

**ORDINANCE NO. 400****AN ORDINANCE REPEALING ORDINANCE NO. 99 ENTITLED “NUISANCES” IN ITS ENTIRITY AND REPLACING ORDINANCE NO. 99 WITH A NEW ORDINANCE ENTITLED “PUBLIC NUISANCES” AND OTHER MATTERS PROPERLY RELATED THERETO**

The City of Coos Bay ordains as follows:

**Section 1. Definitions**

1. Abate means to remove, destroy or to otherwise remedy an unlawful condition, by such means and such manner as is necessary in the interests of the general health, safety and welfare of the community.
2. Debris means the remains of something broken down or destroyed including, but not limited to scrap metal, scrap paper, scrap plastic or scrap wood; pieces of asphalt, concrete, lumber or other building supplies; or yard clippings or cuttings of plant material.
3. Garbage means food waste, animal and vegetable waste, dead animal carcasses, refuse, rubbish trash, or other useless or discarded material.
4. Hearing Officer means a person appointed to conduct hearings.
5. Junk means all inoperable motor vehicles in which multiple major components are defective or removed for more than 30 consecutive days; any motor vehicle which has been unlicensed for more than 30 consecutive days; defective motor vehicle parts, abandoned automobiles, used tires, inoperable and defective machinery, or parts thereof, inoperable and defective appliances and parts thereof, metal portions of inoperable machinery, broken glass, empty glass, plastic or metal containers, scrap lumber, broken furniture, other wastes and or discarded materials, mattresses, or such trash or abandoned materials or anything whatsoever in which flies, mice or rats may breed. As used in this ordinance, such refers only to materials left outside of any building and does not apply to materials stored inside a lawfully constructed building so long as such building is wholly enclosed except for doors for ingress and egress.
6. Nuisance is defined as the doing of any act, failing to perform any duty, or permitting or causing any condition or thing to exist which results in a substantial and unreasonable interference with an abutting property owner or occupier’s use and enjoyment of their property, or adversely effects the public health, safety or welfare of the City, as specified more particularly herein.
6. Director means the Director of Public Works and Community Development.
7. Civil Violation means a violation of a provision of this ordinance, for which a monetary penalty may be imposed under this ordinance. Each day in which a violation occurs or continues to exist is a separate violation.

8. Code Enforcement Officer. Employee of the City who is charged with enforcing this ordinance.
9. Person. A natural person, firm, partnership, association or corporation.
10. 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.
11. Person responsible. The person responsible for abating a nuisance includes:
  - a. The owner.
  - b. The person in charge of property, as defined in this section.
  - c. The person who caused a nuisance, as defined in this ordinance or another ordinance of the city, to come into or continue in existence.

**Section 2. Nuisances 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, including but not limited to, 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 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.
9. Mastics, oil, grease or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system.
10. Animal carcasses on streets or private or public property.

11. Animals or birds afflicted with communicable diseases.
12. Trash, litter, rags, accumulations of empty barrels, boxes, crates, packing cases, mattresses, bedding, packing straw, hay or other packing material, lumber, scrap iron, tin, and other metal or anything whatsoever in which flies, rats or other rodents may breed or multiply or in which may be a fire danger, or which constitutes a hazardous attraction to children.
13. Maintaining or keeping a junk vehicle or parts thereof in the City, except in an authorized wrecking yard zoned for such use.
14. Any refrigerator, freezer, or other insulated container within which a child could suffocate.
15. Toxic, radioactive, caustic, flammable, explosive or other dangerous or hazardous substances, except for as housed where applicable and stored in accordance with health, environmental, refuse zoning laws.

**Section 3. Attractive Nuisances.** No owner or person in charge of property shall permit on the property:

1. Unguarded machinery, equipment or other devices which are unattractive, dangerous and accessible to children.
2. Lumber, logs or piling placed or stored in a manner so as to be attractive, dangerous and accessible to children.
3. Excavations remaining open for an unreasonable amount of time without erecting proper safeguards or barriers against children.
4. Natural or human-caused sand pits left open for an unreasonable amount of time without erecting proper safeguards or barriers against children.

**Section 4. Noxious Vegetation.**

1. No owner or person in charge of real property shall allow noxious vegetation on the property. Noxious vegetation is declared a nuisance.
2. The owner or person in charge of real property shall abate noxious vegetation from the property. The owner and the person in charge shall be jointly and severally liable for the cost of abatement as provided in this ordinance.
3. For purposes of this section, "noxious vegetation" means:
  - a. Vegetation that is, or is likely to become:
    - (1) A health hazard;
    - (2) A fire hazard;
    - (3) A traffic hazard, because it impairs the view of the public thoroughfare, or otherwise makes use of the thoroughfare hazardous.
  - b. Poison oak.

- c. Poison ivy.
  - d. Blackberry bushes that extend into a public way, a pathway frequented by children, cross a property line, or that are used for a habitation by trespassers.
  - e. Gorse.
  - f. Scotch Broom
4. No owner or person in charge of property shall allow noxious vegetation to be on the property or in the right of way of a public thoroughfare abutting on the property. An owner or person in charge of property shall cut down or destroy noxious vegetation as often as needed to prevent it from becoming a health or fire hazard, or, in the case of weeds or other noxious vegetation, from maturing or from going to seed.

**Section 5. Unauthorized Dumping.** No person shall deposit, on public or private property, rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property or would be likely to injure a person, animal or vehicle traveling on a public way.

**Section 6. Trees.**

1. No owner or person in charge of property that abuts on a street or public sidewalk shall permit trees or bushes on the property to interfere with street or sidewalk traffic. An owner or person in charge of property that abuts on a street or public sidewalk shall keep all trees and bushes on the premises, including the adjoining parking strip, trimmed so that any overhanging portions are at least eight (8) feet above the sidewalk and at least twelve 12 feet above the roadway.
2. No owner or person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to persons or property on or near the property.

**Section 7. Fences.**

1. No owner or person in charge of property shall construct or maintain a barbed-wire fence, or permit barbed wire to remain as part of a fence, along a sidewalk or public way; except such wire may be placed above the top of other fencing not less than six (6) feet, six (6) inches high.
2. No owner or person in charge of property shall construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person, without written permission of the City Manager.
3. Fences exceeding four (4) feet in height shall be prohibited on the bay side of Bayshore Drive north of Elrod Avenue excepting that portion between Highland Avenue and Fir Avenue, on the bay side of South Empire Boulevard south of Newmark Avenue the bay side of 6th Avenue south of "F" Street.

**Section 8. Surface Waters, Drainage.**

1. No owner or person in charge of a building or structure shall permit rainwater, ice or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk.
2. The owner or person in charge of property shall install, and maintain in a proper state of repair, adequate drainpipes or a drainage system, so that overflow water accumulating on the roof or about the building is not carried across or on the sidewalk.

**Section 9. Sifting or Leaking Loads.**

1. No person shall drive or move a vehicle on any street unless it is constructed or loaded so as to prevent its contents from dropping, sifting, leaking or otherwise escaping.
2. Any person driving a vehicle from which any contents have escaped must remove the escaped substance or material from the street within three hours.
3. Any escaped substance or material as set forth in this section is hereby declared to be a nuisance and may be abated.

**Section 10. Destabilizing or Exposing Soils.**

1. No person shall remove the vegetation from, expose, or otherwise destabilize soil which is predominantly dune or blow sand and is subject to being blown onto public or other private property.
2. The owner or person in charge of property where the exposure or destabilization occurs shall replant, cover or otherwise stabilize the area before damage occurs to public or other private property.
3. This section shall not apply to a building site for the period of ninety (90) days from the issuance of a building permit or the period of construction plus thirty (30) days, whichever period is shorter. The time period may be extended by the City building official.

**Section 11. Notices and Advertisements.**

1. No person shall affix or cause to be distributed any placard, bill, advertisement or poster upon any real or personal property, public or private, without first securing permission from the owner or person in charge of the property.
2. Any placard, bill, advertisement, or poster found posted, or otherwise affixed, upon any public property contrary to the provisions of this section may be removed by any employee of the City. The person responsible for such illegal posting shall be liable for the cost incurred in its removal.
3. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the City regulating the use of and location of signs and advertising.

4. This section shall not be construed to prohibit the distribution of advertising material during any parade or approved public gathering.

**Section 12. Notice of Nuisance Determination.** At least five (5) days prior to the determination that a nuisance exist, the City Recorder shall notify the owner or person in charge of the property and provide notice that a nuisance determination is pending. For the purposes of this section, notice is sufficient if it is:

1. Mailed to the last know address of the owner or person in charge; or
2. Posted at the site of the property involved.

**Section 13. Enforcement.** The severity of enforcement of this ordinance shall generally correspond to the degree of risk of harm to the public health, safety and welfare. In the absence of an immediate hazard that is threatening to health or public safety, the following abatement procedures will apply:

1. On determination that a nuisance exists, the City shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.
2. At the time of posting, the City Recorder shall cause a copy of the notice to be forwarded by registered or certified mail to the person responsible at the person's last known address.
3. The notice to abate shall contain:
  - a. A description of the real property, by street address or otherwise, on which the nuisance exists and direction to abate the nuisance within ten (10) days from the date of the notice.
  - b. A description of the nuisance.
  - c. A statement that, unless the nuisance is removed, the City may abate the nuisance and the cost of abatement will be charged to the person responsible.
  - d. A statement that failure to abate a nuisance may warrant imposition of fine.
  - e. A statement that the person responsible may protest the order to abate by giving notice to the City Recorder within ten (10) days from the date of the notice.
  - f. If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.
  - g. Upon completion of the posting and mailing, the person's posting and mailing shall execute and file certificates stating the date and place of the mailing and posting.
  - h. An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

- i. If notice is returned as undeliverable or the delivery was refused, then notice can be provided via publication in a newspaper of general circulation at least ten (10) days before abatement action is taken.

**Section 14. 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 15. Abatement by the City.**

1. If the nuisance has not been abated by the person responsible within the time allowed, the City Code Enforcement Officer and City Attorney may cause the nuisance to be abated.
2. The officer charged with abatement of the nuisance shall have the right to enter into or upon property at reasonable times to investigate or cause the removal of a nuisance.
3. The City Recorder shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include a charge equal to 10 percent of those expenses for administrative costs.

**Section 16. Assessment of Costs.**

1. The City Recorder shall forward to the owner and the person responsible, by registered or certified mail, a notice stating:
2. The total cost of abatement, including the administrative costs.
3. That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
4. That if the owner or the person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the City Recorder not more than ten (10) days from the date of the notice.
5. If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as decided by the City Manager and City Attorney, shall be entered in the docket of City liens. When the entry is made, it shall constitute a lien on the property from which the nuisance was removed or abated.
6. The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the current statutory interest rate. The interest shall begin to run from the date of entry of the lien in the lien docket.
7. An error in the name of the owner or the person responsible 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.

**Section 17. Summary Abatement.** The chief of police, any law enforcement officer, or any other city official may proceed summarily to abate a health or other nuisance which imminently endangers human

life or property. The person responsible for such a nuisance shall reimburse the City for costs incurred in abating the nuisance.

**Section 18. Unenumerated Nuisances.** 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.

**Section 19. Penalties.**

1. If the responsible Persons fail to comply with Section 13 of this ordinance, the City shall enforce this penalty section.
2. A violation of a provision of this ordinance is punishable by a fine upon conviction of not less than \$250.00 for the first offense. The penalty shall be five hundred dollars (\$500.00) for the second separate violation and one thousand dollars (\$1,000.00) for the third and subsequent separate violations of the same ordinance within any five (5) year period. Total Civil penalty shall not exceed five thousand dollars (\$5,000.00).
3. Civil penalties assessed may be enforced and collected in accordance with lien, personal obligation, and other procedures authorized by law. The civil citation shall contain the following information:
  - a. File number;
  - b. Name of the person cited;
  - c. Name of property owner;
  - d. Section of the ordinance violated;
  - e. A brief description of the violation of which the person is charged in such a manner as can be readily understood by a person making a reasonable effort to do so;
  - f. The date and place at which the violation occurred and the date of which the citation was issued;
  - g. A statement of action, if any, required to be taken to correct the violation as determined by the Director and the timeframe in which to do so;
  - h. A statement that a minimum cumulative civil penalty in the amount of two hundred fifty dollars (\$250.00) per day for each violation shall be assessed against the person to whom the notice is directed;
  - i. A statement that the determination of violation may be appealed as prescribed by this ordinance and that the per diem civil penalty shall not accrue when the administrative appeal is pending;

- j. A certification by the City's duly authorized Code Enforcement Officer to the effect that he/she certifies that he/she has reasonable grounds to believe, and does believe, that the person cited committed the violation.
4. Service of Citation. The citation shall be served upon the person or persons to whom it is directed per Section 13 of this ordinance.

#### **Section 20. Separate Violations.**

1. Each day's violation of a provision of this ordinance constitutes a separate offense.
2. The abatement of a nuisance is not a penalty for violation of this ordinance, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. However, abatement of a nuisance within ten (10) days of the Code Enforcement Office's determination that a nuisance exists, will relieve the person responsible from the imposition of a penalty under the terms of this ordinance.

#### **Section 21. Appeal**

1. Hearing Officer – Appointment. The City Manager shall appoint one or more hearing officers to hear appeals relating to the interpretation and/or enforcement of this ordinance. The hearing officer may not be a City employee and shall not be an employee of the City Attorney's office. Contracts may be entered into by the person qualified to act as a hearing officer and shall be a municipal or land use attorney licensed to practice law in the State of Oregon.
2. Hearing Officer – Powers and Duties. The hearing officer shall likewise hear evidence presented by the City Attorney and/or the Director. A hearing officer shall hear all appeals taken from the administration of this ordinance. The hearing officer shall hear evidence presented by the person appealing the decision or interpretation of this ordinance. The hearing officer shall give substantial weight to the Director's decision or interpretation and shall substitute his/her judgment only upon a showing by the appellant that the Director's decision/interpretation is arbitrary and capricious or clearly erroneous. Formal rules of evidence need not be followed but witnesses shall be sworn by the hearing officer and a written order issued.
3. Cost of Appeal. In cases where the City's decision is upheld by the hearing officer, said hearing officer shall award the City its reasonable costs of enforcement including those associated with the appeal.
4. Appeal Procedure.
  - a. All appeals shall be filed in writing with the City Recorder at least fourteen (14) calendar days of the date of the issuance of a nuisance determination or interpretation.
  - b. All appeals to the hearing officer shall contain the following:
    - (1) The names of appellants participating in the appeal;
    - (2) A brief statement setting forth the action appealed and a separate and

- (3) concise statement of the error alleged to have been committed by the Director.
  - (4) The signature of the appellant(s), and the appellant's telephone number(s) and mailing address;
  - (5) Verification, by declaration under penalty of perjury, of at least one appellant of the truth of the matter stated in the appeal.
- c. Upon receiving the appeal, the Recorder or designee shall transmit the same to the designated hearing officer as provided herein.
  - d. Failure of any person to file a timely appeal or failure of any person who has filed an appeal to attend the scheduled hearing shall constitute a waiver of his or her right to an appeal hearing.
  - e. A copy of the final order of the hearing officer shall be mailed to the appellant(s) within seven (7) working days following the entry of a written order under this section. Unless otherwise stated in the order, such order shall be final and conclusive fourteen (14) calendar days from the date of mailing thereof unless any party of record makes application to Coos County Circuit Court.
  - f. **Judicial Abatement.** The City may seek a judicial abatement order from the Coos County Circuit Court as deemed necessary, to abate a condition which continues to be a violation of this ordinance where other methods of remedial action have failed to produce compliance.

**Section 22. 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 23. Effective Date.** This ordinance shall become effective upon the 30<sup>th</sup> day after the enactment by the City Council and signature of the Mayor.

Passed by the City Council and Approved by the Mayor October 16, 2007.