

**ORIGINAL**

**ORDINANCE 2010 - 19**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, AMENDING  
TITLE 9 OF THE SUNNYSIDE MUNICIPAL CODE TO PROVIDE A NEW  
CHAPTER 9.35 PERTAINING TO CHRONIC NUISANCE PROPERTIES**

**WHEREAS**, pursuant to Chapter 35A.13 of the Revised Code of Washington, the City Council is charged with the legislative authority of the City of Sunnyside;

**WHEREAS**, the City Council has determined that residents of the City of Sunnyside should be able to enjoy ownership, use and possession of property without negative interference from chronic nuisance properties;

**WHEREAS**, the City Council has considered a proposed Chapter 9.35 of the Sunnyside Municipal Code that establishes definition of chronic nuisance property, a method to enforce the Ordinance, and penalties for violation of the Ordinance;

**WHEREAS**, the City Council has determined that the adoption of Chapter 9.35 of the Sunnyside Municipal Code is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare of the residents of the City of Sunnyside;

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

**Section 1.** Title 9 of the Sunnyside Municipal Code is hereby amended to add a new Chapter 9.35, which will read as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

**Section 2.** Except as amended herein, Title 9 of the Sunnyside Municipal Code shall remain unchanged.

**Section 3.** This ordinance shall be effective five days after passage, approval and publication as required by law.

PASSED this 9<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

ATTEST:

  
\_\_\_\_\_  
DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Menke Jackson Beyer Ehlis & Harper, LLP  
Attorneys for the City of Sunnyside

## **Chapter 9.35 CHRONIC NUISANCE PROPERTIES**

**Sections:**

- 9.35.010 Intent.
- 9.35.020 Definitions.
- 9.35.030 Determination of chronic nuisance—Notice and demand.
- 9.35.040 Violation—Penalty.
- 9.35.050 Enforcement—City attorney.
- 9.35.060 Continuing nuisance activities—Permitting a chronic nuisance.
- 9.35.070 Diversion.

**9.35.010 Intent.**

People should be able to enjoy ownership, use and possession of property without negative interference from chronic nuisance properties. The intent of the City Council in enacting this chapter is to exercise specific powers granted by the State of Washington to declare what shall be a nuisance, abate the same, and to impose fines upon parties who create, continue, or suffer nuisances to exist. In addition, the City Council intends to exercise the specific power granted by the State of Washington to provide for the punishment of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating city ordinances.

**9.35.020 Definitions.**

For purposes of this chapter:

- A. A “chronic nuisance property” is:
  - 1. Property that, within any 180-day period:
    - a. Has had three or more nuisance activities occur or exist upon the property; or
    - b. Has had three or more nuisance activities occur within two hundred feet of the property that involve the person in charge of the property and/or any person associated with the person in charge of the property; or
    - c. Has had either nuisance activities occur or exist upon the property or has had nuisance activities occur within two hundred feet that involved the person in charge of the property and/or any person associated with the person in charge of the property for a combined total of three or more occurrences.
  - 2. Buildings or portions thereof which are substandard or dangerous as defined in the City of Sunnyside Housing Code (Chapter 15.20) or Abatement of Dangerous Buildings Code (Chapter 15.44) as in effect at the date of enactment of this chapter or as thereafter amended.

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3. For the purposes of this section and Section 9.35.030(C), a person is associated with the person in charge of the property if he/she is on the property or within two hundred feet of the property as a guest or invitee of the person in charge of the property.
- B. "Chief of police" means the City of Sunnyside chief of police or his designee.
  - C. "City attorney" means the City of Sunnyside city attorney or his designees.
  - D. "RCW" means the Revised Code of Washington, as in effect at the date of enactment of this chapter or as thereafter amended.
  - E. "SMC" means the Sunnyside Municipal Code, as in effect at the date of enactment of this chapter or as thereafter amended.
  - F. "Nuisance activity" means:
    1. Any of the following activities, behaviors or conduct:
      - a. Harassment offenses as defined in Chapter 9.28 SMC.
      - b. Assault or reckless endangerment as defined in Chapter 9.10 SMC.
      - c. Disorderly conduct as defined in SMC 9.34.010.
      - d. Indecent exposure/conduct and prostitution offenses as defined in Chapter 9A.88 RCW and Chapter 9.62 SMC.
      - e. Liquor-related offenses as defined in Chapters 66.28 and 66.44 RCW and in Chapter 9.26 SMC.
      - f. Littering as defined in Section 9.34.010 SMC.
      - g. Fraud-related offenses as defined in Chapter 9A.60 RCW.
      - h. Possession, manufacture or delivery of a controlled substance or related offenses as defined in Chapter 69.50 RCW.
      - i. Precursor drug-related offenses as defined in Chapter 69.43 RCW.
      - j. Marijuana and drug paraphernalia offenses as defined in Chapter 9.14 SMC.
      - k. Violation of felony drug off-limits orders as defined in Chapter 10.66 RCW.
      - l. Gambling-related offenses as defined in Chapter 9.46 SMC and Chapter 9.47 RCW.
      - m. Firearms and dangerous weapons offenses as defined in Chapters 9.41 RCW and Chapter 9.20 SMC.
      - n. Public disturbance noises as defined in Chapter 9.60 SMC.
      - o. Any attempt, solicitation or conspiracy to commit any of the above activities, behaviors or conduct, as defined in Chapter 9.04 SMC.
    2. Activities, behavior or conduct that is contrary to any of the following City of Sunnyside regulatory codes:
      - a. License code (SMC Title 5).
      - b. Animal control code (SMC Title 6).
      - c. Health and safety code (SMC Title 8).
      - d. Zoning code (SMC Title 17).

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- e. Fire code (Chapter 15.02).
  - f. Building code (Chapter 15.04).
  - g. Land division code (SMC Title 16).
  - i. Washington State Clean Air Act violations.
- 3. Nuisance-related activities as defined in Chapters 8.12 and 9.34 SMC, and Chapter 35.22 RCW.
  - 4. Criminal Street Gang-related activity as defined in RCW 59.18.030, and/or RCW 9.94A.030 (14) and/or in the SMC.

G. "Control" means the power or ability to direct or determine conditions and/or activities located on or occurring on a property.

H. "Person" means an individual, group of individuals, corporation, government or governmental agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

I. "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 or occupant with control of the property.

J. "Owner" means one or more persons, jointly or severally, in whom is vested all or any part of the legal title to property, or all or part of the beneficial ownership and a right to present use and enjoyment of the property, including any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or a part of such building or land.

K. "Property" means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, grounds, vacant lots, facilities, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent.

**9.35.030 Determination of chronic nuisance—Notice and demand.**

A. When the chief of police, or his designee, receives police reports and/or reports from code enforcement documenting the existence of a chronic nuisance property, he shall independently review such reports to determine whether the property is a chronic nuisance property as defined in this chapter.

B. If the chief of police, or his designee, determines that the property is a chronic nuisance property, he shall notify the person in charge of the property in writing that the property is a chronic nuisance property and demand that he/she cease and desist from allowing nuisance activities, as defined in this chapter, to continue.

1. The notice and demand shall contain substantially the following information:

- a. The name and address of the person to whom the letter is issued;

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- b. The location of the subject property by address or other description sufficient for identification of the subject property;
  - c. A statement that the chief of police has determined the property to be a chronic nuisance property;
  - d. A concise description of the documented nuisance activities upon which the determination was based;
  - e. A warning that there is potential civil and/or criminal liability for continuing to allow nuisance activities, as defined in this chapter, to occur upon and/or within two hundred feet of the property; and
  - f. Name and telephone number of the police department representative who is responsible for handling inquiries from the person in charge of the property or others with an interest in the property.
2. The notice and demand shall be served by means of personal service, or by mailing a copy of the notice to the person in charge of the property at his/her last known address, certified mail return receipt requested, or by posting a copy of the notice and demand conspicuously upon the subject property.
  3. Proof of service shall be made by a written declaration under penalty of perjury by the person effecting the service, declaring the time and date of service and the manner by which service was made.
  4. A copy of the notice and demand shall be served upon the owner at the address shown on the records of the Yakima County Tax Assessor and/or the occupant at the address of the property, if these persons are different than the person in charge of the property.
- C. The chief of police may refer the matter to the city attorney for enforcement if, within a six-month period from issuance of the notice and demand, the chief of police receives an additional police report documenting the occurrence of a nuisance activity:
1. Upon the property; or
  2. Within two hundred feet of the property and involving the person in charge of the property or any person associated with the person in charge of the property.

### **9.35.040 Violation—Penalty.**

A. Any property within the City that is a chronic nuisance property is in violation of this chapter and subject to the remedies described herein, and to the enforcement procedures, remedies and penalties set forth in Chapters 8.32 and 9.02 SMC.

B. Any person in charge of property that is a chronic nuisance property is in violation of this chapter and subject to the remedies described herein, and to the enforcement procedures, remedies and penalties set forth in Chapters 8.32, 9.02 unless he/she can show that he/she is in compliance with a written plan of action that he/she has entered into with the city to abate the nuisance, as described in Section 9.64.070.

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C. Whenever the City issues a violation citation to more than one person because of a violation of this chapter, those persons shall be jointly and severally liable.

### **9.35.050 Enforcement—City attorney.**

A. Notwithstanding any other provision of the Sunnyside Municipal Code, the city attorney is authorized to take appropriate action to enforce compliance with the provisions of this chapter. Said enforcement action may include, but is not limited to, any of the following remedies:

1. Issuance of a violation citation under Chapter 8.32.
2. Application to any court of competent jurisdiction for injunction, mandamus or other appropriate action or proceeding to prevent continuing nuisance activities at the property and/or restraining any person from violating any of the provisions of this chapter and compelling compliance with the provisions herein. The person shall pay all City costs, pursuant to Chapters 8.32 and 9.02 SMC, of seeking such relief in the event the City is successful in obtaining the relief. Said costs and/or other penalties may be collected by assessment lien in accordance with Chapter 8.32.

B. Nothing in this chapter shall be construed to prevent or prohibit the City from pursuing immediate relief from nuisance activities at a property by any other means available by law, including but not limited to emergency relief under Article IV of Chapter 8.32 and an order of the fire code official under the City of Sunnyside fire code. Penalty and enforcement provisions provided in this chapter shall not be deemed exclusive and the City may pursue any remedy or relief it deems appropriate.

C. The failure to prosecute and/or convict an individual for the violation(s) constituting the nuisance activities is not a defense to an action under this chapter.

### **9.35.060 Continuing nuisance activities—Permitting a chronic nuisance.**

A. It shall be unlawful for any person to permit a chronic nuisance.

B. Permitting a chronic nuisance occurs when a person:

1. Has been issued a violation citation under this chapter; and
2. Has allowed any additional nuisance activity on the property within 180 days of issuance of the violation citation; and
3. At the time the additional nuisance activity occurred, the violation citation had not resulted in a hearing examiner's order.

C. Permitting a chronic nuisance is a misdemeanor.

D. Each nuisance activity that is allowed on the property as described in this section shall constitute a separate offense.

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E. It shall be a defense to permitting a chronic nuisance if the person in charge of the property can show that he/she is in compliance with a written plan of action that he/she has entered into with the city to abate the nuisance, as described in Section 9.64.070.

### **9.35.070 Diversion.**

If satisfied of the good faith of the person in charge of the property, the city attorney, in coordination with the chief of police, may enter into a stipulated agreement and/or order for abatement of nuisance activities with the person in charge of the property.

Affidavit of Publication

STATE OF WASHINGTON  
COUNTY OF YAKIMA SS

Timothy J. Graff, being first duly sworn on oath  
deposes and says that he is the Publisher of the  
DAILY SUN NEWS, a daily newspaper.

That said newspaper is a legal newspaper and it is  
now and has been for more than six months prior to the  
date of publications hereinafter referred to,  
published in the English language continually as a  
daily newspaper in the city of Sunnyside, YAKIMA  
County, Washington, and it is now and during all of  
said time printed in an office maintained at the  
afforesaid place of publication of said newspaper,  
and that the said Daily Sun News was on the 4th  
Day of April, 1969 approved as a legal newspaper  
by the Superior Court of said Yakima County.

That the annexed is a true copy of a LEGAL  
PUBLICATION -

City of Sunnyside

Summary Ord. 2010-19

published in regular issues (and not in supplemental  
forms) of said newspaper once each week for a period  
of 1 consecutive issue(s) commencing 08/13/10 and  
ending on 08/13/10, both dates inclusive, and that such  
newspaper was regularly distributed to its subscribers  
during all of said period. That the full amount of the  
fee charged for the foregoing publication is the sum  
of \$ 27.00, amount has been paid in full, at the  
rate of \$6.00 per column inch per insertion.

*Timothy J. Graff*  
\_\_\_\_\_

Subscribed and sworn to before me 08/13/10

*[Signature]*  
\_\_\_\_\_

Notary Public in and for  
the State of Washington  
100202-00008



SUMMARY OF ORDINANCE 2010  
- 19

AN ORDINANCE OF THE CITY  
COUNCIL OF THE CITY OF  
SUNNYSIDE, WASHINGTON,  
AMENDING TITLE 9 OF THE  
SUNNYSIDE MUNICIPAL CODE  
TO PROVIDE A NEW CHAPTER  
9.35 PERTAINING TO CHRONIC  
NUISANCE PROPERTIES

Summary 1. Chapter 9.35 of the  
Sunnyside Municipal Code estab-  
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property, a method to enforce the  
Ordinance, and penalties for viola-  
tion of the Ordinance.

Summary 2. Except as amended,  
Title 9 of the Sunnyside Municipal  
Code shall remain unchanged.

Date Approved: August 9, 2010

Signatories: James A. Restucci,  
Mayor

Deborah A. Estrada, City Clerk

Scott Beyer, City Attorney

A complete copy of the full text of  
this Ordinance can be mailed upon  
request or is available online at

[http://www.ci.sunnyside.wa.us/  
news/ordinances.php](http://www.ci.sunnyside.wa.us/news/ordinances.php)

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