

Presented by: COW
Introduced: 01/13/2020
Drafted by: R. Palmer III

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-30(am)

An Ordinance Related to the Regulation of Chronic Nuisance Properties.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. New Chapter. Title 36 Health and Sanitation, is amended to create a new chapter to read:

36.70 CHRONIC NUISANCE PROPERTY

36.70.010 Purpose.

The purpose of this section is to protect the health, welfare, and safety of the City and Borough's residents and environment by regulating chronic nuisance property. Consistent with A.S. 29.35.125, the intent of this section is to prevent properties from becoming chronic nuisances, provide reasonable procedures to abate properties that are public nuisances, and provide enforcement tools to recover municipal costs in responding to chronic nuisance properties. However, victims of crime are not nuisances and this ordinance shall not be construed as the basis of evicting a tenant solely because the tenant requested assistance as a victim of crime.

36.70.020 Definitions.

Enforcement agent means a person authorized by section 3.45.010 or by law to enforce City and Borough of Juneau laws.

Chronic nuisance property means

1. Residential property that has had eight or more law enforcement responses to a dwelling unit in a twelve-month period.
2. Non-residential property, including common areas of multiple dwelling unit developments, that has had sixteen or more law enforcement responses to a commercial unit, or if none per parcel, in a twelve-month period.

Residential property means an individual parcel, tract, or lot shown on the most recent plat of record containing one or more dwelling units or a mobile home.

Commercial unit means an area within a property that is readily identifiable by visual inspection as an area used by a single business or commercial enterprise.

Property means any property, including continuous parcel or area of land undivided in ownership.

Law enforcement response means a police officer or enforcement agent responded to and charged or issued a warning based on probable cause of a nuisance activity.

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

1. A violation of CBJ 36.20, Nuisances;
2. A violation of CBJ 36.30, Litter;
3. A violation of CBJ 36.40, Solid fuel-fire burning devices;
4. A violation of CBJ 36.50, Tobacco;
5. A violation of CBJ Title 42, Penal code;
6. A violation of A.S. Title 11, Criminal Law;

A nuisance activity does not include a response to any of the following:

1. A report of false information as defined by A.S. 11.56.800 or CBJ 42.30.040, unless the false information was provided by an occupant or owner of the property;
2. A false alarm as defined by CBJ 42.30.030, unless the false alarm was caused, permitted, or allowed by an occupant or owner of the property;
3. A report involving potential child neglect, potential domestic violence as defined in A.S. 18.66.990, or potential stalking under A.S. 11.41.260 or 11.41.270;
4. A report of sexual assault as defined by AS 11.41.410-427;
5. A report of a medical emergency;
6. A report from a tenant or owner of commercial property used as a retail store for law enforcement assistance with (a) theft or potential theft from the retailer, (b) report of the presence or identification of a person subject to a state or federal warrant; or (c) trespass;
7. A report from the tenant or owner of commercial property used as a licensed premises regulated by A.S. Title 4 (alcohol) or A.S. 17.38 (marijuana) for police assistance with law enforcement matters including: (a) a minor seeking unlawful admittance or service, (b) a person under the influence seeking admittance or service, (c) a report of the presence or identification of a person under state or federal warrant, or (d) a person under the influence preparing to operate a motor vehicle upon leaving the premises; or
8. A tenant requesting assistance as a victim of crime.

Owner means the person in whose name the property is listed as owner in the State Recorder's Office is conclusively presumed to be the legal record owner.

Dwelling unit means a structure or portion thereof providing independent and complete cooking, living, sleeping, and toilet facilities for a person or group of persons living as a single housekeeping unit.

36.70.030 Violation.

(a) Subject to subsection (b), the owner shall be liable to the City and Borough of Juneau or the owner and the tenant of a unit thereon shall jointly be liable to the City and Borough of Juneau for a fee of \$400 per additional law enforcement response to a chronic nuisance property.

- (1) For property with more than one owner, all owners shall be jointly liable with the tenant for any fee imposed under this chapter. Actual notice to one owner creates a rebuttable presumption of actual notice to all other owners.
- (2) For property owned by a condominium, a fee based on law enforcement response to a chronic nuisance to a single dwelling unit shall be assessed against the owner of the dwelling unit, jointly with the tenant if there is one, and not against the condominium.
- (3) A tenant shall not be liable for the fee if the tenant's conduct did not require the chronic nuisance law enforcement response and the tenant's right to possession commenced on a date subsequent to the date of the first law enforcement response that is counted for purposes of the fee imposed under this chapter.
- (4) If the chronic nuisance property is a mobile home located in a mobile home park, the fee may not be imposed on the owner or operator of the mobile home park, unless the owner's or operator's conduct caused the chronic nuisance. The fee may be imposed jointly on the owner and tenant of the mobile home.

(b) A person is exempt from liability for the fee established by this chapter if:

- (1) The person is a federal, state, or local government agency;
- (2) The property or unit responded to is used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;
- (3) The municipality has not provided notice to the person in writing as provided in section 36.70.040(b);
- (4) Any person has taken appropriate corrective action and given written notice to police of the action as required by section 36.70.050;
- (5) The owner or tenant of the commercial property or unit responded to has entered a current written agreement with the Juneau Police Department to actively abate nuisance activity on the property; or

- (6) If a lieutenant or higher ranking official of the police department determines appropriate corrective action was taken with respect to a specific chronic nuisance property, the count of law enforcement responses to the unit shall reset to zero, effective the date of the determination.
- (c) The fee imposed by this chapter may be collected in any lawful manner, including bringing an action in court for a personal judgment against any one or more of the persons liable.
- (d) An owner or tenant liable for a fee under this chapter may bring an action in court against a person whose conduct required the law enforcement responses to the chronic nuisance property to recover the amount of the fee and related costs. An owner or tenant shall not be granted any extension of time or continuance to pay the fee based on a pending action against a third party.

36.70.040 Notices.

- (a) **Warning Notice.** The municipality shall provide a warning notice to the owner or the owner and tenant of a property when the number of law enforcement responses approaches a chronic nuisance property. Notice may be by mail and need not be certified. Failure to provide a warning notice under this subsection shall prevent the assessment of fees under this chapter.
- (b) **Notice of Chronic Nuisance Determination.** Prior to assessing a fee under this chapter, the municipality shall notify the owner or owner and tenant, if applicable, in writing when a chronic nuisance property exists.
 - (1) A notice under this section shall be given in a manner reasonably calculated, under all the circumstances, to provide actual notice to the person of the potential liability for the fee. Notice to an owner is sufficient if sent by certified mail, return receipt requested, to the owner's mailing address listed on the real property tax assessment records. If the mailed notice is returned refused for signature by the owner, actual notice shall be conclusively presumed on the date refused. If the mailed notice is returned unclaimed or undeliverable, the municipality shall accomplish notice by another method and attest to the date notice is accomplished by affidavit or in a police report. Notice to the owner or tenant may be accomplished by any lawful manner.
 - (2) The notice shall:
 - (A) Identify the property that is the subject of the notice by street address and legal description, and, if the property has multiple units, identify the dwelling unit or commercial unit;
 - (B) State the number of qualifying law enforcement responses and state additional law enforcement responses to the unit or property may result in imposition of fees under this chapter;

- (C) State the person shall be liable for a fee for each law enforcement response to the chronic nuisance property, unless, within 30 days, a person takes appropriate corrective action promptly and gives written notice to the Juneau Police Department of the action taken;
 - (D) State the amount of the fee per law enforcement response to the chronic nuisance property; and
 - (E) State the name and telephone number of a representative of the Juneau Police Department to contact concerning the notice.
- (3) Appeal right. A Notice of Chronic Nuisance Determination is appealable to a hearing officer designated by the manager pursuant to 36.70.070. No person shall be entitled to appellate review of a Notice of Chronic Nuisance Determination who fails to file a notice of appeal with the municipal clerk's office within 20 days of when the Notice of Chronic Nuisance was served. An appeal of a Notice of Chronic Nuisance is limited to the issue of whether the property is a chronic nuisance.

36.70.050 Appropriate corrective action.

(a) An owner or tenant of a property shall have 30 days from the date notice is accomplished, as required under section 36.70.040(b), to promptly take appropriate corrective action. Appropriate corrective action is action reasonably expected to correct the cause of the law enforcement responses to the property. Police officers holding the rank of lieutenant or higher are authorized to determine whether corrective action is appropriate under the specific circumstances. The officer's determination shall be in writing and issued within five days of receipt of the person's written notice of the action taken. Should the officer determine the action taken is not appropriate corrective action, the officer shall explain the reasons and the person shall have ten days from the date of the determination to take appropriate corrective action. Examples of appropriate corrective action may include:

- (1) Written notice to quit under AS 09.45.100—09.45.110;
- (2) Eviction notice served on the tenant or lessee requiring vacation of the premises within 30 days or a reasonable time;
- (3) Obtaining a restraining order, or issuance of a no trespass order;
- (4) Installation or implementation of new or additional security measures;
- (5) Constructing, reconstructing, or removing a structure from the property; or
- (6) Action recommended by the Juneau Police Department in writing and implemented to the satisfaction of a police officer the rank of lieutenant or higher.

(b) Appropriate corrective action does not include:

- (1) Relocating a tenant or lessee of a unit to a different unit on the same property, unless a police officer the rank of lieutenant or higher determines the relocation is reasonable under the circumstances. If a person is relocated, the municipality may transfer the number of law enforcement responses from the former unit to the new unit.
 - (2) Communicating only orally with the person causing the law enforcement responses.
- (c) No fee may be imposed for additional law enforcement responses to the unit that is the subject of the notice during the 30-day period allowed under subsection A. if any person takes appropriate corrective action and gives written notice to the Juneau Police Department of the action taken during the 30-day period. There is a conclusive presumption that appropriate corrective action was taken if there are no additional law enforcement responses to the property from the end of the 30-day period and for the next 60 days.

36.70.060 Lien on property.

- (a) A fee imposed under Section 36.70.030(a) is a lien on the property to which there have been an excessive number of law enforcement responses to a chronic nuisance property.
- (b) The lien becomes effective upon the recording of a Notice of Chronic Nuisance Lien that:
- (1) Describes the property that is the subject of the lien;
 - (2) States the amount of fees accrued at the time of recording;
 - (3) States the lien has been recorded pursuant to this section; and
 - (4) The notice is then served on the property owner.
- (c) When a Notice of Chronic Nuisance Lien has been recorded, the lien has priority over all other liens except:
- (1) Liens for property taxes, special assessments, and sales and use taxes;
 - (2) Liens perfected before the recording of the lien under this section; and
 - (3) Mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the lien under this section.
- (d) A Notice of Chronic Nuisance Lien is appealable after recording to a hearing officer designated by the manager pursuant to 36.70.070. No person shall be entitled to appellate review of a Notice of Chronic Nuisance Lien who fails to file a notice of appeal with the hearing officer at the city manager's office within 20 days of when the Notice of Chronic Nuisance Lien was served.

An appeal of a Notice of Chronic Nuisance Lien is limited to the issue of whether the person is liable for each fee imposed under this chapter.

36.70.070 Appeal hearing.

A hearing before a hearing officer shall be informal and be held within 15 days of receipt of the notice of appeal unless extended for good cause. Relevant evidence must be admitted if it is probative of a material fact in controversy. Irrelevant and unduly repetitive evidence shall be excluded. The hearing officer shall issue a written decision within 15 days of the hearing. A decision from a Notice of Chronic Nuisance Determination appeal is not a final administrative decision. A decision from a Notice of Chronic Nuisance Lien appeal is a final administrative decision of the City and Borough of Juneau. Within 30 days of service of the written decision, a person aggrieved by the decision may appeal to the Superior Court of the First Judicial District in Juneau in accordance with the Alaska Rules of Appellate Procedure.

36.70.080 Sunset provision.

No property shall be deemed a chronic nuisance three years after Ordinance 2019-30 becomes effective.

Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 3rd day of February, 2020.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk