

**ORDINANCE 09-267**

**AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; AND REPEALING ORDINANCE NO. 96 & ORDINANCE NO. 170**

The City of Lakeside ordains as follows:

**PURPOSE:** It is the intent of this ordinance to encourage a clean, healthy and satisfying environment for its citizens, one free from nuisances, eyesores, unhealthy or devaluation conditions. To these ends, this ordinance seeks to regulate, identify and provide means to enforce the regulations to protect the health, safety and welfare of residents and property owners in the City of Lakeside.

**Section 1. Definitions.** For the purpose of this ordinance the following mean:

**Nuisance.** An unlawful act, an omission to perform a duty, or suffering or permitting any condition or thing to be or exist, which either:

1. Injures or endangers the welfare, health or safety of others; or
2. Offends decency; or
3. Creates offensive odors; or
4. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
5. In any way renders other persons insecure in life or the use of property; or
6. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

**Person.** A natural person, firm, partnership, association or corporation.

**Person in charge of property.** An agent, occupant, lessee, tenant, 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 means any and all of the following:

- (1) The owner of the property.
- (2) The person in charge of the 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.

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

**Dismantled.** Inoperative without the addition or application of vital parts or mechanisms and the application of a substantial amount of labor to effect repairs.

**Enforcing Officer.** The person authorized by the City Administrator to enforce nuisance abatement provisions. This shall include, but not limited to, any Compliance Officer, Police Officer, and Fire Marshal.

**Vehicle.** A device in or by which a person or property is or may be transported or drawn upon a public highway, excluding a device moved by human power or used exclusively upon stationary rails or tracks, and including, but not limited to; a vehicle body, engine, transmission, frame or other major part.

**Neglected or discarded vehicle.** A vehicle, motorcycle, or all terrain vehicle (ATV), that is, or appears to be, inoperative, wrecked, dismantled or partially dismantled. It also means unassembled or partially assembled vehicle parts, including, but not limited to, tires, batteries, engines, transmissions, vehicle bodies and frames.

**Obnoxious vegetation.** Includes:

(1) Weeds, grass or legumes above the height of 10 inches. It does not include decorative grasses.

(2) Poison oak or poison ivy.

(3) Vegetation or blackberry vines or bushes that: are a fire hazard because they are near combustibles; extend into a public way; or are used for habitation of trespassers.

(4) Vegetation which is a vision obstruction.

“Obnoxious vegetation” does not include vegetation that constitutes agricultural crops, unless the vegetation is a health hazard, fire hazard, or traffic hazard within the meaning of this ordinance. Nor natural areas of vegetation designated in their natural state and do not constitute a fire hazard as determined by the Fire Chief.

**Rodent Habitat.** Any condition which attracts or is likely to attract, feed or harbor rats or mice; this applies to, but not limited in application to, any building or other structure or part thereof, which is not rodent-proof and is used to store or keep any substance on which rates or mice feed, or rubbish or other loose material that might serve as a harbor for rats or mice.

**Rodent proof.** Any building, structure or part thereof is “rodent-proof” when it is constructed of concrete, metal or some equally impermeable material and in a manner that excludes rats and mice therefrom.

**Unoccupied or unsecured building.** A building or structure that is not being used for lawful occupancy and/or lack of secure means of ingress and egress thus allowing for occupancy or use of a building or structure by unauthorized persons.

1.1.010 The nuisances described in the Ordinance are considered to be nuisances affecting the public and shall be abated pursuant to Section 2 through 12 of this Ordinance. In addition to the abatement costs, which may be charged against the property as described herein, persons responsible may also be charged with an offense or fine.

## **Section 2. Animals**

2.2.010 **Removal of carcasses.** No person shall permit an animal carcass owned or controlled by that person to remain upon public property, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass. A reasonable period of time includes an amount of time up to the carcass creating an odor nuisance, the

contamination of waterways, or health hazard to any surrounding person or property.

2.2.020 License required. A dog shall be licensed according to Coos County animal control regulations, and no person shall own or have custody of a dog within the City of lakeside, which is not licensed.

2.2.030 Animals at large. Except for household pets, other than dogs, no owner or person in charge of an animal shall permit the animal to wander freely and unattended so that the animal is likely to cause a nuisance to other persons or property. "Running at Large" does not include the use of a dog under supervision of a person in order to legally hunt, chase or tree wildlife; or control or protect livestock, nor a dog in field training, or a dog in an area designated as a dog-off-leash area, unless the dog causes personal injury or property damage off the premises of the owners.

(1) A dog is a public nuisance if it:

a. Bites a person, except as provided in subsection (2) of this section;

b. Chases vehicles or persons;

c. Damages or destroys property of persons other than the owner of the dog;

d. Scatters garbage;

e. Trespasses on private property of persons other than the owner of the dog;

f. Is a female in heat running at large;

g. Injures or kills an animal or fowl belonging to a person other than the owner or custodian of the dog.

h. Is soiling, defiling or defecating on an any public property, included but not limited to streets, sidewalks, parks, paths, or upon any private property without permission of the owner of that property.

i. Any person owning or in charge of the dog shall be in violation of this ordinance unless the person immediately removes and disposes of all feces deposited by the dog in a sanitary manner.

(2) A dog shall not be considered a public nuisance if the dog bites a person wrongfully assaulting the dog or the dog's owner, or if the dog bites a person trespassing upon the premises occupied by the dog's owner after being provoked by that person.

2.2.04 Impoundment of Animals. Animals at large may be disposed of in accordance with procedures provided by the city for the impoundment of dogs as implied herein.

(1) Any police officer may impound an animal that is in violation of this ordinance if they have probable cause to believe that the animal is potentially dangerous. The officer shall hold the animal until a hearing is held or until the animal is redeemed or disposed of.

(2) If any police officer has probable cause to believe that any animal in an unoccupied vehicle may be in danger of dying, they may enter the vehicle and impound the animal and leave notice in the vehicle where the animal may be reclaimed.

(3) If there is probable cause to believe any animal is subjected to abuse or mistreatment, after obtaining a search warrant in the manner prescribed by law, a police officer may enter the premises where the animal is being held and impound such animal. If after reasonable search the owner or person having custody cannot be found and notified of impoundment, such notice shall be sent certified mail to the address, if any, at which the animal was impounded.

(4) Any sick or injured animal found by a police officer or animal control officer off the premises of the owner may be delivered to its owner. Any such animal for which the owner is either unknown or cannot be reached, after reasonable attempts to do so, shall be delivered by the animal control officer to a veterinarian for medical treatment in accordance with state and county regulations.

(5) Any police officer or animal control officer may humanely destroy a domestic pet or other domestic animal that is too severely injured to move to impound and is not on the property of its owner, when the owner is either unknown or cannot be reached after reasonable attempts to do so.

(6) No person shall fail to surrender an animal to a person identifiable as a police officer or Code Compliance Officer upon demand, so that the animal can be impounded or quarantined.

**2.2.050 Animal Abandonment.** A person commits the offense of animal abandonment if the person leaves a domesticated animal at a location without providing for the animal's continued care. It is no defense to the offense defined in 2.2.05 that the defendant abandoned the animal at or near an animal shelter, veterinary clinic or other place of shelter if the defendant did not make reasonable arrangements for the care of the animal.

**2.2.060 Forfeiture of Rights.** In addition to and not in lieu of, any other penalty it may impose, the municipal court may require defendant convicted under 2.2.050 to forfeit any rights in the animal subject to abuse, neglect or abandonment, and to repay the reasonable costs incurred by any person or agency prior to judgment in caring for each animal subjected to abuse, neglect or abandonment.

Also, when the Court orders the defendant's rights in the animal to be forfeited, the Court may further order that those rights be given over to the animal regulation authority for further disposition. A transfer of rights under this subsection constitutes a transfer of ownership.

### **Section 3. Nuisances Affecting Public Health**

**3.3.010 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 Oregon Department of Environmental Quality regulations.

b. Drainage of liquid wastes from private premises.

c. Cesspools or septic tanks that are in an unsanitary condition or that cause an offensive odor or are not connected to public sewer system.

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

e. Decayed or unwholesome food offered for human consumption.

f. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes, oils, grease, petroleum, or other substances placed in or ear the water in a manner that will cause harmful material to pollute the water.

g. Stagnant water that affords a breeding place for mosquitoes and other insect pests.

h. Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the city.

i. Indoor or outdoor burning of any material which causes offensive odor or is unsanitary. No person responsible shall burn in wood stoves or fireplaces any household waste, garbage, plastic, Styrofoam or other noxious material.

#### **Section 4. Nuisances Affecting Public Safety**

4.4.010 Creating a Hazard. 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 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside. This includes refrigerators, freezers, dryers, or any other appliance of same liking. (This does not include iceboxes, refrigerators, or other containers offered for sale by commercial establishments provided that the same are kept within enclosures from which children are excluded at all times except business hours.)

(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 4 feet or more, and a top width of 12 inches or more and failing to cover or fence it with a suitable protective construction.

(3) Being the owner of any refuse, abandoned or inoperable materials, furniture, which allows for children to be on or near that may break, tear apart, or fall on them.

4.4.020 Attractive Nuisance. No owner or person in charge of property shall permit on the property:

(1) Unguarded machinery, equipment or other devices that are attractive, dangerous and accessible to children.

(2) Lumber, logs or piling placed or stored in a manner so as to be attractive, dangerous and accessible to children.

4.4.030 Surface Waters, Drainage. No owner or person responsible or in charge of a building or structure shall permit rainwater, ice, or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk.

(1) The owner or person in charge of property shall install, and maintain in a proper state of repair, adequate drainpipes or a drainage system, so that overflow water accumulating on the roof or about the building is not carried across or on the sidewalk.

4.4.040 Snow and Ice. No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk shall permit:

(1) Snow to remain on the sidewalk for a period longer than the first twenty-four (24) hours after the snow has fallen.

(2) Ice to remain on the sidewalk for more than two (2) hours of daylight after the ice has formed, unless the ice is covered with sand, ashes, or other suitable material to assure reasonably safe travel.

4.4.041 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 the 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 city, the city shall have a right to indemnify from the owner or person in charge of the 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.

4.4.050 Obnoxious Vegetation.

(1) Between May 15 and September 30 of any year, no owner or person in charge of property shall allow noxious vegetation to be on property or in the right-of-way of public thoroughfare abutting on the property. An owner or person in charge of property shall cut down or destroy grass, shrubbery, brush, bushes, weeds or other noxious vegetation as often as needed to prevent them from becoming unsightly, from becoming a fire hazard, or, in the case of weeds or other noxious vegetation, from maturing or from going to seed.

(2) Between April and May 15 of each year, the city recorder may cause to be published two times in a newspaper of general circulation in the city a copy of subsection (1) as a notice to all owners and persons in charge of property of the duty to keep their property free from noxious vegetation. The notice shall state that the city is willing to abate the nuisance on a particular parcel of property at the request of the owner or person in charge of the property for a fee sufficient to cover the city's abatement costs. The notice shall also state that, even in the absence of such requests, the city intends to abate all such nuisances 10 or more days after the final publication of the notice and to charge the cost of doing so on a particular parcel of property to the owner or charge the cost of doing so on a particular parcel of property to the owner or the person in charge of the property, or the property itself.

(3) If the notice provided for in subsection (2) is used, it shall be in lieu of the notice required by Section 7 of this ordinance.

4.4.060 Scattering Rubbish. No person shall deposit, on a public or private property, rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness

or safety of the property or would be likely to injure a person, animal or vehicle traveling on a public way.

4.4.070 Trees. No owner or person in charge of property that abuts on a street or public sidewalk shall permit trees or bushes on the property to interfere with the street or sidewalk traffic. An owner or person in charge of the property that abuts on a street or sidewalk shall keep all trees and bushes on the premises, including the adjoining parking strip, trimmed to a height of not less than eight (8) feet above the sidewalk and not less than ten (10) Feet above the roadway.

(1) No owner or person in charge of property shall allow dead or decaying tree to stand if it is a hazard to the public or to person or property on or near the property.

(2) No owner or person in charge of property that abuts on a street or public sidewalk shall allow roots of a tree to interfere with the street or sidewalk.

## **Section 5. Nuisances Affecting Public Peace**

5.5.010 Radio 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 or television reception by a radio or television receiver of good engineering design. (This section does not apply to devises licensed, approved and operated under the rules and regulations of the Federal Communications Commission.)

5.5020 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.

(1) The term "junk" as used in this section, includes all old motor vehicles and their parts, abandoned vehicles, wrecked, dismantled or inoperable vehicles, old boats and boat motors or parts, 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 despair.

(2) This section does not apply to junk kept in a licensed junkyard or automobile wrecking house.

(3) Abatement of vehicles located on private property, which constitute a nuisance under this section shall be done in accordance with the provisions of Section 5.2.030 of this ordinance.

5.5.030 Abandoned Vehicles. No person shall park, store, leave, or permit the parking, storing, or leaving of an abandoned vehicle, including motor vehicle, upon private property, or upon public property, including a public right-of-way. For the purposes of this section, refer to definitions in Section 1.

(1) For purposes of this section, a vehicle is considered to be an abandoned vehicle if it satisfies one of the following criteria:

a. The vehicle is not currently licensed and registered for operation.

b. The vehicle is being used to store junk, as defined in Section 5.5.020 of this ordinance, or rubbish, as defined in Section 4.4.060 of this ordinance.

c. 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.

(2) Upon determination by the City staff person in charge of enforcement regarding abandoned vehicles, 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:

a. 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 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.

b. The ordinance, which has been violated and under which vehicle will be removed.

c. The place where the vehicle will be impounded and the telephone number to find out information where the vehicle will be stored.

d. 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.

e. The vehicle will be sold to satisfy the costs of towing and storage and administrative fees of these charges are not paid.

f. 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.

g. The time within which a hearing must be requested and the method for requesting a hearing.

(3) 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 notice to the registered owner of the vehicle and to any lessor or security interest holders as shown in the 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:

a. The location where the vehicle will be stored.

b. 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.

c. 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.

d. The person owning the vehicle or responsible for creating the nuisance may request a hearing before the City Council 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 evidence 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.

e. When a timely request for a hearing is made, a hearing shall be placed on the regular agenda at the next succeeding Council meeting, but may be postponed at the request of the person asking for the hearing.

f. 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 City Council finds that the impoundment of the vehicle was proper, the Council 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 administrative fee. If the City Council finds the impoundment of the vehicle was improper, the Council 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 City Council shall order it paid by the City.

(4) 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.

(5) 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 2, 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 3 above.

## **Section 6. Unenumerated Nuisances**

6.6.010 Unenumerated Nuisances. The acts, conditions or objects specifically enumerated and defined in Section 2 to 5 are declared public nuisances and may be abated by the procedures set forth in Sections 7 to 12.

(1) In addition to the nuisance 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.

## **Section 7. Abatement Procedure**

**7.7.010 Notice.** On determination by the council that a nuisance exists, the council shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.

(1) At the time of posting, the city recorder shall cause a copy of the notice to be forwarded by registered or certified mail to the person responsible at the person's last known address.

(2) The notice to abate shall contain:

a. A description of the real property, by street address or otherwise, on which the nuisance exists.

b. A direction to abate the nuisance within 10 days from the date of the notice.

c. A description of the nuisance.

d. A statement that, unless the nuisance is removed, the city may abate the nuisance and the cost of abatement will be charged to the person responsible.

e. A statement that failure to abate a nuisance may warrant imposition of fine.

f. A statement that the person responsible may protest the order to abate by giving notice to the city recorder within 10 days from the date of the notice.

g. A statement that the city will destroy, sell, auction, or do whatever means it takes to be reimbursed for abatement and administrative costs. The owner or person responsible for the nuisance causing such abatement can retain the property within 10 days if they pay all fees associated with the abatement.

(3) If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.

(4) Upon completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the mailing and posting.

(5) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

## **Section 8. Abatement by the Person Responsible**

**8.8.010 Abatement by the Person Responsible.** Within 10 days after the posting and mailing of notice as provided in Section 7, the person responsible shall remove the nuisance or show that no nuisance exists.

(1) A person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the city recorder.

(2) The statement shall be referred to the council as a 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. 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 cases where a written statement has been filed as provided.

(3) If the council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within 10 days after the council determination.

## **Section 9. Joint Responsibility**

9.9.010 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.

## **Section 10. Abatement by the City**

10.10.010 Abatement by the city. If the person responsible has not abated the nuisance within the time allowed, the council may cause the nuisance to be abated.

(1) The officer charged with abatement of the nuisance shall only have the right to enter into or upon the property with the owner's permission or in accordance with the law. If owner refuses, officer shall not enter property until a warrant has been issued allowing entry.

(2) The city recorder shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include a charge of \$100 or 10 percent of those expenses, whichever is greater, for administrative costs.

## **Section 11. Assessment of Costs**

11.11.010 Assessment of Costs. The city recorder shall forward to the owner and the person responsible, by registered or certified mail, a notice stating:

a. The total cost of abatement, including the administrative costs.

b. That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

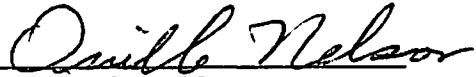
c. That if the owner or the person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the city recorder not more than 10 days from the date of the notice.

FIRST READ to the Council the 10th day of September, 2009

PASSED by the council this 8th day of October, 2009

SIGNED by the Mayor this 8<sup>th</sup> day of October, 2009

Effective this 8th day of November, 2009

  
Orville Nelson, Mayor

ATTEST:

  
Charlie Hill, City Recorder