

CITY OF OAKLAND

ORDINANCE 566

AN ORDINANCE DESCRIBING NUISANCES TO PUBLIC HEALTH, SAFETY AND PROPERTY; PROVIDING FOR NUISANCE ABATEMENT, PRESCRIBING PENALTIES; AND REPEALING CERTAIN ORDINANCES.

WHEREAS, there are City of Oakland ordinances relating to nuisances that no longer provide the City with any substantial regulating power;

WHEREAS, the City of Oakland finds it necessary to repeal certain ordinances that are no longer compatible with State Statutes;

WHEREAS, it is appropriate that the City of Oakland declare an emergency as to the enactment of this Ordinance so that it is in full force and effect immediately from and after its adoption.

NOW, THEREFORE, THE CITY COUNCIL OF OAKLAND, OREGON ORDAINS AS FOLLOWS:

SECTION 1. The following ordinances are hereby repealed:

- A. Ordinance 191 (September 8, 1964)
- B. Ordinance 221 (May 1969)
- C. Ordinance 316 (December 11, 1979)

SECTION 2. DEFINITIONS:

Except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine, and the following mean:

Abandoned Vehicle: Any vehicle that is inoperative damaged, junked, partially or completely dismantled, or used for storage purposes.

Authorized Representative: Officers and personnel named by City Council; Law enforcement officer or officers representing the city for purposes of ordinance enforcement and citations; for purposes of abatement proceedings as set forth in Sections 12 through 14 herein the term 'chief of police' shall also include any code enforcement officer as designated by the city, including but not limited to the city recorder/administrator, building official, fire marshal, county representative as determined the Council.

Building: A permanent, four-sided, roofed structure built or used for the shelter or enclosure of persons, animals, chattels, or property of any kind.

Camping /Recreation Vehicle: A vacation trailer or a self-propelled vehicle or structure equipped with wheels for highway use; and that is intended for human occupancy for vacation and

recreational purposes, but not for residential purposes as defined in Ordinance 499, and is equipped with plumbing, sink or toilet.

Child: Any person less than 18 years of age.

City: The City of Oakland.

Council: The governing body of the city.

Imminent Danger: Any conditions or practice which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately, or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided.

Noise: Any loud, disturbing or unnecessary noise that either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others.

Person: A natural person, firm, partnership, association, or corporation

Private Property: A tax lot as recorded in the records of Douglas County, Oregon regardless of the number of lots or record contained therein.

Property Owner: Property owner as recorded with the Douglas County Assessor's Office and the City utility department to determine the last known address.

Public place: Any building, place or accommodation, whether publicly or privately owned, open and available to the general public.

Solicitation: An act of soliciting, or selling door-to-door, from curbside, on the street(s) or in a park(s).

Storage: Placement anywhere on private property outside of a legally existing enclosed structure for a period in excess of seventy-two (72) hours.

Vehicle: Every device in, upon, or by any person or property that is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks. The definition of a vehicle includes wheeled devices that do not require licensing by the State of Oregon.

NUISANCES AFFECTING PUBLIC HEALTH.

SECTION 3. NUISANCES AFFECTING THE PUBLIC HEALTH.

No person may permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this Ordinance:

(1) Privies: An open vault or privy constructed and maintained within the city, except those privies used in connection with construction projects and constructed in accordance with Department of Environmental Quality regulations.

(2) Debris stored on private property: Accumulations of debris, rubbish, manure, or other refuse located on private property not removed within fifteen (15) days which affects the health, safety or welfare of the City.

(3) Stagnant water: Any pool of water, that is without a proper inlet or outlet, that, if not controlled will be a breeding place for mosquitoes and other similar insect pests.

(4) Water pollution: The pollution of any body of water, well, spring, stream, drainage ditch or river by sewage, industrial wastes, or other substances placed in or near such water in a manner that will cause harmful material to pollute the water.

(5) Odor: Any premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.

(6) Surface drainage: Any drainage of liquid waste from private premises.

(7) Recreational vehicles: Storage of more than one recreational vehicle on private or public property that is not mobile or is not currently licensed, if required to be licensed by the Oregon Vehicle Code when operated on public highways; private property on which more than one (1) recreational vehicle is stored; or habitation in any recreational vehicle, on public or private property, without a permit, as provided for in Ordinance No. 236 and hardship determination as provided in Zoning Ordinance 499.

(8) Estate, Garage or Yard Sales: Any sale within the city limits will not exceed duration of three (3) days.

(9) Human or animal feces deposited or left on public or private property within the city limits.

NUISANCES AFFECTING PUBLIC SAFETY

SECTION 4. ABANDONED ICEBOXES/REFRIGERATORS

No person shall leave in any place accessible to children any abandoned, unattended, or discarded icebox, refrigerator, or similar container that has an airtight door with a lock, snap lock, or other mechanism that may not be released for opening from the inside, without first removing such lock or door from such lock or door from such icebox, refrigerator, or similar container.

SECTION 5. ATTRACTIVE NUISANCES.

(1) No Person or person in charge of any premises shall permit:

- a. Any unguarded machinery, equipment, or other devices on such premises that is attractive, dangerous, and accessible to children.
- b. Lumber, logs, or pilings placed or stored on such property in a manner so as to be attractive, dangerous, and accessible to children.
- c. Any open pit, quarry, cistern, or other excavation to remain open for an unreasonable length of time without erecting adequate safeguards or barriers to prevent such places from being used by children.

(2) The provisions of this section shall not apply to authorized construction projects, if during the course of construction reasonable safeguards are maintained to prevent injury or death.

SECTION 6. SCATTERING RUBBISH.

No person shall throw, dump, or deposit upon any street, alley or other public place, any injurious or offensive substance, or any kind of rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench, detract from the cleanliness or safety of such public place, or would be likely to injure any animal, vehicle, or person traveling upon a public way.

SECTION 7. ACCUMULATION OF TRASH OR OTHER OBJECTS.

- (1) It is unlawful for any person to place, leave, store, dump or permit the accumulation on any open lot or other premises, any lumber, yard debris, boxes, barrels, bricks, stones, scrap metal, motor vehicle bodies or parts or similar materials, garbage, rubbish or any articles of junk, that are not removed within fourteen (14) days of notice by the City and that affect the health, safety or welfare of the city.
- (2) Excepted from this prohibition are construction materials for ongoing construction projects, neatly stacked firewood and compost piles consisting of vegetable matter.

SECTION 8. FIREWORKS—Adoption of State Fireworks Law and Prohibition

- (1) The following enumerated sections of the Oregon Fireworks Law, together with all acts and amendments applicable to cities which are now or hereafter enacted, are hereby adopted by reference and made a part of this ordinance.

ORS 480.110	ORS 480.140	ORS 480.120
ORS 480.150	ORS 480.130	ORS 480.170

- (2) No one shall sell fireworks of any kind within the city limits of Oakland.
- (3) Council shall declare a state of emergency, based on Douglas County Fire declaration of high to extreme fire danger conditions which prevent fireworks activity within the city limits. Standard notice shall be made to all citizens of the declaration of an emergency and the potential fines for violation of this declaration.

SECTION 9. NOISE.

- (1) No person shall make, assist in making or permit any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others.
- (2) The following acts are declared to be of a nature described above in violation of this ordinance. The following enumeration shall not be considered exclusive:
 - a. The keeping of any bird or animal which by causing frequent or long-continued noise shall disturb the comfort or repose of any person in the vicinity.
 - b. The use of any vehicle or engine, either stationary or moving, so operate as to create any loud or unnecessary grating, grinding, rattling or other noise.
 - c. Erection, excavation, demolition, alteration or repair of any building in a residential district other than the following approved hours:
 - i. Monday through Saturday from 7:00 a.m. to 10:00 p.m.
 - ii. Sundays and holidays from 10:00 a.m. to 8:00 p.m.
 - d. The use of any siren or gong upon any vehicle, other than police, fire or other emergency vehicle.
 - e. The discharge in open air of exhaust of any steam engine, internal combustion engine or motor vehicle except through a working muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke.
 - f. The use or operation of any sound system used to produce amplified sound, any electronic equipment or device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance. Upon application to the City Council, permission may be granted for the broadcast or amplification of commercial or entertainment programs including city, state or national events, public festivals or other event of a noncommercial nature.
 - g. The operation or maintenance of any garage (automobile or other) within 100 feet of any private residence, apartment, rooming house or hotel in such a manner as to cause loud or offensive noises to be emitted there from between the hours of 10:00 p.m. and 7:00 a.m.
- (3) The City Council may authorize the Public Works Department and contractors thereof to operate outside of the above restricted hours in case of urgent necessity in the interest of public welfare, health and safety.

SECTION 10. DECLARATION OF NUISANCE, GENERAL NUISANCE.

- (1) The acts, conditions, or objects specifically enumerated and defined in this Ordinance are declared to be public nuisances and such acts, conditions, or objects may be abated by any of the procedures set forth in this Ordinance.
- (2) In addition to those nuisances specifically enumerated within this Ordinance, every other thing, substance, or act that is determined by the council to be injurious or detrimental to the public health, safety, or welfare of the city is hereby declared to be a nuisance and may be abated as provided in this Ordinance.

(3) Joint Responsibility: If more than one person is the party(s) responsible, they shall be jointly and severally liable for abating the nuisance, or for the costs incurred by the City in abating the nuisance.

ABATEMENT PROCEDURE

SECTION 11. ABATEMENT NOTICE.

(1) Posting. Upon determination by the Council that a nuisance as defined in this or any other ordinance of the city exists, the council shall forthwith cause a notice to be posted on the premises where the nuisance exists, directing the owner or person responsible for the property to abate such nuisance.

(2) Notice to owner. At the time of posting, the Authorized Representative shall cause a copy of such notice to be sent by certified mail to the owner of the property and/or the person responsible for the property at the last-known address of such owner and/or other person. At a minimum, the city shall utilize the records of the Douglas County Assessor and the city utility department to determine the last known address.

(3) Notice – Contents. The notice to abate shall contain:

- a. A description of the real property on which the nuisance exists, street address or other.
- b. A direction to abate the nuisance within ten (10) days from the date of the notice.
- c. A description of the nuisance.
- d. A statement that unless such nuisance is removed, the city may issue a citation to appear in the Municipal Court to explain why the nuisance has not been abated.
- e. A statement that the owner or other person responsible for the property may protest the abatement by filing a **Notice of Protest** at City Hall within ten (10) days from the date of the notice.

(4) Certificate of Mailing and Posting. Upon completion of the posting and mailing, the person who is posting and mailing the notice shall execute and file a certificate stating the date and place of such mailing and posting.

(5) Sufficiency of Posted Notice. An error in the name or address of the owner or person responsible for the property or the use of a name other than that of the owner as listed with the Douglas County Assessor's Office and the City utility department to the address of record shall not make the notice void and in such a case the posted notice shall be sufficient.

SECTION 12. ABATEMENT OF NUISANCE – NOTICE OF PROTEST

Within ten (10) days after the posting and mailing of the notice as provided in this Ordinance, the owner or person responsible for the property shall remove the nuisance or show proof at City Hall that no nuisance exists.

(2) The owner or person responsible who is protesting the citation of a nuisance shall file with City Hall a written **Notice of Protest** within 10 days of the Nuisance Notice. The Notice of Protest shall specify the basis for declaring no nuisance exists.

(3) The Notice of Protest shall be referred to the Council as a part of the Council's regular agenda at the next scheduled meeting.

- a. At the time set for consideration of the abatement, the owner or person responsible may appear and be heard by the Council.
- b. The Council shall thereupon determine whether or not a nuisance in fact exists and such determination shall be entered in the official minutes of the Council. Council determination shall be required only in those cases where a written Notice of Protest statement has been properly filed.

(4) If the Council determines that a nuisance does, in fact exist, the owner or person responsible shall abate the nuisance within ten (10) days of such Council determination.

SECTION 13. FAILURE TO ABATE NUISANCE

(1) Failure to abate the nuisance may result in the issuance of a citation to appear in Municipal Court to show proof of abatement or show proof that no nuisance exists.

(2) A decision by the Municipal Court Judge may result in a fine or other remedy the Court finds proper.

IMMINENT DANGER TO HEALTH AND/OR SAFETY

The following conditions must be met before a hazard becomes an imminent danger:

- There must be a threat of death or serious physical harm.
- For a health hazard there must be a reasonable expectation that toxic substances or other health hazards are present, and exposure to them will shorten life or cause substantial harm or injury.
- The threat must be immediate or imminent. This means that it must be believed that death or serious physical harm could occur within a short time.

The procedure provided by this ordinance is not exclusive, but is in addition to procedure provided by other ordinances. The Authorized Representative or such other person(s) as the City Council may designate, may proceed to abate a health or other nuisance that unmistakably exists and from which there is imminent danger to human life or property.

SECTION 14. SUMMARY ABATEMENT.

Prior to issuing a citation as set forth in this Section, the Authorized Representative shall contact the Mayor, and in his/her absence, the Council President, to discuss the issuance of any citation under this Ordinance. The Mayor shall convene an Emergency City Council Meeting to review the issue.

Upon determination by the City Council that a nuisance resulting in an imminent danger to the public health, safety or property of the residents of Oakland as defined in this or any other Ordinance of the city exists, the Authorized Representative shall forthwith issue a citation to the property owner who, in the determination of the Authorized Representative, is in violation of this Ordinance.

(1) Abatement Notice of Imminent Danger.

- a. The citation of nuisance resulting in an imminent danger to the public health, safety or property of the residents of Oakland shall be delivered or posted on the subject property and must contain:
 1. Reference to the section of this ordinance being violated and a description of the imminent threat.
 2. A description of the location upon that the violation occurred; this may be a street address, a street name between intersecting streets, an approximate distance from a known point of reference, or otherwise, at or on which an imminent threat to the public health, safety or property of the residents of Oakland exists.
 3. The month, day, year and time of day of the citation.
 4. A direction to remove the imminent danger to the public health, safety or property of the residents of Oakland within two (2) hours from the time of issuance of the citation.
 5. A statement that unless such imminent danger to the public health, safety or property of the residents of Oakland is removed within two (2) hours after citation, the city will abate the nuisance and the cost of abatement shall be a lien against the property.
 6. A statement that the person or person responsible may protest the citation and action by filing a written Notice of Protest at City Hall within two (2) hours of the time of the citation. This written statement shall specify the basis for such a protest of the condition of a nuisance.
- b. An error in the name or address of the property owner as listed with the Douglas County Assessor's Office and the City's utility department shall not make the citation void, and in such a case, the citation shall be deemed sufficient.

(2) Abatement by the Owner of an Imminent Danger.

- a. Within two (2) hours after the citation is delivered or posted, the property owner or person responsible for the property, shall remove and abate the nuisance.

- b. If the property owner or person responsible for the property believes there is no violation, he/she shall file at City Hall a written Notice of Protest which shall specify the basis for contending that no nuisance exists.
- c. The statement shall be referred to the Authorized Representative of the City immediately after receipt by the City Hall, and the Authorized Representative shall advise the Mayor of such statement.
- d. The Mayor shall convene an Emergency City Council Meeting to refer the statement to the Council.
 - 1. Such Emergency Council Meeting shall be held as soon as a quorum of Council members can be convened.
 - 2. At the time set for the Emergency City Council Meeting for consideration of the abatement, such person or person responsible may appear and be heard by the Council.
 - 3. The Council shall, based upon the evidence presented, thereupon determine whether a nuisance resulting in an imminent danger to the public health, safety or property of the residents of Oakland does, in fact, exist; and such confirmation shall be entered in the official minutes of the Council.
- e. Upon Council determination and confirmation the person, or person responsible, for of this Ordinance shall within two (2) hours after Council confirmation, or two (2) hours after daylight of the next succeeding day, whichever is later, remove or abate such nuisance.

(3) Abatement by the City of Imminent Danger.

- a. If within the time fixed, as provided in this Ordinance, the property owner has not abated the nuisance resulting in an imminent danger to the public health, safety or property of the residents of Oakland, the City Council shall cause the imminent danger to be abated.
- b. The Authorized Representative shall maintain an accurate record of the expense incurred by the city in abating the imminent danger and shall include therein an administrative charge of fifteen (15) percent of the total cost for abatement.
- c. The total cost, including the administrative charge, shall thereupon be assessed to property owned by the person, or person responsible, within the City, whether or not said property shall be in the location of the violation of this Ordinance.
- d. If the person or person responsible does not own property in the City of Oakland, the City may file a civil action to enforce the collection of the total cost, including the administrative charges. The City may take other action available to collect these costs.

SECTION 15. APPLICATION OF ORDINANCE.

The procedure provided by this Ordinance is not exclusive but is in addition to procedures provided by other city ordinances and Oregon State Statutes.

SECTION 16. VIOLATION – PENALTIES.

- (1) Failure to abate a nuisance that is a violation of this ordinance may result in the issuance of a citation to appear in Municipal Court to show proof of abatement or show proof that no nuisance exists.
- (2) The decision by the Municipal Court Judge may result in a fine or other remedy the Court finds proper. Including a fine not to exceed \$500.00 for a non-continuing violation and a fine of not more than \$1,000 for a continuing offense.
- (3) The penalties imposed by this Ordinance are not exclusive and are in addition to any other remedies available under city ordinance or state statute.
- (4) The abatement of a nuisance in accordance with the procedures set forth in this Ordinance shall not constitute a penalty for a violation of this Ordinance, but may, based upon the determination by the court of jurisdiction, be in addition to any penalty imposed for the violation of the Ordinance.

SECTION 17. SEPARATE VIOLATIONS.

- (1) Each day's violation of a provision of this ordinance constitutes a separate offense.
- (2) The abatement of a nuisance is not a penalty for violating this ordinance but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance.

SECTION 18. SEVERABILITY.

The sections and subsections of this ordinance are severable. It being the intent of the City Council to enact this Ordinance, notwithstanding any parts declared invalid or unconstitutional, if any section, subsection, paragraph, or provisions of this Ordinance is so declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect or invalidate the remaining portions of this Ordinance.

Passed by a vote of the Common Council this 4th day of October, 2016 .

SIGNED BY

Bette Keehley, Mayor

ATTEST BY:

Terri Long, City Recorder