

Councilmembers

Position No.

1. Tod Gunther
2. Barbara Ford, Deputy Mayor
3. Michelle Gehring
4. Dave Harman
5. Nicola McDonald
6. Josh Penner
7. Scott Drennen



Orting City Council
Special Meeting Agenda

Orting City Hall
110 Train Street SE, Orting, WA
March 14th, 2017
7pm.

Mayor Joachim Pestinger

CITY OF ORTING
CITY COUNCIL

Special Meeting Agenda
Tuesday March 14th, 2017, 7:00pm

1. CALL MEETING TO ORDER, AND ROLL CALL

2. Ordinance No. 2017-1011, An Ordinance Of The City Of Orting, Washington, Adding Orting Municipal Code Chapter 5-10, Relating To The Declaration And Abatement Of Chronic Nuisance Properties; Providing For Severability; And Establishing An Effective Date.

- **Charlotte Archer**

Motion: *To approve and adopt Ordinance No. 2017-1011, An Ordinance Of The City Of Orting, Washington, Adding Orting Municipal Code Chapter 5-10, Relating To The Declaration And Abatement Of Chronic Nuisance Properties .*

3. ADJOURNMENT

Motion: *Move to Adjourn.*

Next Regular Meeting: March 29th, 2017

CITY OF ORTING
WASHINGTON
ORDINANCE NO. 2017-1011

**AN ORDINANCE OF THE CITY OF ORTING,
WASHINGTON, ADDING ORTING MUNICIPAL CODE
CHAPTER 5-10, RELATING TO THE DECLARATION AND
ABATEMENT OF CHRONIC NUISANCE PROPERTIES;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING
AN EFFECTIVE DATE**

WHEREAS, the City of Orting is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington; and

WHEREAS, the City has the authority to declare and abate nuisances to preserve the public health and safety, pursuant to RCW 35A.21.160, the Washington state constitution at Article XI, section 11, Ch. 7.48 RCW; and

WHEREAS, the ongoing health, safety and welfare concerns regarding properties within the city limits in which a specified number of nuisance activities occur within a specified time period constitutes a chronic public nuisance, which is detrimental to neighbors and the community at large; and

WHEREAS, the legislature of the State of Washington recently amended RCW 35A.21.405 to further clarify nuisance abatement procedures for such properties, and provide further due process; and

WHEREAS, the City adopted a nuisance abatement local Ordinance in 1973, and amended same in 2015, which are currently codified at Orting Municipal Code Title 5, Chapter 1, *et seq.*; and

WHEREAS, City Officials have received multiple complaints of ongoing civil and criminal activities on private properties that have negative impacts on the community; and

WHEREAS, such properties pose endangerments to the public health or safety as a result of unsanitary or unsafe conditions, disruption of nearby public activities and expectations, and degradation of community standards; and

WHEREAS, OMC Title 5 lacks a chapter specific to the needs of the Mayor and City Staff in controlling and abating chronic nuisance properties; and

WHEREAS, the City Council finds that the immediate adoption of this Ordinance is necessary to redress citizen concerns regarding escalating chronic nuisance properties in the City; and

WHEREAS, the City Council intends by this ordinance to protect the public health, safety, and welfare by adding to the City's nuisance abatement code for private property to establish and further clarify chronic nuisance abatement procedures and due process, and to update the City's regulations to reflect current state law; and

WHEREAS, City Council has determined that the proposed regulations are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interest of the citizens of the City; and

WHEREAS, the City Council finds that the potential adverse impacts on the public health, safety and welfare, as outlined herein, justify the declaration of an emergency;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORTING, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. OMC Title 5, Chapter 10, Established.

Orting Municipal Code Title 5, *Public Health and Safety*, Chapter 10, *Chronic Nuisance Properties*, is hereby adopted to read as follows:

**TITLE 5 – PUBLIC HEALTH AND SAFETY
CHAPTER 10 – CHRONIC NUISANCE PROPERTIES**

SECTIONS:

- 5-10-1 PURPOSE.
- 5-10-2 DEFINITIONS.
- 5-10-3 VIOLATION.
- 5-10-4 DETERMINATION OF CHRONIC NUISANCE—WARNING AND DECLARATION.
- 5-10-5 CORRECTION AGREEMENT.
- 5-10-6 COMMENCEMENT OF ACTION – ENFORCEMENT.
- 5-10-7 SUMMARY CLOSURE.

OMC 5-10-1: PURPOSE.

Chronic nuisance properties present significant health, safety and welfare concerns, where the persons responsible for such properties fail to take corrective action to abate the nuisance condition. Chronic nuisance properties can have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. Chronic nuisance properties can also be a financial burden to the city due to repeated calls for service necessitated by nuisance activities that repeatedly occur or exist on such properties.

Accordingly, this chapter is enacted to:

- A. Provide a remedy for nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties.
- B. Provide a means by which the City may prevent and abate chronic nuisances, declare what shall be a chronic nuisance, and abate the same, and to impose fines upon parties who permit, create, continue, or suffer nuisances to exist.
- C. Exercise the specific power granted to the City by the state 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.
- D. Provide a practical process for ameliorating nuisance activities and for holding accountable the persons ultimately responsible for such properties.

This remedy is not the exclusive remedy available under state or local laws to redress chronic nuisance properties, and may be used in conjunction with such other laws.

OMC 5-10-2: DEFINITIONS.

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

- A. “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 applicable Chief of Police, city department director, city code enforcement officer, or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community.
- B. “Chief of Police” means the City of Orting Chief of Police or the Chief’s designee.
- C. A “chronic nuisance property” is:
 - 1. A property that, within any sixty-day period:
 - a. Has had three or more nuisance activities, as described in this title, 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 nuisance activities either occur or exist upon the property or 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 for a combined total of three or more times; or

2. A property that, within any three hundred sixty-five day period:
 - a. Has had seven or more nuisance activities occur or exist upon the property; or
 - b. Has had seven 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 nuisance activities either occur or exist upon the property or 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 for a combined total of seven or more times.
 3. 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.
- D. “City attorney” means the city of Orting city attorney or the city attorney’s designee.
- E. “Control” means the power or ability to direct or determine conditions and/or activities located on or occurring on a property.
- F. “Drug-related activity” means any unlawful activity at a property, which consists of the manufacture, delivery, sale, storage, possession, or giving away of any controlled substance as defined in Chapter 69.50 RCW, legend drug as defined in Chapter 69.41 RCW, or imitation controlled substances as defined in Chapter 69.52 RCW or which is established as a crime under Title 6 OMC.
- G. “Nuisance activity” means and includes:
1. Any nuisance as defined by state law or local ordinance occurring on, around or near a property, including, but not limited to, violations of the following laws and regulations:
 - a. OMC Title 5-1, Public Nuisances;
 - b. OMC Title 5-2, Garbage and Refuse
 - c. OMC Title 5-8, Noise Control
 - d. OMC Title 6-3, Animal Control
 - e. OMC Title 7-2, Public Nuisance Vehicles

- f. OMC Title 10, Buildings and Construction; and
2. Any criminal conduct as defined by state law or local ordinance occurring on, around or near a property, including, but not limited to, the following activities or behaviors:
- a. Stalking, OMC 6-1A-5;
 - b. Harassment, OMC 6-1A-5;
 - c. Disturbing the Peace, OMC 6-1B-1;
 - d. Disorderly conduct, OMC 6-1A-8;
 - e. Assault, OMC 6-1A-5;
 - f. Domestic violence crimes, OMC 6-1A-5;
 - g. Reckless endangerment, OMC 6-1A-5;
 - h. Prostitution, OMC 6-1A-7;
 - i. Patronizing a prostitute, OMC 6-1A-7;
 - j. Public disturbance noises, OMC 5-8-5;
 - k. Offenses against Public Decency, OMC 6-1B-4 and OMC 6-1A-7;
 - l. Crimes relating to firearms and dangerous weapons violation, OMC 6-1A-12;
 - m. Dangerous animal, cruelty to animal and other animal violations, OMC 6-3A, 3C, 3E, 3F; and
 - n. Drug-related activity, OMC 6-1A-6
 - o. Possession of stolen property offenses as defined in Chapter 9A.56 RCW.
 - p. Precursor drug-related offenses as defined in Chapter 69.43 RCW.
 - q. Marijuana and drug paraphernalia offenses as defined in Chapter 6-1A-6 OMC.
 - r. Loitering for the purpose of engaging in drug-related activity as defined in Chapter 6-1B-6 OMC.
 - s. Any attempt, solicitation or conspiracy to commit any of the above activities, behaviors or conduct, as defined in Chapter 6-1A OMC.

3. Activities, behavior or conduct that is contrary to any of the following City of Orting regulatory codes:
 - a. License code (OMC Title 3).
 - b. Animal control code (OMC Title 6).
 - c. Public Health & Safety (OMC Title 5).
 - d. Zoning code (OMC Title 13).
 - e. Building and fire code (Chapters 10-1 through 10-7 OMC).
 - f. Noise control code (Chapter 5-8 OMC).
 - g. Washington State Clean Air Act (Ch. 70.94 RCW).
 4. Nuisance-related activities as defined in Chapters 5-1, 5-2, 5-3 and 7-2 OMC.
 5. Gang-related activity as defined in the OMC or RCW 59.18.030.
 6. For purposes of this chapter, “nuisance activity” shall not include conduct where the person responsible is the victim of a crime and had no control over the criminal act.
- H. “OMC” means the Orting Municipal Code, as in effect at the date of enactment of the ordinance codified in this section or as thereafter amended.
- I. “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.
- J. “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.
- K. “Person associated” with the person in charge of the property means a person on the property or within two hundred feet of the property as a guest or invitee of the person in charge of the property.
- L. “Person in charge” of a property means any person in actual or constructive possession of a property, including but not limited to an owner, lessee, tenant or occupant with control of the property.
- M. “Person responsible” means, unless otherwise defined, any of the following: any person who has titled ownership of the property or structure which is subject to this

chapter; an occupant in control of the property or structure which is subject to this chapter; a developer, builder, or business operator or owner who is developing, building, or operating a business on the property or in a structure which is subject to this chapter; a mortgagee that has filed an action in foreclosure on the property that is subject to the regulation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the regulation and has not been occupied by the owner, the owner's tenant, or a person having the owner's permission to occupy the premises for a period of at least 90 days; and/or any person who has control over the property and created, caused, participated in, or has allowed a violation to occur.

- N. "Property" means any 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.
- O. "RCW" means the Revised Code of Washington, as in effect at the date of enactment of the ordinance codified in this section or as thereafter amended.

OMC 5-10-3: VIOLATION.

- A. Any property within the city that is a chronic nuisance property is in violation of this chapter and subject to the enforcement procedures, remedies and penalties described in this chapter, and to the enforcement procedures, remedies and penalties set forth in Chapters 1-4 and 1-13 OMC.
- 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. 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.

OMC 5-10-4: DETERMINATION OF CHRONIC NUISANCE—WARNING AND DECLARATION.

- A. When the Chief of Police (or their designee), or City Administrator (or their designee), or City Code Enforcement Officer (or their designee), receives specific facts and circumstances documenting the existence of a chronic nuisance property, the or City Administrator (or their designee), or City Code Enforcement Officer (or their designee), may independently review such reports to determine whether the property is a chronic nuisance property as defined in this chapter.
- B. If, following the review described in subsection A of this section, the Chief of Police (or their designee) or City Administrator (or their designee), or City Code Enforcement Officer (or their designee), determines that the property is a chronic nuisance property, the Chief of Police (or their designee) or City Administrator (or their designee), or City Code Enforcement Officer (or their designee) shall issue a Warning to the person in charge of the property, in writing, stating that that the property is a chronic nuisance property and demanding that the person in charge of the property cease and desist from allowing nuisance activities, as defined in this chapter, to continue.

1. The Warning shall contain substantially the following information:
 - a. The name and address of the person to whom the letter is issued;
 - b. The location of the property by address or other description sufficient for identification of the property;
 - c. A concise description of the documented nuisance activities upon which the determination was based;
 - d. 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;
 - e. The name and telephone number of the city representative who is responsible for handling inquiries from the person in charge of the property or others with an interest in the property; and
 - f. A demand the owner and other persons in charge respond to city representative within seven days of service of the notice to discuss a course of action to correct the nuisance.
 2. The Warning 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 property.
 3. The Warning must be served within sixty days of the occurrence of the last nuisance activity which qualified the property as a chronic nuisance property under the definitions of this chapter.
 4. 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.
 5. When a Warning 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 Warning 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. An owner who receives a copy of a Warning pursuant to this chapter 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 City to assist in abatement of the nuisance property. Such reasonable steps may include the owner taking all acts 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, and the Victim Protection Limitation on Landlord's Rental Decisions.

- D. If the owner or person in charge or person responsible timely responds as required by the Warning issued pursuant to this chapter, and agrees to a course of action to abate the nuisance activities, a written correction agreement between the owner or person in charge and the City shall be executed. If the agreed course of action does not result in the abatement of nuisance activities to the satisfaction of the City within thirty days of issuance of the Warning, or within such longer period as permitted by the Chief of Police, City Administrator or Code Enforcement Officer, or their designee, in writing the City may issue a Declaration of Chronic Nuisance Property pursuant to this chapter.
- E. If the City receives no response to the Warning within the time prescribed, the Chief of Police (or their designee) or City Administrator (or their designee), or City Code Enforcement Officer (or their designee), shall issue a Declaration of Chronic Nuisance Property, declaring the property to be a chronic nuisance property, and shall post such Declaration at the property and issue the person(s) responsible a civil infraction, punishable by a maximum penalty of \$1,000. The matter shall be referred to the office of the City Attorney for further action, pursuant to this chapter.
- G. It is a defense to an action for chronic nuisance property that the person responsible, at all material times, could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.

OMC 5-10-5: 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 persons 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 and expenses and monetary penalties pursuant to this chapter from the person in charge for 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 City.

OMC 5-10-6: COMMENCEMENT OF ACTION - ENFORCEMENT.

A. Notwithstanding any other provision of the Orting Municipal Code, the city attorney or their designee, on behalf of the city, 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 1-4-1 OMC. A violation citation issued for a violation of the provisions of this chapter may include in its corrective action suspension or revocation of any license issued under OMC 3-2, and the violations hearing examiner is hereby granted specific authority to so order license suspension or revocation; or

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.

3. Abatement Costs. All costs of abatement, including incidental expenses, shall be billed to the person or persons to whom the violation citation was issued and shall become due and payable thirty days thereafter. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect, including attorney's fees incurred by the city; costs incurred in documenting the violation; the actual expenses and costs to the city in the preparation of notices, specifications and contracts, and in inspecting the work; and the cost of any required printing and mailing.

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 Chapter 5-1-7(C) and an order of the fire code official under the Orting 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.

D. Once the matter is referred to the city attorney, the city attorney shall immediately review and make a determination to initiate legal action authorized under this chapter or state statute, or may seek alternative forms of abatement of the nuisance activity. The city attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in Pierce County Superior Court for the abatement of the nuisance.

E. In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the city shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The city 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.

F. Once the Superior Court determines the property to be a chronic nuisance under this chapter, the court may impose a civil penalty against any or all of the persons responsible for the property, and may order any other relief deemed appropriate. A civil penalty may be assessed for up to \$100.00 per day for each day the nuisance activity continues to occur following the date of the original Warning, as described in this chapter. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:

1. The actions taken by the person responsible to mitigate or correct the nuisance activity;
2. The repeated or continuous nature of the nuisance activity;
3. The statements of the neighbors or those affected by the nuisance activity; and
4. Any other factor deemed relevant by the court.

G. The Superior Court which determined the property to be a chronic nuisance property shall also assess costs against the person responsible in the amount it costs the city to abate, or attempt to abate, the nuisance activity.

H. If the Superior Court determines the property to be a chronic nuisance property, the superior court shall order the property closed and secured against all unauthorized access, use and occupancy for a period up to one year, and may impose a civil penalty and costs.

I. Once a determination has been made by the Superior Court that the chronic nuisance property shall be subject to closure the court may authorize the city to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the court for review. Any civil penalty and/or costs awarded to the city may be filed with the city treasurer who shall cause the same to be filed as a lien on the property with the county treasurer. The city shall file a formal lis pendens notice when an action for abatement is filed in the superior court.

J. The superior court shall retain jurisdiction during any period of closure or abatement of the property.

OMC 5-10-7: SUMMARY CLOSURE.

Nothing in this chapter prohibits the city from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety. The city may take summary action to close the property without complying with the notification provisions of OMC 5-10-4, but shall provide such notice as is reasonable under the circumstances.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Codification. The City Council authorizes the City Clerk to correct any non-substantive errors herein, codify the enacted provisions and amendments, and publish the amended code.

Section 5. Effective Date. This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, and public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), non-exhaustive underlying facts necessary to support this emergency declaration are included in the “WHEREAS” clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
__ DAY OF MARCH, 2017.**

CITY OF ORTING

Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:

Jane Montgomery, City Clerk

Approved as to form:

Charlotte A. Archer
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Date of Publication:
Effective Date:

From: Charlotte Archer
To: [Jane Montgomery](#)
Cc: [Mark Bethune](#); [Scott Larson](#); [Larry Isenhardt](#); [Kathy Swover](#)
Subject: Chronic Nuisance Ordinance - Alternatives for Distribution to Council in Advance of Special Session
Date: Monday, March 13, 2017 11:26:27 AM
Attachments: [Ord. No. 2017-1011 - Insert No. 3 re Council Authorization.docx](#)
[Ord. No. 2017-1011 - Insert No. 1 re Council Report.docx](#)
[Ord. No. 2017-1011 - Insert No. 2 re Council Authorization.docx](#)
[Ordinance No. 2017-1011 - Chronic Nuisance Properties - Original.docx](#)
Importance: High

Hi Jane:

In advance of the Special Session, I was asked to propose language based on the City Council's comments from last week's meeting. Accordingly, attached are the following:

- Ordinance No. 2017-1011, in its Original Form (as submitted to Council last Wednesday);
- **Optional Insert No. 1:** This would add OMC 5-10-8, which would establish the requirement that the City Attorney and Police Chief, City Administrator and/or Code Enforcement Officer provide the Council with an annual report as to all properties prosecuted during the preceding year under the Chronic Nuisance Properties Chapter;
- **Optional Insert No. 2:** This would revise OMC 5-10-7(D), so as to provide that the City Attorney is authorized to bring a civil lawsuit for chronic nuisance abatement, provided that if the estimated attorney's fees, plus costs and penalties (i.e., the potential monetary recovery for the City from the suit) exceed the actual value of the property (i.e., the funds available for any monetary recovery), then the City Attorney must obtain City Council approval via a resolution before filling the suit.
- **Optional Insert No. 3:** This would revise OMC 5-10-7(D), so as to provide that all lawsuits brought by the City Attorney pursuant to this Chapter must be pre-approved by the City Council via resolution.

Please let me know if you or the Council have any questions regarding these options.

Regards,
Charlotte

Charlotte A. Archer
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Our website has a new look. Visit us today at www.KenyonDisend.com.

CITY OF ORTING
WASHINGTON
ORDINANCE NO. 2017-1011

Optional Insert No. 1: This would be added to the end of the new Chapter, at OMC 5-10-8.

OMC 5-10-8: ANNUAL COUNCIL REPORT.

The Chief of Police, City Administrator and/or Code Enforcement Officer, with assistance of the City Attorney, shall provide to the Council an annual report on the implementation of this ordinance. The report shall list each instance in which the Chief of Police, City Administrator, and/or Code Enforcement Officer 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, City Administrator and/or Code Enforcement Officer; 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, City Administrator and/or Code Enforcement Officer, and the City Attorney on the overall effectiveness of the ordinance in reducing the problems resulting from chronic nuisance properties.

The Chief of Police, City Administrator and/or Code Enforcement Officer, 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.

CITY OF ORTING
WASHINGTON
ORDINANCE NO. 2017-1011

Optional Insert No. 2: This would replace OMC 5-10-6(D), as stated in Ordinance No. 2017-1011.

OMC 5-10-6: COMMENCEMENT OF ACTION - ENFORCEMENT.

D. Once the matter is referred to the city attorney, the city attorney shall immediately review and make a determination to initiate legal action authorized under this chapter or state statute, or may seek alternative forms of abatement of the nuisance activity. The city attorney is authorized to initiate legal action on the chronic nuisance property and seek civil penalties and costs in Pierce County Superior Court for the abatement of the nuisance, provided however that the city attorney shall obtain City Council approval to initiate legal action through a resolution if the estimated attorney's fees, civil penalties and costs exceed the value of the property, taking into account all encumbrances, liens, mortgages, judgments, and debts.

CITY OF ORTING
WASHINGTON
ORDINANCE NO. 2017-1011

Optional Insert No. 3: This would replace OMC 5-10-6(D), as stated in Ordinance No. 2017-1011.

OMC 5-10-6: COMMENCEMENT OF ACTION - ENFORCEMENT.

D. Once the matter is referred to the city attorney, the city attorney shall immediately review and make a determination to initiate legal action authorized under this chapter or state statute, or may seek alternative forms of abatement of the nuisance activity. The city attorney shall obtain City Council approval through a resolution to initiate legal action on the chronic nuisance property and seek civil penalties and costs in Pierce County Superior Court for the abatement of the nuisance.