

ORDINANCE NO. 845

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PRESCRIBING PENALTIES; AND REPEALING ORDINANCE NO. 813.

THE TOWN OF LAKEVIEW ORDAINS AS FOLLOWS:

SECTION 1. Definitions.

(1) For the construction, interpretation and implementation of this Ordinance the following definitions are established:

(a) The term "property owner" shall mean any contract purchaser, mortgagor, trust deed grantor, fee owner, lessee, renter or any other person having possession and/or control of property located within the Town of Lakeview.

(b) The term "property" shall mean a developed or undeveloped lot or parcel and all improvements located thereon as located within the Town of Lakeview.

(c) The term "Town" shall mean the Town of Lakeview, Oregon.

(d) The term "Town Council or Council" shall mean the governing body of the Town.

(e) The term "Town Manager" shall mean the Town Manager of the Town or his or her designee.

(f) The term "person" shall mean every natural person, partnership, association, corporation, limited partnership, limited liability company, family limited partnership or any other type of personal or business entity.

(g) The term "repeat offender" shall mean any person who becomes subject to nuisance abatement pursuant to the terms of this Ordinance, if such person was previously subject to nuisance abatement under this Ordinance regarding the same property within two years of the

issuance date of the current notice of abatement.

(2) As used in this ordinance the singular includes the plural and the masculine includes the feminine.

SECTION 2. Nuisance Defined.

(1) The following conditions, situations or occurrences shall be deemed to be "nuisances" and therefore within the parameters of this Ordinance and subject to abatement and enforcement as hereinafter set forth:

(a) The depositing or accumulation upon property of any junk, trash, garbage, vegetative debris, human or animal waste, vehicles, vehicle parts, or any other material which in any way mars the appearance of the area, detracts from the cleanliness of the area, creates a stench or fire hazard or which would be likely to injure any person including children. This definition does not include automobiles or automobile parts kept in a licensed junk yard or automobile wrecking yard.

(b) The keeping of any dangerous animal, wild or domesticated, the permitting of such animals to run at large, or the keeping of animal carcasses on property.

(c) The keeping or maintenance of any outdoor privy except those privies used in connection with construction projects approved by the Town's public works superintendent.

(d) Any pool of stagnant water which is without a proper inlet or outlet and which is utilized as a breeding place for mosquitoes or other similar insects.

(e) The pollution of any body of water, stream 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.

(f) The keeping, storing or accumulation of unused appliances including refrigerators.

(g) The location of any machinery or the piling of any lumber or logs in such a manner as to be attractive and dangerous to children or which is accessible to children.

(h) An open excavation that poses a danger to persons not protected or surrounded by safety barriers.

(i) The accumulation of snow or ice upon any public sidewalk located within a Central Commercial (CC) Land Use District for a period longer than the first two hours of daylight after the snow or ice has accumulated.

(j) The accumulation of snow or ice upon any public sidewalk located within a Residential (R) Land Use District for a period longer than 24 hours after the snow or ice has accumulated.

(k) The accumulation of weeds, grass or other noxious growth on property that has grown to a height of 10 inches or more.

(l) The installation of any fence in violation of the Town's Development Code or the keeping of any trees, shrubs or vegetative growth that encroaches upon or overhangs any street or sidewalk so as to interfere with vehicles or pedestrian traffic.

(m) The construction or maintenance of any barb wire fence unless the barb wire is placed not less than six inches above the top of a board or picket fence where such fence is not less than six feet in height or the installation, maintenance or operation of any electric fence.

(n) The making, assistance in making or the permitting of any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, health, safety or peace of others. Such loud, disturbing or unnecessary noise would include, but is not necessary limited to the following:

(i) The keeping of any bird or any animal which by causing frequent or long continued noise shall disturb the comfort and peace of any person in the vicinity.

(ii) The use of any vehicle or engine either stationary or moving so operated as to create any loud or unnecessary noise.

(iii) The use of any other electrical, battery, compression, mechanical or amplified device so loudly as to disturb persons in vicinity thereof.

(iv) The operation of compression brakes.

(o) Any violation of the Oregon Fireworks Law (ORS 480.110 et. seq.) now in effect or which may be amended from time to time.

(p) Any other act, event, condition, situation or occurrence that offends the senses or produces material annoyance, inconvenience, discomfort, a dangerous situation or harm.

SECTION 3. Abatement of Nuisance.

Any situation or occurrence deemed to be a nuisance as defined herein shall be abated by cessation, repair, rehabilitation or removal in accordance with the procedures specified in this Ordinance.

SECTION 4. Abatement Notice.

Upon determination by the Town Manager that a nuisance exists as defined in this or any other ordinance of the Town, the Town Manager or his or her duly authorized agent shall cause a "notice of abatement" to be mailed to the alleged offender, property owner, and to the person occupying the property, if that person is not the property owner, both by certified mail and first class mail directing the cessation or abatement of such nuisance. A first class mailing shall be deemed to have been received 72 hours after being deposited in the mail. The notice shall contain:

(a) A description of the nuisance.

(b) A street address sufficient for identification of the premises upon which the nuisance is occurring.

(c) A statement specifying the action required to be taken as determined by the

Council and directing that the nuisance be fully removed or abated within 48 hours after receipt of such notice if the subject matter of the nuisance is as defined by Section 2 (1)(b), (e), (h), (i), (j), (n), (o) or (p), and within 10 days after receipt of such notice if the subject matter of the nuisance is as defined by Section 2 (1)(a), (c), (d), (f), (g), (k), (l) or (m).

(d) A statement that unless the nuisance is abated or removed within the time stated after receipt of the notice of abatement that the Town will remove or abate the nuisance with the cost thereof being assessed as a lien against the property.

(e) A statement advising any person who receives a notice of abatement of their right to appeal from the notice provided the appeal is made in writing and received by the Council within 48 hours after receipt of the notice.

(f) A statement that any failure to appeal the notice of abatement will constitute a waiver of rights to a hearing and the right to contest the action required to be taken in the notice of abatement.

In making a determination that a nuisance exists, the Town Manager may base the same on his or her own personal observations or upon the personal observations of a department head of the Town.

SECTION 5. Abatement by Owner.

Within the time stated in the notice and after receipt of the notice provided in Section 4 above, the alleged offender, property owner or person occupying the property who receives the notice of abatement shall remove or abate the nuisance, unless the matter is appealed pursuant to Section 8 below.

SECTION 6. Abatement by Town.

If the nuisance has not been removed or abated within the time required and the matter has

~~not otherwise been appealed by the alleged offender, property owner or person occupying the~~
property, then the Town shall abate the nuisance. In such case, the Town shall maintain an accurate record of the expense incurred by the Town in abating and removing the nuisance and shall include therein an overhead charge of 10% of the total cost for administration. The total cost, including the administrative overhead, shall thereafter be assessed pursuant to Section 9 below.

SECTION 7. Summary Abatement.

Irrespective of the provisions herein contained, in the event a nuisance exists which reasonably appears to constitute an imminent endangerment to human life, human welfare or property rights, such nuisance may be summarily abated by a Town official without notice or other procedural rights. In the case of summary abatement, the costs of the same shall be established and assessed pursuant to Sections 6 and 9 hereof.

SECTION 8. Appeal.

(1) Any person who receives a notice of abatement under Section 4 above may appeal the notice and the action required to be taken by such notice by personally delivering or mailing by certified mail to the Town Council a written request for an appeal. The appeal shall be received by the Town Council within 48 hours after receipt of the notice of abatement. The written request for an appeal shall contain a brief statement setting forth the fact that an appeal is requested and in concise language the relief sought and the reasons why the relief is being sought.

(2) As soon as practicable after receiving the written appeal the Council shall fix a date, time and place for the hearing of the appeal. Such date shall not be less than 2 days nor more than 10 days from date the appeal was received by the Town. Written notice of the time and place of the hearing shall be given as early as possible prior to the date such hearing to the person filing the appeal by personal service of a copy thereof directed to the person filing the appeal.

(3) A failure of any person to file an appeal in accordance with the provisions herein contained shall constitute a waiver of the right to a hearing and an adjudication of the notice of abatement or any portion thereof.

(4) All hearings shall be heard by the Council and conducted in such a manner as to allow all interested persons full opportunity to be heard. Hearings need not be conducted according to technical rules relating to evidence and witnesses.

(5) Following the hearing, the Council may uphold, overrule or modify any decision or requirement as set forth in the notice of abatement, and shall set forth findings and conclusions for such decision. A copy of the decision shall be delivered to the person filing the appeal personally or shall be sent certified mail, postage prepaid, return receipt requested. The effective date of the decision shall be as stated therein.

(6) A decision of the Council after hearing shall be final.

SECTION 9. Enforcement.

(1) After any notice of abatement or decision of the Council becomes final, no person to whom any such notice or decision is directed shall fail, neglect or refuse to obey such notice or decision.

(2) If, after any notice of abatement or decision of the Council becomes final, the person to whom such order is directed shall fail, neglect or refuse to obey such notice or decision, the Town may institute any appropriate action to abate such nuisance.

(3) When any nuisance abatement work is accomplished by the Town or by private contract under the direction of the Town the cost of such work shall be paid by the Town and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner or property occupier, whichever the Council shall determine is appropriate.

~~(4) The Council, in its discretion, may determine that assessments in the amounts of~~

\$500.00 or more may be payable in installments not to exceed five equal annual installments. The Council's determination to allow payment of such assessment in installments, the number of installments, whether they shall bear interest, and a rate thereof shall be by a resolution adopted by the Council prior to the confirmation of the assessment.

(5) If the Council orders that the charge shall be assessed against the property, the Council shall confirm the assessment and cause the same to be certified as a lien to the Lake County Clerk and thereafter said assessment shall constitute a special assessment against and a lien upon the property and shall bear interest at the rate of 9% per annum commencing as of the date of recording. The lien shall continue until the assessment and all accrued interest has been fully paid.

(6) If the Council orders that the charge shall be a personal obligation of the property owner or occupier it shall direct the Town's attorney to collect the same on behalf of the Town by use of all appropriate legal remedies.

SECTION 10. Penalties.

Any violation of this Ordinance may be pursued or prosecuted as follows:

(a) Any person committing a first violation of this Ordinance or any person who is not a repeat offender as defined herein shall be subject to the abatement proceedings as set forth in Sections 3 through 9 of this Ordinance.

(b) Any repeat offender of this Ordinance may, in addition to being subject to the abatement proceedings as established pursuant to Sections 3 through 9 of this Ordinance, maybe prosecuted in the Lake County Circuit Court. Such violation shall be deemed to be a Class C Misdemeanor as defined by ORS 161.555 as now in effect, or which may be amended from time to time and subject to a fine in an amount not to exceed \$1,250.00.

SECTION 11. Severability.

The invalidity of a section or a part of a section of this Ordinance shall not affect the validity of the remaining section or parts of a section of this Ordinance.

SECTION 12. Effective Date.

This Ordinance shall become effective thirty (30) days after its passage by the Town Council and approved by the Mayor.

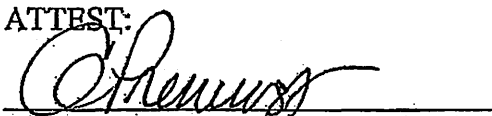
This Ordinance was read by title only and no council member requested the Ordinance to be read in full.

DATED this 23rd day of July, 2013.



Mike Patrick, Mayor

ATTEST:



Christy Prenevost, Town Recorder