

## **Chapter 8.16 NUISANCES**

**Sections:**

|                 |  |
|-----------------|--|
| <b>8.16.010</b> | <b>Title</b>   |
| <b>8.16.020</b> | <b>Definitions</b>                                     |
| <b>8.16.030</b> | <b>Purpose</b>   |
| <b>8.16.040</b> | <b>Administration – Enforcement</b>                    |
| <b>8.16.050</b> | <b>Specific Nuisances Prohibited</b>                   |
| <b>8.16.060</b> | <b>Vehicle Storage and Repair</b>                      |
| <b>8.16.070</b> | <b>Abandoned, Junked and Unlicensed Motor Vehicles</b> |
| <b>8.16.080</b> | <b>Parking</b>   |
| <b>8.16.090</b> | <b>Noise</b>   |
| <b>8.16.100</b> | <b>Abatement</b>                                       |
| <b>8.16.110</b> | <b>Abatement by Persons Responsible</b>                |
| <b>8.16.120</b> | <b>Abatement by City</b>                               |
| <b>8.16.130</b> | <b>Assessment of Costs</b>                             |
| <b>8.16.140</b> | <b>Summary Abatement</b>                               |
| <b>8.16.150</b> | <b>Violation – Penalty</b>                             |

### **8.16.010 Title.**

This chapter shall be known as “The City of Culver Nuisance Ordinance,” and may be so pleaded and referred to and shall apply within the jurisdictional limits of the city.

### **8.16.020 Definitions.**

As used in this chapter, unless the context requires otherwise:

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

“City” means the City of Culver.

“Council” means a common council of the city of Culver.

“Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

“Emergency Work” means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

“Explosive” means a chemical compound, mixture or device that is used or intended to be used for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined by state law, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

“Garbage” means food waste, refuse, rubbish, trash or other useless material.

“Intersection” means the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more streets or highways which join one another at an angle, whether or not one street or highway crosses the other.

“Junk” means all inoperative vehicles, abandoned vehicles, unlicensed vehicles, old vehicle parts, old machinery, old machinery parts, old appliances or parts thereof, appliances that are not being used for the purpose they are manufactured for, discarded furniture, mattresses, carpeting, old or scrap copper, brass, lead, or any other non-ferrous metal, old or discarded exercise equipment, machines, or parts thereof, old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood, iron, steel or other old or scrap ferrous materials, old or discarded glass, tinware, plastic or old or discarded household goods or hardware, old or discarded cardboard, wooden pallets or other shipping materials, and old or discarded apparel. Neatly stacked firewood located on a side yard or a rear yard is not considered junk.

“Liquid waste” means waste oil, septic tank pumping, liquid industrial waste or other similar material.

“Noise Sensitive Area” includes, but is not limited to, real property normally used for residential and/or sleeping purposes, or normally used as a school, church, hospital or public library.

“Nuisance” means any unsafe, annoying, unpleasant or obnoxious condition or practice causing or capable of causing an unreasonable threat to the public health, safety and welfare in the circumstances; provided, however, that anything defined as a nuisance in CMC 8.16.050 shall be a nuisance.

“Nuisance abatement officer” means any peace officer as defined in ORS 133.005(3), the City Recorder, city attorney, public works director, or any individual appointed by the Culver City Council.

“Owner” means any person having a legal interest in real or personal property or any person in possession or control of real or personal property, and excludes any person whose interest is for security only.

“Person” means any natural person, association, trust, partnership, firm or corporation.

“Personal property” means any tangible item including, but not limited to, vehicles, trailers, boats, recreational equipment, structures, carts, tables, racks, and similar items. Personal property shall not include trash or recycling containers placed in the public right-of-way for pick up.

“Plainly Audible” means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

“Public Space” means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

“Radioactive substance” means a substance which emits radiation in the form of gamma rays, X-rays, alpha particles, beta particles, neutrons, protons, high-speed electrons or other nuclear particles, but radiation does not include sound waves, radio waves, visible light, infrared light or ultra-violet light.

“Residential Area” means any real property which contains a structure or building in which one or more persons reside; provided, that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the city’s zoning ordinance.

“Right-of-way” means a public or private area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, streets, sidewalks, bike paths, alleys and walkways. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and under the control of a public agency.

“Rodent” means a mouse or rat.

“Rubbish” means glass, metal, paper, wood, plastics or other nonputrescible solid waste.

“Sewage sludge” means residual waste of sewage treatment plants, consisting of digested organic waste and indigestible solids.

“Sidewalk” means that portion of a public right-of-way, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

“Solid waste” means all putrescible and nonputrescible wastes, whether in solid or liquid form, except wastes produced by the human body, liquid-carried industrial waste or sewage, or sewage hauled as an incidental part of septic tank or cesspool cleaning service, and includes garbage, rubbish, ashes, fill dirt, sewage sludge, street refuse, industrial wastes, swill, demolition and used construction materials, abandoned vehicles or parts thereof, discarded home or industrial appliances, manure, vegetable or animal solids and semisolid waste, dead animals and other discarded solid materials.

“Street” means every public way, road, thoroughfare, alley, and place, including bridges and other structures within the boundaries of this city, open, used or intended for use of the public for vehicles or vehicular traffic as a matter of right.

“Vector” means any insect organism, including but not limited to flies, fleas, lice, ticks, fly maggots and mosquito larvae, capable of bearing or carrying a disease transmittable to human beings.

“Vehicle” means any device which is designed or used for transporting people, goods or property upon a public street or roadway, including but not limited to a body, engine, transmission, frame or other major parts, but does not include a device propelled by human power, such as a bicycle, or a device operated exclusively upon fixed rails or tracks.

### **8.16.030 Purpose.**

The council has determined it necessary to establish and maintain a program for the effective control and abatement of nuisances which constitute a hazard or menace to the health, safety and welfare of the people of the city and this chapter shall be liberally construed to effectuate that purpose.

### **8.16.040 Administration – Enforcement.**

A. The nuisance abatement officer shall be responsible for the administration and enforcement of this chapter.

B. The nuisance abatement officer shall have authority to administer oaths, certify all official acts, issue citations, subpoena and require the attendance of witnesses and production of relevant documents at hearings before the hearing officer and take testimony of any person by deposition.

### **8.16.050 Specific Nuisances Prohibited.**

A. The acts, conditions or objects specifically enumerated and defined in this chapter are declared public nuisances; and such acts, conditions or objects may be abated any of the procedures set forth within this chapter. It shall be unlawful for any person to maintain or allow to exist the following things, practices or conditions on any property, including unoccupied structures, or within public road rights-of-way adjacent to that property, which shall be nuisances:

1. A pond or pool of stagnant water which emits an obnoxious odor or is a source of vector breeding or otherwise presents a threat to the public health, safety and welfare.
2. An animal carcass not buried or destroyed within 24 hours after death.

3. Accumulation, collection or storage of debris, garbage, rubbish, junk or animal excrement that is not removed within a reasonable time, outdoors on any street, lot, or premises, or in a building that is not wholly or entirely closed, except as follows.

a. Junk may be accumulated if authorized by land use permit.

b. Yard cuttings, other than grass clippings, may be accumulated to be burned during the first available open burning season. The accumulations shall meet the size and location requirements of the fire code.

c. Yard cuttings and other organic material may be accumulated for composting, but only if they are not visible from a street or sidewalk, are maintained in a manner that does not attract vermin or vector and do not produce an offensive odor.

d. Garbage may be accumulated in order to be hauled by a solid waste hauler to be taken by the person to a landfill, if the garbage is secured within a covered or sealed container that is kept clean and in good repair and is removed at the next pickup cycle.

e. Animal excrement from livestock may be accumulated for farm or agricultural purposes as long as it does not produce odors on adjacent properties and becomes a danger to health or safety.

f. Debris or junk may be stored in a back yard if it is screened from adjoining properties, streets and public rights-of-way by a sign-obscuring fence.

4. A well, septic system or cesspool that has not been safely or securely sealed or properly maintained and which may cause or has caused an injury to any person or contamination of a potable water supply.

5. Any explosive or radioactive substance, unless the possession is authorized by law.

6. Except as permitted by the City public works department, no person in charge of property or no driver of a vehicle may permit or cause to exist on a public sidewalk, or public or private street adjacent to the property, any dumping or storage of dirt, sand, rocks, gravel, bark dust, snow or other similar material.

7. An open pit, well, quarry, cistern, excavation or other hole of a depth of four feet or more and a top width of six inches or more without reasonable safeguards or barriers to prevent them from being accessible to children and domestic animals.

8. No owner or person in charge of property that abuts a street or public sidewalk shall permit trees or bushes on the property to interfere with street or sidewalk traffic; nor shall any owner or person in charge of property allow a dead or decaying tree to stand.

9. No owner or person in charge of property shall permit vegetation that impedes motorist, bicyclist or pedestrian views of traffic, traffic signs or signals, streetlights or name signs, or other

safety fixtures or markings placed in the public right-of-way. This includes vegetation that is within 30 feet of an intersection of two public or private roads and exceeds a height of three feet above the finished grade of the roadway.

10. Excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks or other public property.
11. Any building or structure which is either vacant or under construction, which is not locked or otherwise secured by barriers or other devices to prevent them from being accessible to children.
12. Signs placed illegally within the public right-of-way.
13. Uncontrolled or uncultivated growth of weeds, brush, poison oak, poison ivy, tansy ragwort or grasses over 14 inches in height which offer vector or rodent harborage, contribute noxious pollens to the atmosphere, constitute a fire hazard or unreasonably interfere with the use and enjoyment of abutting public or private property. Except, uncontrolled or uncultivated growth on public land specifically for the purpose of providing native wildlife habitat shall not constitute a nuisance.
14. Any structure that is contaminated by toxic chemicals or that is in a condition that renders the structure unsafe. Where a governmental agency authorized by law to make the determination that a structure is unfit for use due to hazardous conditions on the property, makes such a determination, there is a rebuttable presumption that the structure is a nuisance in violation of this chapter.
15. Vehicle storage and repair in violation of CMC 8.16.060.
16. Any abandoned, junked and unlicensed motor vehicles in violation of CMC 8.16.070.
17. Violation of any provisions of CMC 8.16.080.
18. Violation of any provisions of CMC 8.16.090.
19. Maintaining an occupied travel trailer, motor home, camper, or vehicle or trailer modified for sleeping at any location other than a recreational vehicle park licensed under the provisions of the state, except as follows: vacation trailers and motor homes may be used by visitors of the residents, and shall be allowed on the residents' lot for a period of time not to exceed 14 days in any consecutive six-month period.
20. Connection of any electric, water, sewer, gas, or telephone line from any source to a motor home, travel trailer, camper or utility trailer if any portion of such line between the connection at the termination and the point of connection at the source extends over, across, or under any public street, sidewalk, alley, or other public right-of-way or portion thereof.

21. Placement in a public right-of-way or on a public sidewalk of a newsstand, dispensing machine or any similar device intended for dispensing materials, including, but not limited to, newspapers, magazines, and advertising publications.
22. Creating, causing, or maintaining any condition or use which violates the provisions of the city of Culver zoning ordinance, comprehensive plan, subdivision ordinance or any other ordinance of the city of Culver.

### **8.16.060 Vehicle Storage and Repair.**

All servicing, repairing, assembling, wrecking, modifying, restoring, or otherwise working on any vehicle on any residential premises shall be subject to the following terms:

- A. Work shall be limited to the repair and maintenance of vehicles, equipment, or other conveyance currently registered as specified in the Oregon Vehicle Code to the occupant or a member of the occupant's family. This limitation precludes auto repair on residential premises by any commercial entity.
- B. Work on inoperative vehicles shall be limited to no more than one vehicle at any one time.
- C. Work shall take place within an enclosed structure or in an area screened from public view, except that minor servicing, repairing, or otherwise working on a vehicle may be performed outside an enclosed structure or in an area screened from public view so long as the vehicle is parked on a designated driveway or improved parking surface and the service, repair, or work is completed within 48 hours.
- D. Work shall take place only after the hour of 7:00 a.m. and before the hour of 10:00 p.m.
- E. Work shall not take place in a public right-of-way.
- F. Parts, equipment, or other supplies shall be kept within an enclosed structure or in an area that is screened from public view.
- G. No work or condition shall create a nuisance as defined within the Culver City Code.
- H. Upon completion of all work allowed by this section, the owner shall clean the property of all debris, oil, grease, gasoline, cloths, rags, equipment, and material used in the work and shall leave the property in such a condition that no hazards to person or property remain.

### **8.16.070 Abandoned, Junked and Unlicensed Motor Vehicles**

- A. It is unlawful to park, store, or leave or permit the parking or storing of any licensed or unlicensed motor vehicle of any kind for a period of time in excess of seven days, which is wrecked or junked or partially dismantled, or in inoperative or abandoned condition, whether attended or not, upon any property within the city of Culver unless the same is completely

enclosed within a building, or unless it is in connection with a business enterprise lawfully licensed by the City and property operated within applicable land use regulations.

B. The cumulation or storage of one or more of such vehicles defined in Section 8.16.070(A) on any property within the City, shall constitute rubbish and unsightly debris and is hereby declared to be a nuisance, determinantal to the health, safety, and welfare of the inhabitants of the city of Culver. It shall be the duty of the registered owner of such vehicle, and it shall also be the duty of all persons in charge of property, to remove the same from the city of Culver or to have the same housed in a building where it will not be visible from a street.

C. In addition to any remedies authorized by this chapter, a nuisance abatement officer may cause a vehicle in violation of this chapter located on any property within the city to be removed to an automobile wrecking yard or any other similar place for storage of the vehicle as designated by a nuisance abatement officer as part of abating the nuisance created by such vehicle and/or nuisances on the property. The abatement of such vehicle shall be in accordance with the procedures outlined in CMC 8.16.110. The city shall also have any remedies available under this chapter, without limitation, the ability to sell a removed vehicle as abandoned property pursuant to CMC 2.16.

Within 48 hours after the removal and storage of such vehicle a notice shall be given to the registered owner of such vehicle if the identify of such owner can be reasonably ascertained as well as delivered to the mailing address of the property from which the vehicle was removed and to the address of record for the owner of such property if different. Such notice shall include the location where the vehicle or vehicles are stored, the cost incurred by the city for the removal or towing and the storage charges accruing; and if said charges are not paid in full to the city recorder of the city of Culver within 10 days immediately following the giving of such notice, said vehicle or vehicles shall be deemed to have been abandoned and will thereafter be discarded as junk, or may, in the discretion of the nuisance abatement officer, be sold as an abandoned personal property in the manner prescribed by CMC 2.16.

D. In addition to any fines authorized by the chapter, and notwithstanding anything herein to the contrary, any vehicle in violation of this section located on a public right-of-way shall be subject to CMC 8.16.080(D).

### **8.16.080 Parking**

A. No person shall park any vehicle or personal property parked or stored in such a way as to obstruct the flow of traffic on a public right-of-way or the movement of pedestrians on a public sidewalk.

B. No vehicle or personal property located on a public right-of-way, a sidewalk or on public property shall be permitted for more than 72 consecutive hours; provided, that any basketball stand that does not interfere with the flow of traffic or pedestrians, or create a substantial safety hazard, may be located in the right-of-way for more than 72 hours. Movement of a vehicle within a 500-foot radius shall not extend the time limits for parking violations pursuant to this section.



C. Within residential neighborhoods, no commercial vehicle which exceeds 8,000 pounds gross weight, 21 feet in length or eight feet in height shall be parked in the street unless it is a vehicle that is routinely on standby and necessary to use under emergency circumstances. Semi-trailers are prohibited.

D. Whenever a vehicle is placed in a manner or location which constitutes an obstruction to traffic or hazard in public safety or is parked in a manner that violates this chapter, within the city limits of the City of Culver, the nuisance abatement officer may cause the vehicle to be towed pursuant to provisions established in ORS 98.805, 98.810, 98.8122, and 98.818. The owner of such vehicle is responsible to the City or any private towing and storage operator pursuant to the provisions of ORS 98.812 and 98.818. The city shall also have any remedies available under this chapter including, without limitation, the ability to sell a removed vehicle as abandoned property.

E. If any vehicle is impounded and stored under the provisions of this chapter or any other provision of the Culver Municipal Code, or pursuant to any other lawful authority, said vehicle shall not be released by the person to whom possession thereof is delivered until all charges connected with the removal, towing, and storage of such vehicle have been fully paid.

### **8.16.090 Noise**

(A) Purpose. This section is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of the city of Culver through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity. Nothing in this section shall limit the city or state in enforcing the regulations of Oregon Administrative Rule 340, Division 35 – Noise Control Regulations.

(B) Findings. The City Council of the City of Culver finds:

(1) Loud and raucous noise degrades the environment of the city to a degree that:

- (a) Is harmful to the health, welfare, and safety of its inhabitants and visitors;
- (b) Interferes with the comfortable enjoyment of life and property;
- (c) Interferes with the well-being, tranquility, and privacy of the home; and
- (d) Both causes and aggravates health problems.

(2) Both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the city's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication.

(3) The use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the city.

(4) Certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the city.

(5) The obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance to protect the freedom of expression guaranteed by Article I, Section 8, of the Oregon Constitution and the First Amendment of the United States Constitution. This section enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights.

C. Scope. This section applies to the control of all sound originating within the jurisdictional limits of the city.

D. General prohibition.

(1) No person shall make, continue, or cause to be made or continued:

(a) Any unnecessary or unreasonably loud or raucous noise; or

(b) Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the city; or

(c) Any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.

(2) Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:

(a) The proximity of the sound to sleeping facilities, whether residential or commercial;

(b) The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;

(c) The time of day or night the sound occurs;

(d) The duration of the sound; and

(e) Whether the sound is recurrent, intermittent, or constant.

E. Noises prohibited. The following acts are declared to be per se violations of this section. This enumeration does not constitute an exclusive list:

(1) *Unreasonable noises.* The unreasonable making of, or knowingly permitting to be made, any unreasonably loud, unnecessary, boisterous, or unusual noise, disturbance, commotion or vibration. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of any residential, commercial or public property when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent residences, or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.

(2) *Vehicle horns, nonemergency signaling devices, and similar devices.* The unreasonable and/or unnecessary sounding of any horn, nonemergency signaling device, or other similar device.

(3) *Radios, televisions, stereos, loudspeakers, musical instruments and similar personal sound making devices.* The use or operation of a radio, television, stereo, musical instrument, or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors in residential or noise sensitive areas.

(4) *Yelling, shouting, and similar activities.* Yelling, shouting, hooting, whistling, or singing in residential or noise sensitive areas or in public places at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities.

(5) *Animals and birds.* Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls or otherwise cares for the animal or bird.

(6) *Loading or unloading merchandise, materials, equipment.* The creation of unreasonably loud, raucous, and excessive noise in connection with the loading or unloading of any vehicle at a place of business or residence.

(7) *Construction or repair of buildings, excavation of streets and highways.* All outdoor construction shall be conducted only after the hour of 7:00 a.m. and before the hour of 10:00 p.m., unless exempted hereafter.

(8) *Power tools and similar devices.* The operation of power tools or similar devices in residential or noise sensitive areas which creates unreasonably loud and raucous noise or which creates a noise that would be reasonable except for the time of day/night in which the noise takes place.

(9) *Commercial establishments adjacent to residential property.* Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under the control of the establishment.

(10) *Idling of commercial motor vehicles.* In accordance with Oregon House Bill 2081, no commercial motor vehicle shall be allowed to idle for more than five minutes in any continuous 60-minute period, except as authorized as an exception under House Bill 2081.

F. *Exemptions.* Sounds caused by the following are exempt from the prohibitions set out in subsection (E) of this section and are in addition to the exemptions specifically set forth in subsection (E) of this section:

(1) Motor vehicles on traffic ways of the city; provided, that they do not create unmuffled engine or braking noise and the prohibitions of subsections (E)(2) and (3) of this section continue to apply.

(2) Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger.

(3) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

(4) Repairs or excavations of bridges, streets or highways or utility structures by or on behalf of the city, the state, or the federal government when public safety, welfare and convenience render it impractical to perform the work in the hours prescribed.

(5) *Outdoor school and playground activities.* Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to school athletic and school entertainment events.

(6) *Other outdoor community events.* Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events.

(7) Commercial and industrial businesses existing prior to the date of adoption of this section which are operating within their historically typical noise levels. Any increase in noise due to change of equipment, operations or any other reason shall be subject to the standards of this section.

G. *Enforcement.* The following individuals shall enforce this section: The nuisance abatement officer will have primary responsibility for the enforcement of the noise regulations contained in this section. Nothing in this section shall prevent the nuisance abatement officer from obtaining voluntary compliance by way of warning, notice or education.

H. *Penalties.*

(1) A person who violates a provision of this section is guilty of an infraction which is punishable by a fine not to exceed \$500.

(2) Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

I. *Severability clause.* A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this section shall not affect the validity of the remaining parts to this section.

### **8.16.100 Abatement**

A. The nuisance abatement officer may issue warnings, citations, and/or order to any owner and/or person in charge of property for nuisances, charging such person with violating this chapter.

B. The nuisance abatement officer may enter upon any property in connection with the City's provision of any notice or order provided under this chapter, determining compliance with this chapter, and/or to enforce this chapter, including, without limitation, performing any abatement; the nuisance abatement officer and/or its designee shall not be liable for trespass or conversion in connection therewith.

C. Notice of Abatement. The nuisance abatement officer shall have the authority to enforce this chapter and may cause a ten (10) day written notice of violation to be issued to the owner and/or person in charge of property. The notice will contain: (a) a description of the nuisance; (b) identification of the property upon which the nuisance is located by address or otherwise; and (c) inform the owner and/or person in charge of property that if the nuisance is not abated within ten (10) days, or such longer period as may be provided in the notice, it will be abated by the City and the owner and person in charge of property will be assessed for the cost of abatement as provided under this chapter.

D. Service. Except as otherwise provided in this chapter, any notice or order required under this chapter will be: (a) personally delivered to the owner and person in charge of property; (b) sent to the owner and person in charge of property by first-class mail to their last known residence or business address; or (c) posted at the property and also sent via first-class mail to the owner and person in charge of property to their last known residence or business address. Any notice or order served by mail will be deemed received three days after the date mailed. Failure of any owner and/or person in charge of property to receive notice or the order, or an error in the name or address of any owner and/or person in charge of property, will not render the notice or order void; the notice and/or order will be deemed proper and sufficient. Refusal to accept the registered or certified mail will not be deemed to, and will not, render the notice or order invalid.

### **8.16.110 Abatement by Persons Responsible**

- A. Within ten (10) days after the service of the notice, as provided CMC 8.16.100(D), the person responsible shall remove the nuisance or show that no nuisance exists.
- B. A person responsible, protesting that no nuisance exists, shall file with the City Recorder a written statement which shall specify the basis for so protesting.
- C. The statement shall be referred to the City Council as part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council; and 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. Council determination shall be required only in those cases where a written statement has been filed as provided.
- D. If the Council determines that a nuisance does in fact exist, the person responsible shall, within ten days after the Council determination, abate the nuisance.
- E. If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or the costs incurred by the city in abating the nuisance.

#### **8.16.120 Abatement by City**

- A. Abatement. If, within the time limit set by the city in the notice, as provided in CMC 8.16.100 and CMC 8.16.110, any nuisance described in the notice has not been removed and abated, or cause shown as shown in CMC 8.16.110, why such nuisance should not be removed or abated, or where summary abatement is authorized, the nuisance abatement officer or his/her designee may cause the nuisance to be abated, including disposal in an approved manner.
- B. The officer charged with the abatement of the nuisance shall have the right at reasonable times to enter into or upon property to investigate the nuisance. The officer charged with abatement of the nuisance and others as necessary shall have the right at reasonable times to enter into or upon the property to cause the removal of the nuisance.
- C. Warrants. The nuisance abatement officer or his/her designee may request any Circuit Court judge to issue a nuisance abatement warrant whenever entry onto private property is necessary to remove and abate any nuisance, or whenever the Nuisance abatement officer or his/her designee has reasonable cause to believe that there exists upon any property any violation described in this title.
- (D) Grounds for issuance of nuisance abatement warrants; affidavit.
  - (1) Affidavit. A nuisance abatement warrant will be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance, or regulation requiring or authorizing the removal and abatement of the nuisance, the property to be entered, the basis upon which cause exists to remove or

abate the nuisance, and a statement of the general types and estimated quantity of the items to be removed or conditions abated.

(2) *Cause.* Cause will be deemed to exist if reasonable legislative or administrative standards for removing and abating nuisances are satisfied with respect to any property, or if there is cause to believe that a nuisance violation exists, as defined in this title, with respect to the designated property.

E. Procedure for issuance of a nuisance abatement warrant.

(1) *Examination.* Before issuing a nuisance abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existing of grounds for granting such application.

(2) *Issuance.* If the judge is satisfied that cause for the removal and abatement of any nuisance exists and that the other requirements for granting the application are satisfied, the judge will issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general type and estimated quantity of the items to be removed or conditions abated. The warrant will contain a direction that it be executed during business hours, or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

(3) *Police assistance.* In issuing a nuisance abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the city in any way necessary to enter the property and remove and abate the nuisance.

(4) *Effect of abatement.* Upon the issuance of the nuisance abatement warrant, the owner's rights to any property authorized to be abated will be forfeited, and the property may be destroyed by the seizing agency or department.

(5) *Return.* A nuisance abatement warrant shall be executed within ten working days of its issue and returned to the judge by whom it was issued within ten working days from its date of execution. After the expiration of the time prescribed in this subsection, the warrant unless executed is void.

F. Cost of nuisance abatement.

(1) Whenever a nuisance is abated by the city, the nuisance abatement officer, or his/her designee, shall keep an accurate record of the expenses incurred by the city in physically abating the nuisances and shall include therein a charge of \$50 or 15% of those expenses, whichever is the greater for administrative overhead.

(2) When the city has abated a nuisance maintained by any owner of real property, for each subsequent nuisance which is abated by the city within two consecutive calendar

years concerning real property owned by the same person, an additional civil penalty of \$500 shall be added to the costs, charges, and civil penalties. The additional civil penalty shall be imposed without regard to whether the nuisance abated by the city involved the same real property or is of the same character as the previous nuisance.

(3) Costs and penalties resulting from nuisance abatement shall be assessed as lien upon the real property as provided in CMC 8.16.130.

### **8.16.130 Assessment of Costs**

A. The nuisance abatement officer, or his/her designee, by registered or certified mail, shall send to the person responsible a notice stating:

(1) The total cost of abatement, including the administrative overhead and any civil penalties so authorized.

(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 if the owner or person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the City Recorder no more than ten days from the date of the notice.

B. If an objection to the cost of abatement is filed as provided in subsection (A) of this section, the objection shall be referred to the City Council as part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person objecting may appear and be heard by the Council; and the Council shall hear and make a decision on the objection to the costs assessed. Council determination shall be required only in those cases where a written objection has been filed as provided.

C. If the costs of abatement are not paid within 30 days from the date of the notice or the date of Council decision if an objection is filed, the costs of abatement shall be entered in the city lien docket and constitute a lien on the property from which the nuisance was removed or abated.

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 9% per annum and interest shall begin to run from the date of entry of the lien in the lien docket.

E. An error in the name of the owner or person responsible 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.

### **8.16.140 Summary Abatement.**

The nuisance abatement officer may proceed summarily to abate a nuisance which poses imminent danger to human life or property.



### **8.16.150 Violation – Penalty.**

Each violation shall be a civil offense and subject to a fine of not less than one hundred dollars (\$100.00) for the first failure to comply, a fine of not less than five hundred (\$500.00) for the second violation; and one thousand dollars (\$1,000.00) for each subsequent failure to comply committed within one year of the first occurrence. In addition to any other rights or remedies provided under this chapter, the City may file a civil action to recover unpaid fees, fines, and costs, including, without limitation, the City's attorney fees and other fees, costs, and expenses incurred by City to enforce this chapter.