

ORDINANCE NO. 108

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; AND REPEALING ORDINANCES NO. 13, 51, AND 51-1210.

Dunes City ordains as follows:

Section 1. Definitions.

Person. A natural person, firm, partnership, association or corporation.

Person in charge of property. An agent, occupant, lessee, contract purchaser or other person having possession or control of property or supervision of a construction project.

Person responsible. The person responsible for abating a nuisance includes:

- (1) The owner.
- (2) The person in charge of property, as defined in this section.
- (3) The person who caused a nuisance, as defined in this ordinance or another ordinance of the city, to come into or continue into existence.

Animals

Section 2. Dogs. No person shall permit a dog owned or controlled by the person to disturb the public peace by molesting other persons, chasing vehicles, attacking other animals or by damaging the property of another person.

Section 3. Removal of Carcasses. No person shall permit an animal carcass owned or controlled by the person to remain upon public property, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass.

Section 4. Dangerous Animals.

(1) No owner or person in charge of a dangerous animal shall permit the animal to be at large, or to damage or endanger the property of another person.

(2) For the purposes of this section the following mean:

At large. Off the premises of the owner, and not under complete control by adequate leash.

Dangerous animal. Any animal, ~~other than a dog~~, which has the propensity to bite or attack any person without provocation and the capacity to inflict serious harm on that person. It shall be presumed that any animal, ~~other than a dog~~, which has injured

a human being on two occasions without provocation is a dangerous animal.

[Sections 5 to 10 reserved for expansion]

Nuisances Affecting Public Safety

Section 11. Creating a Hazard. No person shall create a hazard by:

(1) Maintaining or leaving, in a place accessible to children, a container with a compartment of more than one and one-half cubic feet capacity and a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside.

(2) Being the owner or otherwise having possession of property on which there is a well, cistern, cesspool, excavation, or other hole of a depth of 4 feet or more, and a top width of 12 inches or more and failing to cover or fence it with a suitable protective construction.

Section 12. Unsafe Buildings. No person shall permit a building owned by the person to be in an unsafe condition, as defined in the building code of the state of Oregon.

Section 13. Discarded and Inoperable Vehicles.

(1) No person shall store or permit the storing of a discarded vehicle upon private property within the city for a period of time in excess of 72 hours unless the vehicle is completely enclosed within a building or unless it is in connection with a lawfully conducted business enterprise dealing in junked vehicles.

(2) For the purposes of this section, "discarded vehicle" means a vehicle, whether it has an unexpired license plate lawfully affixed or not, that is in one or more of the following conditions:

- (a) Inoperative.
- (b) Wrecked
- (c) Dismantled in whole or part.
- (d) Abandoned.
- (e) Junked

(3) A discarded vehicle nuisance may be abated through the procedures of this ordinance, including making the costs of abatement a lien against the real property from which the vehicle is removed. If the city abates the nuisance by removing the vehicle, the provisions of the Oregon Vehicle Code pertaining to removal of abandoned vehicles shall be followed, and the vehicle may be sold to recover the costs of abatement.

[Sections 14 to 20 reserved for expansion]

Nuisances Affecting Public Health

Section 21. Nuisance Affecting Public Health.

No person shall cause or permit a nuisance affecting public health on property owned or controlled by the person. The following are nuisances affecting public health and may be abated as provided in this ordinance.

(1) Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with State Health Division regulations.

(2) Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and ^{to be set by the city} that affect the health of the city.

(3) Stagnant water that affords a breeding place for mosquitoes and other insect pests.

(4) Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

(5) Decayed or unwholesome food offered for human consumption.

(6) Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.

(7) Drainage of liquid wastes from private premises.

(8) Cesspools or septic tanks that are in an unsanitary condition or that cause an offensive odor.

[Sections 22 to 25 reserved for expansion]

Nuisances Affecting Public Peace

Section 26. Noise.

(1) No person shall create or assist in creating or permit the continuance of unreasonable noise in the city. The following enumeration of violations of this section is illustrative of some unreasonable noises, but is not exclusive.

(a) Keeping an animal that disturbs the comfort and repose of a person in the vicinity by loud and frequent or continued noise.

(b) Using an engine, thing or device that is so loaded, out of repair, or operated in such a manner that it creates a loud or unnecessary grating, grinding, rattling or other noise.

(c) Using a mechanical device operated by compressed air, steam or otherwise, unless the noise created by it is effectively muffled.

(d) Using or operating an automatic or electric phonograph, loudspeaker, or sound amplifying device so loudly that it disturbs persons in the vicinity.

(2) Noise is presumed to be unreasonable if, during the hours of 7 a.m. to 6 p.m., it is audible to a person of normal hearing at a distance of 75 yards, or, during the hours of 6 p.m. to 7 a.m., it is audible at a distance of 50 yards.

(3) When a determination is made as to the reasonableness of a noise, the business purpose or economic necessity of the cause will be taken into consideration, but will not be considered a justification.

[Sections 27 to 30 reserved for expansion]

Unenumerated Nuisances

Section 31. Unenumerated nuisances.

(1) The acts, conditions or objects specifically enumerated and defined in sections 2 to 26 are declared public nuisances and may be abated by the procedures set forth in sections 32 to 36.

(2) In addition to the nuisances specifically enumerated in this ordinance, every other thing, substance or act that is determined by the council to be injurious or detrimental to the public health, safety or welfare of the city is declared a nuisance and may be abated as provided in this ordinance.

Abatement Procedure

Section 32. Inspection and Notice.

(1) When a signed written allegation is presented to the recorder that a nuisance as defined in this ordinance exists, the recorder shall notify the mayor, who will designate a person or persons to inspect whether a nuisance exists.

(2) If the inspectors conclude, as a result of the inspection, that a nuisance exists, they shall inform the mayor. The mayor shall then direct the recorder to post on the property where the nuisance exists, a notice directing the owner and person in charge of the property to abate the nuisance.

(3) At the time of the posting of notice, the recorder shall send a copy of the notice by registered or certified mail to the owner and the person in charge of the property to the last known address of the person or persons.

(4) The notice to abate shall include the following:

(a) A description of the real property, by street address or otherwise, on which the nuisance exists.

(b) A description of the nuisance.

(c) A direction to abate the nuisance within 10 days from the date of the notice.

(d) A statement that, unless the nuisance is removed, the city may abate the nuisance and the cost

of abatement will be charged as a lien against the property.

(e) A statement that failure to abate a nuisance may warrant imposition of a fine.

(f) A statement that the owner or other person in charge of the property may protest the abatement by giving notice to the recorder within 10 days of the date on the posted or mailed notice, whichever is later.

(5) Upon completion of the posting and mailing, the recorder shall execute and file a certificate stating the date and place of the mailing and posting.

(6) An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or person in charge shall not make the notice void, and in such case the posted notice shall be sufficient.

Section 33. Abatement by the Person Responsible.

(1) Within 10 days after the posting and mailing of the notice as provided in section 32, the owner or person responsible shall remove the nuisance or file a statement that no nuisance exists, as provided in subsection 2. *See 33*

(2) The owner or person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the recorder.

(3) The statement shall be referred to the council as a part of its regular agenda at the next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the council, as may the person complaining of a nuisance, and other interested parties. The council shall determine whether a nuisance in fact exists, and the determination shall be entered in the official minutes of the council. Council determination shall be required only in those cases where written objection to the notice has been filed.

(4) If the inspection designated in section 32 determines that an emergency exists, the inspector shall notify the mayor, and the mayor may call an emergency meeting of the council and cause to be served on the owner and the person in charge of the property a notice that they must attend the emergency meeting if they wish to object to the proceeding. The emergency meeting shall be conducted pursuant to the regular abatement proceedings in so far as reasonably practical to do so.

(5) If the council determines a nuisance does exist, the person responsible shall within five days after the council meeting and determination, abate the nuisance, unless the council has granted a longer time to abate the nuisance for good and sufficient cause. If the council determines that an emergency exists, it may order the nuisance abated within 24 hours.

Section 34. Joint Responsibility. If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

Section 35. Abatement by the City.

(1) If the nuisance has not been abated by the person responsible within the time allowed, the city may cause the nuisance to be abated.

(2) The recorder shall keep an accurate record of the expenses, including attorney costs, incurred by the city in abating the nuisance and shall include in those expenses a charge of 15 percent for the expenses of administration overhead.

Section 36. Assessment of Costs.

(1) The recorder shall forward to the owner and the person in charge of the property, by registered or certified mail, a notice stating:

(a) The total cost of abatement, including the administrative overhead.

(b) That the cost will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(c) That if the owner or person in charge of the property objects to the cost of abatement they may file a written notice of objection with the recorder not more than 10 days from the date of the notice.

(2) At least 10 days after the date of the notice, the council, in the regular course of business shall hear and determine the objections to the cost to be assessed.

(3) If the abatement costs are not paid within 30 days from the date of the notice, the assessment of the cost stated or determined by the council shall be made by resolution and entered in the docket of city liens, and shall constitute a lien on the property from which the nuisance was removed.

(4) The lien may be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the legal rate of interest. The interest shall commence to run from the date of the entry of the lien in the lien docket.

(5) An error in the name of the owner or the person in charge of the property or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property.

General

Section 37. Summary Abatement. The procedure provided by this ordinance is not exclusive, but is in addition to any procedure provided by other ordinances. The city may proceed summarily to abate a health or other nuisance which

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unmistakably exists and which imminently endangers human life or property.

Section 38. Penalties.

(1) A violation of a provision of this ordinance is punishable by a fine not to exceed \$500. Each day's violation constitutes a separate offense.

(2) The abatement of a nuisance is not a penalty for violating this ordinance, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance.

Section 39. Severability. The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 40. Repeal. Ordinance No. 13, enacted July 12, 1965; Ordinance No. 51, enacted September 14, 1978, as amended by Ordinance No. 66, enacted October 11, 1979; and Ordinance No. 51-1210, enacted February 11, 1982, are repealed.

Passed by the City Council of Dunes City, Lane County, Oregon, this 11th day of December, 1986, by the following vote:

Aye 6 Nay 0 Absent 1

APPROVED BY THE MAYOR THIS
15th DAY OF December, 1986.


JAMES E. BAUMEISTER, Mayor

ATTEST:


BETTY STOCKING, City Recorder

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