

ORDINANCE NO. 768

AN ORDINANCE AMENDING TMC CHAPTER 8.28, NUISANCES, REDUCING THE ABATEMENT PERIOD FOR SOME NUISANCES FROM TEN DAYS TO THREE DAYS AND MAKING OTHER CHANGES AND AMENDING TMC SECTION 10.12.100 RELATING TO VEHICLE STORAGE ON STREETS

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Expanding upon and clarifying the current nuisance provision prohibiting parking across the public sidewalk to include parking or storage of personal property on the public sidewalk or in the right-of-way in a manner that obstructs the flow of traffic or movement of pedestrians serves the public interest and preserves public safety by keeping streets and sidewalks clear of obstructions.
2. Moving the restriction on storing vehicles and personal property on the public right-of-way for more than 72 hours into the nuisance ordinance will make it possible to address these violations more expeditiously.
3. Requiring immediate abatement rather than the normal ten-day abatement period for certain nuisances, such as obstruction of the public sidewalk, and for repeat nuisance violations by the same owner within a 12-month period, is reasonable given the nature and circumstances of these type of nuisances and the ease by which they can be corrected.
4. Making it a nuisance to place a newsstand in the public right-of-way, including on the public sidewalk, serves the public interest because they have been shown to be unsightly and they create litter when the wind blows them over.
5. Permitting a single violation notice to serve as notification for all similar violations on that property for the following twelve months is justified because it avoids having to continually send notices to repetitive violators who abuse the process by repeating the same violation after each correction.


NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. Troutdale Municipal Code, Sections 8.28.020, 8.28.060, 8.28.070, 8.28.075 and 8.28.090, 8.28.110, and 8.28.130 are amended to read as shown in Attachment A.

Section 2. A new section 8.28.095 is added to Troutdale Municipal Code, Chapter 8.28, to read as shown in Attachment A.


Section 3. Troutdale Municipal Code, Section 10.12.100, is deleted.

YEAS: 6
NAYS: 1
ABSTAINED: 0



Paul Thalhofer, Mayor
October 27, 2005

Date



Debbie Stickney, City Recorder

Adopted: October 25, 2005

Chapter 8.28
NUISANCES

8.28.190 Violation – Each day deemed separate offense.

8.28.200 Violation – Penalty.

Sections:

- 8.28.010 Title.**
- 8.28.020 Definitions.**
- 8.28.030 Purpose.**
- 8.28.040 Administration – Enforcement.**
- 8.28.050 Administration – Rules and regulations.**
- 8.28.060 Notice procedure.**
- 8.28.070 Specific nuisances prohibited.**
- 8.28.075 Vehicle storage and repair.**
- 8.28.080 Routine and emergency inspections – Authority.**
- 8.28.090 Abatement – General procedures.**
- 8.28.095 Abatement – Immediate situations.**
- 8.28.100 Abatement – Emergency situations.**
- 8.28.110 Appeal and hearing procedures – General requirements.**
- 8.28.120 Appeal and hearing procedures – Review of decision.**
- 8.28.130 Abatement by owner – Required.**
- 8.28.140 Abatement by city – Assessments.**
- 8.28.150 Waiver of assessments – Conditions.**
- 8.28.160 Waiver of assessments – Application procedures.**
- 8.28.170 Liens against property.**
- 8.28.180 Summary abatement.**

8.28.010 Title.

This chapter shall be known as “The City of Troutdale Nuisance Control Ordinance,” and may be so pleaded and referred to and shall apply within the jurisdictional limits of the city.

8.28.020 Definitions.

As used in this chapter, unless the context requires otherwise:

A. “Abandoned vehicle” means any vehicle which reasonably appears to be inoperative, wrecked, discarded, displays expired vehicle registration plates, has no vehicle registration plates displayed, or is totally or partially dismantled.

B. “Council” means a common council of the city.

C. “Director” means the director of the department of community development of the city 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 state 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 chapter.

G. "Intersection" means the area embraced within the prolongation or connection of the lateral curblines or, if none, then of the lateral boundary lines of two or more streets or highways which join one another at an angle, whether 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 unsafe, 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 8.28.070 of this chapter 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. "Personal property" means any tangible item including, but not limited to, vehicles, trailers, boats, recreational equipment, structures, carts, tables, racks, and similar items. Personal property shall not include trash or recycling containers placed in the public right-of-way for pick up.

M. "Right-of-way" means a public or private area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, streets, sidewalks, bike paths,

alleys and walkways. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and under the control of a public agency.

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

O. "Rodent" means a mouse or rat.

P. "Rubbish" means glass, metal, paper, wood, plastics or other nonputrescible solid waste.

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

R. "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.

S. "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.

T. "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.

U. "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.

8.28.030 Purpose.

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 and this chapter shall be liberally construed to effectuate that purpose.

8.28.040 Administration - Enforcement

A. The director shall be responsible for the administration and enforcement of this chapter.

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 hearing officer and take testimony of any person by deposition.

8.28.050 Administration - Rules and regulations.

The director may adopt rules necessary for the administration and enforcement of this chapter.

8.28.060 Notice procedure.

A. Notices of violations shall be in writing in a letter, summons or citation.

B. Notice of violation provided in accordance with 8.28.090 may be placed at the location of the violation or mailed to the property owner, property manager, and/or the tenant. If mailed, the notice may be sent by regular postpaid mail.

C. Notice of a violation provided in accordance with Section 8.28.095 of this chapter may be affixed to the property or mailed to the property owner. If mailed, it shall be mailed certified or registered mail, return receipt requested, or signature confirmation.

D. Summons, citations, and notices of city abatement, liens and penalties shall be mailed certified or registered mail, return receipt requested, or signature confirmation, or personally delivered to the property owner.

E. A mailed notice shall be presumed to have been received on the second mail delivery day after mailing.

8.28.070 Specific nuisances prohibited.

A. It is unlawful for any person to maintain or allow to exist the following things, practices or conditions on any property, including unoccupied structures, 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 twenty-four 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 and 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 may attract or harbor vectors or rodents;
7. Any explosive or radioactive substance, unless the possession is authorized by law;
8. 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;
9. An open pit, well, quarry, cistern, excavation or other hole of a depth of four feet or more and a top width of six inches or more without reasonable safeguards or barriers to prevent them from being accessible to children and domestic animals;
10. Dead or decaying trees and tree limbs that present a safety hazard to the public or to abutting property owners;
11. Any abandoned vehicle upon private or public property;
12. Any vehicle or personal property parked or stored in such a way as to obstruct the flow of traffic on a public right-of-way or the movement of pedestrians on a public sidewalk;
13. Any vehicle or personal property located on a public right-of-way, a sidewalk or on public property for more than 72 consecutive hours, provided that

any basketball stand that does not interfere with the flow of traffic or pedestrians, or create a substantial safety hazard, may be located in the right-of-way for more than 72 hours.

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

15. Obstruction to public sidewalks or roadways by trees, bushes, roots, other natural growth, soil or solid waste;

16. Excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks or other public property;

17. 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;

18. Signs placed illegally within the public right-of-way.

19. Uncontrolled or uncultivated growth of weeds, brush, poison oak, poison ivy, tansy ragwort or grasses over fourteen inches in height 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. Except, uncontrolled or uncultivated growth on public land specifically for the purpose of providing native wildlife habitat shall not constitute a nuisance.

20. Any structure that is contaminated by toxic chemicals or that is in a condition that renders the structure unsafe. Where a governmental agency authorized by law to make the determination that a structure is unfit for use due to hazardous conditions on the property, makes such a determination, there is a rebuttable presumption that the

structure is a nuisance in violation of this chapter.

21. Vehicle storage and repair in violation of Section 8.28.075 of this chapter.

22. Maintaining an occupied travel trailer, motor home, camper, or vehicle or trailer modified for sleeping at any location other than a recreational vehicle park licensed under the provisions of the state, except as follows:

Vacation trailers and motor homes may be used by visitors of the residents, and shall be allowed on the residents' lot for a period of time not to exceed fourteen days in any consecutive six-month period.

23. Connection of any electric, water, sewer, gas, or telephone line from any source to a motor home, travel trailer, camper or utility trailer if any portion of such line between the connection at the termination and the point of connection at the source extends over, across, or under any public street, sidewalk, alley, or other public right-of-way or portion thereof.

24. Placement in a public right-of-way or on a public sidewalk of a newsstand, dispensing machine or any similar device intended for dispensing materials, including, but not limited to, newspapers, magazines, and advertising publications.

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 8.28.020(I) of this chapter.

8.28.075 Vehicle storage and repair.

Every person shall maintain the following things, practices or conditions

on any property unless the practice or condition occurs as part of a lawfully established nonconforming use, or nonconforming development pursuant to the Troutdale Development Code.

A. All new driveways must be constructed with concrete, asphalt or comparable hard surface, or as otherwise allowed by the Troutdale Development Code. Driveway means the private vehicular drive that connects an off-street parking area, garage, carport or other building used for parking or storing a vehicle with the street.

B. Parking areas, other than driveways, must be surfaced with concrete, asphalt or not less than six inches of one inch minus or greater crushed stone. "Parking area" means any portion of the property, other than the driveway, that is used to park motorized or non-motorized vehicles.

C. No motor vehicle shall be parked upon any grass or exposed soil surface.

D. Within residential neighborhoods, no commercial vehicle which exceeds eight thousand pounds gross weight, twenty-one feet in length or eight feet in height shall be parked in the street unless it is a vehicle that is routinely on standby and necessary to use under emergency circumstances. Semi-trailers are prohibited.

E. Within residential neighborhoods, service, repair or storage of vehicles not owned and properly registered with the state of Oregon to a resident of the site is prohibited. A vehicle registered to a resident of the site may be serviced and repaired under the following conditions:

1. The service and repair, if not conducted in a completely enclosed building, must be minor in nature. Minor service and repair includes tune-ups, replacement and servicing of oil and other fluids, and replacement and

adjustment of minor parts such as tires, hoses, belts, filters, fuses, and similar items. Minor repair does not include: body and fender repair and replacement; painting; engine or transmission removal or replacement; or any work using welders, torches, or air-driven power tools; and

2. All work not classified as minor in nature must occur inside a completely enclosed building.

8.28.080 Routine and emergency inspections – Authority

A. The director may enter any property or building at any reasonable time for the purpose of inspection or enforcing this chapter. 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 and Sections 8.28.090 and 8.28.100 of this chapter, 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.

8.28.090 Abatement – General procedures.

A. An investigation may be conducted whenever the director receives a complaint that a nuisance exists.

B. Whenever it appears to the director that there is reasonable cause to believe that a nuisance exists, the director shall provide written notice to the owner of the existence of the nuisance provided, however, only one notice for a particular type of nuisance will be provided to the same owner within a 12-month period. Repeat nuisance violations are subject to immediate abatement in accordance with

Section 8.28.095 of this chapter or city abatement in accordance with Section 8.28.140 of this chapter.

C. Except for nuisances that are subject to immediate abatement in accordance with Section 8.28.095 of this chapter, emergency abatement in accordance with Section 8.28.100 of this chapter, or city abatement in accordance with Section 8.28.140 of this chapter, notice of the nuisance shall demand abatement within ten 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.

D. The notice of a nuisance that is not subject to immediate abatement under Section 8.28.095, emergency abatement under Section 8.28.100 of this chapter or city abatement under Section 8.28.140 of this chapter 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 and/or the city may file charges against the owner in Troutdale municipal court;

6. A statement that notwithstanding the city's abatement authority pursuant to Section 8.28.140 of this chapter, if the nuisance is not abated within ten days from the date of the written notice, enforcement penalties for noncompliance in accordance with subsection 8.28.130(B) of this chapter will be imposed.

7. A statement that the owner may request a hearing to contest whether a nuisance exists or to contest the imposition of any enforcement penalty by writing to the director within seven days of the date of the notice.

E. The notice of a nuisance that is subject to immediate abatement under Section 8.28.095 of this chapter shall contain:

1. The information in subsections 8.28.090(D)(1)-(5) of this chapter;

2. A statement that the nuisance shall be abated immediately, which means as soon as possible and no later than 72 hours after the notice of the nuisance was affixed to the property or mailed to the owner;

3. A statement that if the nuisance is not abated within 72 hours of the date the notice of the violation was affixed to the property or mailed to the owner, the city may abate the nuisance in accordance with Section 8.28.140 of this chapter;

4. A statement that notwithstanding the city abatement authority pursuant to Section 8.28.140 of this chapter, if the nuisance is not abated within 72 hours, enforcement penalties for noncompliance in accordance with subsection 8.28.130(B) of this chapter will be imposed.

5. A statement that the owner may request a hearing to contest the finding of a nuisance, provided that the hearing will occur after the nuisance has been abated.

F. The notice shall be provided in accordance with Section 8.28.060 of this chapter.

8.28.095 Abatement – Immediate Situations

Nuisances that exist due to violations of subsections 8.28.070(a)(12)-(13) and

(24) and 8.28.075(D) of this chapter and repeat nuisance violations by the same owner within a 12-month period shall be abated immediately, which means as soon as possible and no later than 72 hours after notice of the nuisance is affixed to the property or mailed to the owner.

8.28.100 Abatement – Emergency Situations

A. 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.

B. In an emergency, and in lieu of action under subsection A 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.

8.28.110 Appeal and hearing procedures – General requirements.

A. Any person receiving a notice under Section 8.28.090, subsection 8.28.130(B) or Section 8.28.100 of this chapter, may request a hearing by writing the director within seven days of the date of the notice. A hearing request does not stay the requirement to immediately abate a nuisance in accordance with Section 8.28.095 and 8.28.100 of this chapter.

B. The director shall, upon receipt of a 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 person 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 persons 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 fifteen days from the date of the hearing, or any continuance thereof not to exceed fifteen days from the date of the hearing, 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 or affirm the abatement was proper if the nuisance has already been abated.

H. If the hearings officer determines that anything removed under subsection 8.28.100(B) or Section 8.28.095 of this chapter 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 that there was a wrongful abatement under Section 8.28.095 or subsection

8.28.100(B) of this chapter, the hearings officer may order the director to make reasonable restitution.

8.28.120 Appeal and hearing procedures – Review of decision.

Review of any action of the hearings officer taken under this chapter and the rules adopted under them shall be taken solely and exclusively by writ of review in the manner set forth in Oregon Revised Statutes Sections 34.010 through 34.100.

8.28.130 Abatement by owner – Required.

A. Failure of the owner to abate the nuisance within ten days as provided by subsection 8.28.090(B) of this chapter, or within 72 hours as provided by Section 8.28.095 of this chapter, or within the time set by the hearings officer under Section 8.28.110 of this chapter, shall be a violation of this chapter.

B. If a nuisance is not abated within ten days of the initial written notice for abatement, as provided in Section 8.28.090 of this chapter, unless a request for a hearing is made under Section 8.28.110 of this chapter or if a nuisance is not abated within 72 hours as provided in Section 8.28.095 of this chapter, or if a nuisance is not abated within the time set by the hearings officer under Section 8.28.110 of this chapter, the director shall impose enforcement penalties for noncompliance in accordance with the adopted fee schedule. The director shall provide notice of the imposition of any enforcement penalty to the owner. Enforcement penalties are separate from any penalties imposed under Section 8.28.200 of this chapter.