

ORDINANCE NO. 311-O

AN ORDINANCE PROVIDING FOR THE ABATEMENT OF NUISANCES.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE.

Section 1 - Ordinance Title. This Ordinance shall be known as the City of Troutdale Nuisance Control Ordinance, may be so pleaded and referred to and shall apply within the jurisdictional limits of the City of Troutdale.

Section 2 - Definitions. As used in this Ordinance, unless the context requires otherwise:

(A) "Abandoned vehicle" means any vehicle which reasonably appears to be inoperative, wrecked, discarded, abandoned or totally or partially dismantled.

(B) "Council" means a Common Council of the City of Troutdale, Oregon.

(C) "Director" means the Director of the Department of Community Development of the City of Troutdale or the director's authorized representative.

(D) "Explosive" means a chemical compound, mixture or device that is used or intended to be used for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined by Oregon law, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(E) "Garbage" means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

(F) "Hearings officer" means that person appointed by the Council to preside at hearings held pursuant to this Ordinance.

(G) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more streets or highways which join one another at an angle, whehter or not one street or highway crosses the other.

(H) "Liquid waste" means waste oil, septic tank pumping, liquid industrial wastes or other similar material.

(I) "Nuisance" means any annoying, unpleasant or obnoxious condition or practice causing or capable of causing an unreasonable threat to the public health, safety and welfare in the circumstances, but does not include noise, provided, however, that anything defined as a nuisance in Section 7 shall be a nuisance.

(J) "Owner" means any person having a legal interest in real or personal property or any person in possession or control of real or personal property, and excludes any person whose interest is for security only.

(K) "Person" means any natural person, association, trust, partnership, firm or corporation.

(L) "Radioactive substance" means a substance which emits radiation in the form of gamma rays, x-rays, alpha particles, beta particles, neutrons, protons, high-speed electrons and other nuclear particles, but radiation does not include sound waves, radio waves, visible light, infrared light or ultra-violet light.

(M) "Rodent" means a mouse or rat.

(N) "Rubbish" means glass, metal, paper, wood, plastics or other nonputrescible solid waste.

(O) "Sewage sludge" means residual waste of sewage treatment plants, consisting of digested organic waste and indigestible solids.

(P) "Sidewalk" means that portion of a public right of way, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

(Q) "Solid waste" means all putrescible and nonputrescible wastes, whether in solid or liquid form, except wastes produced by the human body, liquid-carried industrial waste or sewage, or sewage hauled as an incidental part of septic tank or cesspool cleaning service, and includes garbage, rubbish, ashes, fill dirt, sewage sludge, street refuse, industrial wastes, swill, demolition and used construction materials, abandoned vehicles or parts thereof, discarded home or industrial appliances, manure, vegetable or animal solids and semisolid waste, dead animals and other discarded solid materials.

(R) "Vector" means any insect organism, including but not limited to flies, fleas, lice, ticks, fly maggots and mosquito larvae, capable of bearing or carrying a disease transmittable to human beings.

(S) "Vehicle" means any device which is designed or used for transporting people, goods or property upon a public street or roadway, including but not limited to a body, engine, transmission, frame or other major parts, but does not include a device propelled by human power, such as a bicycle, or a device operated exclusively upon fixed rails or tracks.

Section 3 - Policy. The council has determined it necessary to establish and maintain a program for the effective control and abatement of nuisances which constitute a hazard or menace to the health, safety and welfare of the people of the City of Troutdale and this Ordinance shall be liberally construed to effectuate that purpose.

Section 4 - Administration and Enforcement.

(A) The director shall be responsible for the administration and enforcement of this Ordinance.

(B) The director shall have authority to administer oaths, certify all official acts, issue citations, subpoena and require the attendance of witnesses and production of relevant documents at hearings before the hearings officer and take testimony of any person by deposition.

Section 5 - Rules. The director may adopt rules necessary for the administration and enforcement of this Ordinance.

Section 6 - Notices. Except as provided in subsection (B) of Section 8, all notices shall be in writing and, if mailed, then postpaid certified or registered mail, return receipt requested, to the addressee's last-known address. A mailed notice shall be presumed to have been received on the second mail delivery day after mailing.

Section 7 - Nuisances Prohibited.

(A) It shall be unlawful for any person to maintain or allow to exist the following things, practices or conditions on any property or within public road rights of way adjacent to that property, which shall be nuisances:

(1) A pond or pool of stagnant water which emits an obnoxious odor or is a source of vector breeding or otherwise presents a threat to the public health, safety and welfare.

(2) An animal carcass not buried or destroyed within 24 hours after death.

(3) Accumulation, collection or storage of solid waste without prior approval of the director, unless the person is licensed by lawful authority to operate a business specifically for those purposes.

(4) A well, septic system or cesspool that has not been safely or securely sealed or properly maintained which may cause or has caused an injury to any person or contamination of a potable water supply.

(5) An abandoned, discarded, or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside.

(6) Any property, whether vacant or improved building, residence structure or accumulation of any materials which is infested by vector or rodents.

(7) Uncontrolled or uncultivated growth of weeds, brush, berry vines, poison oak, poison ivy, tansy ragwort or grasses which offer vector or rodent harborage, contribute noxious pollens to the atmosphere, constitute a fire hazard or unreasonably interfere with the use and enjoyment of abutting public or private property.

(8) Any explosive or radioactive substance unless the possession is authorized by law.

(9) Any accumulation of dirt, sand, gravel, pieces or chunks of concrete or other similar inorganic material, which is unsightly and reduces the aesthetic appearance of the neighborhood.

(10) An open pit, well, quarry, cistern, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more without reasonable safeguards or barriers to prevent them from being accessible to children.

(11) Dead or decaying trees and tree limbs that present a safety hazard to the public or to abutting property owners.

(12) Any abandoned vehicle upon private or public property.

(13) Signs, hedges, shrubbery, natural growth or other obstructions at or near intersections which hinder the view necessary for the safe operation of vehicles.

(14) Obstruction to public sidewalks or roadways by trees, bushes, roots, other natural growth, soil or solid waste.

(15) Any excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks or other public property.

(16) Any building or structure which is either vacant or under construction, which is not locked or otherwise secured by barriers or other devices to prevent them from being accessible to children.

(B) The enumeration of nuisances in subsection (A) of this section shall not limit the power of the director to investigate or declare any other condition a nuisance which is within the scope of subsection (I) of Section 2 of this Ordinance.

#### Section 8 - Inspection and Abatement.

(A) The director may enter any property or building at any reasonable time for the purpose of inspection or enforcing this Ordinance. Except when an emergency exists, the director shall obtain the consent of the owner or a warrant from the municipal court or other court of competent jurisdiction before entering private property or a private building.

(B) As used in this section, an emergency exists when the director has reasonable cause to believe that a nuisance constitutes an immediate and active danger to the public health, safety and welfare.

(C) An investigation may be conducted whenever the director receives a complaint that a nuisance exists.

(D) Whenever it appears there is reasonable cause to believe that a nuisance exists, or upon receipt of declaration from the director, the director shall provide written notice to the owner of the existence of

the nuisance and shall demand abatement within 10 days from the date of the written notice, or such lesser time as may be set by the director to protect the public health, safety and welfare. The notice shall contain:

(1) A description of the real property by street address or otherwise on which the nuisance exists.

(2) A description of the nature of the nuisance.

(3) The action necessary to abate the nuisance.

(4) The time within which the nuisance must be abated.

(5) A statement that unless the nuisance is abated, the City may abate the nuisance and the cost of abatement shall be a lien against the property.

(6) A statement that the owner may request a hearing by writing to the director within seven days of the date of the notice.

(E) In an emergency the director may order immediate abatement of a nuisance. The director shall give notice of the requirement for immediate abatement to the owner.

(F) In an emergency, and in lieu of action under subsection (E) of this section, the director may proceed with immediate abatement of the nuisance. The director shall then immediately send written notice of abatement to the owner of the property.

#### Section 9 - Appeals and Hearings.

(A) Any person receiving a notice under subsection (D), (E) or (F) of Section 8 may request a hearing by writing the director within seven days of the date of the notice.

(B) The director shall, upon receipt of request for a hearing, promptly notify the hearings officer who shall set a time and place for the hearing at the earliest possible time and shall promptly notify the person requesting the hearing as to the time and place for the hearing. Notice may be by any means of giving actual notice. Notice may also be given to such persons as the hearings officer may determine to be interested persons.

(C) The person requesting the hearing and the director may make argument, submit testimony, cross-examine witnesses and submit rebuttal evidence on the pertinent issues. Any party may be represented by counsel.

(D) If requested by either party all hearings shall be recorded in a manner which will allow for written transcription to be made and all materials submitted at the hearing shall be retained by the hearings officer for a period of two years.

(E) Failure of the person requesting the hearing to appear at the hearing shall constitute a waiver of the right to a hearing.

(F) After the hearing the hearings officer shall issue and mail a copy of the order determining the question within 15 days from the date of the hearing, or any continuance thereof not to exceed 15 days, to the person requesting the hearing and the director.

(G) If the hearings officer finds the nuisance to exist, the order shall set a date for abatement to be accomplished by the owner.

(H) If the hearings officer determines that anything removed under subsection (F) of Section 8 no longer constitutes a nuisance or can be released upon such condition as the hearings officer may prescribe that will eliminate the nuisance, the person requesting the hearing may claim it upon paying the expense incurred in its removal and storage.

(I) If the hearings officer determines there was a wrongful abatement under subsection (F) of Section 8, the hearings officer may order the director to make reasonable restitution.

Section 10 - Review. Review of any action of the hearings officer taken under this Ordinance and the rules adopted under them shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 to 34.100.

Section 11 - Abatement by Owner Required. Failure of the owner to abate the nuisance within 10 days as provided by subsection (D) of Section 8 or within the time set by the hearings officer under Section 9 shall be a violation of this Ordinance.

Section 12 - Abatement by City; Costs; Waiver; Lien.

(A) If an owner fails to abate a nuisance as required under this Ordinance, the director may cause abatement of the nuisance. Accurate record of the abatement costs shall be kept and shall include a surcharge of 25 percent of the cost of the abatement for administrative overhead. A billing for the amount of the costs shall be forwarded by certified or registered mail, return receipt requested, to the owner. Payment shall be due to the Department of Community Development within 15 days from date of the billing.

(B) The cost of abating a nuisance may be waived for low income, elderly or disabled persons, if upon timely application it appears to the director that the following conditions are met:

(1) The owner is disabled or over 65 years of age, and, if single, had an income during the preceding calendar year from all sources of less than \$3,600, or, if the head of a family, had an income during the preceding calendar year from all sources of less than \$5,400; and

(2) The owner is living on the property from which the nuisance is to be abated.

(C) Applications for waiver of nuisance abatement costs shall be filed with the director, in writing, within ten days from the date of notice of the amount of cost of abatement. The director may require the owner to supply additional information as evidence that the applicant quali-

fies under the provisions of this Section. An application for waiver of nuisance assessment costs must be submitted for each cost of abatement notice sent to the applicant.

(D) The council shall file a lien against the property if payment is not made as provided in subsection (A) of this section or waived under subsection (B) of this section.

(E) The lien provided for in subsection (D) of this section shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate accruing from the date billing is sent to the owner of property.

(F) The lien provided for in subsection (D) of this section shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments.

Section 13 - Affect of Other Laws. This Ordinance shall not affect the validity or enforceability of any other state law or county ordinance which are now or may in the future be in effect and which relate to the activities regulated by this Ordinance.

Section 14 - Severability. If any section, subsection, sentence, clause, phrase or portion of Sections 1 to 14 is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be considered a separate, distinct and independent provision and shall not affect the validity of the remaining portions of Section 1 to 14.

Section 15 - Summary Abatement. The chief of police may proceed summarily to abate a nuisance which poses imminent danger to human life or property.

Section 16 - Separate Violations. Each days violation of a provision of this Ordinance constitutes a separate offense. The abatement of a nuisance is not a penalty for violating this ordinance, but is an additional remedy. The imposition of a penalty shall not relieve a person of the duty to abate a nuisance.

Section 17 - Penalty. Any owner or person who is convicted of a violation of this Ordinance shall be fined not more than \$1,000.00. The penalties set forth in this Section are in addition to and not in lieu of civil remedies.

ADOPTED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE on the 12th day of February, 1980.

YEAS: 4

NAYS: 0

Signed by the Mayor of the City of Troutdale on the 13th day of February, 1980.

ATTEST:

Jerry Widner  
FERRI WIDNER, Recorder

R.M. Sturges  
R.M. STURGES, Mayor