

ORDINANCE NO 647
AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR
THEIR ABATEMENT; PRESCRIBING PENALTIES; AND
REPEALING ORDINANCE NO. 627

The people of the City of Amity ordain as follows:

Definitions

Section 1. Definitions. As used in this ordinance, the singular includes the plural, and the masculine includes the feminine; and except where the context indicates otherwise, the following shall mean:

- (1) "Person" means a natural person, firm, partnership, association or corporation.
- (2) "Person in charge of property" means an agent, occupant, lessee, contract purchaser or other person having possession or control of property or the supervision of any construction project.
- (3) Person Responsible. The person responsible for abating a nuisance shall include any or all of the following:
 - (a) The owner of the property upon which the nuisance exists;
 - (b) The person in charge of property, as defined in subsection (2) of this section;
 - (c) The person who caused to come into or continues in existence a nuisance as defined in this chapter or another ordinance of this city.
- (4) "Public place" means a building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

Nuisances Affecting the Public Health

Section 2. Nuisances Affecting the Public Health. No person shall cause or permit a nuisance affecting public health on property owned or controlled by the person. The following are hereby declared to be nuisances affecting the public health and may be abated in the manner prescribed by Sections 16 to 20 of this ordinance.

- (1) Privies. Any open vault or privy maintained within the city, except those privies used in connection with construction projects and constructed in accordance with the state health regulations.
- (2) Debris or accumulation of solid waste on private property. All animal carcasses and accumulations of debris; rubbish, manure and, other refuse located on privately owned real property or sidewalks abutting thereon, and which has not been removed within forty-eight (48) hours and, which may affect the health of the city. All solid waste shall be removed from private property weekly, or at other reasonable intervals so as to prevent spillage, the escape of odors and conditions that would attract pests. Solid waste containers shall be equipped with covers sufficient to keep out water and to prevent disturbance by animals or the entrance of pests.
- (3) Stagnant water. Any pool of water that affords a breeding place for mosquitoes and other similar insect pests.
- (4) Water pollution. The pollution of any body of water, stream, well, drainage ditch, storm drain 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) Food. Decayed or unwholesome food or food products which is offered for human consumption.
- (6) Odor. Any premises which are in such state or condition as to cause a noisome or offensive odor or which are in an unsanitary condition.
- (7) Putrescible wastes. Putrescible wastes not removed at least every seven (7) days.
- (8) Animals or birds afflicted with communicable diseases.
- (9) Mastics, oil, grease, petroleum, solvents or industrial cleaning products allowed to be introduced into the sewer system.
- (10) Drainage of liquid wastes from private premises.
- (11) Animals or birds maintained, kept or housed in such a number or manner as to create offensive odor, noise or unsanitary condition.
- (12) Premises infested or habituated, by animals or insects detrimental to human concerns, including, but not limited to cockroaches, rodents, rats or vermin.
- (13) Open burning of the following materials: wet garbage, plastic, asbestos, wire insulation, automobile parts, asphalt, petroleum treated materials, painted wood and wood treated with creosote or pentachlorophenol, rubber products including tires, animal remains, animal or vegetable matter resulting from the handling, preparation, cooking or service of food, or any other material that emits dense smoke or noxious odors.

Nuisances Affecting the Public Safety

Section 3. Prohibited Hazards. No person shall allow, cause, create, permit or suffer a nuisance affecting public safety on private or public property. The following are not exclusive but illustrative of nuisances affecting public safety and may be abated as provided in this Ordinance.

- (1) Woodpiles, wood, lumber, rocks, bricks, blocks or metal within the streets or alleys or upon the sidewalks or planting strips for a period of time longer than 24 hours after placement of such material without first obtaining a permit from the city.
- (2) A container with a compartment of more than one cubic foot capacity with a door or lid that locks or fastens automatically when closed that cannot be easily opened from the inside, maintained or left, in a place accessible to children.
- (3) A well, cistern, cesspool, excavation, or other hole of a depth of 4 feet or more and a top width of 12 inches or more uncovered, not fenced or without a suitable protective construction or otherwise creating an attractive nuisance which might present harm to children.
- (4) Unguarded machinery, equipment or other devices appealing, dangerous and accessible to children, unless protected by a fence, structure or other protective device(s) or otherwise creating an attractive nuisance which might present harm to children.
- (5) Lumber, logs or other materials piled or placed or stored in a manner to be appealing, dangerous and accessible to children.
- (6) Excavations remaining open and unattended without erecting proper safeguards or barriers.
- (7) Buildings or structures that are damaged decrepit or lack structural integrity, or pose, a safety or health hazard because of damaged or inadequate wiring or non-operational or inadequate water or, wastewater facilities AND are certified as hazardous structures by the city building official.
- (8) Any residential structure without a street number that is displayed in a position that is

easily observable and read from the public right of way.

- (9) a. Any structure or improvement to land constructed without a building permit but for which a building permit was required under the laws of the State of Oregon, city ordinances, and codes when the non-permitted structure was constructed (a "non-permitted structure"), is a nuisance affecting public safety. This rule applies to all non-permitted structures regardless of when it was constructed.

b. The nuisance caused by a non-permitted structure may be abated by the owner of the premises obtaining and by paying for the appropriate permits and inspections, provided the nuisance will not be abated until the structure is in compliance with all current laws of the State of Oregon, city ordinances, and codes. This remedy is not exclusive of other remedies provided allowed by city ordinance for the abatement of nuisances.

Section 4. Snow and Ice Removal. No owner or person in charge of any premises, improved or unimproved, abutting upon any public sidewalk, shall permit:

- (1) Any snow to remain on such sidewalk for a period longer than the first two hours of daylight after the snow has fallen.
- (2) Any such sidewalk to be covered with ice. It shall be the duty of any such person to remove any ice accumulating on such sidewalk, or to properly cover it with sand, ashes or other suitable material however, no salt or corrosive material that might, damage the sidewalk may be applied.

Section 5. Unauthorized Dumping.

- (1) No person shall deposit, on 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.
- (2) No person shall deposit trash, rubbish, debris or refuse which was generated from a residence or business into public trash receptacles located on sidewalks or in city parks.

Section 6. Sifting or Leaking Loads.

- (1) No person shall drive or move a vehicle on any street unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise spilling therefrom.
- (2) It shall be the duty of any person driving a vehicle from which the contents have spilled, to remove any spilled substance or material from the street within 3 hours.
- (3) Any spilled substance or material as set forth in this section is hereby declared to be a nuisance, and may be abated as provided in this ordinance.

Section 7. Fences.

- (1) No person shall construct or maintain any barbed-wire fence or allow barbed wire to remain as part of any fence, unless such wire is placed not less than six inches above the top of a board or picket fence, which is not less than six feet high.

- (2) No person shall install, maintain or operate a wire fence charged with electrical current within the city.

Section 8. Surface Waters. Drainage.

- (1) No person in charge of any building or structure shall suffer or permit rainwater, ice or snow to fall from any such building or structure onto a street or public sidewalk or flow across the sidewalk, Every such person in charge of property shall at all times keep and maintain in a proper state of repair adequate drainpipes or a drainage system so that any overflow water accumulating on the roof or about such building(s) will not be carried across any sidewalk or street.

Section 9. Grass, Shrubbery, Weeds and Noxious Growth.

- (1) No owner or person in charge of property shall permit weeds or other noxious vegetation to grow upon his property. It shall be the duty of an owner or person in charge of property to cut down or to destroy grass or weeds that exceed six (6) inches in height; to cut down or to destroy the uncontrolled growth of 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) For purposed of this section, "noxious vegetation" means (the enumeration of which shall not be construed to be exclusive):
 - (a) Vegetation that is, or is likely to become:
 1. A health hazard;
 2. A fire hazard;
 3. A traffic hazard, because it impairs the view of the public thoroughfare, or otherwise makes use of the thoroughfare hazardous.
 - (b) Poison Oak.
 - (c) Poison Ivy.
 - (d) Wild Morning Glory.
 - (e) Blackberry bushes that extend into a public way, a pathway frequented by children., cross a property line, or that are used for a habitation by trespassers.

Nuisances Affecting the Public Peace & Welfare

Section 10. Unnecessary 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 loud, disturbing and unnecessary noises in violation of this section, but the enumeration shall not be construed to be exclusive:
 - (a) The keeping of any bird or animal which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in, the vicinity.
 - (b) The attaching of any bell to any animal or allowing a bell to remain on any animal, which is disturbing to any person in the immediate vicinity.
 - (c) The use of any vehicle or engine, either stationary or moving, so operated as to

create any loud or unnecessary grating, grinding, rattling or other noise, including excessive roaring or revving of vehicle engines.

- (d) The use of a mechanical device operated by compressed air, steam or otherwise, or the excessive sound of any horn, whistle or signaling device on any vehicle (except as a necessary warning of danger), unless the noise created is effectively muffled.
- (e) The erection, including excavation, demolition, alteration or repair of any building in residential districts, other than between the hours of 7:00 a.m. and 9:00 p.m., except upon special permit granted by the city.
- (f) The use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, or the use or operation of a sound amplifying device so loudly as to disturb persons at least five feet from the motor vehicle.
- (g) The, discharge in the open air of the exhaust of any steam engine, internal combustion engine, motorboat or motor vehicle, except through a muffler or other device, which will effectively prevent loud or explosive noises and the emission of annoying smoke.
- (h) The use or operation of an automatic or electric piano, phonograph, loudspeaker, stereo or sound amplifying device so loudly as to disturb persons at least five feet beyond the property on which the sound originates. Sound produced in conjunction with officially organized sporting events, parades, festivals, fairs and other events issued a permit from the city are exempt from the noise limitations.

Section 11. Radio and Television Interference.

- (1) 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.
- (2) This section does not apply to devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

Section 12. Notices, Advertisements and Unauthorized Markings.

- (1) No person shall, either as principal or agent, affix or cause to be distributed, any placard, bill, advertisement, poster or writing (legible or illegible), graphic symbol or marking, upon any real or personal property, public or private, without first securing permission from the owner or proper public authority. 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 and locations of signs and advertising.
- (2) No person shall, either as principal, agent or employee, scatter, distribute or cause to be distributed on the streets, sidewalks or other public places or upon any private property any placards or advertisements whatsoever.
- (3) This section shall not be construed to prohibit the distribution of material during any parade, public gatherings or community event.

Section 13. Junk.

- (1) No person shall keep junk outdoors on a street, lot, or premises except in a building that is wholly enclosed or the junk is completely hidden from public view, by a sight-

obscuring fence.

- (2) The term "junk" as used in this section includes all old motors and vehicles, old motor and vehicle parts, old machinery, old machinery parts, old appliances or their parts, miscellaneous old parts, old iron or other metal, glass, paper, lumber, wood, or waste or discarded material.
- (3) This section does not apply to junk kept in a licensed junkyard or automobile wrecking house.

Section 14. Abandoned or Derelict Vehicles. No person shall park or store an abandoned or derelict vehicle on public or private property in accordance with the provisions of Amity Ordinance to Authorize the Towing of Certain Abandoned, Inoperative, Unregistered, Junked or Nuisance Vehicles as may be amended.

Section 15. Excessive Vehicle Parking. No person shall park any vehicle within the front yard setback area of yards located: adjacent to a street. The side yard areas may not be used for parking of vehicles except in paved parking areas.

Section 16. Unenumerated Nuisances.

- (1) The acts, conditions or objects specifically enumerated and defined in sections 2 to 15 are declared public nuisances and may be abated by the procedures set forth in Sections 17 through 24. (2) In addition to the nuisances specifically enumerated in this ordinance, every other thing, substance or act that is determined by the city 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.

Enforcement

Section 17. Cumulative remedies.

- (1) This chapter may be enforced by:
 - (a) Prosecution for civil infraction, as provided in this chapter and other applicable law;
 - (b) Abatement, as provided in this chapter and other applicable law;
 - (c) An action for damages for any individual damaged by the violation; or
 - (d) An injunction from the appropriate court against continuation or repetition of the violation.
- (2) These remedies are cumulative and not intended as exclusive.

Section 18. Civil infraction assessment.

A violation of any provision of this ordinance constitutes a Class 1 civil infraction for the first violation and a Class 2 civil infraction for any subsequent violations within a twelve month period. All violations shall be dealt with in accordance with the procedures as otherwise approved by Amity City Ordinance No. 628.

Section 19. Abatement.

- (1) When any police officer or other city official authorized by the city administrator determines that a nuisance exists, such police officer or authorized official may give

written notice to the persons responsible.

- (2) The notice shall be given to:
 - (a) The owner of the premises on which the nuisance is alleged to exist;
 - (b) The person in apparent possession or control of the premises; and
 - (c) The person who caused the nuisance. Failure of notice to one person does not affect the responsibility of any other person who is notified.
- (3) The notice shall direct the person notified to abate the nuisance within ten days of the time the notice is sent or posted on the premises; a longer notice period may also be given. The notice shall also inform the person notified of his right to judicial review under this chapter.
- (4) If a person is dissatisfied with the notice to abate, such person may request judicial review by making a request to the city court for judicial review within ten days of the time the notice to abate is sent or posted. The request need not be in any particular form, except that it must:
 - (a) Be in writing;
 - (b) Identify the place and nature of the alleged nuisance;
 - (c) Specify the name and address of the person seeking judicial review; and
 - (d) Identify the police officer or other city official alleging that a nuisance exists.A copy of this notice shall be delivered to the police officer or other city official alleging that a nuisance exists.
- (5) The judicial review shall be held on the first court day following after the request for judicial review is made, or on the second court day after the request for judicial review is made, if the first court day is less than five days from the date upon which the request for judicial review is made. The day may be postponed by:
 - (a) Agreement of the parties; or
 - (b) Order of the court for good cause.
- (6) The court shall promptly notify:
 - (a) The person requesting the review; and
 - (b) The police officer or other city official alleging the existence of a nuisance.
- (7) At the judicial review the court shall determine, based on a preponderance of the evidence, whether a nuisance exists. If a nuisance exists, the court shall order the responsible person to abate it within 72 hours, or within such longer time as the court determines, for good cause, should be given. If the court finds there is no nuisance, it shall dismiss the matter.
- (8) Any person, who is directed by a police officer or other authorized city official to abate a nuisance and does not seek judicial review within the proper time, thereby waives any further hearing or judicial determination of the issue.
- (9) If a person is directed by a police officer or other authorized city official to abate a nuisance and neither requests judicial review within the proper time nor abates the nuisance, or if the person fails to abate the nuisance within 72 hours (or such further time allowed) when ordered to do so by the court, then the city may abate the nuisance.
- (10) There shall be no liability to the city for the abatement unless the city acts in bad faith or causes manifestly unreasonable and unnecessary damage in the abatement.
- (11) In case of an apparent emergency, abatement may be made in a summary manner, without notice. In such case, however, the person aggrieved may request judicial review of the abatement. In such judicial review, the abatement shall be upheld if conducted without violation of subsection (10) of this section and if there was substantial evidence of the emergency and the nuisance at the time it was abated.

Section 20. Joint responsibility. If more than one person is 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 21. Abatement by city.

- (1) If, within the time allowed, the nuisance has not been abated by the person responsible, the city administrator, or his designee, may cause the nuisance to be abated.
- (2) The city administrator, or his designee, will be responsible for appropriate postings and notifications as required by this chapter.
- (3) The city administrator, or his designee, shall have the right, at reasonable times, to enter into or upon property to investigate or cause the removal of a nuisance.
- (4) If the nuisance is not abated within the prescribed time, the police chief, or his designee, shall be responsible for issuing citations to appear in court, as appropriate under the circumstances. If abatement by the city is in order, the city administrator, or his designee, will notify the public works superintendent of the nature of the abatement required. If city crews are utilized, the city administrator, or his designee, will provide the city recorder with information required for the appropriate assessment of fees and recording of liens.
- (5) The city recorder shall keep an accurate record of the expenses incurred by the city in physically abating the nuisance and shall include therein a charge of \$10.00 or 10 percent of those expenses, whichever is greater, for administrative overhead.
- (6) In addition to the remedy of abatement provided herein to the city, the person responsible shall also be subject to citation for civil infraction, as provided herein.

Section 22. Assessment of costs.

- (1) The city recorder by certified or registered mail, postage prepaid, shall forward to the person responsible a notice stating:
 - (a) The total cost of abatement, including the administrative overhead;
 - (b) That the cost as indicated will be assessed to and become a lien against the property, unless paid within 30 days from the date of the notice; and
 - (c) That, if the person responsible objects to the costs of the abatement as indicated, that person may file a notice of objection with the city recorder, not more than 10 days from the date of the notice.
- (2) Upon the expiration of 10 days after the date of the notice, the court, in the regular course of business, shall hear and determine any objections to the costs assessed.
- (3) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as determined by the court, shall be made and shall thereupon be entered in the docket of city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.
- (4) The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the legal rate. 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 person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property. The city may also institute action

for the recovery of said amount against the author or continuer thereof or may pursue both remedies to recover said money expended.

Section 23. Notice.

Any notice required in this chapter shall be sufficient, if the person to be notified is substantially apprised of the substance of the notice, notwithstanding any minor deficiencies or irregularities of form. Actual receipt of the notice is not required as long as a good faith effort is made to deliver it.

Section 24. Separate violations.

- (1) Each day's violation of a provision of this chapter constitutes a separate offense.
- (2) The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of an assessment does not relieve a person of the duty to abate the nuisance; however, abatement of a nuisance within three working days of the date of notice to abate, or if a written protest has been filed, then abatement within 72 hours of the court's determination that a nuisance exists, will relieve the person responsible from the imposition of a penalty.

This ordinance will take effect 30 days from the date of its passage.

FIRST READING:

SECOND READING:

SUBMITTED AND APPROVED THIS 1st DAY OF July, 2015.

Ayes: Blunt, King, Miller, van Sooker, Zipsen, Dahl
Nays:

SIGNED:



Mayor: Michael Cape

ATTEST:



City Recorder: Jennifer Elkins