violations on the property to any potential person in charge. Such a letter shall include the following:

1. The street address or legal description sufficient for identification of the real property and the name and address of other persons in charge of receiving the notice.
2. A declaration that the enforcement officer has determined that behavioral nuisance activities have occurred on real property along with a description of those specific activities.

3. A notice that the person in charge may be subject to monetary penalties, under the process set forth in LMC 14.41.060, if not corrected to the satisfaction of the City. A notice to the person in charge that a failure to comply may subject them to monetary penalties under the process of LMC 14.41.060 and collections and also that their property may be subject to a lien on the land that in part may be equal in priority to taxes. See, for example, RCW 35A.21.405 and RCW 4.56.200.

4. A demand that the owner or person in charge responds to the City within 15 (fifteen) days.

5. A notice that if no response is received, the City may, in its discretion, take action to abate the nuisance pursuant to the process described in LMC 14.41.060.

B. The City may enter into a written correction agreement that can put potential enforcement, including but not limited to fines or tickets that could be imposed pursuant to LMC 14.41.060, in abeyance on condition that the agreement terms are followed by the person in charge. The person in charge may agree to a lien for costs to be recovered by the City, including attorney's fees and fines if subsequently imposed under LMC 14.41.060, if the person in charge fails to follow the terms of the agreement. This section is not an exclusive method to seek abatement of violations. The correction agreement, if entered into, shall include the following:

1. The name and address of the person in charge 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 description of the chronic behavioral public nuisance activities.

4. The necessary correction 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 person in charge that the City may abate the nuisance and recover its costs, expenses, and monetary penalties pursuant to this chapter subject to collections or liens in the City's discretion from the owner or person in charge if the terms of the correction agreement are not met.

7. An acknowledgment of the existence of the violation and waiver of the right to later dispute that the violation occurred.

C. Each violation of a correction agreement entered pursuant to this chapter is subject to a penalty of One Thousand and no/100 Dollars (\$1,000.00) per violation and is enforced by the Hearing Examiner pursuant to the process of LMC 14.41.060.

14.41.040 Liability for continuing nuisance

Every successive owner, person in charge, or occupant of real property who neglects to abate a continuing nuisance upon or in the use of such real property caused by a former owner, is liable thereof in the same manner as the owner who created it. Any owner and person in charge may be held joint and severally liable.

14.41.050 Cumulative effect of chapter

The provisions of this chapter shall be cumulative and in addition to the provisions of the now existing ordinances of the City.

14.41.060 Hearing Examiner process for determination of violations penalty and abatement requirements

A. Except as provided in this section, in addition to any other sanction or remedial procedure that may be available, the person in charge is subject to a civil penalty of Five Hundred and no/100 Dollars (\$500.00) for every chronic behavioral public nuisance violation by the process more specifically described in this section. Proof is by a preponderance of the evidence. Exception: each violation of the correction agreement described in LMC 14.41.030 is subject to a penalty up to One Thousand and no/100 Dollars (\$1,000.00).

The complaint against a person in charge shall be filed with the City of Lacey Hearing Examiner and subject, by substantial compliance, to the requirements in Subsections B and C below.

B. Complaint to the Hearing Examiner. The City shall file a Complaint with the Hearing Examiner. Content of the Complaint shall include the following:

1. The name and address of the owner responsible for the violation;
2. The street address or description sufficient for identification of the building, structure, premises, or land upon which the violation has occurred or is occurring;
3. A description of each violation and a reference to the provision(s) of this chapter that has been violated;
4. The required corrective action and the date and time by which the correction must be completed to avoid a hearing;
5. The Complaint shall state the date, time, and location of an administrative hearing before the Hearing Examiner, which will be at least ten (10) days from the date of the Complaint;
6. A statement that the costs and expenses of abatement incurred by the City and a monetary penalty for each violation as specified in LMC 14.41.060 may be assessed against the person in charge to whom the Complaint is directed as specified and ordered by the Hearing Examiner and that the fines may be placed as liens on the land pursuant to RCW 35A.21.405, RCW 4.56.020, and any other authority;

7. The prior Notice of Violation pursuant to LMC 14.41.030 of chronic behavioral nuisance property, if any should be attached to the Complaint; and

8. Recommended penalties, as referred to in LMC 14.41.060 and 14.41.030, to be adopted by the Hearing Examiner.

C. Hearing Examiner process.

1. Hearing. A hearing will be scheduled by the Community and Economic Development staff in consultation with the Police Department.

2. Procedure. The Hearing Examiner shall conduct a quasi-judicial hearing on the Complaint pursuant to the rules of procedure of the Hearing Examiner. City staff and the owner to whom the Complaint was directed, and their attorney(s) if any, may participate as parties in the hearing. Each party may call witnesses. The City shall have the burden of proof to show by a preponderance of the evidence that the property is a chronic behavioral public nuisance property under this chapter and that the corrective action is reasonably calculated to abate the chronic nuisance. Copies of police incident reports and reports of other City departments documenting nuisance activities shall be admissible in such actions. Additionally, evidence of a property's general reputation and the reputation of persons residing in or frequenting the property shall be admissible in such actions. At the request of the City, the Hearing Examiner may allow testimony from the general public that relate to the chronic behavioral public nuisance case. The Hearing Examiner may place reasonable limits on such testimony. The City may also call neighbors and others as witnesses regarding the chronic behavioral public nuisance.

14.41.070 Decision of the Hearing Examiner

A. The Hearing Examiner shall adopt, decline to adopt or modify the City's decisions, recommended penalties, and recommended decision regarding the alleged violation(s) and corrective action(s) and mail a copy of the decision to the owner and to the City within then (10) working days of the hearing, unless due to extraordinary circumstances additional time is needed.

B. The Hearing Examiner shall have authority to impose remedies for violation of this chapter. The Hearing Examiner shall issue an order to the person in charge responsible for the violation which contains the following information:

1. The decision regarding the alleged violation(s), including findings of fact and conclusions based thereon in support of the decision;

2. The required corrective action;

3. The date and time by which the correction must be completed;

4. The monetary penalties assessed based on the criteria in subsection (C) of this section;

5. Make any other order that will reasonably abate nuisance activities from occurring on the property, including authorizing the City to take action to abate nuisance activities from occurring upon the real property if other Hearing Examiner orders are not complied with or do not abate nuisance activity on the property and providing that the costs of such City action are to be paid for by the person in charge of the property;

6. Business license revocation, if any;

7. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

C. Assessment of Monetary Penalty. Monetary penalties assessed by the hearing examiner shall be collected by any method in the full discretion of the City Manager or designee, including but not limited to collections, liens and other legal actions.

1. The Hearing Examiner shall have the following options in assessing monetary penalties:

a. Assess monetary penalties; or

b. Assess some monetary penalties and hold some penalties in abeyance pending a grant of an opportunity to comply; or

c. Assess no monetary penalties.

2. In determining the monetary penalty assessment, the Hearing Examiner shall consider the following factors:

a. Whether the person in charge responded to the City's attempts to contact the person and cooperated with efforts to correct the violation;

b. Whether the person in charge failed to appear at the hearing;

c. Whether the violation was a repeat violation;

d. Whether the person in charge showed due diligence and/or substantial progress in correcting the violation;

e. Whether a genuine code interpretation issue exists; and

f. Any other relevant factors.

D. Failure to Appear. If the person in charge to whom the Complaint was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter an order finding the violation as stated in the Complaint, and ordering the appropriate remedies. The City may proceed to carry out the Hearing Examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that owner or person in charge.

E. Appeal of Hearing Examiner decision to Superior Court of land use decision regarding use of the premises and/or buildings (real property). The City declares that the Hearing Examiner decision, pursuant to RCW 36.70C.020(c), due to the link to specific identifiable

real property, is enforcement by the City of ordinances regulating the improvement, modification, maintenance, or use of real property. An appeal by the person in charge of the decision of the Hearing Examiner must be filed with Superior Court within twenty-one (21) calendar days from the date the Hearing Examiner's decision under the process and standards of the Land Use Petition Act, chapter 36.70C RCW.

14.41.080 Right of entry for inspection and enforcement

The City retains all rights of entry as allowed by any law, code, constitutional provision, common law, case law, or any other legal authority.

14.41.090 Superior Court abatement of nuisance

The City may enforce the Hearing Examiner order in superior court by any and all legal means in its sole discretion. The City may also pursue any and all other legal means to abate the nuisance, including actions for public nuisance, condemnation and blight, chapters 35.80 and 35.80A RCW. This may also include seeking an order to file a lien pursuant to RCW 35A.21.405 and RCW 4.56.200. The City may also file for receivership under chapter 7.60 RCW.

14.41.100 Chapter inapplicable when it would have the effect of penalizing certain persons

Notwithstanding anything in this Chapter to the contrary, a property may not be designated a chronic behavioral public nuisance under this Chapter where such designation would have the effect of penalizing the landlord of the property, the homeowner of the property, a tenant of the property, a resident of the property, an occupant of the property, a guest in housing at the property, or an applicant for housing at the property, based on any such person's request for assistance or based on criminal activity of which such person is a victim or otherwise not at fault.

Section 2. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. CORRECTIONS. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, at a regularly-called meeting thereof, held this Third day of August, 2023.

CITY COUNCIL

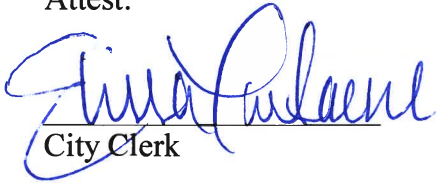
By:


Mayor

Approved as to form:


City Attorney

Attest:


City Clerk