

ORDINANCE NO. 797

AN ORDINANCE AMENDING TMC CHAPTER 8.28, NUISANCES, ADDING A PROVISION TO PROHIBIT CAMPING AND MAKING OTHER CHANGES

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The problem of people sleeping and camping on both public and private property within the city is becoming more pervasive, and has become a public nuisance.
2. Requiring abatement of such makeshift homeless camps within 72 hours as part of the Nuisance Code is a method of addressing the problem without the need of citing violators for a criminal offense.
3. That in some instances it is more expeditious to personally deliver a notice, summons or citation than it is to place it in the United States Mail with proof of delivery.
4. Changing the reference Director to City Administrator or designee allows the City Administrator to designate the Chief of Police to fulfill this function at the present time, or to change the designee if needs of the organization change.


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

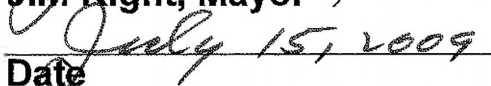
Section 1. Troutdale Municipal Code, Sections 8.28.020, 8.28.040, 8.28.050, 8.28.060, 8.28.070, 8.28.080, 8.28.090, 8.28.095, 8.28.100, 8.28.110, 8.28.130, 8.28.140, 8.28.150, 8.28.160, 8.28.170, are amended to read as shown in Attachment A.

YEAS: 7

NAYS: 0

ABSTAINED: 0



Jim Kight, Mayor


Date



Debbie Stickney, City Recorder

Adopted: July 14, 2009

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. "Administrator" means the Troutdale City Administrator or the City Administrator's authorized representative.
- C. "Camp" means to live, cook, sleep, or take overnight shelter in a motorized vehicle, temporary, or non-permanent structure or location, including but not limited to a shack, lean-to, storage shed, tent, travel trailer, recreational vehicle, boat, utility trailer or vehicle of any kind.
- D. "Council" means a common council of the city.
- E. "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.
- F. "Garbage" means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.
- G. "Hearings officer" means that person appointed by the council to preside at hearings held pursuant to this chapter.
- H. "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.
- I. "Liquid waste" means waste oil, septic tank pumping, liquid industrial wastes or other similar material.
- J. "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.
- K. "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.

- L. "Person" means any natural person, association, trust, partnership, firm or corporation.
- M. "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.
- N. "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.
- O. "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 or other nuclear particles, but radiation does not include sound waves, radio waves, visible light, infrared light or ultra-violet light.
- P. "Rodent" means a mouse or rat.
- Q. "Rubbish" means glass, metal, paper, wood, plastics or other nonputrescible solid waste.
- R. "Sewage sludge" means residual waste of sewage treatment plants, consisting of digested organic waste and indigestible solids.
- S. "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.
- T. "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.
- U. "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.
- V. "Vehicle" means any device which is designed or used for transporting people, goods or property, 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. (Ord. 768 § 1 Att. A (part), 2005; Ord. 729 § 1 (part), 2003; Ord. 696 § 1, 2000; Ord. 352-O § 2 (7.30.010), 1981)

8.28.040 Administration—Enforcement.

- A. The Administrator shall be responsible for the administration and enforcement of this chapter.
- B. The Administrator 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. (Ord. 352-O § 2 (7.30.020), 1981)

8.28.050 Administration—Rules and regulations.

The Administrator may adopt rules necessary for the administration and enforcement of this chapter. (Ord. 352-O § 2 (7.30.025), 1981)

8.28.060 Notice procedure.

- A. Notices of violations shall be provided in writing.
- B. Notice of violation provided in accordance with Section 8.28.090 of this chapter may be placed at the location of the violation or personally delivered 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 personally delivered 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. (Ord. 768 § 1 Att. A (part), 2005; Ord. 711 § 1, 2001; Ord. 352-O § 2 (7.30.030), 1981)

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 Administrator, 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 seventy-two 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 seventy-two 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.
 25. For any person to camp or sleep in or upon any public highway, street, alley, public park, parking lot, or other public place; or to camp or sleep in any barn, shed, shop, warehouse, railroad car, automobile, vessel, or place other than such as is kept for lodging purposes, without the written permission of the owner or party entitled to possession thereof, and in no event for more than 24 hours, except as provided in Section 8.28.070(22) of this chapter.
- B. The enumeration of nuisances in subsection A of this section shall not limit the power of the Administrator to investigate or declare any other condition a nuisance which is within the scope of Section 8.28.020(I) of this chapter. (Ord. 768 § 1 Att. A (part), 2005: Ord.

729 § 1 (part), 2003: Ord. 674 § 2, 1999: Ord. 649 § 1 Exh. A (part), 1997: Ord. 575-O, 1992; Ord. 454-O (part), 1985; Ord. 352-O § 2 (7.30.035), 1981)

8.28.080 Routine and emergency inspections—Authority.

- A. The Administrator 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 Administrator 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 Administrator has reasonable cause to believe that a nuisance constitutes an immediate and active danger to the public health, safety and welfare. (Ord. 352-O § 2 (7.30.040(A) and (B)), 1981)

8.28.090 Abatement—General procedures.

- A. An investigation may be conducted whenever the Administrator receives a complaint that a nuisance exists.
- B. Whenever it appears to the Administrator that there is reasonable cause to believe that a nuisance exists, the Administrator 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 twelve-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 Administrator 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 of this chapter, 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 Section 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 Administrator 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 (D)(1) through (D)(5) of this section;
 2. A statement that the nuisance shall be abated immediately, which means as soon as possible and no later than seventy-two hours after the notice of the nuisance was affixed to the property or personally delivered or mailed to the owner;
 3. A statement that if the nuisance is not abated within seventy-two 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 seventy-two hours, enforcement penalties for noncompliance in accordance with Section 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.
8.28.090
- F. The notice shall be provided in accordance with Section 8.28.060 of this chapter. (Ord. 768 § 1 Att. A (part), 2005; Ord. 678 § 1, 1999; Ord. 649 § 1 Exh. A (part), 1997; Ord. 352-O § 2 (7.30.040(C) and (D)), 1981)

8.28.095 Abatement—Immediate situations.

Nuisances that exist due to violations of Sections 8.28.070(A)(12), (A)(13), (A)(24) and (A)(25) and 8.28.075(D) of this chapter and repeat nuisance violations by the same owner within a twelve-month period shall be abated immediately, which means as soon as possible and no later than seventy-two hours after notice of the nuisance is affixed to the property or personally delivered or mailed to the owner. (Ord. 768 § 2 Att. A (part), 2005)

8.28.100 Abatement—Emergency situations.

- A. In an emergency, the Administrator may order immediate abatement of a nuisance. The Administrator 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 Administrator may proceed with immediate abatement of the nuisance. The Administrator shall then immediately send written notice of abatement to the owner of the property. (Ord. 352-O § 2 (7.30.040(E) and (F)), 1981)

8.28.110 Appeal and hearing procedures—General requirements.

- A. Any person receiving a notice under Sections 8.28.090, 8.28.130(B) or 8.28.100 of this chapter, may request a hearing by writing the Administrator 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 Sections 8.28.095 and 8.28.100 of this chapter.
- B. The Administrator 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 Administrator 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 Administrator.
- 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 Section 8.28.100(B) or 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 8.28.100(B) of this chapter, the hearings officer may order the Administrator

to make reasonable restitution. (Ord. 768 § 1 Att. A (part), 2005: Ord. 678 § 2, 1999: Ord. 454-O (part), 1985; Ord. 352-O § 2 (7.30.050), 1981)

8.28.130 Abatement by owner—Required.

- A. Failure of the owner to abate the nuisance within ten days as provided by Section 8.28.090(B) of this chapter, or within seventy-two 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 seventy-two 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 Administrator shall impose enforcement penalties for noncompliance in accordance with the adopted fee schedule. The Administrator 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. (Ord. 768 § 1 Att. A (part), 2005: Ord. 678 § 3, 1999: Ord. 678 § 3, 1999: Ord. 352-O § 2 (7.30.060), 1981)

8.28.140 Abatement by city--Assessments.

If an owner fails to abate a nuisance as required under this chapter, the Administrator may cause abatement of the nuisance and/or file charges against the owner in Troutdale municipal court. If the city abates the nuisance, an accurate record of the abatement costs shall be kept and shall include a surcharge of twenty-five percent of the cost of the abatement for administrative overhead. A billing for the amount of the costs, and notice that those costs may be imposed as a lien should payment not be timely received, shall be forwarded by certified or registered mail, return receipt requested, to the owner. Payment shall be due to the City of Troutdale within fifteen days from the date of the billing. (Ord. 696 §2, 2000: Ord. 649 § 1 Exh. A (part), 1997: Ord. 352-O § 2 (7.30.065(A)), 1981)

8.28.150 Waiver of assessments--Conditions.

The cost of abating a nuisance or the cost of any enforcement penalty imposed by the Administrator may be waived for low income, elderly or disabled persons, if upon timely application it appears to the Administrator that the following conditions are met:

- A. The owner is disabled or over sixty-five years of age, and, if single, had an income during the preceding calendar year from all sources of less than three thousand six hundred dollars, or, if the head of a family had an income during the preceding calendar year from all sources of less than five thousand four hundred dollars; and
- B. The owner is living on the property from which the nuisance is to be abated. (Ord. 678 § 4, 1999: Ord. 352-O § 2 (7.30.065(B)), 1981)

8.28.160 Waiver of assessments--Application procedures.

Application for waiver of nuisance abatement costs or for waiver of enforcement penalties shall be filed with the Administrator, in writing, within ten days from the date of notice of the amount of cost of abatement or within ten days of the date of the notice of the imposition of the enforcement penalty. The Administrator may require the owner to supply additional information as evidence that the applicant qualifies for a waiver under the provisions of Section 8.28.150. An application for waiver of nuisance assessment costs or enforcement penalties must be submitted for each cost of abatement notice or each enforcement penalty notice sent to the applicant. (Ord. 678 § 5, 1999; Ord. 352-O § 2 (7.30.065(C)), 1981)

8.28.170 Liens against property.

- A. The Administrator shall file a lien against the property if payment is not made as provided in Section 8.28.140 of this chapter or waived under Section 8.28.150 of this chapter.
- B. The lien provided for in subsection A 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 the property.
- C. The lien provided for in subsection A of this section shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments. (Ord. 696 §3, 2000; Ord. 352-O § 2 (7.30.065(D), (E), (F)), 1981)