

# **TOWN OF RUSTON**

## **ORDINANCE NO. 1306**

### **AN ORDINANCE OF THE TOWN OF RUSTON, WASHINGTON, CREATING A NEW CHAPTER 9.03A OF THE RUSTON MUNICIPAL CODE, RELATING TO CHRONIC NUISANCE ACTIVITIES.**

WHEREAS, the Town Council of the Town of Ruston finds that current Town ordinances do not provide for adequate measures to deal with chronic or habitual violators of the town's ordinances; and

WHEREAS, the Council finds that chronic or habitual violations of the Town's ordinances endanger the safety of the Town's law enforcement personnel, create unsafe conditions for members of the public, substantially interfere with Town residents' use and enjoyment of their property, and therefore constitute a public nuisance; and

WHEREAS, the Council finds that certain properties within the Town of Ruston are "nuisance properties," wherein the owners of said properties routinely allow such public nuisance or criminal activities to occur on an ongoing basis, and refuse or neglect to take measures to eliminate nuisance or criminal activity; and

WHEREAS, the Council finds it to be in the public interest to take effective measures to prevent such chronic nuisances by appropriate fines and other penalties;

### **NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF RUSTON, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1.** A new Chapter 9.03A RMC is hereby created to read in its entirety as follows:

#### **Chapter 9.03A CHRONIC PUBLIC NUISANCE**

##### **Sections:**

**9.03A.010 Scope.**

**9.03A.020 Purpose.**

**9.03A.030 Chronic nuisance property defined.**

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- 9.03A.080 Abatement.**
- 9.03A.090 Judicial action.**
- 9.03A.100 Additional relief.**
- 9.03A.110 Summary closure.**
- 9.03A.120 Collection of judgments.**
- 9.03A.130 Severability.**

#### **9.03A.010 Scope.**

This chapter addresses chronic nuisance activities and property conditions that are in violation of various chapters of the Ruston Municipal Code (“RMC”) and continue to be unresolved by normal compliance methods, therefore resulting in the necessary enactment of the provisions of this chapter. Chronic nuisance activities and property conditions present grave health, safety, and welfare concerns, which the owners of properties on which such activity occurs have failed to take corrective action to abate. Chronic nuisance conditions and activities have a tremendous negative impact upon the quality of life, safety, and health of the Town of Ruston. This chapter is enacted to remedy nuisance activities that repeatedly occur or exist by providing a process for abatement. The remedies provided by this chapter are not exclusive. Any remedy available under any state law or local ordinance may be used in lieu of or in conjunction with the remedies under this chapter.

Chronic nuisance activities are also a financial burden to the Town due to repeated calls for service which can and do endanger the lives and health of the responders, and this chapter is a means to ameliorate those conditions and hold responsible the property owners who repeatedly allow such activities to occur unabated on their properties.

#### **9.03A.020 Purpose.**

The purpose of this chapter is to protect the health, safety, and welfare of the residents of the general public by:

- A. Establishing standards for reducing criminal activity and improving property conditions.
- B. Working in cooperation with property owners to develop a plan of action to accomplish these goals.
- C. Monitoring a plan of action to ensure the reduction of calls for service and improvements in property conditions improvements are sustained.
- D. Establishing due process by which property owners can appeal decisions if necessary.
- E. Establishing civil penalties for failure to comply with the plan of action.
- F. Establishing a judicial process to abate properties if necessary.

#### **9.03A.030 Chronic nuisance property defined.**

A “Chronic Nuisance Property” exists as a result of a property owner omitting to perform a duty or permitting an action or condition to occur or exist which intrudes on the ability of neighbors or citizens to use or enjoy their own properties or public property adjacent to where the nuisance occurs. Such chronic nuisance properties include, but are not limited to:

A. Properties on which three or more nuisance activities occur or exist within any 60-day period. Nuisance activities include, but are not limited to, violation of the following laws and regulations:

Chapter 6.02 RMC, Cesspools and Privies;

Chapter 7.01 RMC, Dogs;

Chapter 7.02 RMC, Domestic Animals;

Chapter 7.03 RMC, Birds;

Chapter 7.04 RMC, Animal Housing;

Chapter 9.01 RMC, Disorderly Persons;

Chapter 9.02 RMC, Liquor;

Chapter 9.03 RMC, Nuisances;

Chapter 9.04 RMC, Abandoned Vehicles and Hulks;

Chapter 9.05 RMC, Unfit Buildings;

Chapter 9.06 RMC, Explosives and Dangerous Substances;

Chapter 9.07 RMC, Minors;

Chapter 9.10 RMC, Obscene Publications;

Chapter 9.11 RMC, Air Guns, Sling Shots, Whips, TASERs and Similar Devices;

RMC 9.19.060, Public Noise Disturbances;

RMC 9.20.010, Title 9A RCW Sections Adopted by Reference;

RMC 9.20.020, Title 9 RCW Sections Adopted by Reference;

Chapter 9.21 RMC, Controlled Substances;

Chapter 12.01 RMC, Construction Codes;

Chapter 12.02 RMC, Digging and Grading;

Uniform Fire Code Sections 2501.16.1 and 2501.16.3;

Gang related activity as defined in RCW 59.18.030;

Alcoholic beverage control violations as defined in Chapter 66.44 RCW;

Any attempt to commit and/or conspiracy to commit any of the above activities, behaviors, or conduct shall also be considered a nuisance activity.

B. Properties with nuisance conditions, as defined by state law, occurring on the property or upon the adjacent right-of-way.

#### **9.03A.040 Definitions.**

For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

“Abate” means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this chapter by such means and in such a manner and to such an extent as the Mayor or his designee determines is necessary in the interest of the general health, safety, and welfare of the community.

“Control” means the ability to regulate, restrain, dominate, counteract, or govern property or conduct that occurs on a property.

“Drug-related activity” means any unlawful activity at a property which consists of the unlawful manufacture, delivery, sale, storage, possession, or giving away of any controlled substance, as defined in RCW 69.50; illegal drug, as defined in RCW 69.41; precursor drug, as defined in RCW 69.43; or imitation controlled substances, as defined in RCW 69.52.

“Landlord” means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and, in addition, means any person designated as a representative of the landlord.

“Owner” means any person having any interest in the real estate in question as indicated in the records of the office of the Pierce County Assessor, or who establishes, under this chapter, their ownership interest therein.

“Person” means natural person, joint venture, partnership, association, club, company, corporation, business trust, or organization or the manager, lessee, agent, officer, or employee of any of them. “Person associated with a property” means any person who, on the occasion of a nuisance activity, has entered, patronized, or 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; or employee, or any independent contractor of a property; or a person in charge of or owner of a property.

“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, lessee, agent, or property manager of a property under his or her control.

“Premises” and “property” may be used by this chapter interchangeably and means any building, lot, parcel, dwelling, rental unit, real estate, or land, or portion thereof, including property used as residential or commercial property.

“Receiver” is a person appointed by a court or judicial officer to take charge of a property during the pending of a civil action or proceeding, or upon a judgment, decree, or order therein, and to manage and/or dispose of it as the court or officer may direct.

“Rental unit” means any structure or that part of a structure, including, but not limited to, a single family home, room, or apartment that is rented to another and used as a home, residence, or sleeping place by one or more persons.

#### **9.03A.050 Violation.**

A. Any property within the Town that is a chronic nuisance property is in violation of this chapter and subject to its remedies.

B. Any person in charge who permits property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

#### **9.03A.060 Process.**

A. Where a property qualifies as a chronic nuisance property as defined by RMC 9.03A.030, or when chronic criminal activity is being tracked at a particular address, the Town may pursue enforcement as a chronic nuisance.

B. The appropriate Town official shall confirm the presence of a chronic nuisance property. If it is determined that the site is not a chronic nuisance, the case will be closed.

C. If it is determined that the site is a chronic nuisance property, a Notice of Violation will be sent to the owner of the property and the person in charge of the property. The Notice of Violation shall contain:

1. The street address or a legal description sufficient for identification of the property;
2. A concise description of the nuisance activities that exist or that have occurred on the property;

3. A request that the owner or person in charge respond to the appropriate department within ten calendar days of service of the Notice of Violation to discuss the nuisance activities and create a plan to abate the chronic nuisance;
4. An offer to the person in charge of an opportunity to abate the nuisance activities giving rise to the violation; and
5. A statement that failure to develop or comply with a plan of action may leave the property subject to abatement that the owner or person in charge is responsible for civil penalties up to \$250 per day and that the owner or person in charge is responsible for the costs of municipal services after the Notice of Violation of the chronic nuisance property is received.

D. Such Notice of Violation shall be either (a) personally served or (b) delivered by first-class mail and certified mail, return receipt requested, to the person in charge of the property, with a copy mailed to the owner at the address indicated by the Pierce County Assessor if different than the person in charge of the property.

E. If the person in charge responds, as required by the Notice of Violation, and agrees to abate the nuisance activity, the appropriate department and the person in charge and/or property owner may work out an agreed upon plan of action which would abate the nuisance activity. If an agreed upon plan of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the owner and/or person in charge of the property may be subject to civil penalties. Up to three community stakeholders may be called upon by the Mayor or his designee to participate in the review, negotiation, and monitoring of the action plan. One of the community stakeholders may be recommended by the property owner.

F. The plan of action may include, but not be limited to, items such as education for the owner or person in charge of the property, physical improvements for crime prevention, security for the property, and other items necessary to abate the chronic nuisance property. The plan must include specific time frames in which items will be completed.

G. The monetary penalties for violations of this chapter shall be as follows:

1. First civil penalty \$125
2. Second and subsequent civil penalties \$250

Civil penalties will continue to accumulate until the plan of action is in place or, if the total assessed penalties exceed \$1,000, a Certificate of Complaint may be filed with the Pierce County Auditor to be attached to the title of the property. A copy of the Certificate of Complaint shall be sent to the property owner and parties of interest if different from the owner.

If over \$1,000 in fines is levied or if the property owner or person in charge fails to adhere to a plan of action, the full costs of municipal services may be charged to the owner.

H. Each day that a property or person is not in compliance with the provisions of this chapter may constitute a separate violation of this chapter.

#### **9.03A.070 Administrative reviews.**

A. General. A person, firm, or corporation to whom a Notice of Violation for a chronic nuisance(s) or a civil penalty is assessed may request an administrative review of the Notice of Violation or the first civil penalty.

B. How to Request an Administrative Review. A person, firm, or corporation may request an administrative review of the Notice of Violation for the first civil penalty by filing a written request with the Mayor, Town of Ruston, 5117 North Winnifred Street, Ruston, WA 98407, within ten calendar days of the notification date of violations or the date of the first assessed civil

penalty. The request shall state, in writing, the reasons the Mayor should review the Notice of Violation or the issuance of the civil penalty. Failure to state the basis for the review, in writing, shall be cause for dismissal of the review. Upon receipt of the request for administrative review, the Mayor or his designee shall review the information provided.

C. Decision of the Mayor or Designee. After considering all of the information provided, the Mayor or the Mayor's designee shall determine whether a violation has occurred and shall affirm, vacate, suspend, or modify the Notice of Violation for the nuisance(s) or the amount of any monetary penalty assessed. The Mayor or Mayor's designee decision shall be either (a) personally served or (b) delivered by first class mail and certified mail, return receipt requested, to the person in charge of the property, with a copy mailed to the owner at the address indicated by the Pierce County Assessor if different than the person in charge of the property.

**9.03A.080 Abatement.**

After an enforcement action is taken and civil penalties have been assessed in excess of \$1,000, the property is subject to abatement by the Town in the manner authorized by law.

**9.03A.090 Judicial action.**

- A. The Town Attorney may initiate legal action on the chronic nuisance property and seek abatement of the nuisance in Pierce County Superior Court.
- B. In any determination of whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the Town shall have the initial burden of proof to show, by a preponderance of the evidence, that the property is a chronic nuisance property. The Town may submit official police reports and other affidavits outlining the information that led to arrest(s) and other chronic nuisance activity 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.
- C. Once the court determines the property to be a chronic nuisance under this chapter, the court may order any other relief deemed appropriate to abate the chronic nuisance activity. The Town will request that the court consider: (a) the actions taken by the person in charge and/or owner to mitigate or correct the nuisance activity; (b) the repeated or continuous nature of the nuisance activity; (c) the statements of the neighbors or those affected by the nuisance activity; (d) costs for personnel in the pursuit of bringing the property into compliance; and (e) any other factor deemed relevant by the court.
- D. If the court determines the property to be a chronic nuisance property, the court may order the property to be abated by the Town or may order the property into a receivership, in accordance with Chapter 7.60 RCW.
- E. Once a determination has been made by the court that the chronic nuisance property may be subject to abatement, the court may authorize the Town to physically abate the property. Costs for such abatement shall be submitted to the court for review. The Town shall file a formal lis pendens notice when an action for abatement is filed in the Pierce County Superior Court.
- F. If the court orders the property into a receivership, the court shall appoint a receiver and shall define the terms of the receivership based on the recommendations provided by the Town.
- G. Pierce County Superior Court shall retain jurisdiction during any period of closure or abatement of the property.

#### **9.03A.100 Additional relief.**

The Mayor or his designee may seek any legal or equitable relief, such as utilization of Chapters 9.66, 7.48, or 7.48A RCW, at any time to mitigate violations referenced in this Chapter. The Mayor may also revoke the business license of any business owner found to be in violation of this Chapter.

#### **9.03A.110 Summary closure.**

Nothing in this chapter prohibits the Town from taking any emergency action for the summary closure of a chronic nuisance property when such closure is necessary to avoid an immediate threat to public welfare and safety. The Town may take summary action to close the property without complying with the notification provisions of RMC 9.03A.060, but shall provide such notice as is reasonable under the circumstances.

#### **9.03A.120 Collection of judgments.**

If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty costs and costs for municipal services may be referred to a collection agency. The cost to the Town for the collection services will be assessed as costs, at the rate agreed upon between the Town and the collection agency, and added to the judgment. Alternatively, the Town may pursue collection in any other manner allowed by law.

#### **9.03A.130 Severability.**

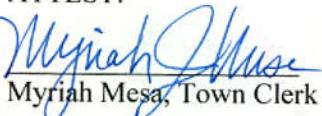
If any portion of this ordinance, or its application to any person or circumstances, is held invalid, the validity of the ordinance as a whole, or any other portion thereof, or the application of the provision to other persons or circumstances is not affected.

**Section 2.** Effective Date. This Ordinance shall take effect immediately upon publication as required by law.

ENACTED by the Town Council of the Town of Ruston in open public meeting, SIGNED by the Mayor and attested by the Town Clerk in authentication of such passage this 1st day of March, 2010.

  
Bruce Hopkins, Mayor

ATTEST:

  
Myriah Mesa, Town Clerk