

ORDINANCE NO. 2009-6

**AN ORDINANCE PROVIDING FOR A PENALTY STRUCTURE AND
ABATEMENT PROCEDURE FOR NUISANCE ORDINANCES
ADOPTED BY THE CITY OF MAYWOOD PARK
THAT DO NOT HAVE SPECIFIED
PENALTY CLAUSES, and
ABATEMENT PROCEDURES**

Chapter 7.1 – Penalties and Abatement Procedures for Nuisance Violations

1. Violation – Each Day Deemed Separate Offense.

- 1.1 Each day's violation of a provision of this Chapter and/or City of Maywood Park Nuisance Ordinance constitutes a separate offense. The abatement of a nuisance is not a penalty for violation this Chapter, but is an additional remedy. The imposition of a penalty shall not relieve a person of the duty to abate a nuisance.

2. Violation – Penalty.

- 2.1 Any owner or person who is convicted of a violation of this Chapter and/or a City of Maywood Park Nuisance Ordinance shall be fined not more than one thousand dollars (\$1,000.00). The penalties set forth in this Section are in addition to and not in lieu of civil remedies.
- 2.2 Any person convicted two times for the same violation of this Chapter shall be considered on the third violation a “habitual offender” and shall be fined no less than one thousand dollars (\$1,000.00) on the third and every subsequent conviction.

3. Declaration of Purpose.

- 3.1 It is the purpose and intent of this Ordinance to provide for a procedure for removal of nuisances in order to reduce social deterioration within the City of Maywood Park and to promote public safety and health.
- 3.2 The Manager may adopt procedures, forms, and written policies for administering and implementing the provisions of this Chapter.

4. Nuisance Property.

- 4.1 Any property, building, or structure within the City of Maywood Park that becomes a nuisance property is in violation of this Chapter and is subject to its remedies.

- 4.2 Any person who permits property under his or her control to become a nuisance property shall be in violation of this Chapter and subject to its remedies.

5. Definitions.

For purposes of this Chapter, the following definitions shall apply:

- 5.1 **Nuisance.** Any act or omission of duty as outlined by City of Maywood Park Nuisance Ordinances and/or this Chapter.
- 5.2 **Manager.** The Nuisance Abatement Manager is the City Official, or designated representative, who is responsible for the administration of the Nuisance Abatement Program under this Chapter. In accordance with adopted procedures, the Manager may appoint such officers, employees, and agents as shall be authorized and necessary to enforce the provisions of this Chapter.
- 5.3 **Nuisance Property.** Property upon which a nuisance has been deemed and has been permitted to remain for more than thirty (30) days after the property owner of record has been issued written notification pursuant to Section 6.2.
- 5.4 **Occupant.** Any person or sublessee, successor, or assignee who has control over property.
- 5.5 **Owner.** Any person, agent, firm, or corporation having a legal or equitable interest in a property and includes but is not limited to:
- 5.5(a) A mortgagor in possession in whom is vested all or part of the legal title to the property or all or part of the beneficial ownership and a right to present use and enjoyment of the premises; or
- 5.5(b) An occupant who has control over the property/premises.
- 5.6 **Permit.** Knowingly to suffer, allow, or acquiesce by any failure, refusal, or neglect to abate.
- 5.7 **Property.** Any real or personal property and that which is affixed incidental or appurtenant to real property but not limited to any premises, house, building, fence, structure, or any separate part thereof, whether permanent or not.
- 5.8 **Unauthorized.** Without the consent of the owner or the occupant.

6. Procedures.

6.1 **Required Nuisance Abatement.** The owner or occupant of any property in the City of Maywood Park shall remove/abate any nuisance from such property within thirty (30) days of the notification from the City of a nuisance.

6.2 Notification.

- 6.2(a) Whenever the Manager determines that a nuisance exists on any property in the City of Maywood Park, the Manager may issue an abatement notice.
- 6.2(b) The Manager shall cause the notice to be served upon the property owner and any occupant. The owner or occupant shall have thirty (30) days after the date of service of the notice in which to abate the nuisance. The Nuisance Abatement Manager shall have the sole discretion to grant the property owner the option of giving the City of Maywood Park written permission to enter on the property and abate the nuisance.
- 6.2(c) Service shall be accomplished by addressing the notice to the owner and occupant and sending it by personal service, registered mail, or certified mail. Service on the occupant may also be accomplished by posting the notice in a clearly visible location on the subject property.
- 6.2(d) If nuisance is not abated or written permission is not given to the City of Maywood Park to abate, the costs of removal may be assessed to the owner and will become a lien on the affected property. For each instance of nuisance abatement, the Manager shall keep an accurate account of all expenses incurred, including an overhead charge of 25 percent for program administration and a civil penalty of one thousand dollars (\$1,000.00) for each day that the nuisance is not abated. In the event that the measures taken are deemed by the Code Hearings Officer to be appropriate, the cost for the same may be made as an assessment lien upon the property.

7. Appeal.

7.1 Within ten (10) days of the receipt of the notice, the property owner or occupant may appeal the notice from the Manager to the Code Hearings Officer of the City of Maywood Park.

7.2 Upon receipt of the appeal request, the Code Hearings Officer shall set the matter for hearing within ten (10) business days. If the Code Hearings Officer finds the property to be a Nuisance Property, and the owner or responsible party has been given notice in accordance with Subsection 6.2 above, the Code Hearings Officer shall specify when and under what conditions the nuisance shall be abated.

8. Abatement of Nuisance.

8.1 The Manager may summarily abate any nuisance immediately abutting public streets or property, or on any public property.

8.2 Whenever the Manager has reasonable cause to believe that there exists at any building or property any nuisance requiring abatement under this Chapter and/or per City of Maywood Park Nuisance Ordinances, the Manager may enter upon the nuisance property at all reasonable times to perform any duty imposed on the Manager under this Chapter, and to enforce the provisions of this Chapter. Upon the failure to comply with the notice of abatement by the designated compliance date, and if the property owner or occupant has not appealed the notice as provided under Section 7, the following steps may be taken if the nuisance property is plainly enclosed to create privacy and prevent access by unauthorized persons:

8.2(a) If the nuisance property is occupied, the Manager shall first present property credentials and demand entry to cause the nuisance to be abated. If the entry is refused, the Manager may attempt to secure entry by any legal means.

8.2(b) If the nuisance property is unoccupied, the Manager shall first make a reasonable attempt to locate the owner or occupant and demand entry. Such demand may be included in the initial notice sent to the owner or occupant under Section 4 above. If entry is refused, the Manager may attempt to secure entry by any legal means:

(i) If the Manager has first obtained an administrative search warrant to secure entry onto the nuisance property to abate the nuisance, no owner or occupant shall refuse, fail, or neglect, after proper request, to promptly permit entry by the Manager to abate the nuisance.

(ii) It shall be unlawful for any owner or occupant to refuse to permit entry by the Manager to abate nuisance under this Chapter after an administrative search warrant has been obtained. Any violation of this Subsection is punishable upon conviction by a fine of not more than \$500.00 and a jail sentence of up to six months.

8.2(c) If the nuisance is not removed and abated, or cause shown, as specified above, the Manager may cause the nuisance to be removed and abated upon issuance of an Administrative Search warrant.

(i) **Nuisance Abatement.** If the nuisance is not removed and abated, or cause shown, as specified above, the Manager may cause the nuisance to be removed and abated.

(ii) **Warrants.** The Manager may request any Circuit or Municipal Court judge to issue a nuisance abatement warrant whenever entry onto private property is necessary to remove and abate any nuisance.

(iii) **Grounds for Issuance of Nuisance Abatement Warrants:**

(A) **Affidavit.** A nuisance abatement warrant shall be issued only upon cause, supported by affidavit, particularly describing: the applicant's status in applying for the warrant; the ordinance or regulation requiring or authorizing the removal and abatement of the nuisance; the building or property to be entered; the basis upon which cause exists to remove or abate the nuisance; and a statement of the nuisance to be removed or abated.

(B) **Cause.** Cause shall be deemed to exist if there is reasonable belief that a nuisance violation exists, as defined in this Chapter, with respect to the designated property, and that the property owner has been given notice and an opportunity to abate the nuisance, and has not responded in a timely fashion.

(iv) **Procedure for Issuance of a Nuisance Abatement Warrant:**

(A) **Examination.** Before issuing a nuisance abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.

(B) **Issuance.** If the judge is satisfied that cause for the removal and abatement of any nuisance exists and that the other requirements for granting the application are satisfied, the judge shall issue the nuisance abatement warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant shall contain a direction that it be executed on any day of the week between

the hours of 8:00 a.m. and 6:00 p.m., or where the judge has specifically determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

- (C) **Police Assistance.** In issuing a nuisance abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the City in any way necessary to enter the property and remove and abate the nuisance.

(v) **Execution of Nuisance Abatement Warrants:**

- (A) **Occupied Property.** Except as provided in Section 8.2, in executing a nuisance abatement warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority, and purpose to an occupant or person in possession of the property designated in the warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. A copy of the warrant shall be left with the occupant or the person in possession.
- (B) **Unoccupied Property.** In executing a nuisance abatement warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in Section 8.2(c)(v)(A), but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case, a copy of the nuisance abatement warrant shall be conspicuously posted on the property.
- (C) **Return.** A nuisance abatement warrant must be executed within thirty (30) working days from its date of execution. After the expiration of the time prescribed by this Subsection, the warrant, unless executed, is void.

9. Nuisance Abatement Consent Forms.

- 9.1 The Manager shall develop consent forms allowing the Manager to enter onto property to abate the nuisance without prior notice from the Manager. The Manager shall make these consent forms available to the public.
- 9.2 Property owners and occupants may request and sign consent forms for allowing nuisance abatement. The Nuisance Abatement Manager shall renew the consent forms at least biannually.

The City Council hereby declares an emergency, declaring that this Ordinance is immediately necessary to secure the continued general public health and general welfare of the citizens of the City of Maywood Park, and that this Ordinance is immediately necessary to conserve, stabilize, and protect property within the incorporated area of the City of Maywood Park. The Ordinance shall take effect and be in force immediately.

PASSED AND APPROVED by the City Council of the City of Maywood Park on the 1stth day of December, 2009.

/s/ Mark Hardie
MARK HARDIE, Mayor

ATTEST:

/s/ Julie D. Risley
JULIE D. RISLEY, City Recorder/Treasurer