

**CITY OF BURIEN, WASHINGTON**

**ORDINANCE NO. 572**

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**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,  
ADOPTING A NEW CHAPTER 9.120 OF THE BURIEN MUNICIPAL  
CODE RELATED TO REGULATION OF CHRONIC NUISANCE  
PROPERTIES**

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**WHEREAS**, as a code city operating under Title 35 RCW, Optional Municipal Code, the City of Burien has broad statutory authority to define, prevent, abate, and impose fines upon persons creating or allowing nuisances; and

**WHEREAS**, some persons who own or control property in the City have allowed or may allow their properties to be used on multiple occasions for illegal purposes or for activities constituting a nuisance, with the result that these properties have or may become chronic nuisance properties; and

**WHEREAS**, neighboring property owners and residents should be able to own, use or possess property without the negative impacts caused by chronic nuisance properties; and

**WHEREAS**, it is in the interest of the public health, safety and welfare to adopt regulations related to chronic nuisance properties in the City of Burien;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN,  
WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:**

Section 1. A new Chapter 9.120 of the Burien Municipal Code is hereby adopted to read as follows:

**Chapter 9.120  
CHRONIC NUISANCE PROPERTIES**

Sections:

- 9.120.010 Purpose
- 9.120.020 Definitions
- 9.120.030 Violation
- 9.120.040 Procedure
- 9.120.050 Commencement of Action - Enforcement
- 9.120.060 Summary Closure

**9.120.010 Purpose.**

(1) 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. This chapter is enacted to provide a remedy for nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties. This remedy is not the exclusive remedy available under state or local laws and may be used in conjunction with such other laws.

(2) Also, chronic nuisance properties can 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. This chapter provides a practical process for ameliorating such activities and for holding accountable the persons ultimately responsible for such properties.

**9.120.020 Definitions.**

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

(1) "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 city department director or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community.

(2) "Control" means the ability to regulate, restrain, dominate, counteract or govern property or conduct that occurs on a property.

(3) "Chronic nuisance property" means property on which any combination of three (3) or more nuisance activities occur or exist during any sixty (60) day period.

(4) "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 Chapter 9.35 BMC.

(5) "Nuisance activity" means and includes:

(a) 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:

- (i) Title 8 BMC, Health and Safety;
- (ii) Title 15 BMC, Buildings and Construction; and
- (iii) BMC 9.75.100, Public Nuisances.

(b) 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:

- (i) Stalking, BMC 9.80.300;
- (ii) Harassment, BMC 9.80.300;
- (iii) Public disturbance, BMC 9.105.100;
- (iv) Disorderly conduct, BMC 9.105.200;
- (v) Assault, BMC 9.80.100;
- (vi) Domestic violence crimes, BMC [9.80.100](#);
- (vii) Reckless endangerment, BMC 9.80.100;
- (viii) Prostitution, BMC 9.90.010 and .020;

- (ix) Patronizing a prostitute, BMC 9.90.030;
- (x) Public disturbance noises BMC 9.105.400;
- (xi) Crimes relating to public morals, Ch. 9.95 BMC;
- (xii) Crimes relating to firearms and dangerous weapons violation, Ch. 9.50 BMC;
- (xiii) Dangerous animal or cruelty to animal violations, BMC 6.05.300; and
- (xiv) Drug-related activity.

(c) 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.

(6) "Person responsible for property" or "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 ninety (90) days; and/or any person who has control over the property and created, caused, participated in, or has allowed a violation to occur.

(7) "Person" means natural person, joint venture, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, officer or employee of any of them.

(8) "Premises and property" may be used by this chapter interchangeably and means any public or private building, lot, parcel, dwelling, rental unit, real estate or land or portion thereof including property used as residential or commercial property.

(9) "Rental unit" means any structure or that part of a structure, including but not limited to single-family home, room or apartment, which is rented to another and used as a home, residence, or sleeping place by one (1) or more persons.

#### **9.120.030 Violation.**

(1) Any property within the City of Burien which is a chronic nuisance property is in violation of this chapter and subject to its remedies; and

(2) Any person responsible for property who permits property to be a chronic nuisance property shall be in violation of this chapter and subject to its remedies.

#### **9.120.040 Procedure.**

(1) When the Chief of Police, or his/her designee(s), receives documentation confirming the occurrence of three or more nuisance activities within a sixty (60) day period on any property, the Chief of Police, or his/her designee(s), may review such documentation to determine whether it describes the nuisance activities enumerated in BMC [9.120.020](#). Upon such a finding, the Chief of Police, or his/her designee(s), shall warn the person responsible for such property, in writing, that the property is in danger of being declared a chronic nuisance property.

(2) The warning shall contain:

- (a) The street address or a legal description sufficient for identification of the property;
- (b) A concise description of the nuisance activities that exist, or that have occurred on the property;

- (c) A demand that the person responsible for such property respond to the Chief of Police or his/her designee(s) within ten (10) days of service of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;
- (d) Offer the person responsible an opportunity to abate the nuisance activities giving rise to the violation; and
- (e) A statement describing that if legal action is sought, the property could be subject to closure and civil penalties and/or costs assessed up to one hundred dollars (\$100.00) per day if the property is declared a chronic nuisance property.

(3) The Chief of Police or his/her designee(s) shall serve or cause to be served such warning upon the person responsible in accordance with the procedures set forth in BMC 1.15.070.

(4) If the person responsible fails to respond to the warning within the time prescribed, the Chief of Police, or his/her designee(s) shall issue a notice declaring the property to be a chronic nuisance property and post such notice at the property and issue the person responsible a civil infraction, punishable by a maximum penalty of one thousand dollars (\$1,000). If the person responsible fails to respond to the issued infraction and/or continues to violate the provisions of this chapter, the matter shall be referred to the Office of the City Attorney for further action.

(5) If the person responsible responds as required by the notice and agrees to abate the nuisance activity, the Chief of Police, or his/her designee(s), and the person responsible, may work out an agreed upon course of action which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the Office of the City Attorney for enforcement action. Provided, that in the event the Chief of Police or his/her designee(s) or the City Attorney determines that the person responsible has taken reasonable steps to abate the nuisance activity, the City Attorney shall not commence an enforcement action under this chapter, notwithstanding the continuance of the nuisance activity.

(6) 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.

#### **9.120.050 Commencement of Action - Enforcement.**

(1) 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 King County Superior Court for the abatement of the nuisance.

(2) 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.

(3) 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 one hundred dollars (\$100.00) per day for each day the nuisance activity continues to occur following the date of the original warning by the Chief of Police, or his/her designee(s), as described in BMC [9.120.040](#). In assessing the civil penalty, the Court may consider the following factors, citing to those found applicable:

- (a) The actions taken by the person responsible 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; and
- (d) Any other factor deemed relevant by the Court.

(4) 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.

(5) 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.

(6) 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.

(7) The Superior Court shall retain jurisdiction during any period of closure or abatement of the property.

(8) King County District Court is to have jurisdiction of all civil infractions issued pursuant to this chapter.

#### **9.120.060 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 BMC [9.120.040](#), but shall provide such notice as is reasonable under the circumstances.

Section 2. Effective Date. This Ordinance shall take effect five days after publication.

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.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 19<sup>TH</sup> DAY OF NOVEMBER, 2012, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2012.

CITY OF BURIEN

/s/ Rose Clark, Acting Mayor

ATTEST/AUTHENTICATED:

/s/ Monica Lusk, City Clerk

Approved as to form:

/s/ Craig D. Knutson, City Attorney

Filed with the City Clerk: November 13, 2012

Passed by the City Council: November 19, 2012

Ordinance No. 572

Date of Publication: Friday, November 23, 2012