

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1879

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, ADDING A NEW CHAPTER 8.06 TO THE FIFE MUNICIPAL CODE REGARDING ABATEMENT OF CHRONIC NUISANCE TRANSIENT ACCOMMODATION PROPERTIES AND AMENDING SECTION 5.01.150 REGARDING BUSINESS LICENSES**

WHEREAS, the City of Fife has the statutory and police power authority to define and abate nuisances and punish practices dangerous to the public health and safety; and

WHEREAS, a disproportionate amount of nuisance activity in the City occurs at hotels and motels (collectively known as transient accommodation properties), compared to other uses; and

WHEREAS, the City Council desires to enact local legislation to supplement existing legislation and define penalties for chronic nuisance transient accommodation properties; and

WHEREAS, the City Council finds that nuisance activities at transient accommodation properties can greatly impact quality of life, that chronic nuisance activities can convey the message that an area may be vulnerable to crime and unsafe, and that controlling nuisance activities at transient accommodation properties enhances safety and quality of life in the community; and

WHEREAS, the City Council finds that provisions of this Ordinance are necessary for the public health, safety and welfare; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. A new Chapter 8.06 is hereby added to the Fife Municipal Code, titled “Chronic Nuisance Transient Accommodation Properties” to read as follows:

**Chapter 8.06 CHRONIC NUISANCE TRANSIENT ACCOMMODATION PROPERTIES**

**8.06.010 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 chief of police determines is necessary in the interest of the general health, safety and welfare of the community.

(2) "Chief of police" means the chief of the Fife police department or his or her designees.

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

(4) "Chronic nuisance transient accommodation property" means:

A. A transient accommodation property on which 0.27 or more nuisance activities per lodging unit as described in subsection (5) of this section exist or have occurred during any sixty-day period or 0.76 or more nuisance activities have occurred during any twelve-month period, or

B. A transient accommodation 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 probable 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.

(5) "Nuisance activity" includes:

A. A "most serious offense" as defined in RCW 9.94A.030;

B. Any activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW, or FMC Chapters 9.20 or 9.21.

C. Any of the following activities, behaviors or criminal conduct:  
Assault, harassment or reckless endangerment, as defined in FMC Title 9;  
Assault in the third degree as defined in RCW 9A.36.031;  
Permitting, promoting, patronizing, advancing or profiting from prostitution as defined in RCW Chapter 9A.88;  
Prostitution as defined in RCW Chapter 9A.88;  
Obstructing pedestrian or vehicular traffic, as defined in FMC 9.37.020;  
Failure to disburse, as defined in RCW 9A.84.020;  
Weapons violations, as defined in RCW Chapter 9.41;  
Drug loitering, as defined in FMC Chapter 9.22;  
Prostitution loitering as defined in FMC Chapter 9.23;  
Child molestation in the third degree as defined in RCW 9A.44.089;  
Sexual misconduct with a minor as defined in RCW 9A.44.093 or 9A.44.094;

"Criminal street gang-related offense" as defined in RCW 9.94A.030.

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

(7) "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.

(8) "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.

(9) "Transient accommodation" means any facility such as a hotel, motel, condominium, resort, or any other facility or place offering six or more lodging units to guests for periods of less than thirty days, but shall not include jails, hospitals, asylums, sanitariums, orphanages, prisons, detention homes, and similar facilities.

(10) "Transient Accommodation Property" means any land containing a facility for transient accommodation, including associated parking area, recreation area, loading area, landscaping, or other amenities.

(11) "RCW" means the Revised Code of Washington.

(12) "Lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification.

#### **8.06.020 Violation.**

A. Any property within the city of Fife which is a chronic nuisance transient accommodation property is in violation of this chapter and subject to its remedies;

B. Owners and other persons in charge who permit property to be a chronic nuisance transient accommodation property shall be in violation of this chapter and subject to its remedies; and

C. An owner who fails to comply with FMC 8.06.035 is in violation of this chapter and may be subject to penalties pursuant to FMC 8.06.050.

#### **8.06.030 Declaration of chronic nuisance property and procedure.**

A. The chief of police may declare that a property is a chronic nuisance transient accommodation property, as defined in this chapter, when there are specific facts and circumstances documenting (1) the occurrence of 0.27 or more nuisance activities per lodging unit on a property within sixty days or 0.76 or more nuisance activities per lodging unit within a twelve-month period, or (2) activity on a property as described in FMC 8.06.010(4)(B). The chief of police shall provide written notice of this declaration to the persons in charge of the property. The notice shall be sent by first class mail or personally served, and a copy shall be sent by certified mail. The notice shall contain:

1. The street address or a legal description sufficient for identification of the property;

2. A declaration that the chief of police 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 FMC 8.06.050;

4. A demand that the owner and other persons in charge respond to the chief of police 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 of police as required in this section, or if the matter is not voluntarily corrected to the satisfaction of the chief of police, the city may file an action to abate the property as a chronic nuisance transient accommodation property pursuant to FMC 8.06.060 and/or take other action against the property or person in charge.

B. When a notice 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 transient accommodation 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 issued pursuant to subsection A of this section and agrees to a course of action to abate the nuisance activities, a written correction agreement conforming to the requirements of FMC 8.06.040 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 of police within thirty days of issuance of the notice pursuant to subsection A of this section, or within such longer period as permitted in writing by the chief of police, or (2) the person in charge fails to respond as required by the notice, the chief of police may refer the matter to the city attorney for initiation of proceedings pursuant to FMC 8.06.060.

#### **8.06.035 Owner cooperation.**

An owner who receives a copy of a notice pursuant to FMC 8.06.030(B) describing a chronic nuisance transient accommodation 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 of police 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.

#### **8.06.040 Correction agreement.**

A. A correction agreement is a contract between the city and the person in charge of the chronic nuisance transient accommodation 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:

1. The name and address of the person(s) in charge of the property;
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 person in charge that the city may inspect the property as may be necessary to determine compliance with the correction agreement;
6. An agreement by the person in charge that the city 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
7. When a person in charge, other than an owner or an owner's agent, has permitted a property to be a chronic nuisance transient accommodation property, an agreement by the owner to promptly take all acts and pursue all remedies requested by the chief of police pursuant to FMC 8.06.035.

B. Corrective action may include, but is not limited to, one or more of the following:

1. Have a representative available on the premises at all times.
2. Install and operate a surveillance camera (with recorder) in the lobby for 24 hours per day, seven days per week.
3. Provide the Fife police department with the names and dates of birth of all owners, managers, and employees to allow for background checks.
4. Hold semi-annual employee training sessions, assisted by the Fife police department.
5. Provide 24-hour front desk personnel.
6. Enforce the following guest rules:
  - (a) Units cannot be rented for less than a six-hour period.
  - (b) No unit may be used for drunkenness, fighting, or breaches of the peace. No unit may be used if loud noises come from that unit. Loud noises are those noises that disturb the tranquility of the neighborhood or those noises that would be disturbing to a reasonable person.
  - (c) Alcohol may not be consumed in common areas except for designated banquet or reception rooms or areas.
7. Maintain a daily key log. Each key that is found to be missing must have its corresponding lock re-keyed prior to the unit being rented. Each master key that is found to be missing will require the establishment to re-key all corresponding locks.
8. Issue parking passes to all vehicles to be allowed to park on the premises with each pass marked with the issue date and expiration date.
9. Participate in the Fife police department "criminal trespass program." Participation shall mean the facility shall be registered in the "criminal trespass program."

10. Remove all graffiti and repair all vandalism within seven days of occurrence.

11. Permit an annual inspection by the city of Fife building official to ensure that guestrooms are maintained according to applicable building, fire, and health code regulations.

12. Follow crime prevention through environmental design (CPTED) standards for landscaping/plant maintenance. These standards will be provided by the Fife police department.

13. Install lighting in all common areas with minimum maintained lighting of 1.5 foot-candles at ground level.

14. Install and operate video monitoring equipment in all parking lots, monitored and recorded at the front desk 24 hours per day, seven days per week.

15. Have a licensed, armed and uniformed security guard on the premises every day from 6:00 p.m. until 6:00 a.m.

16. Submit to scheduled semi-annual audits by the city of Fife police department to verify compliance with the above-referenced requirements.

17. Undergo a Fife police department crime prevention assessment of their property to be conducted by the Fife police crime prevention unit using standards from the crime prevention through environmental design (CPTED) program.

#### **8.06.050 Penalties.**

A. Except as provided in 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 five hundred dollars per day from the date of the notice issued pursuant to FMC 8.06.030(A) until the chief of police confirms that the property is no longer a chronic nuisance transient accommodation property.

B. If the agreed course of action results in the abatement of nuisance activities to the satisfaction of the chief of police within thirty days of the notice issued pursuant to FMC 8.06.030(A), or such longer period allowed by the chief of police pursuant to FMC 8.06.030(D), the matter shall not be referred to the city attorney and the person in charge shall not be subject to any penalty pursuant to this chapter.

C. An owner who fails to comply with FMC 8.06.035 is subject to a civil penalty of up to twenty-five thousand dollars.

#### **8.06.060 Commencement of action—Enforcement.**

Upon referral pursuant to FMC 8.06.030, the city attorney may initiate an action in any court of competent jurisdiction to abate a chronic nuisance transient accommodation property, to impose penalties pursuant to this chapter, to seek alternative remedies under city or state laws and seek any other relief authorized by law.

#### **8.06.070 Burden of proof.**

In an action against a person in charge to abate a chronic nuisance transient accommodation property or to recover penalties authorized by this chapter, the city shall have the burden of proof to show by a preponderance of the evidence that the property is a chronic transient accommodation nuisance property pursuant to this chapter.

In an action against an owner to recover penalties authorized by FMC 8.06.050(D), the city shall have the additional burden to prove by a preponderance of the evidence that the owner failed to comply with FMC 8.06.035. Copies of police incident reports and reports of other city 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.

#### **8.06.080 Remedies.**

A. If the court determines a property is a chronic nuisance transient accommodation 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 of police 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 five hundred dollars per day against the person in charge for each day from the date the notice pursuant to FMC 8.06.030(A) was issued until the chief of police confirms that the property is no longer a chronic nuisance property, (4) order the property closed and secured against all unauthorized access, use and occupancy for a period up to one year, (5) make any other order that will reasonably abate nuisance activities from occurring on the property, including authorizing the city 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 city action are to be paid for by the person in charge of the property. If the court orders closure of the property, the court may authorize the City to physically secure the premises and initiate such closure, and provide that the costs for such closure 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 FMC 8.06.035, the court may impose a civil penalty up to twenty-five thousand dollars.

C. 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 auditor.

#### **8.06.090 Suspension or revocation of business license.**

In addition to any other remedy that is authorized by this chapter or other laws, upon the finding by a court that a property is a chronic nuisance transient accommodation property pursuant to this chapter, the person in charge is subject to the suspension or

revocation of a business license or other license issued by the city and required at such property, including but not limited to licenses issued pursuant to FMC Title 5.

#### **8.06.100 Review of Thresholds.**

Every two years, the City Council shall endeavor to review, and if deemed appropriate, adjust the sixty-day and annual chronic nuisance thresholds.

Section 2. Section 5.01.150 of the Fife Municipal Code is hereby amended to read as follows:

#### **5.01.150 License suspension or revocation.**

In addition to the other penalties provided herein or by law, any license issued under the provisions of this title may be revoked or suspended, should any or all of the following apply:

A. The license was procured by fraud, false representation, or material omission of fact; or

B. The licensee or any of its employees, officers, agents or servants, while acting within the scope of their employment, violates or fails to comply with any of the provisions of this title; or

C. The licensee's continued operation of the business for which the license was issued has or will result in a danger to the public health, safety or welfare, or the violation of any federal or state law or any ordinance or regulation of the city; or

D. The operation of the business for which the license was issued has resulted in the creation of a public nuisance as defined in the FMC, or state statute or common law; or

E. The licensee, or any of its employees, officers, agents or servants, has been convicted in any court of violating any federal, state or city criminal statute or ordinance upon the business premises stated in the license; or

F. The location at which the business is being conducted does not conform to city ordinances; or

G. The license is being used for a purpose different from that for which it was issued; or

H. The property at which the business is located has been determined by a court to be a chronic nuisance transient accommodation property as provided in FMC Chapter 8.06.

Section 3. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the




remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 4. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced the 12<sup>th</sup> day of Aug., 2014.

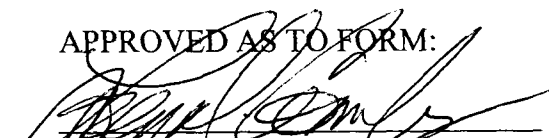
Passed by the City Council on the 9<sup>th</sup> day of Sept. 2014.

  
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Subir Mukerjee, Interim City Manager

ATTEST:

  
\_\_\_\_\_  
Carol Etgen, City Clerk

APPROVED AS TO FORM:

  
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Loren D. Combs, City Attorney

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