

ORDINANCE NO. 93-1162

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; REPEALING GENERAL ORDINANCE NOS. 751, 821, 897, AND 88-1087; AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF THE DALLES DO ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, except where the context indicates otherwise, the following terms shall mean:

- A. City. The City of The Dalles.
- B. City Council. The governing body of the City.
- C. [Section deleted by Ordinance No. 95-1198, passed by City Council and approved by the Mayor September 11, 1995.]
- D. Person. A natural person, firm, partnership, association or corporation.
- E. 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.
- F. 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 ordinance or another ordinance of the City, to come into or continue in existence.
- G. Police Chief. The duly appointed Chief of the City's police department, or the Chief's duly authorized designee.

H. Public place. A building, way, place or accommodation, publicly or privately owned, open and available to the general public.

Nuisances Affecting Public Health

Section 2. 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 ordinance.

- A. 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.
- B. Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health, safety, or welfare of the City.
- C. Stagnant water that affords a breeding place for mosquitoes and other insect pests.
- D. 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.
- E. Decayed or unwholesome food offered for human consumption.
- F. Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.
- G. Drainage of liquid wastes from private premises.
- H. Cesspools or septic tanks that are in an unsanitary condition or that cause an offensive odor.
- I. Mastics, oil, grease or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system.
- J. An animal carcass which is allowed to remain upon public or private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass.

(Sections 3 through 9 are reserved for expansion.)

Nuisances Affecting Public Safety

Section 10. Abandoned Refrigerators. No person shall place, leave or discard any abandoned, unattended or discarded refrigerator, freezer, or similar container which has a door or lid that locks or fastens automatically, in any place accessible to children without first removing such door or lid from the refrigerator, freezer, or similar container. Abandoned refrigerators, freezers, or other similar containers are declared to be a public nuisance and may be abated in a summary manner in accordance with the provisions set forth in Section 35.

Section 11. Attractive Nuisances.

A. No owner or person in charge of property shall permit on the property:

1. Unguarded machinery, equipment or other devices on such premises which are attractive and dangerous to children and which are accessible to children.
2. Lumber, logs or piling placed or stored in such a manner as to be attractive, dangerous, and accessible to children.
3. Any excavation to remain open without erecting proper safeguards or barriers to prevent such excavation from being used by children.

B. The provisions of this section shall not apply to authorized construction projects provided that during the course of construction, all necessary safeguards required by any applicable local, state, or federal law or regulation are maintained to prevent injury or death to playing children.

Section 12. Hazardous vegetation. [Section 12 repealed by Ordinance No. 99-1234, adopted by City Council November 22, 1999.]

Section 13. Scattering Rubbish. No person shall deposit, on public or private property, rubbish, trash, debris, refuse or any substance that would mar the appearance of the property, create a stench or fire hazard, detract from the cleanliness or safety of the property, or be likely to injure a person, animal or vehicle traveling on a public way.

Section 14. Fences.

A. No owner or person in charge of property shall construct or maintain a barbed-wire fence, or permit barbed wire to remain as part of a fence, along a sidewalk or public way; except such wire may be placed above the top of other fencing, which other fencing is not less than six (6) feet, six (6) inches high.

B. No owner or person in charge of property shall construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person, without written permission of the Community & Economic Development Director.

Section 15. Surface Waters, Drainage.

A. No person owning or controlling any real property shall permit any type of surface water from any source whatsoever to flow from the premises across or upon any sidewalk abutting such property.

B. It is hereby made the duty of each person owning or controlling real property abutting upon any sidewalk to provide a proper system of drainage so that any overflow water will not be carried across or upon any sidewalk.

Section 16. Snow and Ice Removal.

A. No owner or person in charge of property, improved or unimproved, abutting upon any public sidewalk within the City, shall permit:

1. Snow to remain on the sidewalk for a period longer than the first two hours of daylight after the snow has fallen.
2. Ice to remain on the sidewalk for more than two hours of daylight after the ice has formed, unless the ice is covered with sand, ashes or other suitable material to assure safe travel.

B. Any person injured due to the failure of an owner or person in charge of property to clear snow or ice from the sidewalk as required by this section shall have a right of action against such owner or person in charge of property for damages. Such right of action is in lieu of any action against the City. In the event any action is filed against the City, the City shall have a right to indemnity from the owner or person in charge of property for failure to comply with this section. The indemnity shall include not only damages awarded to the person injured but also all fees, costs and expenses in defending the action and the costs and fees for bringing an indemnity action.

Section 17. Abandoned Vehicles [Added by Ordinance 05-1263, adopted September 12, 2005.]

- A. No person shall park, store, leave, or permit the parking, storing, or leaving of an abandoned vehicle, including a motor vehicle, upon private property, or upon public property, including a public right-of-way. For purposes of this section, the following definitions apply:
1. "Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion.
 2. "Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.
- B. For purposes of this section, a vehicle is considered to be an abandoned vehicle if it satisfies one of the following criteria:
1. The vehicle is not currently licensed and registered for operation.
 2. The vehicle is being used to store junk, as defined in Section 22 of this ordinance, or rubbish, as defined in Section 13 of this ordinance.
 3. The vehicle has parts which have been discarded, dismantled, or partially dismantled, or stripped, or the vehicle is in a rusted, damaged, wrecked or other condition which renders the vehicle inoperable.
- C. Upon determination by the City staff person in charge of enforcement regarding an abandoned vehicle which qualifies as a nuisance under this section, the City staff person may solicit voluntary compliance by affixing a notice to the abandoned vehicle. In the case of an abandoned vehicle on private property, permission to enter the property to affix the notice to the vehicle shall be obtained from the property owner, or shall be authorized by an inspection warrant. The notice shall provide the following information:
1. That the vehicle will be subject to being impounded by the City if the vehicle is not removed from the private property or public property within five (5) days of the date of the notice. If the vehicle is to remain on private property, it must be stored within an enclosed structure or covered by an approved coverage device.

2. The ordinance which has been violated and under which the vehicle will be removed.
 3. The place where the vehicle will be impounded and the telephone number to find out information where the vehicle will be stored.
 4. The vehicle, if impounded, will be subject to towing and storage charges and an administrative fee, and a lien will attach to the vehicle and its contents.
 5. The vehicle will be sold to satisfy the costs of towing and storage and administrative fees if these charges are not paid.
 6. The owner, possessor or person having an interest in the vehicle is entitled to a hearing, before the vehicle is impounded, to contest the proposed impoundment if a hearing is timely requested.
 7. The time within which a hearing must be requested and the method for requesting a hearing.
- D. In the event the person responsible has not voluntarily complied by removing the vehicle from the private property or the public right-of-way or storing the vehicle within an enclosed structure or underneath an approved coverage device, the City staff person in charge of enforcement shall institute abatement proceedings to have the abandoned vehicle towed from the private property or the public right-of-way. The City staff person shall mail a notice to the registered owner of the vehicle and to any lessors or security interest holders as shown in the state Motor Vehicle Department records, and to the person responsible for creating the nuisance, if that person is not the registered owner of the vehicle and the City has been able to identify that person, that the vehicle has been impounded. The notice shall be sent by certified mail, return receipt requested, and be mailed within 48 hours of the impoundment. The notice shall include the following information:
1. The location where the vehicle will be stored.
 2. That the vehicle and its contents are subject to a lien for the payment of storage and towing charges and an administrative fee of \$100, and the vehicle and its contents will be sold if those charges and administrative fee are not paid.

3. The vehicle will not be released until the owner provides proof that the vehicle is currently licensed and registered, that the nuisance conditions will not be resumed, and all towing and storage fees and the \$100 administrative fee have been paid, and the City has authorized the release of the vehicle in writing.
 4. The person owning the vehicle or responsible for creating the nuisance may request a hearing before the Municipal Court to contest the validity of the impoundment or the liability for storage and towing charges and the administrative fee. The request for a hearing must be made within five (5) calendar days after the date that notice of impoundment is mailed, as evidenced by the postmark, not including Saturdays, Sundays, or holidays. The request for a hearing shall be made to the City staff person who issued the notice of impoundment.
 5. When a timely request for a hearing is made, a hearing shall be set in the Municipal Court for four calendar days after the request is received, excluding Saturdays, Sundays, and holidays, but may be postponed at the request of the person asking for the hearing.
 6. The City shall have the burden of proving by a preponderance of the evidence that the vehicle which was impounded constituted a nuisance under this ordinance. If the Municipal Judge finds that the impoundment of the vehicle was proper, the Judge shall enter an order supporting the removal and shall find the owner of the vehicle or the person responsible for the nuisance is liable for the usual and customary towing and storage costs and the administrative fee. If the Municipal Court Judge finds the impoundment of the vehicle was improper, the Judge shall order the vehicle released to the person entitled to possession and shall enter a finding that the owner or the person responsible for creating the nuisance is not liable for any towing or storage costs resulting from the impoundment, and if there is a lien on the vehicle for towing and storage costs, the Municipal Court Judge shall order it paid by the City.
- E. Disposal of abandoned vehicles which have been impounded under this section shall be done in accordance with the applicable provisions of Chapter 819 of the Oregon Revised Statutes. The City shall be entitled to recover the costs of the nuisance abatement, including the \$100 administrative fee, in an appropriate action at law.

- F. Removal of an abandoned vehicle from one parcel of private property to another parcel of private property, or removal of an abandoned vehicle from private property onto a public right-of-way, or removal of an abandoned vehicle from one location to another location on a public right-of-way, after a notice has been affixed to the vehicle under subsection (C), shall not prevent the City from proceeding with the process to have the vehicle towed from a parcel of private property or the public right-of-way and impounded under the provisions of subsection (D) above.

(Sections 18 through 20 are reserved for expansion.)

Nuisances Affecting Public Peace

Section 21. Radio, Telephone, and Television Interference. No person shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio, telephone, or television reception by a radio, telephone, or television receiver of good engineering design. [As amended by Ordinance No. 96-1200, passed by City Council and approved by the Mayor February 12, 1996.]

- A. This section does not apply to devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

Section 22. Junk. No person shall keep junk outdoors on a street, lot, or premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.

- A. The term "junk", as used in this section, includes, but is not limited to, all old motor vehicles, old motor vehicle parts, abandoned automobiles, old machinery, old machinery parts, old appliances or appliance parts, old iron or other metal, glass, paper, lumber, wood or other waste or discarded material. For purposes of this subsection, the term "old" shall include, but not be limited to, a description of items which are dilapidated, abandoned, inoperable, or otherwise in a state of disrepair.

- B. This section does not apply to junk kept in a licensed junk yard or automobile wrecking yard.

- C. Abatement of vehicles located on private or public property which constitute a nuisance under this section shall be done in accordance with the provisions of Section 17 of this ordinance. [Added by Ordinance 05-1263, adopted September 12, 2005.]

D. For purposes of abatement of conditions involving the presence of junk, as described in this section, the Code Enforcement Officer or other City staff person authorized to enforce the provisions of this ordinance, may include a description of the location of the junk in the abatement notice which is issued under Section 31, as a description of the items which need to be removed. The abatement notice shall specify the location from which the junk must be removed to abate the nuisance conditions. [Added by Ordinance No. 08-1295, adopted June 23, 2008.]

Section 23. Notices and Advertisements. No person shall affix or cause to be distributed any placard, bill, advertisement or poster upon any real or personal property, public or private, including but not limited to flyers attached to motor vehicles, without first securing permission from the owner or person in charge 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 a location of signs and advertising.

A. This section shall not be construed to prohibit the distribution of material during any parade or public gathering.

(Sections 24 through 29 are reserved for expansion.)

Unenumerated Nuisances

Section 30. Unenumerated Nuisances. The acts, conditions or objects specifically enumerated and defined in Sections 2 to 29 are declared public nuisances and may be abated by the procedures set forth in Sections 31 to 35. In addition to the nuisances specifically enumerated in 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 declared a nuisance and may be abated as provided in this ordinance.

Abatement Procedure

Section 31. Abatement Notice.

A. Upon determination by the City staff person in charge of enforcement regarding the nuisance in question that a nuisance as defined in this or any other ordinance of the City exists, the City staff person may solicit voluntary compliance by sending a letter to the person responsible for abating the nuisance, and establishing a deadline for compliance with the provisions of this ordinance. In the event the City staff person confirms the person responsible has not voluntarily complied, the City staff person shall institute abatement proceedings by causing a notice to be posted on the premises where the nuisance exists, directing the removal of such nuisance.

B. At the time of posting, the City staff person shall cause a copy of such notice to be forwarded by certified mail, postage prepaid, to the owner or person in charge of the property at his/her last known address.

C. The notice to abate shall be entitled "Notice to Abate Nuisance" in letters not less than one inch in height and contain:

1. A description of the real property by street address or otherwise, on which the nuisance exists,
2. A direction to abate the nuisance within the time period provided by the appropriate ordinance, or within five (5) days from the date of the notice if no time period is provided in said ordinance,
3. A description of the nuisance,
4. A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement shall be charged to the owner and be 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 person in charge of the property may protest the notice to abate by giving notice to the City Clerk within five (5) days from the date of the notice.

D. The person posting and mailing the notice provided herein shall, upon completion of the posting and mailing, execute and file a certificate stating the date and place of such mailing and posting.

E. 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 of the property shall not make the notice void and in such case the posted notice shall be deemed sufficient.

F. In lieu of the posting and mailing required by this section, personal service of the notice to abate upon the owner or person in charge of the property shall be sufficient.

Section 32. Abatement by the Owner.

A. Within the required time period after the posting and mailing of the notice as provided in Section 31, the owner or person in charge of the property shall remove and abate the nuisance or show that no nuisance exists.

B. The owner or person in charge protesting that no nuisance in fact exists shall file with the City Clerk a written statement which shall specify the basis for contending that no nuisance exists.

C. The statement shall be referred to the Council as a part of the Council's regular agenda at its next succeeding meeting. At the time set for the consideration of the abatement appeal, the owner or person in charge of the property may appear and be heard by the Council; and the Council shall thereupon determine whether 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 statement has been filed as provided herein, and its decision thereon shall be final and conclusive.

D. Upon Council determination that a nuisance does in fact exist, the owner or person in charge of the property shall within three days after such Council determination remove or abate such nuisance.

Section 33. Abatement by the City.

A. If within the time fixed, as provided in this ordinance, the nuisance has not been abated by the owner or person in charge of the property, the staff person enforcing said abatement ordinance may cause the nuisance to be abated.

B. The City shall have the right at reasonable times to enter into or on property to investigate or cause the removal of the nuisance.

C. The City Clerk shall maintain an accurate record of the expense incurred by the City in abating the nuisance and shall include an administrative cost of \$500.00. [As amended by Ordinance No. 95-1198, passed by City Council and approved by the Mayor September 11, 1995.]

D. The total costs, including the administrative overhead, shall thereupon be assessed to the property as hereinafter provided.

E. If more than one (1) person is responsible for the creation or continuation of a nuisance, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

Section 34. Assessment of Costs.

A. A notice of the assessment shall be forwarded by certified mail, postage prepaid, to the owner or person in charge of the property by the City Clerk. The notice shall contain:

1. The total cost, including the administrative overhead, of the abatement.
2. A statement that the cost as indicated will become a lien against the property unless paid within 15 days. [As amended by Ordinance No. 05-1257, adopted by City Council January 10, 2005.]
3. A statement that if the owner or person in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the City Clerk within 5 days from the date of the notice. [As amended by Ordinance No. 05-1257, adopted by City Council January 10, 2005.]

B. Upon the expiration of 5 days after the date of the notice, objections to the proposed assessment shall be heard and determined by the City Council in its regular course of business. [As amended by Ordinance No. 05-1257, adopted by City Council January 10, 2005.]

C. An assessment for the cost of abatement as determined by the Council shall be made by resolution of the Council and shall thereupon be entered in the docket of City liens, and upon such entry being made, it shall constitute a lien upon the property from which the nuisance was abated.

D. The lien shall be collected and foreclosed in the manner prescribed by State law for enforcement of liens and collection of assessments. [As amended by Ordinance No. 05-1257, adopted by City Council January 10, 2005.]

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 assessment render the assessment void, but it shall remain a valid lien against the property.

Section 35. Summary Abatement. Upon determination by the County Health Officer, the Police Chief, the Fire Chief, or other City official that a nuisance as defined in this or any other City ordinance exists, and that, unless the nuisance be summarily abated, the public health, safety or welfare will be endangered, such officer may act as follows:

A. The officer shall at once serve a written notice upon the person responsible therefor; or, in case personal service of such notice cannot be made, the officer shall post a copy thereof upon the premises affected thereby, said notice directing the person responsible to abate the public nuisance within a period of 24 hours or such additional time as the officer shall deem necessary for the abatement thereof. Such notice shall include the text of this section.

B. If the nuisance is not removed or abated within 24 hours, or such additional time as the officer shall have established, the officer is authorized to remove or abate the nuisance. The cost of such removal or abatement shall be charged against the property and collected as provided in Sections 33 and 34 of this ordinance. If removal or abatement is accomplished by the City, then the officer shall keep an accurate account of the actual expenses incurred in such action, and shall provide such record to the City Clerk. If any person shall be aggrieved by the notice to remove or abate a nuisance given under this section, such person may take an appeal to the City Council within 24 hours from the receipt or posting of such notice by notifying the office of the City Clerk in writing of such intention to appeal. Upon 24-hours' notice to the aggrieved person, a hearing will be scheduled before the Council or a person appointed by the Council to take testimony, and a decision will be immediately rendered.

General Provisions

Section 36. Civil Penalty. Any person injured thereby may bring a civil action to abate a nuisance created or maintained in violation of this ordinance. In addition to any other penalty provided herein, any person creating or maintaining a nuisance shall be liable for damages to any person injured thereby. Damages shall include attorney fees and costs incurred by the plaintiff in maintaining an action to recover damages and any action to abate the nuisance. No action shall be maintained against the City for failure to abate a nuisance under this ordinance.

Section 37. Penalties. Any person violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by imprisonment for a period not to exceed 60 days, or by a fine not to exceed \$500.00, or both. (As amended by Ordinance No. 99-1231, adopted by City Council and approved by the Mayor February 22, 1999)

Section 38. Separate Violations.

A. Each day's violation of a provision of this ordinance shall constitute a separate offense.

B. The abatement of a nuisance as herein provided shall not constitute a penalty for a violation of this ordinance, but shall be in addition to any penalty imposed for a violation of the ordinance. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. However, abatement of a nuisance within three (3) days of Council determination that a nuisance exists, will relieve the person responsible from the imposition of a penalty under Section 37 of this ordinance.

Section 39. Severability. The sections and subsections of this ordinance are hereby declared severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 40. Administration of Provisions.

A. For purposes of administering the provisions of this ordinance, the City Manager shall appoint appropriate staff persons. Such City staff persons shall have full power and authority to do any and all things necessary, incidental or proper in the enforcement of said ordinance, excluding the power to arrest.

B. No person shall hinder or attempt to prevent the City staff person, or anyone working under the authority of the City staff person from enforcing the provisions of this ordinance.

C. Any City staff person who has been authorized to enforce the provisions of this ordinance shall have the authority to apply to the Municipal Court for an inspection warrant, for the purpose of inspecting premises to determine if a violation has occurred.

Section 41. Citation Procedure. In addition to the abatement procedures set forth in this ordinance, the City staff person enforcing said ordinance section may issue a citation for a nuisance violation, which will result in the filing of a complaint in the Municipal Court.

Section 42. Repeal. General Ordinance Nos. 751, 821, 897, and 88-1087 are hereby repealed.

Section 43. Saving Clause. Notwithstanding Section 42, ordinances repealed thereby shall remain in force for the purpose of authorizing the arrest, prosecution, conviction and punishment of a person who violated those ordinances prior to the effective date of this ordinance.

Section 44. Emergency. Whereas, the control of nuisances is necessary for the public health, safety and welfare; now, therefore, an emergency is hereby declared to exist; and this ordinance shall go into full force and effect from and after its passage by the Council.

Passed by the Council and approved by the Mayor this 21st day of June, 1993.