

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: October 13, 2014

AGENDA ITEM: An Ordinance Creating Marysville Municipal Code Chapter 6.23 Related to Chronic Nuisance Properties	AGENDA SECTION: New Business
PREPARED BY: Chris Holland, Planning Manager	APPROVED BY:
ATTACHMENT: Adopting Ordinance	MAYOR CAO
BUDGET CODE:	AMOUNT:

DESCRIPTION:

In Marysville, some property owners allow their properties to be used for unlawful criminal purposes or in a manner that otherwise violates Marysville Municipal Codes. In some cases, the property owners allow these crimes and violations to occur repeatedly despite continued Police and Code Enforcement efforts. These types of properties are considered “Chronic Nuisance Properties.”

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. The activities that occur at these properties often result in numerous service calls to the police, fire and other City departments. The numerous service calls generated by chronic nuisance properties create a financial burden to the City and create a negative living environment for surrounding neighbors.

The City does not have laws in place that provide adequate tools to hold property owners responsible for correcting chronic nuisances when illegal activities and other code violations repeatedly occur on their property. A chronic nuisance property ordinance is an effective tool to address these chronic nuisance properties.

Other jurisdictions that have adopted similar ordinances include, Everett, Shoreline, Renton, Burien, Seattle, Tacoma and Yakima.

RECOMMENDED ACTION:

Approve the attached ordinance creating Marysville Municipal Code Chapter 6.23 related to Chronic Nuisance properties and amending Marysville Municipal Code Section 22G.060.090 related to Hearing Examiner duties.

COUNCIL ACTION:

**CITY OF MARYSVILLE
Marysville, Washington**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE, WASHINGTON, CREATING A NEW CHAPTER 6.23 OF THE MARYSVILLE MUNICIPAL CODE (MMC) RELATED TO CHRONIC NUISANCE PROPERTIES AND AMENDING MMC SECTION 22G.060.090 RELATED TO HEARING EXAMINER DUTIES; PROVIDING FOR SEVERABILITY; AND EFFECTIVE DATE.

WHEREAS, the City Council finds that in certain limited circumstances the City needs a more focused and aggressive approach to dealing with properties that have a documented record of significant ongoing and persistent criminal activity related to drug trafficking, possession, sales and use of illegal drugs and significant numbers of related crimes such as assaults, possession of stolen property, theft, domestic violence and other serious code violations all of which degrade the quality of life in Marysville and seriously affect the public health, and safety of our citizens, businesses; and

WHEREAS, Police and Code enforcement resources can become stretched to their limits in dealing with the type of chronic illegal activities described in the preceding recital; and

WHEREAS, the City Council finds that it is in the public interest to add a new Chapter 6.23 MMC related to chronic nuisance properties and to amend MMC 6.23.060.090 related to hearing examiner duties.

NOW THEREFORE, the City Council of the City of Marysville, Washington do ordain as follows:

Section 1. A new Chapter 6.23 MMC, *Chronic Nuisance Properties*, is hereby created, as follows:

**Chapter 6.23
CHRONIC NUISANCE PROPERTIES**

Section:	
6.23.010	Purpose
6.23.020	Definitions
6.23.030	Chronic nuisance activities - Violation
6.23.040	Determination of chronic nuisance property
6.23.050	Notice of determination of chronic nuisance property
6.23.060	Appeal of chronic nuisance property
6.23.070	Owner cooperation
6.23.080	Voluntary compliance plan and correction agreement
6.23.090	Enforcement

6.23.010 Purpose.

Chronic nuisance properties present significant health, safety, and welfare concerns with a tremendous negative impact upon the quality of life in the neighborhoods where they are located. This chapter provides a remedy for chronic nuisance activities that repeatedly occur or exist on such properties.

6.23.020 Definitions.

For purposes of this chapter:

- (1) "Chief of police" means the city of Marysville chief of police or the chief's designee.
- (2) "Chronic nuisance activity" means:
 - (a) Any of the following activities, behaviors or conduct:
 - (i) Harassment offenses as defined in Chapter 6.50 MMC.
 - (ii) Assault or reckless endangerment as defined in Chapter 6.21 MMC.
 - (iii) Disorderly conduct as defined in MMC 6.24.020.
 - (iv) Indecent exposure and prostitution offenses as defined in Chapter 9A.88 RCW and Chapter 6.30 MMC.
 - (v) Liquor-related offenses as defined in Chapters 66.28 and 66.44 RCW and in Chapters 6.58 and 6.57 MMC.
 - (vi) Littering as defined in Chapter 7.12 MMC.
 - (vii) Fraud-related offenses as defined in Chapter 9A.60 RCW.
 - (viii) Possession, manufacture, or delivery of a controlled substance or related offenses as defined in Chapter 69.50 RCW.
 - (ix) Precursor drug-related offenses as defined in Chapter 69.43 RCW.
 - (x) Controlled substances and drug paraphernalia offenses as defined in Chapter 6.27 MMC.
 - (xi) Violation of Stay Out of Drug Areas (SODA) Order as defined in Chapter 6.28 MMC.
 - (xii) Loitering for the purpose of engaging in drug-related activity as defined in MMC 6.36.020.
 - (xiii) Violation of felony drug off-limits orders as defined in Chapter 10.66 RCW and Chapter 6.28 MMC.
 - (xiv) Gambling-related offenses as defined in Chapters 9.46 and 9.47 RCW and Chapter 5.26 MMC.
 - (xv) Firearms and dangerous weapons offenses as defined in Chapter 9.41 RCW and Chapter 6.60 MMC.
 - (xvi) Public nuisance and disturbance noises as defined in MMC 6.76.060.
 - (xvii) Possession of stolen property offenses as defined in Chapter 9A.56 RCW.
 - (b) Activities, behavior or conduct that is in violation of any of the following City of Marysville regulatory codes:
 - (i) License code (MMC Title 5).
 - (ii) Animal control code (MMC Title 10).
 - (iii) Health and sanitation (MMC Title 7).
 - (iv) Unified Development Code (MMC Title 22).
 - (v) Fire code (MMC Title 9)
 - (vi) Building code (MMC Title 16).
 - (vii) Noise regulation code (Chapter 6.76 MMC).
 - (viii) Washington State Clean Air Act violations.

(c) Nuisance-related activities as defined in Chapters 7.48, 7.48A, 9.66 and 35.22 RCW.

(d) Gang-related activity as defined in RCW 59.18.030.

(e) Multiple nuisance activities contained in a single police incident report are not counted as separate nuisance activities.

(f) Police incident reports generated by calls for service to aid victims on the property shall not be used to determine a chronic nuisance property.

(3) "Chronic nuisance property" is a property which:

(a) For single-family residential property or single-unit commercial property, within a 90-day period:

(i) Has had six or more nuisance activities occur or exist upon the property;

(ii) Has had six 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;

(iii) 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 six or more times; or

(b) For single-family residential property or single-unit commercial property, within a 365-day period:

(i) Has had twelve or more nuisance activities occur or exist upon the property; or

(ii) Has had twelve 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

(iii) 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 twelve or more times; or

(c) For any type of property, a search warrant has been served twice within a 24-month period; or

(d) For multi-family residential or multi-tenant commercial property, within a 180-day period, the following number of nuisance activities described in subsection (2) of this section have occurred on different days:

- | | |
|---------------------------------------|-------------------------|
| (i) Property with two or three units: | 8 nuisance activities. |
| (ii) Property with four to 19-units: | 14 nuisance activities. |
| (iii) Property with 20 to 39 units: | 20 nuisance activities. |
| (iv) Property with 40 to 100 units: | 26 nuisance activities. |
| (v) Property with over 100 units: | 32 nuisance activities. |

A single unit within a multi-family residential and multi-tenant commercial property that meets the definition of subsection (3)(a) or (3)(b) of this section is a chronic nuisance property; and

(e) Any property determined or designated by the Chief of Police and the director after a review of official documentation such as police incident reports, notices and orders to correct, and case files to determine if there are sufficient facts and circumstances to establish probable cause to find the occurrence of nuisance activities.

(f) For the purposes of this section and Section 6.23.030(3), 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, invitee, or tenant of the person in charge of the property.

(4) "City attorney" means the city of Marysville city attorney or the city attorney's designee.

(5) "Control" means the power or ability to direct or determine conditions and/or activities located on or occurring on a property, and any person who has authority to allow others to be present on a property.

(6) "Director" means the city of Marysville director of community development or the director's designee.

(7) "MMC" means the Marysville Municipal Code, as in effect at the date of enactment of the ordinance codified in this section or as thereafter amended.

(8) "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.

(9) "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.

(10) "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.

(11) "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.

(12) "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.

6.23.030 Chronic nuisance activities – Violation.

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

6.23.040 Determination of chronic nuisance property.

The police chief and the director shall review official documentation such as police incident reports, notices and orders to correct, and case files to determine if there are sufficient facts and circumstances to establish probable cause to find the occurrence of nuisance activities to support a designation of the property as a chronic nuisance property.

6.23.050 Notice of determination of chronic nuisance property.

(1) When a property is determined to be a chronic nuisance property, the property owner of record and person in charge of the property shall be served with a notice of determination of chronic nuisance property with the following information:

(a) The name and address of the person to whom the letter is issued;

(b) The location of the subject property by address or other description sufficient for identification of the subject property;

(c) A statement that the city has determined the property to be a chronic nuisance property;

(d) A concise description of the nuisance activities upon which the determination was based, and documentation of the chronic nuisance activities including police case number(s), police incident report numbers, and city of Marysville code enforcement case numbers;

(e) A demand that the property owner of record or the person in charge of the property respond within seven days of service to the notice as directed to abate chronic nuisances which may include submission of a voluntary compliance plan for city approval;

(f) A warning that the persons in charge of the property are potentially civilly and criminally liable and subject to civil infractions and abatement at the owner's expense for continuing to allow chronic nuisance activities, as defined in this chapter, to occur upon the property;

(g) A warning that the property owner of a chronic nuisance property permitted by a person in charge other than the owner, or the owner's agent, must promptly take all steps requested in the notice of determination of chronic nuisance property to assist in abatement of the nuisance property, including pursuing eviction of the person in charge, available to the owner pursuant to any lease and consistent with state law. A statement advising that any person named in the notice of determination of chronic nuisance property or having any record or equitable title in the property against which the notice of determination is recorded may appeal from the notice to the city of Marysville hearing examiner within 14 calendar days of the date of issuance of the notice in accordance with MMC 6.23.060;

(h) A statement advising that a failure to appeal the notice of determination of chronic nuisance property within the applicable time limits renders the determination a final determination, that the conditions described in the notice existed and constituted a chronic nuisance, and that the named party is liable as a responsible party; and

(i) Name and telephone number of the city representative who is responsible for handling inquiries regarding the notice including a statement advising the property owner and person in charge of the property of his or her duty to notify the city of any actions taken to achieve compliance with the notice of determination of chronic nuisance property.

(2) The notice of determination of chronic nuisance shall be served on the property owner of record and the person in charge of the property by the following methods:

(a) By posting the notice of determination of chronic nuisance property in a conspicuous place on the property where the violation occurred and concurrently mailing the notice to the property's address; and

(b) By personal service; or

(c) By mailing a copy by certified mail, return receipt requested, to the property owner of record at the address shown on Snohomish County tax records and to the person(s) in charge of the property at his/her last known address or at the address of their place of business.

6.23.060 Appeal of chronic nuisance property.

(1) Any person named in a notice of determination of chronic nuisance property may file a written appeal to the police chief, or director, within 14 calendar days from the date of service of the notice of determination of chronic nuisance.

(2) The written notice of appeal shall contain a concise statement identifying:

(a) A detailed statement of the grounds for appeal, making reference to each finding, conclusion, or condition which is alleged to contain error;

(b) A detailed statement of the facts upon which the appeal is based; and

(c) The name and address of the appellant and his/her interest(s) in the matter.

(3) An appeal of a determination of chronic nuisance shall not stay the requirement that the specified chronic nuisance activity immediately cease and/or be remedied.

(4) The police chief, or director, shall prepare and transmit to the hearing examiner any appeal of the notice of determination of chronic nuisance, and a hearing shall be scheduled within 60 days of the appeal date. The regulations set forth in MMC Chapter 22G .060 shall apply to the conduct of the hearing and such rules as are promulgated

pursuant to MMC 22G.060.080. The party that must bear the cost of the appeal shall be part of the hearing examiner's decision. The hearing examiner's decision may be reviewed by an action for writ of review in the superior court of Snohomish County filed within 10 calendar days of the decision. If no appeal is filed in the required length of time, the hearing examiner's decision shall be final.

6.23.070 Owner cooperation.

An owner who received a copy of a notice pursuant to MMC 6.23.050 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 police chief or director 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, *Victim protection — Limitation on tenant screening service provider disclosures and landlord's rental decisions*.

6.23.080 Voluntary compliance plan and correction agreement.

As provided in MMC 6.23.050(1)(e), the property owner of record or the person in charge of the property, if not the owner, is responsible for development and submittal of a written voluntary compliance plan. The police chief, and the director, in consultation with the city attorney, shall review the plan for approval. The plan shall establish, at a minimum, the necessary corrective action(s) to be taken to abate the chronic nuisance activity or activities, deadlines for implementation and completion of the plan.

Upon acceptance of the voluntary compliance plan, the property owner of record or the person in charge of the property, if not the owner, shall enter into a correction agreement. 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 property owner of record or the person in charge of the property, if not the owner. The agreement shall include the following:

- (1) The name and address of the property owner of record or the person in charge of the property, if not the owner;
- (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 property owner of record or the person in charge of the property, if not the owner, that the City may inspect the property as may be necessary to determine compliance with the correction agreement;
- (6) An agreement by the property owner of record or the person in charge of the property, if not the owner, that the City may abate the nuisance and recover its costs, expenses and monetary penalties pursuant to local and state law from the property owner of record or the person in charge, if not the owner, 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 police chief and director pursuant to MMC 6.23.070.

6.23.090 Enforcement.

(1) Any person in charge of property that has been determined to be a chronic nuisance property is in violation of this chapter and any property owner of record who fails to comply with MMC 6.23.050 shall be subject to the remedies described herein unless he/she can show by clear and convincing evidence that he/she is in compliance with a voluntary compliance plan and correction agreement, as described in MMC 6.23.080.

(2) If the property owner of record or the person in charge of the property does not respond to a notice of determination of chronic nuisance property within the time proscribed, the person responsible shall be issued a civil infraction, punishable by a maximum penalty of \$1,000.

(3) If the person responsible does not respond to the issued infraction or continues to violate the provisions of this chapter, including the voluntary compliance plan and correction agreement, the matter shall be referred to the office of the city attorney for further action. The city attorney may initiate legal action to abate the chronic nuisance activity which may include vacating any building and securing it against unauthorized access, use, and occupancy for a period of up to one year, with costs of abatement assessed against the owner and, if applicable, payment of relocation assistance costs as provided in RCW 59.18.085.

6.23.100 Additional enforcement provisions.

(1) 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 forced abatement under MMC 6.24.060 and an order of the fire code official under MMC Title 9. 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.

(2) Whenever the city issues a notice of determination of chronic nuisance property to more than one person because of a violation of this chapter, those persons shall be jointly and severally liable.

(3) The failure of the city to prosecute an individual for violation(s) constituting chronic nuisance activities is not a defense to an action under this chapter.

(4) The police chief and the director shall have the authority to promulgate procedures for administering this chapter.

Section 2. MMC 22G.060.090 is hereby amended, as follows:

22G.060.090 Duties.

The examiner is vested with the duty and authority to hold public hearings and render decisions on the following matters:

- (1) Preliminary plats;
- (2) Appeals from administrative decisions on short plats;
- (3) Rezones; except area-wide rezones initiated by the city itself shall be heard by the planning commission;
- (4) Binding site plan approvals when subject to public review;
- (5) Conditional use permits when subject to public review;
- (6) Zoning code variances;
- (7) Administrative appeals from decisions and interpretations by city staff relating to land use codes, SEPA and permits;
- (8) Conditional shoreline development permits, variances and appeals from administrative determinations arising under Chapter 22E.050 MMC;

(9) Complaints by citizens or city staff seeking administrative enforcement of provisions of city land use codes or conditions in development permits and approvals, or seeking rescission or modification of such permits or approvals;

(10) Variances and administrative appeals arising from the city's sign code;

(11) Variances and administrative appeals arising from the city's floodplain management code;

(12) Variances and administrative appeals arising under the city's street department code;

(13) Appeals of suspension or removal of tow truck operators from the city's list under MMC 11.37.060;

(14) Appeals of a chronic nuisance property notice outlined in Chapter 6.23 MMC.

(15) Such other regulatory, enforcement or quasi-judicial matters as may be assigned to the examiner by the mayor and city council.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 4. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2014.

CITY OF MARYSVILLE

By: _____
JON NEHRING, MAYOR

Attest:

By: _____
APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to form:

By: _____
GRANT K. WEED, CITY ATTORNEY

Date of Publication: _____

Effective Date: _____
(5 days after publication)