

ORDINANCE NO. 419N

AN ORDINANCE OF THE TOWN OF GARFIELD, WASHINGTON, relating to abatement of and penalties for public nuisances; adding a new Garfield Municipal Code Chapter 12.03A, entitled "Chronic Nuisance Properties."

WHEREAS, the Town of Garfield Town council finds that people should be able to enjoy ownership, use and possession of property without the negative impacts caused by chronic nuisance properties; and

WHEREAS, some persons who own or control property in the Town allow their properties to be used for illegal purposes, with the result that these properties have become chronic nuisance properties; and

WHEREAS, the current nuisance provisions found in Garfield's Municipal Code do not provide adequate tools for abating chronic nuisances resulting from the use of properties for unlawful purposes; and

WHEREAS, 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 Town; and

WHEREAS, chronic nuisance properties cause a financial burden upon the Town by the numerous calls for service to the properties because of the illegal activities that repeatedly occur or exist on such properties;

NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF GARFIELD, WASHINGTON, DOES ORDAIN as follows:

Section 1. There is hereby adopted as Garfield Municipal Code Chapter 12.03A the following:

**"CHAPTER 12.03A
CHRONIC NUISANCE PROPERTIES**

Sections:

12.03A.010 - Definitions

12.03A.020 - Violation

12.03A.030 - Declaration of Chronic Nuisance Property and Procedure

12.03A.035 - Owner Cooperation

12.03A.040 - Correction Agreement

12.03A.050 - Penalties

12.03A.060 - Commencement of Action – Enforcement

12.03A.070 - Burden of Proof

12.03A.080 - Remedies

12.03A.085 - Additional remedies

12.03A.010 - Definitions. For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever required. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Town" is the Town of Garfield, Washington, a Fourth Class Town and Municipal Corporation of the State of Washington.

"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 chief law enforcement officer determines is necessary in the interest of the general health, safety and welfare of the community.

"Chief law enforcement officer" means the Garfield Town Marshall or his or her designees, or the chief officer or designees of any law enforcement agency with which the Town has contracted to provide policing services to the town.

"Control" means the power or ability to direct or determine conditions, conduct, or events occurring on a property.

"Chronic nuisance property" means:

- 1. A property on which three or more nuisance activities exist or have occurred during any sixty-day period or seven or more nuisance activities have occurred during any twelve-month period; or**

2. 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 probably 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.

"Nuisance activity" means any of the following activities, behaviors, or conduct:

1. Any offenses defined in RCW Title 9 and/or Title 9A.
2. Any violations of the following Titles or Chapters of the Garfield Municipal Code:
 - (a) Chapter 12.08 (firearms);
 - (b) Chapter 12.09 (fireworks);
 - (c) Chapter 12.12 (public health);
 - (d) Chapter 12.14 (junk vehicles);
 - (e) Title 9 (animals);
 - (f) Title 14 (public peace);
 - (g) Chapter 22.16 (manufactured mobile home installations).
3. Liquor related offenses as defined in RCW Chapter 66.28 and 66.44.
4. Possession, manufacture or delivery of a controlled substance or related offenses as defined in RCW Chapter 69.50.

For the purposes of the subsection, all reference to any Garfield Municipal Code Title or Chapter shall refer to such Title or Chapter as in effect as of the date of the enactment of this chapter, or as thereafter amended.

"Owner" means any person who, alone or with others, has title or interest in any property.

"Person" means an individual, group of individuals, corporation, partnership, association, club, company, business trust, joint venture, organization, or any other legal or commercial entity or the manager, lessee, agent, officer or employee of any of them.

"Person in charge" of a property means the owner and, if different than the owner, any other person in actual or constructive possession of a property, including but not limited to, a lessee, tenant, occupant, agent, or manager of a property under his or her control. "Property" means any land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or position thereof.

"RCW" means the Revised Code of Washington.

12.03A.020 - Violation. A. Any property within the Town which is a chronic nuisance property is in violation of this chapter and subject to its terms and remedies;

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 terms and remedies; and

C. An owner who fails to comply with §12.03A.035, (the "Owner Cooperation" section, below) is in violation of this chapter and shall be subject to penalties pursuant to §12.03.050 (the "Penalties" section, below).

12.03A.030 - Declaration of Chronic Nuisance Property and Procedure. A. The chief law enforcement officer may declare that a property is a chronic nuisance property, as defined in this chapter, when there are specific facts and circumstances documenting the occurrence of three or more nuisance activities on a property within sixty days or seven or more nuisance activities within a twelve month period. The chief law enforcement officer shall provide written notice of this declaration (hereinafter the "notice of declaration of chronic nuisance") to the persons in charge of the property. The notice of declaration of chronic nuisance shall be sent by first class mail or personally served, and a copy shall be sent by certified mail. The notice of declaration of chronic nuisance shall contain:

- 1. The street address or legal description sufficient for identification of the property;**
- 2. A declaration that the chief law enforcement officer has determined the property has become a chronic nuisance property with a concise description of the nuisance activities that exist or that have occurred;**

3. A notice that the owner and other persons in charge of the property are subject to monetary penalties as set forth in §12.03A.050 (the "Penalties" section, below);
4. A demand that the owner and other persons in charge respond to the chief law enforcement officer within seven days of service of the notice to discuss a course of action to correct the nuisance;
5. A notice that, if the person in charge does not respond to the chief law enforcement officer as required in this section, or if the matter is not voluntarily corrected to the satisfaction of the chief law enforcement officer, the Town may file an action to abate the property as a chronic nuisance property pursuant to §12.03A.060 (the "Commencement of Action - Enforcement" section, below), and/or take other action against the property or person in charge.

B. When a notice of declaration of chronic nuisance 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 notice 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. If the owner or person in charge responds as required by the notice of declaration of chronic nuisance and agrees to a course of action to abate the nuisance activities, a written correction agreement conforming to the requirements set forth in §12.03A.040 below, shall be executed.

D. If (1) the agreed course of action does not result in the abatement of nuisance activities to the satisfaction of the chief law enforcement officer within thirty days of issuance of the notice of declaration of chronic nuisance or within such longer period as permitted in writing by the chief law enforcement officer or (2) the person in charge fails to respond as required by the notice, the chief law enforcement officer may refer the matter to the Town Council with a recommendation that the Town Council authorize the Town Attorney to initiate proceedings pursuant to §12.03A.060 ("Commencement of Action - Enforcement", below).

12.03A.035 - Owner Cooperation. An owner who receives a copy of a notice of declaration of chronic nuisance, 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 chief law enforcement officer to assist in abatement of the nuisance property. Such reasonable steps may include the owner taking all actions 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, the Victim Protection Limitation on Landlord's Rental Decisions.

12.03A.040 - Correction Agreement. A correction agreement is a contract between the Town 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:

- A. The name and address of the person(s) in charge of the property;
- B. The street address or a description sufficient for identification of the property, building, structure, or land upon or within which the nuisance is occurring;
- C. A description of the nuisance activities;
- D. The necessary corrective action to be taken, and a date or time by which correction must be completed;
- E. An agreement by the person in charge that the Town may inspect the property as may be necessary to determine compliance with the correction agreement;
- F. An agreement by the person in charge that the Town may abate the nuisance and recover its costs, expenses and monetary penalties pursuant to this chapter from the person in charge for abating the nuisance if the terms of the correction agreement are not met; and
- G. When a person in charge, other than an owner or an owner's agent, has permitted a property to be a chronic nuisance property, the agreement shall incorporate an additional agreement by the owner to promptly take all acts and pursue all remedies requested by the chief law enforcement officer pursuant to §12.03A.035 (the "Owner Cooperation" section, above).

12.03A.050 - Penalties. A. Except as otherwise provided in subsection B of this section, in addition to any other sanction or remedial procedure that may be available, the person in charge is subject to a penalty of up to \$500.00 per day from the date the notice of declaration of chronic nuisance issued, until the chief law enforcement officer confirms that the property is no longer a chronic nuisance property.

B. If the agreed course of action results in the abatement of nuisance activities to the satisfaction of the chief law enforcement officer within thirty days of the notice of declaration of chronic nuisance, or such longer period allowed by the chief law enforcement officer pursuant to §12.03A.030(D), above, the matter shall not be referred to the Town Council and the person in charge shall not be subject to any penalty pursuant to this Chapter.

C. An owner who fails to comply with §12.03A.035 (the "Owner Cooperation" section, above) is subject to a civil penalty of up to \$500.00.

12.03A.060 - Commencement of Action – Enforcement. Upon authorization from the Town Council following the recommendation of the chief law enforcement officer as provided in §12.03A.030(D), above, the Town Attorney may initiate an action in any court of competent jurisdiction to abate a chronic nuisance property, to impose penalties pursuant to this chapter, to seek alternative remedies under town or state laws and/or seek any other relief authorized by law.

12.03A.070 - Burden of Proof. In an action against a person in charge to abate a chronic nuisance property or to recover penalties authorized by this chapter, the Town shall have the burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property pursuant to this chapter.

In an action against an owner to recover penalties authorized by §12.03A.050(D) (the "Penalties" section, above), the Town shall have the additional burden to prove by a preponderance of the evidence that the owner failed to comply with §12.03A.035 (the "Owner Cooperation" section, above). Copies of police incident reports and reports of other Town departments documenting nuisance activities shall be admissible in such actions. Additionally, evidence of a property's general reputation and the reputation of persons residing in or frequenting the property shall be admissible in such actions.

12.03A.080 - Remedies. A. If the court determines a property is a chronic nuisance property pursuant to this chapter, the court may order any of the following:

1. Order the person in charge to immediately abate nuisance activity from occurring on the property;
2. Order that the chief law enforcement officer shall have the right to inspect the property to determine if the court's orders have been complied with;
3. Impose a penalty of up to \$500.00 per day against the person in charge for each day from the date the notice of declaration of chronic nuisance was issued, until the chief law enforcement officer confirms that the property is no longer a chronic nuisance property;
4. Make any other order that will reasonably abate nuisance activities from occurring on the property, including authorizing the Town to take action to abate nuisance activities from occurring upon the property if other court orders are not complied with or do not abate nuisance activity on the property and providing that the costs of such Town action are to be paid for by the person in charge of the property.

B. If the court finds that an owner failed to take all reasonable steps requested in writing pursuant to §12.03A.035 (the "Owner Cooperation" section, above), the court shall impose a civil penalty of \$500.00, no part of which shall be deferred or reduced.

12.03A.085 - Additional Remedies. A. In addition to the remedies authorized by §12.03A.080, above, if as part of its order abating a chronic nuisance property, the court orders a person in charge to cease renting or leasing a property, the court may order the person in charge to pay relocation assistance not to exceed \$3,300.00 to any tenant (1) who must relocate because of the order of abatement, and (2) the court finds not to have caused or participated in nuisance activities at the property.

B. For the purposes of this section, the term "tenant" shall have the meaning as set forth in RCW 59.18.030(8)."

Section 2 - Severability. Each separate provision of the ordinances set forth herein shall be deemed independent of all other provisions. If any provision, or any part thereof, be declared invalid, all other provisions, or parts thereof, shall remain valid and enforceable.

Section 3 - Effective Date. This ordinance shall be in full force and effect 5 days after its passage, approval and publication as provided by law.

PASSED BY THE TOWN COUNCIL OF THE TOWN OF GARFIELD, this 13th day of June 2012.

TOWN OF GARFIELD
Whitman County, Washington

Jarrod Pfaff, Mayor

Attest:

By _____
Annie Pillers, Clerk-Treasurer

APPROVED AS TO FORM:

_____ Town Attorney
Stephen Bishop

Passed: June 13, 2012

Published: _____

Effective date: _____