

ORDINANCE NO. 2010-_____

AN ORDINANCE relating to abatement of and penalties, including license suspension or revocation, for public nuisances; amending Title 11 of the Yakima Municipal Code entitled "BUILDINGS", adding a new Chapter 11.45 entitled "Chronic Nuisance Properties"; and adding Yakima Municipal Code Section 5.01.060 as a new Section.

WHEREAS, RCW 35.22.280 empowers first class cities to define and abate nuisances and impose fines upon persons responsible for creating or allowing nuisances; and

WHEREAS, the Yakima City Council finds that people should be able to enjoy ownership, use and possession of property without the negative impacts caused by chronic nuisance properties; and

WHEREAS, some persons who own or control property in the City of Yakima allow their properties to be used for illegal purposes, with the result that these properties have become chronic nuisance properties; and

WHEREAS, the current nuisance provisions of Yakima Municipal Code do not provide adequate tools for abating chronic nuisances resulting from the use of properties for illegal purposes; and

WHEREAS, chronic nuisance properties present serious health, safety and welfare concerns and interfere with the quality of life, comfort and solitude of other persons residing in the neighborhood; and

WHEREAS, chronic nuisance properties cause a financial burden upon the City by the numerous calls for service to the properties because of the illegal activities that repeatedly occur or exist on such properties; Now, Therefore,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Section 11.45 entitled "Chronic Nuisance Properties" is added as a new Section to the Yakima Municipal Code and reads as follows:

CHAPTER 11.45 CHRONIC NUISANCE PROPERTIES

Sections:

- 11.45.010 Definitions.**
- 11.45.020 Violation.**
- 11.45.030 Declaration of Chronic Nuisance Property and Procedure.**
- 11.45.035 Owner Cooperation.**
- 11.45.040 Correction Agreement.**
- 11.45.050 Penalties.**
- 11.45.060 Commencement of Action--Enforcement.**
- 11.45.070 Burden of Proof.**
- 11.45.080 Remedies.**

11.45.085 Additional remedies.

11.45.090 Suspension or Revocation of Business License.

11.45.010 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 Chief of Police determines is necessary in the interest of the general health, safety and welfare of the community.

"Chief of Police" means the Chief of the Yakima Police Department or his or her designees.

"Control" means the power or ability to direct or determine conditions, conduct, or events occurring on a property.

"Chronic nuisance property" means:

A. a property on which three or more nuisance activities as described in YMC 11.45.010(5) exist or have occurred during any sixty-day period or seven or more nuisance activities have occurred during any twelve-month period, or

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

"Nuisance activity" includes:

A. a "most serious offense" as defined in RCW 9.94A;

B. a "drug related activity" as defined in RCW 59.18.130;

C. any of the following activities, behaviors or criminal conduct:

Assault, Fighting, Harassment or Reckless Endangerment, as defined in YMC Title 6;

Promoting, advancing or profiting from prostitution as defined in Chapter 9A.88 RCW;

Prostitution, as defined in YMC Title 6;

Permitting Prostitution, as defined in YMC Title 6;

Obstructing pedestrian or vehicular traffic, as defined in YMC Title 6;

Public Disturbance Noise, as defined in YMC Title 6;

Weapons violations, as defined in YMC Title 6 or the Revised Code of Washington;

Drug Traffic Loitering and/or Loitering for purposes of Prostitution, as defined in YMC Title 6;

Criminal street gang-related offense and/or pattern of criminal street gang activity, as defined in YMC Title 6.

"Owner" means any person who, alone or with others, has title or interest in any property.

"Person" means an individual, group of individuals, corporation, partnership, association, club, company, business trust, joint venture, organization, or any other legal or commercial entity or the manager, lessee, agent, officer or employee of any of them.

"Person in charge" of a property means the owner and, if different than the owner, any other person in actual or constructive possession of a property, including but not limited to, a lessee, tenant, occupant, agent, or manager of a property under his or her control.

"Property" means any 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, building or structure or any separate part, unit or portion thereof.

"RCW" means the Revised Code of Washington.

"YMC" means the Yakima Municipal Code.

11.45.020 Violation.

A. Any property within the City of Yakima which is a chronic nuisance property is in violation of this Chapter and subject to its remedies;

B. Owners and other persons in charge who permit property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies; and

C. An owner who fails to comply with YMC 11.45.035 is in violation of this chapter and may be subject to penalties pursuant to YMC Chapter 5.52.

11.45.030 Declaration of Chronic Nuisance Property and Procedure.

A. The Chief of Police may declare that a property is a chronic nuisance property, as defined in this chapter, when there are specific facts and circumstances documenting (1) the occurrence of three or more nuisance activities on a property within sixty days or seven or more nuisance activities within a twelve month period, or (2) activity on a property as described in YMC 11.45.010(4)(b). The Chief of Police shall provide written notice of this declaration to the persons in charge of the property. The notice shall be sent by first class mail or personally served, and a copy shall be sent by certified mail. The notice shall contain:

1. the street address or a legal description sufficient for identification of the property;

2. a declaration that the Chief of Police has determined the property has become a chronic nuisance property with a concise description of the nuisance activities that exist or that have occurred;

3. a notice that the owner and other persons in charge of the property are subject to monetary penalties as set forth in YMC 11.45.050.

4. a demand that the owner and other persons in charge respond to the Chief of Police within seven days of service of the notice to discuss a course of action to correct the nuisance;

5. a notice that, if the person in charge does not respond to the Chief of Police as required in this section, or if the matter is not voluntarily corrected to the satisfaction of the Chief of Police, the City may file an action to abate the property as a chronic nuisance property pursuant to YMC 11.45.060 and/or take other action against the property or person in charge.

B. When a notice is issued pursuant to this section to a person in charge, other than an owner or an owner's agent, who has permitted a property to become a chronic nuisance property, a copy of such notice shall also be sent by first class mail or personally served on the owner of the property, and a copy shall be sent by certified mail.

C. If the owner or person in charge responds as required by the notice issued pursuant to YMC 11.45.030A and agrees to a course of action to abate the nuisance activities, a written correction agreement conforming to the requirements of YMC 11.45.040 shall be executed.

D. If (1) the agreed course of action does not result in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of issuance of the notice pursuant to YMC 11.45.030A, or within such longer period as permitted in writing by the Chief of Police or (2) the person in charge fails to respond as required by the notice, the Chief of Police may refer the matter to the City Attorney for initiation of proceedings pursuant to YMC 11.45.060.

11.45.035 Owner Cooperation.

An owner who receives a copy of a notice pursuant to YMC 11.45.030B describing a chronic nuisance property permitted by a person in charge other than the owner or the owner's agent, shall promptly take all reasonable steps requested in writing by the Chief of Police to assist in abatement of the nuisance property. Such reasonable steps may include the owner taking all actions and pursuing all remedies, including pursuing eviction of the person in charge, that are (1) available to the owner pursuant to any lease or other agreement, and (2) consistent with state and local laws, including but not limited to RCW 59.18.580, **the Victim Protection Limitation on Landlord's Rental Decisions**.

11.45.040 Correction Agreement.

A. A correction agreement is a contract between the City and the person in charge of the chronic nuisance property in which such person agrees to promptly take all lawful and reasonable actions, which shall be set forth in the agreement to abate the nuisance activities within a specified time and according to specified conditions. The agreement shall be signed by the person in charge and, if different, the owner. The agreement shall include the following:

1. The name and address of the person(s) 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 nuisance activities;
4. The necessary corrective 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 from the person in charge for abating the nuisance if the terms of the correction agreement are not met; and
7. When a person in charge, other than an owner or an owner's agent, has permitted a property to be a chronic nuisance property, an agreement by the owner to promptly take all acts and pursue all remedies requested by the Chief of Police pursuant to YMC 11.45.035.

11.45.050 Penalties.

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 penalty of up to \$500 dollars per day from the date of the notice issued pursuant to YMC 11.45.030A until the Chief of Police confirms that the property is no longer a chronic nuisance property.

B. If the agreed course of action results in the abatement of nuisance activities to the satisfaction of the Chief of Police within thirty days of the notice issued pursuant to YMC 11.45.030A, or such longer period allowed by the Chief of Police pursuant to YMC 11.45.030D, the matter shall not be referred to the City Attorney and the person in charge shall not be subject to any penalty pursuant to this Chapter.

C. An owner who fails to comply with YMC 11.45.035 is subject to a civil penalty of up to \$25,000.

11.45.060 Commencement of Action--Enforcement.

Upon referral pursuant to YMC 11.45.030, the City Attorney may initiate an action in any court of competent jurisdiction to abate a chronic nuisance

property, to impose penalties pursuant to this chapter, to seek alternative remedies under city or state laws and seek any other relief authorized by law.

11.45.070 Burden of Proof.

In an action against a person in charge to abate a chronic nuisance property or to recover penalties authorized by this chapter, the City shall have the burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property pursuant to this chapter.

In an action against an owner to recover penalties authorized by YMC 11.45.050D, the City shall have the additional burden to prove by a preponderance of the evidence that the owner failed to comply with YMC 11.45.035. 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.

11.45.080 Remedies.

A. If the Court determines a property is a chronic nuisance property pursuant to this chapter the court may order any of the following: (1) order the person in charge to immediately abate nuisance activity from occurring on the property, (2) order that the Chief of Police shall have the right to inspect the property to determine if the court's orders have been complied with, (3) impose a penalty of up to \$500 per day against the person in charge for each day from the date the notice pursuant to YMC 11.45.030A was issued until the Chief of Police confirms that the property is no longer a chronic nuisance property, (4) 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 property if other court 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.

B. If the court finds that an owner failed to take all reasonable steps requested in writing pursuant to YMC 11.45.035, the court may impose a civil penalty up to \$25,000.

11.45.085 Additional remedies.

A. In addition to the remedies authorized by YMC 11.45.080, if as part of its order abating a chronic nuisance property, the court orders a person in charge to cease renting or leasing a property, the court may order the person in charge to pay relocation assistance not to exceed \$3,300 to any tenant (1) who must relocate because of the order of abatement, and (2) the court finds not to have caused or participated in nuisance activities at the property.

B. For purposes of this section, YMC 11.45.085, the term "tenant" shall have the meaning as set forth in RCW 59.18.030(8).

11.45.090 Suspension or Revocation of Business License.

In addition to any other remedy that is authorized by this chapter or other laws, upon the finding by a court that a property is a chronic nuisance property pursuant to this chapter, the person in charge is subject to the suspension or revocation of a business license or other license issued by the City and required at such property, including, but not limited to licenses issued pursuant to YMC Title 5.

YMC 11.45.090 Annual Reporting Required.

The Chief of Police, with assistance of the City Attorney, shall provide an annual report on the implementation of this ordinance. The report shall list each instance in which the Chief of Police declared a property to be a chronic nuisance property and provided written notice to the persons in charge of the property. For each instance, the report shall describe:

A. The location and use of the property (i.e., whether residential or commercial, and if residential the number of units, and if commercial, the size and nature of the commercial use).

B. The nuisance activities on which the declaration was based.

C. The administrative and legal process resulting from the notice, including:

1) whether the notice resulted in a written correction agreement;

2) whether the notice resulted in the abatement of nuisance activities to the satisfaction of the Chief of Police; and, if not,

3) whether the Chief of Police referred the matter to the City Attorney for initiation of proceedings; and, if so,

4) whether the City Attorney initiated proceedings; and, if so,

5) whether a court determined the property to be a chronic nuisance property; and, if so,

6) what orders the court made, including penalties, other orders to abate the nuisance activities, or relocation assistance to tenants; and

7) whether the City revoked any business licenses on the property.

D. A summary of the consequences of the declaration to date, including actions taken by persons in charge to abate the nuisance activities, whether these included the eviction of tenants, and whether the nuisance activities appear to be permanently abated.

The report shall also include brief assessments by the Chief of Police and the City Attorney on the overall effectiveness of the ordinance in reducing the problems resulting from chronic nuisance properties.

The Chief of Police and City Attorney shall provide the report to the City Council in February of each year on the chronic nuisance property declarations in the prior calendar year. Any declarations not fully resolved by the end of the calendar year shall be described again in the following year's report.

Section 2. Yakima Municipal Code Section 5.01.060 is hereby added as a new Section, to read as follows:

5.01.060 Business License – Denial, Revocation, or Refusal to Renew – Grounds -- Appeals.

A. The codes administration manager, or his or her designee, has the power and authority to deny, revoke or refuse to renew any business license issued under the provisions of this Title in order to further the public interest in public health, safety and welfare. The codes administration manager, or his or her designee, shall provide notice to said licensee in writing by certified mail of the denial or revocation of, or refusal to renew, his or her license and on what grounds such a decision was based. The codes administration manager may deny, revoke or refuse to renew any license issued under this Title upon a finding that any applicant, licensee, owner, or any officer or agent thereof:

1. Has omitted to disclose any material fact necessary to make a statement not misleading, in any application for the license; or

2. Has charges pending against her/him or has been convicted of a crime or offense that directly relates to the activity for which the license is required, and the time elapsed since the date of conviction or release from jail or prison, whichever is more recent, is less than ten years; or has been convicted of several crimes including at least one within the last ten years; provided, however, that any licensee whose license is revoked because of charges pending against her/him may engage in the activity for which the license is required, pending a final decision on the charges; or

3. Has been subject to an adverse finding in any judgment or order which directly relates to the activity for which the license is required, in any judicial or administrative proceeding in which fraud, deceit, coercion, breach of trust, unfair method of competition, unfair or deceptive trade act or practice, or assertion of unconscionable contractual provisions, or other similar act, practice, or conduct, on the part of the licensee-applicant is proven, and the time elapsed since the judgment or order is less than ten years; or

4. Has violated or failed to comply with any applicable provisions of this Code or rule or regulation prescribed under this Title; provided, that failure to obtain a license shall not be grounds for license denial; or

5. Is in default in any payment of any fee or tax required under Title 3 or Title 5 of the Yakima Municipal Code; or

6. Has been subject to an adverse finding in any judgment or order, in any judicial or administrative proceeding for violation of any provision of a City ordinance or rule or regulation prescribed thereunder pertaining to fire, building, health, sanitation, zoning, weights and measures, consumer protection, environmental protection, or any other ordinance or law and that is applicable to the licensed activity or licensed premises; or

7. Has been determined to have discriminated against any person because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any

sensory, mental, or physical handicap, in the course of licensed activity, in violation of a City ordinance, law, rule or regulation prescribed thereunder; or

8. Has violated or failed to comply with any final order of the codes administration manager or Hearing Examiner; or

9. Has failed to complete the application for a license as required by this Code; or

10. Has failed to obtain a license or permit required by state or other law necessary to engage in the licensed activity; or

11. Has failed to comply with RCW Chapters 49.12 and 28A.28, and rules and regulations promulgated pursuant thereto, regarding employment of minors; or

12. Any licensee has permitted or authorized his/her agent to violate or fail to comply with any provision of this Code; or

13. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in YMC Chapter 11.45.

B. No license issued under YMC Title 5 shall be revoked, denied or refused renewal by the codes administration manager except in accordance with the procedure and on the grounds provided in this Title. Parties aggrieved by the codes administration manager's decision to revoke, deny or refuse renewal of a license issued under this Title shall have the same opportunity for appeal, under the same procedure as is described in YMC 5.52.120.

The period of denial, revocation or non-renewal shall be at least one year, and the licensee or any person (as defined in YMC Section 5.52.020) in which the licensee is a principal shall not again be licensed during such period.

C. Appeals. The applicant may appeal the decision of the codes administration manager to deny, revoke or refuse to renew a business license. An appeal of the administrative official's decision shall be to the legislative body in accord with the process and procedure set forth in YMC 15.16.040 and 15.16.050. Decisions of the legislative body may similarly be appealed to the Yakima County Superior Court in accord with the process and procedure set forth in YMC 15.16.060.

The filing of an appeal shall not stay any actions of the administrative official denying, revoking or refusing to issue a business license associated with the business license decision being appealed.

Section 3. Severability. Each separate provision of the ordinances set forth herein shall be deemed independent of all other provisions. If any provision of YMC Chapters 11.45, 5.01.060 or 5.01.070, or any part thereof, be declared invalid, all other provisions, or parts thereof, shall remain valid and enforceable.

Section 4. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this __ day of _____,2010.

ATTEST:

Micah Cawley, Mayor

City Clerk

Publication Date: _____

Effective Date: _____