

Dunes City Council ~ Regular Session

January 8, 2025 ~ 6:00 pm

The meeting will adjourn not later than 9:00 pm. If agenda items are not completed, they will be addressed at the next scheduled meeting.



AGENDA

1. **Call to Order**..... Mayor Ed McGuire
2. **Oaths of Office**..... City Staff
3. **Roll Call** City Administrator
4. **Pledge of Allegiance to the Flag**..... Mayor Ed McGuire

5. **Consideration of the Agenda**..... **Action Item**

6. **Announcements / Correspondence**
A. CLPUD

7. **Citizen Input on Items Not Discussed in Public Hearing**

*The public comment period is an essential part of local government meetings. Each person has **three** minutes to speak. Our governing body takes the input into consideration. However, in observance of Oregon open meeting laws, this isn't the time for dialogue, but rather a time for us to **listen** to you. The Council may choose not to respond to comments and lack of response does not indicate support or disagreement. Our City Administrator is taking notes of action, as needed.*

8. **New Business**
A. Updated Council Rules of Procedure..... **Discussion/Action Item**

10. **Work Session**
Chapter 91..... **Discussion**

11. **Executive Session – None**

12. **For the Good of the Order**

13. **Adjournment**

1. AUTHORITY

1.1 Charter: The Dunes City Charter of 1974 provides that the Council shall adopt rules for the government of its members and proceedings.

2. GENERAL RULES

2.1 Meetings to be Public All meetings of the Council shall be open to the public, except for executive sessions allowed by the law. The journal of proceedings shall be open to public inspection as provided by State law.

2.2 Quorum: A majority of members of the Council (4) shall constitute a quorum for its business, but a smaller number may meet and compel the attendance of absent members in a manner provided by ordinance.

2.3 Journal of Proceedings: An account of all the proceedings of the Council shall be kept under the care and direction of the City Recorder. The minutes, upon approval, shall constitute the official record of the Council. Minutes are approved upon motion by the Council, and shall be signed by the Mayor or presiding officer, and attested to by the person preparing the written minutes. Tape recordings are not the official record, however, shall be kept and stored for one year after the minutes are approved or longer if an appeal is pending.

2.4 Rules of Order: *Roberts Rules of Order Revised* shall govern the proceedings of the Council in all cases, unless they say they are in conflict with these rules.

2.5 Mayor Absence: In the event the Mayor is absent, the Council President shall preside over the Council meeting with full voting powers. In the event the Mayor and Council President are both absent, the Council shall move by motion and vote to elect another council member to be acting President, retaining full voting powers.

2.6 Council Absence: In the event that a Council member knows he or she will not be able to attend a scheduled meeting, he or she will so notify either the Mayor or City Administrator as soon as practicable.

2.7 Council Etiquette: No Council member will ever chastise, denigrate, or criticize anyone during an open Council meeting. If attempts to deal with these problems in a private two-way conversation fail, then the Council member may petition the Mayor to convene a full Council Executive Session to deal with the

problem. In no case shall a Council member deal with any City employee personnel problems except through the City Administrator. The chain of command must be observed.

3. TYPES OF MEETINGS

3.1 Regular Meetings: Regular meetings of the Council shall be held at 6:00 p.m. on the first (1st) and third (3rd) Wednesday of each month. A change of any regular meeting date may be made by motion duly passed at the regular meeting. All regular meetings shall be held in the Dunes City Hall, unless another facility is needed to accommodate an anticipated increase in attendance.

3.2 Special Meetings: Special meetings may be called by the Mayor, by Two (2) Councilors, or by announcement during any regular meeting. The call for a special meeting shall specify the time and place and shall list one or more of the subjects to be considered. No special meeting shall be held until at least Twenty-Four (24) hours after the call is issued, except in case of an actual emergency.

3.3 Work Sessions: Work sessions shall be held in accordance with applicable state law. Such sessions shall be called by the Mayor, City Administrator, or at the request of at least Two (2) Councilors.

3.4 Adjourned Meeting: Any meeting of the Council may be adjourned to a latter date and time, provided that no adjournment shall be for a longer period than until the next regular meeting.

3.5 Executive Session: Executive sessions may be held in accordance with the provisions of State law. (ORS 19.660).

3.6 Attendance of Media at Council Meetings: Except as provided for by State law all meetings of the Council shall be open to the media and freely subject to recording by tape, radio, television, and photographic service at any time, provided that such arrangements do not interfere with the orderly conduct of the meetings as determined by the presiding officer.

3.7 Public Hearing: Public Hearings shall be held in conjunction with regular scheduled council meetings whenever possible.

1. Hearings Officer: The presiding officer shall designate a Hearing Officer to conduct the public hearing when appropriate.

4. PRESIDING OFFICER AND DUTIES

4.1 Presiding Officer: The Mayor shall preside at all meetings of the Council. In the absence of the Mayor, the Council President shall preside. In the absence of both the Mayor and the Council President, the Council shall elect a presiding officer.

4.2 Preservation of Order: The presiding officer shall preserve order and decorum, prevent attacks on personalities or the impugning of members' motives, and confine members to debate to the question under discussion.

4.3 Points of Order: The presiding officer shall determine all points of order subject to the right of any member to appeal to the Council. If any appeal is taken, the question shall be: "Shall the decision of the Mayor (or presiding officer) be sustained?"

4.4 Questions to be Stated: The presiding officer shall state all questions submitted for a vote and announce the result. A roll call vote shall be taken upon the request of any member.

4.5 Substitution for Presiding Officer: The Mayor and/or presiding officer may take part in debate. A presiding officer (except the Mayor) may make or second a motion. To cover a temporary absence, the presiding officer may call upon another member to temporarily chair the meeting and such substitution shall not continue beyond adjournment.

5. ORDER OF BUSINESS AND AGENDA

5.1 Agenda: The order of business of each meeting shall be as contained in the agenda as directed by the Mayor. The agenda shall be a listing by topic of subjects to be considered by the Council. **No item shall be added or deleted to the agenda after 3 p.m. seven (7) days prior to the meeting. The Council shall consider only those items on the agenda. In order for the Council to consider an item not on the Agenda, the Council must first vote to consider the item. If the item receives less than a majority of the votes of the Council members present, it will not be considered at the meeting. Council members and the Mayor shall endeavor to have subjects they wish considered submitted to the City Recorder/Administrator in time to be placed on the Agenda.**

5.2 Order of Business: The order of business on the agenda may be adjusted at the direction of the presiding officer.

5.3 Agenda available to press and public: Copies of the agenda shall be made available to the press and public, and one copy shall be posted on the bulletin board at City Hall, one copy posted on the bulletin board at the Westlake Post Office, and one copy posted on the Dunes City web page.

5.4 Presentation by Members of the Council: The agenda shall provide time when the Mayor or any Council member may bring before the Council any business that he/she feels should be deliberated upon by the Council. These matters need not be specifically listed on the agenda. These matters shall not be acted on until a subsequent meeting, unless there is a compelling reason, which is decided only upon unanimous vote. The Council may decline formal action or defer action to a subsequent meeting.

5.5 Duty to Vote: All Council members present, when a question is called shall be entitled to vote unless otherwise disqualified by a conflict of interest as provided by Oregon Law. Unless an abstention is declared, it shall be considered a negative vote.

1. When not otherwise provided by City Charter, the concurrence of a majority of the members of the Council present shall be necessary to decide any question.

6. ORDINANCE, RESOLUTIONS, AND MOTIONS

6.1 Distribution of Ordinances: Except when an emergency exists, the City Recorder shall cause copies of all proposed ordinances to be ready for pickup to all members of the Council at least Twenty-Four (24) hours before the council meeting at which the ordinance is to be introduced.

6.2 Reading by Title Only: Upon being introduced, each proposed ordinance shall be read fully or by “title only” if no member of the council requests a full reading. Upon determining that there are no objections, or if a motion is unanimously passed to read an ordinance by “title only,” the presiding officer may so direct the reading.

6.3 Recording of Votes: The ayes and nays shall be taken upon the passage of all ordinances and entered upon the official record of the Council. Unless a roll call vote is requested or directed by the presiding officer, member officer, or any member of the Council, the vote on any motion or resolution shall be by voice vote with the presiding officer declaring which council members voted with the minority.

6.4 Majority Vote Required: An affirmative vote of at least a majority of the members of the Council present and eligible to vote shall be necessary to pass an ordinance, resolution, or motion. When any vote is called each council member shall respond “yes(aye),” “no(nay),” “abstain,” or “pass”. Any council member who responds “pass” shall be given an opportunity at the end of roll call to change his/her vote to “yes(aye)” or “no(nay),” or “abstain”. Any “pass” response not so changed shall be recorded as an abstention.

6.5 Tie Vote: In the event of a tie vote on any motion, the motion shall be considered by the Mayor, who shall consider the subject and shall vote to break the tie vote. In the absence of the Mayor to consider the subject and vote to break the tie, the motion shall be considered lost.

6.6 Requests for Ordinances or Legal Opinions: Any member of the City Council may request the Mayor to have prepared a proposed ordinance with such ordinance to be placed on the agenda of the next regular meeting, provided the ordinance can be drafted and distributed to the members of the Council in accordance with time schedules set forth in these rules. Any member of the Council may request a written legal opinion, the Mayor shall forthwith request the same from the City Attorney; and upon return receipt thereof, the City Recorder shall distribute the subject ordinance or written legal opinion to all members of the Council so that they may be fully informed of the status of any affairs.

7. CREATION OF COMMITTEES

7.1 Citizen Committees: The Council may create temporary committees to assist in the conduct of the operation of the city government with such duties as the Council may specify not inconsistent with the City Charter or City Code.

7.2 Membership and Selections: Membership and selection of members shall be as provided by the provisions of the City Code or by the Council. Any committee so created shall cease to exist upon the accomplishment of the special purposes for which it was created or when abolished by a majority vote of the Council. No committee so appointed shall have powers other than advisory to the Council or to the Mayor and shall conduct their meeting in accordance with State law. The Council can ask for the removal of any citizen from any committee without debate.

8. CITIZENS RIGHTS

8.1 Addressing the Council:

A. Any person desiring to address the Council by oral communication shall first secure the permission of the presiding officer. Each person addressing the Council shall give his/her name and declare whether they are a resident of the City. Unless further time is granted by the Council, he/she shall limit his/her address to Three (3) minutes. All remarks shall be addressed to the Council as a body and not to any member thereof. No person, other than members of the Council and the person having the floor, shall be permitted to enter into any discussion. No questions shall be asked of the council members except through the presiding officer.

B. The Oregon Public Meeting law is a public attendance law, not a public participation law.

C. No person, be it a Council member, City staff, or member of the audience, shall enter into any discussion unless first recognized by the chair.

D. After a motion has been made and seconded, no member of the audience shall address the Council without first securing permission from the Chair.

8.2 Reading of Protest: Interested persons, or their authorized representatives may address the Council for the reading of protests, petitions, or communications relating to any matter of which the Council has control when the item is under consideration by the Council, subject to authority of the presiding officer.

8.3 Written Communication: Interested parties, or their authorized representatives, may address the Council by written communication in regard to any matter concerning the City's business or over which the Council has control at any time by direct mail or addressing the Mayor or presiding officer and requesting copies to be distributed to the council members.

8.4 Disorderly Conduct: Any of the following shall be sufficient cause to remove any person from the Council chambers for the duration of the meeting, if such conduct, in the opinion of the chair rises to the level of Disorderly Conduct.

1. The use of unreasonably loud, offensive or disruptive language.

Unreasonably loud noises, or disruptive language or conduct, is hereby defined as that which obstructs the work or the conduct of business of the Council. Before the Presiding Officer removes any person from the meeting room for conduct, that person shall be given a warning by the chair to cease his or her conduct. If the

meeting is disrupted by members of the audience, the chair or a majority of the Council members present may order that the Council chambers be cleared.

2. The making of loud or disruptive noises.
3. The willful damage of furnishing or of the interior of the Council chambers.
4. The refusal to obey any of the rules of conduct provided within this article, the limitations on occupancy and seating capacity.
5. Approaching the dais or otherwise using threatening movements or body language.
5. The engagement of violent or distracting actions.

9. CONDUCT OF HEARINGS

9.1 Scope of Rules: The rules contained in this section 9.1 shall govern the conduct of quasi-judicial, legislative, or administrative hearings held by the Council.

9.2 Pre-hearing or Ex-Parte Contacts in Quasi-Judicial Hearings:

A. The general public has a right to have council members free from pre-hearing or ex-parte contacts on matters heard by them. It is recognized that countervailing public right is free access to public officials on any matter. Therefore, council members shall reveal any pre-hearing, ex-parte contacts, the substance of those contacts, and the substance of the communications with regard to any matter as early as possible under the circumstances in the hearing on the matter. If the public official feels he/she may render impartial judgment in the matter, after disclosing the ex-parte contact, he/she should so state. If ex-parte contacts are significant and are with the proponent or opponent of the matter, the official should disqualify him/herself from further participation in the matter.

B. Any party interested in a matter to be heard by the Council may challenge the qualification of any council member to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a council member's bias, prejudgment, personal interest, or other facts from which the party has concluded that the council member will not participate and make a decision in an impartial manner.

(1) Except for a good cause shown, such challenge must be made prior to the commencement of the public hearing.

(2) Such challenge shall be incorporated into the record of the hearing.

(3) Disqualification for bias applies **only** in quasi-judicial actions and not in legislative type proceedings.

C. If any council member feels he/she is incapable of rendering fair judgment in a quasi-judicial matter, the official should declare the bias and abstain from participation in discussion or vote on the matter if he/she has prejudged the case or given a reasonable appearance of having prejudged.

D. No other officer or employee of the City who has a financial or other private interest shall participate in discussion with, or give an official opinion to, the Council on the matter without first declaring for the record the nature and extent of such interest.

9.3 Participation by a Council Member: Notwithstanding any provision of this or any other rule:

A. An abstaining or disqualified council member may be counted for purpose of forming a quorum; and

B. Conflicts of Interest: State Law (ORS 244.040 and 244.120) disallows participation by a public official in any proceeding or action in which he/she has a pecuniary interest in the proceeding. A conflict of interest exists when the matter before the public body would result in “private pecuniary benefit or detriment” for the official or relative of the official. The public official must declare a conflict of interest, remove him/herself from the council area and may not participate in any discussion from the audience.

C. Potential Conflict of Interest: State Law (ORS 224.020(7)) states “potential conflict” exists when the matter before the public body **could** result in “private pecuniary detriment” for the official or relative. The public official **must** announce the nature of the potential conflict prior to the issue being discussed, however the official need not disqualify him/herself, only make the announcement.

9.4 Presiding Officer: The presiding officer shall have authority to regulate the course and decorum of the hearing and dispose of procedural requests of similar matters. The presiding officer shall also have authority to rule on: admissibility of

exhibits and other documents in evidence; offers of proof and relevancy of testimony; and impose reasonable limitations in the number of witnesses heard; and set reasonable time limits for: oral presentations, cross examination of witnesses, and rebuttal testimony.

9.4 Burden and Nature of Proof: The burden of proof is upon the proponent, if any. The more drastic or the greater the impact of a proposal in an area, the greater the burden upon the proponent.

9.5 Order of Procedure: The presiding officer, in the conduct of the hearing, shall:

A. Commence the hearing: Announce the nature and purpose of the hearing and summarize the rules for the conduct of the hearing.

B. Call for Abstentions:

(1) Inquire of the Council whether any member thereof wishes to abstain from participation in the hearing. Any council member then announcing a decision to abstain shall identify the reasons for abstaining and shall not participate in discussion of the matter or vote on the matter.

(2) Any council member whose participation has been challenged by allegation of bias, prejudgment, personal interest or partiality, or who has been subject to significant ex-parte or pre-hearing contact with proponents or opponents, shall make a statement in response thereto or in explanation thereof, as part of his/her decision to participate in the hearing. This statement shall not be subject to cross examination, except upon consent of that council member, but shall be subject to rebuttal by the proponent or opponent as appropriate.

C. Objections to Jurisdiction: Inquire of the audience whether there are any objections to the jurisdiction of the Council to hear the matter. The presiding officer shall terminate the hearing if the inquiry results in substantial evidence that the Council lacks jurisdiction, or the procedural requirements of any Code or ordinance provisions were not met. Any matter thus terminated shall, if the defect can be remedied, be rescheduled by the Council.

D. Code of Procedure in Quasi-Judicial Hearings:

(1) *Staff report: Planning Commission Recommendation, etc.*

Summarize the nature of the matter, explain any graphic or pictorial displays which are a part of the record, summarize the staff report, summarize the findings and decision of the Planning Commission or other appropriate board or agency, and provide such other information as may be requested by the Council. The presiding officer may request a representative of staff or any other officer or employee to perform this duty.

(2) *Proponent's Case*: The proponent shall first be heard and persons in favor of the proponents' proposal shall next be heard.

(3) *Opponent's Case*: Opponents shall be heard next.

(4) *Public Agencies*: The presiding officer shall allow the proponent to offer rebuttal evidence and testimony and, if provided, allow the opponent or other interested party to rebut the new evidence or testimony offered by proponent's rebuttal.

E. Written Communications: Written communication addressing a matter before the Council at a hearing shall be received by the City Recorder not less than 24 hours before commencement of the hearing and considered for receiving into evidence. Written communication shall be part of the record of the proceedings.

F. Close of Hearing and Deliberation by Council: The presiding officer shall conclude the hearing and the Council shall deliberate the matter. If a resolution supporting the findings of fact has been received by the Council prior to the hearing, the Council may take action at the same meeting as the hearing. If the Council makes new findings, it shall state its preliminary decision and findings, which may incorporate findings proposed by the proponent, opponents and/or staff. The Planning Commission, or other appropriate board or agency, or the Council, may continue its deliberations to a subsequent meeting, the time and place of which must then be announced. The subsequent meeting shall be for the purpose of continued deliberation, or to consider proposed findings and the presiding officer shall not allow additional submission of testimony except upon approval by the Council.

G. Official Notice:

(1) The Council may take official notice of the following and make them part of the record:

a. All facts which are judicially noticeable; and

b. The Charter, Codes, Ordinances, Resolutions, Rules, regulations and official policies, if written, of the City.

(2) Matters officially noticed need not be established by evidence and may be considered by the Council in the determination of the proposal.

H. Record of Proceedings:

(1) The City Recorder, or designee of the Council, shall be present at each hearing and shall cause the proceedings to be stenographically or electronically recorded. It shall not be necessary to transcribe testimony unless required for judicial or administrative review or unless ordered by the Council.

(2) The presiding officer shall, where practicable, cause to be received all physical and documentary evidence presented which shall be marked to show the identity of the person offering the same and whether presented on behalf of the proponent or opponent. Unless evidence is capable of being offered and incorporated in the record of the case, it shall not be received. All exhibits received into evidence shall be retained by the Council until after any applicable appeal period has expired, at which time the exhibits may be released upon written request to the person identified thereon.

(3) Any member of the public shall have access to the record of the proceedings at reasonable times, places, and circumstances. Any member of the public shall be entitled to request copies be made of the record at his/her own expense.

10. AMENDMENT AND ADOPTION OF THESE RULES:

10.1 Adoption and Amendment of these Rules: These rules shall be adopted by the Dunes City Council and may be amended or repealed by resolution adopted by majority vote of all members of the Council, provided that new rules or proposed amendment shall have been introduced into the record at a prior council meeting.

10.2 Suspension of these Rules: Any provision of these rules not governed by the City Charter, City Code, or State Statute may be temporarily suspended by a vote of a majority of the Council. The vote on any such suspension shall be taken by ayes and nays and entered upon the record.

**CITY OF DUNES CITY
LANE COUNTY, OREGON
ORDINANCE NO. 252**

AN ORDINANCE AMENDING CHAPTER 91 OF THE DUNES CITY CODE OF ORDINANCES ENTITLED “NUISANCES” BY CORRECTING SCRIVENOR’S ERRORS IN ORDINANCE NO. 220, WHICH LEAD TO A SCRIVENOR’S ERRORS IN ORDINANCE NO. 251; REPEALING ORDINANCE NO. 220 AND ORDINANCE NO. 251.

WHEREAS, Ordinance No. 220, which amended Chapter 91 of the Dunes City Code entitled “Nuisances”, was adopted by the Dunes City Council following public hearing on the 14th day of March, 2013; and

WHEREAS, said Ordinance No. 220 contained numerous typographical errors, specifically with regard to the numbering of the Sections contained therein; and

WHEREAS, in reliance on the language of Ordinance No. 220, Ordinance No. 251 was drafted and now contains an erroneous Section number referral as well; and

WHEREAS, in preparing for a new codification of the Dunes City Code, the Dunes City Council believes it to be in the best interests of the citizens of Dunes City for such typographical errors to be corrected by this Ordinance and by repealing Ordinances 220 and 251;

NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. Title IX – General Regulations, Chapter 91 – Nuisances, is hereby amended to read as follows:

TITLE IX - GENERAL REGULATIONS

CHAPTER 91 - NUISANCES

Section

§ 91.01	Definitions
§ 91.02	Nuisances declared; Unenumerated nuisances
§ 91.03	Nuisances affecting public safety
§ 91.04	Nuisances affecting public health
§ 91.05	Nuisances affecting public peace
§ 91.06	Abatement procedure
§ 91.07 to § 91.98	Reserved
§ 91.99	Penalty

§ 91.01 DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

DISCARDED VEHICLE. A vehicle, whether it has an unexpired license plate lawfully affixed or not, except as provided herein, that is in one or more of the following conditions:

- A. Inoperative;
- B. Wrecked;
- C. Dismantled in whole or in part;
- D. Abandoned.

Vehicles that are in the process of being repaired or restored shall not be considered "discarded" provided no more than two (2) such vehicles are visible by persons walking or driving upon any street or other public right-of-way and from adjacent properties.

ENCLOSURE. Any garage, carport, building, basement, or area fenced by a fence which is solid, not to exceed fence height limitations set by City Code, maintained in a good state of repair, which shields the junk from view from all public rights-of-way and adjacent properties.

JUNK. Includes inoperable motors, discarded vehicles or parts thereof, inoperable hauling or travel equipment or machinery or parts thereof, inoperable appliances or parts thereof, iron or metal, glass, paper, lumber, wood, tires or other waste or discarded material that are kept out of doors on any street or other public right-of-way or on a lot or premises, except in an enclosure concealing such junk from the view of persons walking or driving upon any street or other public right-of-way and from adjacent properties.

PERSON IN CHARGE OF PROPERTY. An owner, 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:

- 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 Chapter or another ordinance of the City, to come into or continue in existence.

WRECKED. Substantially damaged through accident or other cause.

§ 91.02 NUISANCES DECLARED; UNENUMERATED NUISANCES.

A. The acts, conditions, or objects specifically enumerated and defined in this Chapter are declared public nuisances and may be abated by the procedures set forth in Chapter 36 of the Dunes City Code.

B. In addition to the nuisances specifically enumerated in this Chapter, every other thing, substance, or act that is determined by the City Code Enforcement Officer to be injurious or detrimental to the public health, safety, or welfare of the City is declared a nuisance and may be subject to City-initiated abatement or penalty as provided in this Chapter.

§ 91.03 NUISANCES AFFECTING PUBLIC SAFETY.

A. *Containers, cisterns, and the like.* 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 (1 ½) 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 four (4) feet or more and a top width of twelve (12) inches or more and failing to cover or fence it with suitable protective construction.

B. *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.

C. *Rights of Way.*

1. No person shall place on any public right-of-way debris, materials, refuse, buildings, structures, or other human constructed improvements.

2. No person shall fail to apply for a right-of-way permit as required by Dunes City Code.

3. No person shall commit or permit trespass upon the public right-of-way, with or without a permit to do so, when demand to cease or remove said trespass is issued by the City.

4. No person shall commit any act upon a public right-of-way when such act is prohibited by Dunes City Code or State statute.

D. Nuisances affecting public safety may be subject to a penalty as provided herein.

§ 91.04 NUISANCES AFFECTING PUBLIC HEALTH.

A. *General 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 nuisances affecting public health and may be abated as provided in Chapter 36 of the Dunes City Code:

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 as set by the City and that affect the health of the City's residents;

3. Stagnant water that affords a breeding place for mosquitoes and other insect pests and rodents;

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

6. Drainage of liquid wastes from private premises;

7. Cesspools or septic tanks that are in an unsanitary condition or that cause an offensive odor;

B. *Abandoned and discarded items prohibited.* No person shall keep junk or other items described below within the view persons walking or driving upon any street or public right-of-way, or from adjacent properties:

1. Abandoned appliances, including, but not limited to, freezers, refrigerators, iceboxes, water heaters, washers, dryers, ovens, etc;

2. Abandoned furniture including, but not limited to, items such as couches, chairs, tables, mattresses, etc;

3. Used wood or lumber containing nails or scattered in such a manner as to create a safety hazard;

4. Machinery which is inoperable, or parts thereof that would be a safety hazard to children or pets;

5. Scattered tires which are not being used for landscaping;

6. Any unguarded machinery, equipment, or other devices on property which may be attractive, accessible, and potentially dangerous to children;

7. Lumber, logs, or piling placed or stored in such a manner so as to be attractive, accessible, and potentially dangerous to children;

8. An open pit, quarry, cistern, or other excavation without adequate safeguards or barriers to prevent such places being used by children. This provision shall not apply to authorized construction projects if during the course of construction reasonable safeguards are maintained to prevent any injury to playing children;

9. More than two (2) discarded vehicles as defined in § 91.01 herein.

C. No person shall knowingly place, deposit, distribute, store or scatter food, garbage or any other attractant so as to knowingly constitute a lure, attraction or enticement for deer raccoon, bear, cougar, coyote, and/or wolf.

§ 91.05 NUISANCES AFFECTING THE PUBLIC PEACE.

A. 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:

1. Keeping an animal that causes annoyance, alarm, or noise disturbance for more than fifteen (15) minutes at any time of the day or night, be it repeated barking, whining, screeching, howling, braying or other like sounds which can be heard beyond the boundary of the owner's property;

2. Using an engine 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;

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

4. Using or operating a loudspeaker or sound amplifying device so loudly that it disturbs persons in the vicinity.

B. Noise is presumed to be unreasonable if, during the hours of 7:00 a.m. to 7:00 p.m. it is audible to a person of normal hearing at a distance of 100 yards, or during the hours of 7:00 p.m. to 7:00 a.m., it is audible at a distance of 50 yards.

§ 91.25, Inspection; Notice to Abate – deleted.

§ 91.26, Abatement by Person Responsible – deleted.

§ 91.27, Joint Responsibility - deleted.

§ 91.28, Abatement by City – deleted.

§ 91.29, Assessment of Costs; Lien – deleted

§ 91.30, Summary Abatement – deleted

§ 91.98, Penalty – deleted and replaced.

§ 91.99, Appeals – deleted.

§ 91.06 ABATEMENT PROCESS.

Violations of the provisions of this Chapter will be abated in accordance with the process described in Chapter 36 of the Dunes City Code.

§ 91.99 PENALTY.

Any person violating any of the provisions of §91.01 *et. seq.* may be deemed guilty of a misdemeanor by the appropriate City authority, and upon conviction shall be fined in an amount set by Resolution of the City Council from time-to-time. Every day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

Section 2. REPEAL.

The repeal of Ordinances 220 and 251 shall not affect any action occurring before the repeal takes effect. Ordinance Number 220 and Ordinance Number 251 are hereby repealed.

Section 3. SEVERABILITY CLAUSE.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and that holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. OTHER REMEDIES. Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance. Non-exclusive remedies for enforcement are all those available under State and County laws including seizure of property, civil and criminal penalties.

Section 5. CAPTIONS. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

Section 6. SCRIVENER'S ERRORS. Any scrivener's errors in this Ordinance may be corrected by Resolution of the City Council.

Section 7. EFFECTIVE DATE.

The City Council declares an emergency to exist in that more than the mandatory 30 days have expired since the adoption of Ordinance 220 and 30 days will have passed since the adoption of Ordinance 251 on May 10, 2019, so there is no need to wait another 30 days due to scrivener's errors. This Ordinance shall take on May 10, 2019.

First reading performed in a regular meeting of the City Council of Dunes City, Oregon, on the 8th day of May, 2019.

Passed at the second reading and placed on final passage, and adopted by the City Council of Dunes City, Oregon, on this 8th day of May, 2019.

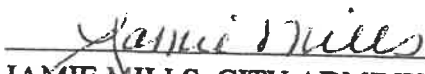
Ayes: 5 Nays: 0 Abstain: 0 Absent: 1

DATED THIS 8th DAY OF MAY, 2019.



ROBERT FORSYTHE, MAYOR

ATTEST:



JAMIE MILLS, CITY ADMINISTRATOR

CHAPTER 8.10 NUISANCES

8.10.005 Purpose and Process

The purpose of this chapter is to protect the public health and safety and to improve the aesthetics of the city by eliminating health and safety hazards and prohibiting or restricting conditions and actions that adversely impact the beauty and livability of the city. The nuisance process described in this chapter is intended to abate ongoing conditions, which is to lessen, reduce, or remove such conditions. But some nuisances may be of short duration, and the civil infraction process may be used to impose sanctions on those responsible for the nuisance, whether or not the nuisance abatement process is also used.

(Section 8.10.005 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.010 Definitions

- A. **Fence** means a barrier intended to prevent escape or intrusion or to mark a boundary. A fence may consist of wood, metal, masonry, plastic, or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.
- B. **Inoperable Vehicle** means any vehicle which has no current valid state vehicle license, or which cannot be moved without being repaired or dismantled, or which is no longer usable for the purposes for which it was manufactured, and which has been in that condition for at least 15 days.
- C. **Person** means a natural person, firm, partnership, association, company, corporation, or other entity of any kind.
- D. **Person in Charge of Property** means an agent, occupant, lessee, contract purchaser, or person, other than the title owner, having possession or control of the property.
- E. **Public Place** means a building, place, or accommodation, whether publicly or privately owned, open and available to the general public.

- F. **Screened and Fenced** means surrounded by a fence to prevent unauthorized entry into an area and effectively screened from view from public rights of way and adjacent properties.
- G. **Street** means the area within the right-of-way improved for vehicular travel, including bike lanes and motor vehicle travel lanes.
- H. **Vermin** means wild or feral animals normally considered to be pests such as rats, mice, feral cats, raccoons, and opossums.

8.10.020 Nuisances Declared

The following actions or omissions are declared to be nuisances.

- A. The acts, conditions, or objects specifically enumerated in this chapter or designated a nuisance by city code or ordinance.
- B. Violations of the zoning ordinance and any failure to comply with a condition of a land use approval.
- C. Violation of any ordinance imposing health, safety, or sanitary standards for housing.
- D. Real property where chronic unlawful activities specifically enumerated in Section 8.10.140 occur, or where those chronic unlawful activities result from the use of the real property.

(Section 8.10.020 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.030 Animals

- A. No person may permit an animal or bird owned or controlled by the person to be at large if the animal or bird is known to be afflicted with a communicable disease or is a dangerous animal.
- B. No person may permit livestock or poultry to run at large within the city nor permit any barn, stable, chicken coop or other similar structure to cause an odor noticeable at the property line of the property.

- C. Livestock or poultry or other domesticated animals or fowl running at large in the city may be taken up and impounded by police, animal control, or code enforcement officer with reasonable efforts to preserve the animal's life. If the owner or other responsible person cannot be located after reasonable efforts, the animal may be sold, transferred to a responsible agency, or disposed of.
- D. No person may permit any fowl or animal carcass owned by him or under his control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of such carcass.
- E. No person shall scatter or deposit any food or other attractants on public or private property with the intent of attracting and/or feeding wild animals, including, but not limited to, bears, raccoons, coyotes, cougar, and deer. This subsection does not apply to birdseed held in receptacles that are reasonably designed to avoid access by wild animals as described above.

(Section 8.10.030 (E) adopted by Ordinance No. 2141 on October 1, 2018; effective October 31, 2018)

8.10.040 Nuisances Affecting Public Health and Safety

No person may permit or cause a nuisance affecting public health or safety. Nuisances affecting public health or safety include, but are not limited to:

- A. **Privies and Improperly Functioning Septic System.**
An open vault or privy, cesspool, or improperly maintained septic tank that causes odor or improper disposal of wastes. Portable privies placed on a temporary basis in connection with construction projects or temporary events in accordance with the State Board of Health regulations are not nuisances, and portable privies placed with city approval are not nuisances.
- B. **Debris.**

1. Accumulations of debris, rubbish, manure, junk, and other refuse located on private property that is not removed within a reasonable time. A reasonable time for materials that can be disposed of through normal solid waste collection is one week. A reasonable time for other materials is 15 days.
2. Unprotected garbage or refuse. Garbage or refuse stored or allowed to remain outdoors other than in receptacle that provides protection from weather and animals, including garbage or refuse that overflow from dumpsters. A dumpster will be considered to be overflowing if the lid cannot be fully closed because the accumulation of garbage. For purpose of this section, construction waste is not considered to be garbage or refuse.

C. **Junk Machinery, Junk Vehicles And Inoperable Vehicles.** Junk machinery, junk vehicles, and inoperable vehicles that are not removed within 15 days. Junk machinery, junk vehicles, and inoperable vehicles within an enclosed building and those that are screened and fenced on the premises of a business lawfully engaged in wrecking, junking, storage or repair of vehicles are exempt from this section.

D. **Stagnant Water.** Stagnant water which affords a breeding place or drinking source for mosquitoes, insects, and other insect pests.

E. **Water Pollution.** Pollution of a body of water, surface water, groundwater, well, spring, stream or drainage ditch by sewage, industrial wastes or other hazardous substances placed in or near such water without necessary permits in a manner that will cause harmful material to pollute the water.

F. **Odor.**

1. Premises that are not properly maintained so that they are in a state or condition that causes an offensive odor.
2. Offensive odors noticeable outside the property where the odor is created, including chemical

odors, odors from coffee roasting, sewage odors, and other offensive odors, beyond the level of odors normally associated with this type of activity.

(Chapter 8.10.040(F.) (2.) amended by Ordinance No. 1930, adopted on July 16, 2007; effective August 15, 2007)

- G. **Surface Drainage.** Drainage of liquid wastes from private premises without required permits.
- H. **Smoke, Fumes, Cinders And Dust.** Dense smoke, noxious fumes, gas soot, cinders, or dust in unreasonable quantities. Reasonableness shall take into account the purpose of the action resulting in the smoke, fumes, soot or cinders and the availability of alternatives.
- I. **Harborage for Vermin.** It is unlawful for any person who owns and/or is in charge of property to allow the accumulation of any litter, filth, garbage, decaying animal or vegetable matter, which may or does offer harborage or source of food for vermin.
- J. **Properties Declared "Unfit for Use."** Property placed on the Oregon Health Division "unfit for use list" because it has been used for the manufacture of illegal drugs and that has not been issued a "Certificate of Fitness" by the Oregon Health Division.
- K. **Appliances And Containers.** No person may leave in a place accessible to children an abandoned, unattended or discarded appliance or similar container which has a door with a snap lock or lock or other mechanism which may not be released for opening from the inside, without first removing the lock or door.
- L. Premises that are in an unsanitary condition that create a health risk.
- M. **Offensive Littering.**
 - 1. Discarding or depositing any rubbish, trash, garbage, debris, litter or other refuse upon the land of another without permission of the owner, or upon any right of way, park, beach or other

public property, other than in a receptacle intended for refuse collection, and then only if the receptacle is intended for public use or with the permission of the person in charge of the receptacle.

2. Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way.
3. Discarding any lighted tobacco product, matches, or other lighted material.

8.10.050 Attractive Nuisances

A. No owner or person in charge of property may permit:

1. Unguarded machinery, equipment or other devices on such property that are attractive, dangerous and accessible to children;
2. Lumber, logs, firewood, building materials or pilings placed or stored on such property in a manner so as to be attractive, dangerous and accessible to children;
3. An open pit, quarry, cistern, or other excavation without erecting adequate safeguards or barriers to prevent such places from being used by children.
4. Structures such as partially completed, partially demolished, or abandoned buildings that are attractive, dangerous and accessible to children.
5. Outdoor storage of inoperable vehicles and other vehicles not used for transportation without a sight-obscuring fence, wall, or other visual and physical barrier, regardless of whether vehicle storage is a permitted use in the zone.

B. This section shall not apply to authorized construction projects, if during the course of construction

reasonable safeguards are maintained to prevent injury or death to playing children.

8.10.060 Vegetation and Vision Obstructions

The following things, practices, or conditions on any property are nuisances. For purpose of this section, "property" includes any portion of a right-of-way adjacent to the property.

- A. Grass, thistles, cockleburrs, weeds, or other noxious vegetation greater than eight inches in height or that are a fire hazard. The city shall have discretion to not enforce this section based on the totality of circumstances, including the type and location of the property, whether the property is appropriately left in a natural state, whether the property has even been cleared without appropriate measure to prevent invasive plant species, and other similar factors.
- B. Dead, decaying, or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property.
- C. Brush, bushes, shrubbery, tree limbs, or other growth that projects over a sidewalk at less than 8 feet above the sidewalk level, or that projects over a street at less than 13 feet above the street level.
- D. Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures that obstruct vision constitute a safety hazard if they are within a clear vision area pursuant to Chapter 14.17 of the Newport Municipal Code.

(8.10.060(D) enacted by Ordinance No. 2054, adopted on June 3, 2013; effective June 13, 2013.)

8.10.070 Rubbish, Composting and Burning

- A. No person may throw, dump, deposit or discard in any way upon public or private property any injurious or offensive substance or any kind of litter, rubbish, trash, debris or refuse which would mar the

appearance, create a stench or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.

- B. No person may compost materials that either cause offensive odors, or create a health hazard, or are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies or other vermin. A properly contained and maintained compost heap with no noticeable odor at the nearest property line is not a nuisance.
- C. No person may burn materials that cause offensive odors or create a health hazard. Examples of materials that may not be burned include plastic, rubber, and wet or putrescible garbage.

8.10.080 Fences

- A. No person may construct or maintain a barbed-wire fence or allow barbed wire to remain as a part of a fence along a sidewalk or public way. Fences that include barbed wire above a level at least six feet above ground level and placed and maintained by a governmental entity for the purpose of public safety or security are exempt from this section.
- B. No person may install, maintain, or operate an electric fence along a street or sidewalk, or along the adjoining property line of another person.
- C. Improperly maintained fences are nuisances. A fence is improperly maintained if components are missing or loose, or the fence is sagging, leaning or otherwise not in good repair.

8.10.090 Surface Water and Drainage

- A. No owner or person in charge of any building or structure may direct or allow rainwater to fall from the building or structure directly onto a street or public sidewalk or to flow across a public sidewalk. Rainwater falling from a canopy, awning or similar structure is exempt from this section if the awning, canopy or other structure provides shelter from rain for at least two and a half feet of sidewalk width.

Nothing in this section prohibits a person from directing a rain drain into a ditch or portion of the street that operates as part of the storm drainage system, provided that there is no surface flow across a sidewalk

- B. The owner or person in charge of property shall install and maintain in a proper state of repair adequate drain pipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across the surface of any sidewalk. Any flow from a property into a ditch or street portion of the storm drainage system that crosses a sidewalk shall be directed through a pipe or culvert under the sidewalk.
- C. Any owner or person in charge of property shall keep open drainageways on property that they possess or control cleared of debris.
- D. Nonpublic stormwater facilities that malfunction and result in flooding or damage to other property not possessed or controlled by the owner or person in charge of the stormwater facility are nuisances. The owner or person in charge of property served by an access drive is responsible for culverts under the access drive, even if the culvert is in the right of way. Nonpublic stormwater facilities include but are not limited to:
 - 1. A stormwater facility not located on city-owned property, city right-of-way, or city easement;
 - 2. A private parking lot storm drain or drywell;
 - 3. A stormwater facility not designed and constructed for use by the general public;
 - 4. Access-drive culverts in the public right-of-way or on private property;
 - 5. A stormwater detention or retention system not constructed or otherwise acquired by the city.
- E. No person may dispose of waste oil, paints, solvents, or other toxic chemicals into any stream, storm drain or other portion of the storm drainage system.

“Dispose of” includes placing materials in locations where they will ultimately enter the storm drainage system.

8.10.100 Graffiti

- A. It is every property owner’s duty to remove graffiti promptly from their property in a manner acceptable to the city.
- B. **Graffiti** means any unauthorized painting, writing, drawing, carving or inscription which can be seen from any public right-of-way, sidewalk, alley or park and which damages, defaces or destroys any real or personal property through the use of paint, spray paint, indelible marker, ink, knives or any similar method, regardless of the content of the message delivered or nature of the material used in the commission of the act.

8.10.110 Notices and Advertisements

- A. No person may affix or cause to be distributed any placard, bill, advertisement, poster or other thing upon real or personal property, public or private, without first securing permission from the owner or person in control of the property. 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 the location of signs and advertising or as a prohibition on distributing information to the owner or occupant of a property.
- B. No person, either as principal or agent, may scatter or cause to be scattered on public or private property any placards, advertisements or any other materials.
- C. This section does not prohibit any person from distributing information or other materials directly to a person, to leave information at a property directed to the owner or occupant of the property in such a way that the information will not become litter, or to make materials available from a table, display rack or similar structure where the person has the right to place the table, display rack, or other structure. This section is to be interpreted so that it does not restrict any person’s constitutional rights.

8.10.120 Buildings and Structures

- A. An improperly maintained building or structure is a nuisance. An improperly maintained building is one that is an obviously dilapidated state, such as a building or structure that has:
1. A substantial amount of missing siding, roofing or other component. A building with a temporary covering such as a tarp or plywood for more than 30 days is considered to have missing siding or roofing.
 2. Has missing windows or doors, or windows, doors or screens that are not properly attached or that do not properly close.
 3. Has substantial visible damage or deterioration of any type, including smoke damage or peeling or flaking paint.
 4. Has any component or attachment that is visibly broken or damaged.

(Section 8.10.120 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.125 Garage Sales

- A. **Garage Sale** means an event in a residential zone at which personal belongings and other goods are displayed and offered for sale by one or more persons at the residential premises of one of the owners. Garage sales include events such as yard sales, patio sales, rummage sales, and other similar sales.
- B. Garage sales have benefits for those holding the sales and their customers, but have a detrimental impact on neighboring property because of additional traffic and noise. Garage sales in excess of four per calendar year or in excess of 48 consecutive hours are a nuisance. Garage sales in excess of two per calendar month are a nuisance.

(Chapter 8.10.125 was adopted by Ordinance No. 1973, on February 2, 2009; effective March 4, 2009)

8.10.130 Dangerous Excavations

No owner or person in charge of property shall allow an excavation to be unguarded in the absence of suitable barriers, with warning lights or area lighting to be provided during hours of darkness.

8.10.135 Outdoor Storage

Outdoor storage of machinery, equipment, parts, supplies, and other items shall be maintained so as to present a neat and orderly appearance or shall be screened from view from public rights-of-way and adjacent properties. Failure to maintain outdoor storage in compliance with the section is a nuisance. Normal outdoor storage of fishing gear on boats or on dock or harbor areas is exempt from this section.

(Section 8.10.135 was adopted by Ordinance No. 1950 on February 19, 2008; effective March 20, 2008.)

(Section 8.10.135 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.140 Chronic Nuisance Property

Any real property within the City that becomes a chronic nuisance property is in violation of this Chapter and subject to its remedies.

A. **Chronic nuisance property** means:

1. Property upon which the owner or person in charge of property permits three or more separate incidents listed below to occur within any 30-day period, or five or more separate incidents listed below within any 90-day period, at least one of which separate incidents must have resulted in a citation or arrest;
2. Property, the use of which has a causal relation to three or more separate incidents listed below occurring within any 30-day period, or five or more separate incidents listed below within any 90-day period, at least one of which separate incidents must have resulted in a citation or arrest, and all

of which occurred within 100 feet of the boundary line of the subject property; or

3. Any combination of separate incidents as specified in Subsection (A)(1) or (A)(2) above which amounts to three or more separate incidents listed below occurring within any 30-day period, or five or more separate incidents listed below within any 90-day period, at least one of which separate incidents must have resulted in a citation or arrest.
- B. For purposes of Section 8.10.140, the following offenses shall constitute incidents which would support a finding of chronic nuisance property:
1. Disorderly conduct under ORS 166.025;
 2. Unlawful use of weapon or possession of firearms under ORS 166.220 or 166.250;
 3. Noise disturbance in violation of NMC Chapter 8.15;
 4. Providing alcohol to minor or minor in possession of alcohol under ORS 471.410 or 471.430;
 5. Public indecency under ORS 163.465;
 6. Criminal mischief under ORS 164.345 to 164.365;
 7. Prostitution or related offenses under ORS 167.002 to 167.027;
 8. Possession, manufacture, or delivery of controlled substances or related offenses under ORS 167.203 to 167.262, 475.005 to 475.285, or 475.940 to 475.980;
 9. Endangering the welfare of a minor under ORS 163.575;
 10. Harassment under ORS 166.065;
 11. Assault under ORS 163.160 to 163.185;

12. Public consumption of alcohol in violation of NMC Chapter 9.55;
13. Menacing or bias under ORS 163.190, 166.155, and 166.165;
14. Recklessly endangering another person under ORS 163.195;
15. Animal abuse, neglect, abandonment or fighting, or dogfighting under ORS 167.315 to 167.330, 167.340, 167.355, and 167.365;
16. Theft or related offenses under ORS 164.015 to 164.140;
17. Any act or omission that causes injury to or endangers the comfort, health, repose, or safety of citizens of the city generally;
18. Any act or omission that unlawfully interferes with, obstructs, or renders unsafe personal safety or property.

C. To qualify, all incidents must be based on either:

1. The statement of a person who personally witnessed the alleged incident;
2. Personal observation of a law enforcement officer; or
3. A determination by a law enforcement officer after an investigation that there are reasonable grounds to conclude that the alleged incident did, in fact, occur.

(Section 8.10.140 was adopted by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.145 Civil Penalty

- A. Violation by any person of any of the provisions of this Chapter is a civil infraction punishable by a penalty not to exceed \$1,000.00.
- B. Each day's violation of a provision of this Chapter constitutes a separate violation.

- C. The abatement of a nuisance is not a penalty for violating this Chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance, and abatement of the nuisance does not cure any violation that occurred prior to the abatement. The municipal judge may consider any abatement by the owner in considering the appropriate civil penalty. The remedies provided in this Chapter are not exclusive and all remedies are cumulative. The city and private parties may seek other legal means, including actions in Circuit Court, to abate nuisances and recover damages from nuisances.

(Formerly Section 8.10.210.)

8.10.150 Abatement

- A. Notice of nuisance and abatement. After determining that a nuisance exists, the city manager may cause a notice of nuisance to be posted and/or served. The city manager may attempt to resolve a nuisance by informal means prior to issuing the notice.
- B. Posting. If the nuisance involves a specific property, notice of the nuisance shall be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance.
- C. Personal service and mailing. All notices of nuisance, whether posted or not, shall be personally served on or mailed by registered or certified mail to the owner to the last known address of the owner. The city may also provide notice in a similar fashion to any person known by the city to be in charge of the property or responsible for the nuisance.
- D. The notice of nuisance and abatement shall contain:
 - 1. If the nuisance involves a specific property, a description (street address or other) of the real property where the nuisance exists;
 - 2. A direction to abate the nuisance within 10 days from the date of the notice;

3. A description of the nuisance;
 4. A statement that unless such nuisance is removed the city may abate the nuisance and the cost of abatement shall be a lien against the property;
 5. A statement that the owner or other person in charge of the property may protest the abatement by giving notice to the city manager within 10 days from the date of the notice.
- E. On completion of the posting and mailing the person posting and mailing the notice shall execute and file a certificate stating the time and place of the mailing and posting. A public file with the notice and other materials shall be maintained in the city recorder's office.
- F. An error in the name or address of the owner, person in charge, or other person responsible for the nuisance, or the use of a name other than that of the owner or other person, or an error in maintaining the file, shall not make the notice void. If notice is posted, posting of the notice is sufficient notice. Mailing to a person that the city reasonably believes to be the owner, person in charge, or otherwise responsible for the nuisance, shall constitute sufficient notice as to that person, regardless of delivery or receipt of the notice.
- G. Nuisance determination. If a person complains in writing to the city manager alleging that a nuisance exists and the city manager determines there is a nuisance and the nuisance remains in place for 30 days without an investigation by the city to initiate the nuisance process, the person may petition to the City Council to initiate the nuisance process. On receipt of the petition, the city shall schedule the matter before the City Council, and written notice of the agenda item shall be mailed to or served on the complainant, the owner of the property where the nuisance is located (if applicable), and any person believed to be responsible for the nuisance, at least 7 calendar days prior to the agenda item. After hearing the matter, the Council may:

1. Direct the city manager to initiate the nuisance process;
2. Direct the city manager to investigate further and either initiate the nuisance process or report back to the Council why the nuisance process has not been initiated.

(Section 8.10.150 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.155 Abatement or Protest

- A. Within 10 days after the posting and/or mailing of the notice as provided in Section 8.10.150, the owner or person in charge of the property shall remove the nuisance or submit a written protest as provided in Subsection (B) below. The time to remove the nuisance may be extended as provided in Section 8.10.160(A.)
- B. An owner, person in charge, or other person responsible for the nuisance who wishes to protest the nuisance notice shall file with the city manager a written statement specifying the basis for the protest.
- C. On receipt of the protest, the city manager may withdraw the notice if the manager concludes that no nuisance exists. If the manager does not withdraw the notice, the protest shall be referred to the Council for consideration at either of the next two Council meetings. At the time set for consideration of the protest, the owner or other person may appear and be heard by the Council and the Council shall thereupon determine whether or not a nuisance in fact exists.
- D. If the Council determines that a nuisance does in fact exist, the owner or other person shall abate the nuisance according to the Council determination. If no deadline is included in the Council decision, the nuisance shall be abated within 10 days of the Council decision.

(Section 8.10.155 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.160 Abatement by City

- A. If the nuisance has not been abated within 10 days of posting or as within the time specified in the Council decision, the city manager may cause the nuisance to be abated by the city. The city manager may decide not to proceed with the abatement if the city lacks the resources to abate the nuisance. The city manager may agree to extend the deadline for a reasonable period of time so long as the owner or other responsible person is making reasonable efforts to abate.
- B. No abatement by the city on private property shall occur unless preceded by issuance of a judicial warrant authorizing entry and abatement, or in the alternative, written consent and release of liability by the property owner or person in charge of the property. The municipal judge shall have the authority to issue a warrant to enter and abate.
- C. The city shall keep an accurate record of the actual cost incurred by the city in abating the nuisance, including any administrative expenses, and any costs incurred in posting notice or holding the hearing. Staff time in preparation for and participation at the hearing shall also be included as a cost of abatement.

8.10.190 Assessment of Costs

- A. After the city has determined the total cost of abatement, the city, by personal service or by registered or certified mail shall provide to the owner and may provide to any other person in charge of the property or responsible for the nuisance a notice stating:
 - 1. The total cost of abatement.
 - 2. That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice;
 - 3. That any objection to the cost of the abatement as stated in the notice must be filed with the city manager not more than 10 days from the date of the notice of abatement costs.

- B. If no timely objection is received and payment is not received within 30 days, the amount stated in the notice shall be entered into the city's lien docket and shall constitute a lien on the property where the nuisance abatement occurred.
- C. If an objection is received, the objection shall be considered by the Council at its next meeting. After a hearing on the objection, the Council shall determine the amount of abatement costs payable to the city, and the amount shall be paid within 10 days of the Council determination. If unpaid after 10 days, the amount of abatement costs determined by the Council shall be entered into the city's lien docket and shall constitute a lien on the property where the nuisance abatement occurred.
- D. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of nine percent per annum from the date of entry of the lien in the lien docket.
- E. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property where the nuisance abatement occurred.

(Section 8.10.190 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

8.10.200 Summary Abatement

The city manager, fire chief, and police chief may proceed summarily to abate a health or other nuisance from which there is immediate danger to human life, health, or safety or immediate danger of substantial damage to property.

(Section 8.10.200 was amended by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

(Section 8.10.210 was renumbered 8.10.145 by Ordinance No. 2171 on February 16, 2021; effective March 18, 2021.)

(Chapter 8.10 was adopted by Ordinance 1921 on June 4, 2007; effective July 4, 2007.)