

## Chapter 8.04

### NUISANCES

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#### **8.04.010 Definitions.**

A. "Nuisance" means any condition or use of premises, building exteriors, public place or property which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the vicinity of the condition or use, or which promotes blight, deterioration and unsightliness, invites plundering, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, creates offensive odor or unsanitary conditions, creates harborage for rodents and insects and/or is injurious to the health, safety and general welfare of the residents of this city.

B. "Person" means a natural person, firm, partnership, association or corporation.

C. "Person in charge of property" means and agent, occupant, lessee, contract purchaser or other person having possession control or supervision of property or construction project.

D. "Person responsible" means the person or persons responsible for abating a nuisance shall include:

1. The person who owns the property, as defined in subsection B of this section.

2. The person in charge of property, as defined in subsection C of this section.

3. The person who caused a nuisance, as defined in this chapter, to come into or continue in existence.

E. "Public place" means a publicly or privately owned building, city sidewalk or street, public easement, public right-of-way, place or accommodation open and available to the general public. (Ord. 97-04 ' 1, 1997)

F. "Vehicle" means any devise in, upon or by which any person or property is or may be transported that is propelled or powered by any means. (ORD. 2009-08 § 1; 6, 2009)

#### **8.04.020 Nuisances affecting public health.**

No person responsible shall cause or permit on property owned or controlled by that person the accumulation of debris rubbish, refuse, stagnant water, decayed food, garbage or other state or condition such that it affects the health of the city. (Ord. 97-04 § 2, 1997)

#### **8.04.030 Nuisances affecting public safety**

A. No person responsible shall cause or permit on property owned or controlled by that person any condition listed below which affects the public safety or general welfare of the residents of this city.

1. Refuse; abandoned or inoperable materials, furniture, household items, machinery, equipment, stoves, freezers, refrigerators; stripped or junked automobiles; other personal property which causes a fire hazard, offensive odor, detriment to surrounding property or that is a danger to a person, animal or vehicle traveling upon a public way.

2. Any material or object placed or stored outdoors in a manner so as to be attractive, dangerous and accessible to children.

3. Any construction site, open pit or other excavation without safeguards or barriers to prevent injury or death.

4. Trees, brush or their root systems which cause damage to city property, sidewalks or streets.

5. Water or other materials to flow onto streets or across sidewalks so as to cause a hazard to pedestrians or vehicular traffic or require undue maintenance by the city.

6. Brush, weeds, briars, thistles, grass or other vegetation becoming a fire hazard or detriment to surrounding property. (Ord. 97-04 § 3, 1997)

#### **8.04.040 Nuisances affecting public peace.**

No person responsible shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes noise which exceeds Oregon Department of Environmental Quality standards. (Ord. 97-04 § 4, 1997)

#### **8.04.050 Unenumerated nuisances.**

In addition to the nuisances specifically enumerated in this chapter, every other thing, substance or act which the common council or the city of Port Orford determines 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 chapter. (Ord. 97-04 § 5, 1997)

#### **8.04.055 Abandoned Vehicles**

A. 1. No person shall park, store, leave or permit the parking, storing, or leaving of an abandoned vehicle, including a motor vehicle, upon private property, or upon public property, including a public right-of-way. For purposes of this section, the following definitions apply:

a. Abandoned vehicle: any vehicle which reasonably appears to be inoperative, wrecked, discarded, displays expired vehicle registration, has no vehicle registration plates displayed, or is totally or partially dismantled.

b. Motor vehicle: a vehicle that is self-propelled or designed for self propulsion.

B. Upon determination by the City staff person in charge of enforcement regarding an abandoned vehicle which qualifies as a nuisance under this section, the City staff person may solicit voluntary compliance by affixing a notice to the abandoned vehicle. In the case of an abandoned vehicle on private property, permission to enter the property to affix the notice to the vehicle shall be obtained from property owner, or shall be authorized by an inspection warrant. The notice shall provide the following information:

a. That the vehicle will be subject to being impounded by the City if the vehicle is not removed from the private property or public property within ten (10) days of the notice. If the vehicle is to remain on private property, it must be stored within an enclosed structure or covered by an approved coverage device.

b. The ordinance which has been violated and under which the vehicle will be removed.

c. The place where the vehicle will be impounded and the telephone number to find out information where the vehicle will be stored.

d. The vehicle, if impounded, will

be subject to towing and storage charges and an administrative fee, and a lien will attach to the vehicle and its contents.

e. The vehicle will be sold to satisfy the costs of towing and storage and administrative fees if these charges are not paid.

f. The owner, possessor or person having an interest in the vehicle is entitled to a hearing, before the vehicle is impounded, to contest the property impoundment if a hearing is timely requested.

g. The time within which a hearing must be requested and the method for requesting a hearing.

C. In the event the person responsible has not voluntarily complied by removing the vehicle from the private property or the public right-of-way or storing the vehicle within an enclosed structure or underneath an approved coverage device, the City staff person in charge of enforcement shall institute abatement proceedings to have the abandoned vehicle towed from the private property or the public right-of-way. The City staff person shall mail a notice to the registered owner of the vehicle and to any lessors or security interest holders as shown in the state Motor Vehicle Department records, and to the person responsible for creating the nuisance, if that person is not the registered owner of the vehicle and the City has been able to identify that person, that the vehicle has been impounded. The notice shall be sent by certified mail, return receipt requested, and be mailed within 48 hours of the impoundment.

The notice shall include the following information:

a. The location where the vehicle will be stored.

b. That the vehicle and its contents are subject to a lien for the payment of storage and towing charges and an administrative fee of \$100.00 and the vehicle and its contents will be sold if those charges and administrative fee are not paid.

c. The vehicle will not be released until the owner provides proof that the vehicle is currently licensed and registered, that the nuisance conditions will not be resumed, and all towing and storage fees and the \$100.00 administrative fee have been paid, and the City has authorized the release of the vehicle in writing.

d. The person owning the vehicle or responsible for creating the nuisance may request a hearing before the Municipal Court to contest the validity of the impoundment or the liability for storage and towing charges and the administrative fee. The request for a hearing must be made within ten (10) calendar days after the date that notice of impoundment is mailed, as evidenced by the postmark, not including Saturdays, Sundays, or holidays. The request for a hearing shall be made to the City staff person who issued the notice of impoundment.

e. When a timely request for a hearing is made, a hearing shall be set in the Municipal Court for five (5) calendar days after the request is received, excluding Saturdays, Sundays, and holidays, but may be postponed at the request of the person asking for the hearing.

f. The City shall have the burden of proving by a preponderance of the evidence that the vehicle which was impounded constituted a nuisance under this ordinance. If the Municipal Judge finds that the impoundment of the vehicle was proper, the Judge shall enter an order supporting the removal and shall find the owner of the vehicle or the person responsible for the nuisance is liable for the usual and customary towing and storage costs and the administrative fee. If the Municipal Judge finds the impoundment of the vehicle was improper, the Judge shall order the vehicle released to the person entitled to possession and shall enter a finding that the owner or the person responsible for creating the nuisance is not liable for any towing or storage costs resulting from the impoundment, and if there is a lien on the vehicle for towing and storage

costs, the Municipal Judge shall order it paid by the City.

D. Disposal of abandoned vehicles which have been impounded under this section shall be done in accordance with the applicable provisions of Chapter 819 of the Oregon Revised Statutes. The City shall be entitled to recover the costs of the nuisance abatement, including the \$100 administrative fee, in an appropriate action at law.

E. Removal of an abandoned vehicle from one parcel of private property to another parcel of private property, or removal of an abandoned vehicle from one location to another location on a public right-of-way, after a notice has been affixed to the vehicle under this section, shall not prevent the City from proceeding with the process to have the vehicle towed from a parcel of private property or the public right-of-way and impounded under the provisions of subsection (C) above. (*ORD. 2009-08 § 5.5; 6, 2009*)

#### **8.04.060 Courtesy notice.**

A. Upon determination by the Police Chief, his/her designee, or the council that a nuisance exists, the Police Chief shall cause a courtesy notice to be posted on the premises or at the site of the nuisance directing the person responsible to abate the nuisance within ten days. (*ORD 2006-04 § 6, 2006*)

B. At the time of the posting, the Police Chief or his/her designee shall cause a copy of the courtesy notice to be mailed to the last

ii. A description of the nuisance.

iii. A reference to the ordinance codified in this chapter by number, a statement advising the person responsible to review such ordinance, and a statement advising the person

known address of the owner of the property upon which the nuisance exists. (*ORD 2006-04 § 6, 2006*)

C. If the person responsible and/or owner fails to abate the nuisance in accordance with the courtesy notice, the city shall take the applicable abatement actions listed below.

D. An error in the name of the owner or a failure to receive the courtesy notice to abate the nuisance shall not void the city's subsequent action or requirements. (*Ord. 97-04 § 6, 1997*)

#### **8.04.070 Abatement procedure.**

A. 1. Notice

a. Upon the failure of the person responsible and/or owner to comply with abatement or a nuisance in accordance with the courtesy notice, the Police Chief or his/her designee 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. (*ORD 2006-04 § 7, 2006*)

b. At the time of posting, the city recorder shall cause a copy of the notice to be forwarded by registered or certified mail, return receipt requested, to all persons responsible at that person's last known address.

c. The notice to abate shall contain:

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

responsible where a copy of such ordinance may be obtained. If the person responsible requests a copy of such ordinance may be obtained. If the person responsible requests a copy or such of such ordinance, the city may require a reasonable charge for photocopying such ordinance.

iv. A direction to abate the nuisance within ten days from the date of the notice.

v. A statement that unless the nuisance is removed, the city may abate the nuisance and all costs associated with the abatement shall

be charged to the person responsible. Further, that the costs not paid by the person responsible may be assessed to and become a lien on the property.

vi. A statement that failure to abate the nuisance may warrant imposition of a fine against the person responsible who caused the creation of and/or continued existence of the nuisance.

vii. A statement that the person responsible may protest the order to abate by giving notice, in writing, to the city recorder within ten days from the date of the notice.

(Ord. 97-04 § 7, 1997)(ORD 2006-04 § 7, 2006)

viii. A statement that should the person responsible fail to remove the nuisance that the City may enter the property and remove, destroy, sell or otherwise dispose of the items causing the nuisance. (2009-08 § 7, 2009)

**8.04.075 City Officer’s Duty**

A. 1. A City Officer is authorized at all reasonable times to examine any property for the purposes of determining whether or not there is a nuisance present on the property.

2. If the owner or person in possession of private property objects to the City Officer entering the private property to examine any suspected nuisance, the City Officer shall not enter such property until a warrant is issued by the Municipal Court allowing such entry. The warrant shall be based upon an Affidavit showing probable cause for such inspection by stating the purpose and extent of the proposed inspection, citing this Ordinance as the bases for such inspection, and whether or not it is an inspection instituted by a complaint or other specific or general information concerning the nuisance in question and the property in which it is situated.

3. The Municipal Judge shall have the authority after reviewing such affidavit and other evidence presented to issue

the warrant specifying the right to enter said property and the extent of inspection of the nuisance in question.

4. It is unlawful and a violation of this Ordinance for any person to interfere or attempt to prevent the City Officer from entering upon private premises and inspecting any nuisance when an emergency exists if the City Officer has a warrant authorizing entry.

**8.04.080 Assessment of fine.**

A. If the Police Chief determines that a fine is warranted the Police Chief shall cause a police officer of the city of Port Orford to issue a citation to the person who caused the creation and/or continued existence of the nuisance. (ORD 2006-04 § 8, 2006)

B. This citation shall be handled by the city court system in the same manner as other citations. (Ord. 97-04 § 8, 1997)

C. The city recorder shall keep an accurate record of the expense incurred by the city in abating the nuisance, including administrative expenses. (Ord. 97-04 § 11, 1997)

**8.04.090 Abatement by the person responsible.**

A. Within ten days of the posting and mailing or personal service of the notice, as provided in Section 8.04.070, the person responsible shall remove the nuisance or file a written protest to the abatement order with the city recorder. The statement shall specify the basis for so protesting.

B. The statement shall be referred to the city council as part of its regular agenda at its next regularly scheduled meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the council. The council shall determine whether or not a nuisance in fact exists, and the

determination shall be entered in the official minutes of the council.

C. If the council determines that a nuisance does exist, the person responsible shall abate the nuisance within ten days of the council's determination. No further notification of persons responsible shall be required. (Ord. 97-04 § 9, 1997)

**8.04.095 Discarding of Property**

A. 1. The City shall have the authority to remove, discard, destroy or otherwise dispose of items abated by the City.

2. Notice of the City's authority to remove, discard or destroy items shall be included in the notice sent to the property owner as set out in 8.04.070. (Ord 2009-08 § 9.5, 2009)

**8.04.100 Joint responsibility.**

If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance and for the costs incurred by the city in abating the nuisance. This provision does not invalidate the city's authority to assess a lien on the property where the nuisance exists. (Ord. 97-04 § 10, 1997.)

**8.04.110 Abatement by the city.**

A. If the nuisance has not been abated within the time allowed, the Police Chief may designate a person or persons to cause the nuisance to be abated. (ORD 2006-04 § 11, 2006)

B. The designated person or persons charged with abatement of the nuisance shall have the right, at reasonable times, to enter into or upon the property to investigate or cause the removal of the nuisance.

**8.04.120 Assessment of costs.**

A. The city recorder shall forward to

person responsible, by registered or certified mail, return receipt requested, a notice stating:

1. The total cost of abatement.

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

3. That if the person responsible objects to the cost of the abatement, a written notice of objection may be filed with the city recorder within ten days of the date of notice.

B. The objection shall be referred to the city council as part of its regular agenda at its next regularly scheduled meeting. At the time set for consideration of the objection, the person objecting may appear and be heard by the council. The council shall hear and make a decision on the objections to the costs assessed, and the determination shall be entered in the official minutes of the council.

C. The cost determined by the council shall be paid within thirty (30) days of the decision. Nor further notification of persons responsible is required.

D. If the costs of the abatement are not paid within thirty (30) days of the date of notification, or the date of a council decision in the case of an abjection, an assessment of the costs, as stated or as decided by the council, shall be made by resolution and 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 abated.

E. The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the current rate for street assessments. The interest shall be to run from the date of entry of the lien in the lien docket.

F. An error in the name of the owner or person responsible or a failure to receive the notice of the assessment shall not void the

assessment, and it shall remain a valid lien against the property. (Ord. 97-04 § 12, 1997)

**8.04.130      Constitutionality and Savings Clause**

If any clause, sentence, paragraph, section, article or portion of this ordinance shall, for any reason, be adjudged invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance shall remain in full force and effect.