

ORDINANCE NO. 176

AN ORDINANCE CONCERNING NUISANCES; REPEALING AND REPLACING ORDINANCE NO. 108 AND CHAPTER 91 OF THE CODE OF DUNES CITY.

WHEREAS, the City Council of Dunes City wishes to amend its nuisance provisions to make them easier to administer and fairer in their application.

THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. Ordinance 108, enacted as Title IX, GENERAL REGULATIONS, of the Dunes City Code of Ordinances, is amended by repealing and replacing Chapter 91 with the following:

GENERAL PROVISIONS

§91.01 DEFINITIONS.

For the purpose 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, that is in one or more of the following conditions:

- (1) Inoperative;
- (2) Wrecked;
- (3) Dismantled in whole or in part;
- (4) Abandoned;
- (5) Rusted and in poor condition;
- (6) Not in current lawful use.

In addition, motor vehicles, including hauling or travel trailers, travel campers or mobile homes, without lawfully attached, unexpired license plates and liability insurance shall be considered "discarded" if state law requires licensing for road use.

ENCLOSURE. Any garage, carport, building, basement, or area fenced by a fence which is solid, not to exceed fence height limitations in the city zoning ordinance, 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, inoperable motor 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.

PERSON IN CHARGE OF PROPERTY. An agent, occupant, lessee, contract purchaser, or other person having possession or control of property or supervision of a construction project.

PERSON RESPONSIBLE. The person responsible for abating a nuisance includes:

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

WRECKED. Substantially damaged through accident or other cause.

NUISANCES REGULATED

§91.10 NUISANCES DECLARED; UNENUMERATED NUISANCES.

(A) The acts, conditions, or objects specifically enumerated and defined in this subchapter are declared public nuisances and may be abated by the procedures set forth in sections §91.25 et seq.

(B) In addition to the nuisances specifically enumerated in this chapter, every other thing, substance, or act that is determined by the Council to be injurious or detrimental to the public health, safety, or welfare of the city is declared a nuisance and may be subject to City-

initiated abatement or penalty as provided in this chapter.

§91.11 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 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 feet or more and a top width of 12 inches or more and failing to cover or fence it with a 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) Nuisances affecting public safety may be subject to a penalty as provided by §91.99 and §10.99 of this Code.

§91.12 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 this chapter:

(1) Open vaults or privies constructed and maintained with 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;

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

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

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

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

(7) Drainage of liquid wastes from private premises;

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

(B) *Eyesores prohibited.* No person shall keep junk or the items described below out of doors on any street or public right-of-way, or on any private property except in an enclosure:

(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, tables, chairs, 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 junk 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.

(7) Any unguarded machinery, equipment, or other devices on property which may be attractive, accessible, and

potentially dangerous to children;

(8) Lumber, logs, or pilings placed or stored in such a manner so as to be attractive, accessible, and potentially dangerous to children;

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

(10) More than six vehicles that have valid, unexpired license plates and liability insurance. (Exception is any lawfully established business within the city if the enforcement would preclude the lawful operation of the business.)

§91.13 NUISANCES AFFECTING 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 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, thing, or device that is so loaded, out of repair, or operated in such a manner that it creates a loud or unnecessary grating, grinding, rattling or other noise;

(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 an automatic or electric phonograph, 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 a.m. to 6 p.m., it is audible to a person of normal hearing at a

distance of 75 yards, or, during the hours of 6 p.m. to 7 a.m., it is audible at a distance of 50 yards.

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

§91.14 DISCARDED AND INOPERATIVE VEHICLES.

(A) *Discarded and inoperative vehicles prohibited.* It shall be unlawful to park, store or leave, or permit the parking or storing of any licensed or unlicensed motor vehicle of any kind, including equipment, machinery, hauling or travel trailers, travel campers, mobile homes, or recreational vehicles which are inoperative, wrecked, dismantled in whole or part, abandoned, rusted and in poor condition, or not in current lawful use, whether attended or no, upon any public or private property within the city for a period of time in excess of seventy-two (72) hours, 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 properly operated in the appropriate business zone, pursuant to the zoning laws of the City.

(B) *Accumulation a Nuisance.* The accumulation and storage of one or more of such vehicles as described in (A) herein on public or private property shall constitute junk and unsightly debris and a nuisance, detrimental to the health, safety and welfare of the inhabitants of the City.

It shall be the duty of the person in charge of the property or the person responsible for the property upon which such vehicle is located to remove the same from the City or to have the same housed in an enclosure where it will not be viewed from the street or adjacent properties.

(C) *Servicing on Streets.* It shall be unlawful to disassemble, construct, reconstruct, repair and/or service motor vehicles of any kind in or upon any street, road, alley or public thoroughfare in the City, except for emergency service, in which case said emergency service shall not extend over a period of two (2) hours, and does not interfere with or impede the flow of traffic.

(D) *Servicing on Private Property.* Vehicles registered to the owner of the property or the person in charge of the property may be serviced as follows: Disassembling, constructing, reconstructing,

repairing and/or servicing motor vehicles of any kind on private property shall not extend over a period of seventy-two (72) hours unless the vehicle is in an enclosure which shields the vehicle from view from all public rights-of-way and adjacent properties. More than two vehicles undergoing repairs at the same time is prohibited.

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

ABATEMENT PROCEDURE

§91.25 INSPECTION; NOTICE TO ABATE.

(A) When a signed, written allegation is presented to the City Recorder that a nuisance, as defined in this chapter, exists, the Recorder shall notify the Site Review Committee. The Site Review Committee will investigate to determine whether a nuisance exists.

(B) If the Committee concludes as a result of their inspection that a nuisance exists, they shall inform the City Council. The Council shall then direct the City Recorder to post on the property where the nuisance exists, a notice directing the owner and the person in charge of the property to abate the nuisance.

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

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

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

(2) A description of the nuisance;

(3) A direction to abate the nuisance within ten days from the date of the notice;

(4) A statement that, unless the nuisance is removed, the city may abate the nuisance and the cost of abatement will be charged as a lien against the property;

(5) A statement that failure to abate a nuisance may warrant imposition of a fine;

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

(E) Upon completion of the posting and mailing, the City Recorder shall execute and file a certificate stating the date and place of the mailing and posting.

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

§91.26 ABATEMENT BY PERSON RESPONSIBLE.

(A) Within ten days after the posting and mailing of the notice as provided in §91.25, the owner or person responsible shall remove the nuisance or file a statement that no nuisance exists, as provided in division (B) below.

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

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

(D) If the investigation designated in §91.25 determines that an emergency exists, the Site Review Committee shall notify the

Mayor, and the Mayor may call an emergency meeting of the Council and cause to be served on the owner and the person in charge of the property a notice that they must attend the emergency meeting if they wish to object to the proceeding. The emergency meeting shall be conducted pursuant to the regular abatement proceedings in so far as reasonably practical to do so.

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

(F) If the Council determines that a nuisance does exist, it may, in addition to abating the nuisance, assess a penalty to the responsible party, consistent with §91.98 and §10.99 of this Code.

§91.27 JOINT RESPONSIBILITY.

If more than one person is a "person responsible", they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance and may be individually subject to a penalty imposed under §91.98 of this Code.

§91.28 ABATEMENT BY CITY.

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

(B) The City Recorder shall keep an accurate record of the expenses, including attorney costs, incurred by the city in abating the nuisance and shall include in those expenses a charge of 15% for the expenses of administrative overhead.

§91.29 ASSESSMENT OF COSTS; LIEN.

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

(1) The total cost of abatement including the administrative overhead;

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

(3) That if the owner or person in charge of the property objects to the cost of abatement, he or she may file a written notice of objection with the City Recorder not more than ten days from the date of the notice.

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

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

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

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

§91.30 SUMMARY ABATEMENT.

The procedure provided by this chapter is not exclusive, but is in addition to any procedure provided by other ordinances. The city may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property.

§91.98 PENALTY.

(A) A violation of a provision of this chapter is punishable as provided by §10.00. Each day's violation constitutes a separate offense.

(B) If the City Council has determined that the owner of the property upon which the nuisance occurs is a responsible party, the penalty shall become a lien against the property unless paid within 30 days from the date of the notice of the penalty.

(1) That if the owner or person in charge of the property objects to the penalty, he or she may file a written notice of objection with the City Recorder not more than ten days from the date of the notice of the penalty.

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

(3) The assessment of penalty costs stated or determined by the Council shall be made by resolution and entered in the docket of city liens, and shall constitute a lien on the property from which the nuisance was removed.

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

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

(B) The abatement⁶ of a nuisance is not a penalty for violating this ordinance, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance.

§91.99 APPEALS.

(A) Appeals of abatement proceedings, including costs of abatement and penalties imposed by the Council, may be appealed to the Municipal Court, if that court has been established, or to the Lane County Circuit Court.

(1) Appeals to the Municipal Court must be filed with the court on a form provided by the City Recorder within thirty (30) days of the appealed action becoming final.

(2) Appeals to the Lane County Circuit Court may be appealed by Writ of Review as provided by ORS 34.010 through 34.100.

Section 2. Severability. If any phrase, clause, or part of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

ADOPTED BY THE DUNES CITY COUNCIL THIS 12th DAY OF MAY, 2005.

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

Robert B. Ward Jr., Mayor

Joanne Hickey, City Recorder