

ORDINANCE NO. 818

AN ORDINANCE ADOPTING TROUTDALE MUNICIPAL CODE CHAPTER 8.30, THE "UNSAFE BUILDING ABATEMENT ORDINANCE" AND AMENDING TROUTDALE MUNICIPAL CODE SECTIONS 8.28.070, 15.04.040, 15.04.050 AND 1.04.095.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The problem of property falling into a state of disrepair to the point where the conditions endanger the life, health, property or safety of the public within the city is becoming more pervasive, and has become a public nuisance.
2. The City's existing Nuisance Control Ordinance, Chapter 8.28, is one of general application and not specifically designed to address structural issues which are directly related to safety.
3. The remedial measures required to abate this particular type of public nuisance are generally more involved and time consuming than those contemplated by the timeframes contained in Chapter 8.28, the general Nuisance Control Ordinance.

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

Section 1. That Troutdale Municipal Code Chapter 8.30, the Unsafe Building Abatement Ordinance, as shown in Attachment A, is hereby adopted.

Section 2. That Troutdale Municipal Code Section 8.28.070 is amended to read as shown in Attachment B, Troutdale Municipal Code Sections 15.04.040 and 15.04.050 are amended to read as shown in Attachment C, and Troutdale Municipal Code Section 1.04.095 is amended to read as shown in Attachment D.

YEAS: 4

NAYS: 2 Councilor Allen, Councilor White

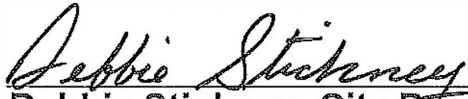
ABSTAINED: 0



Doug Dabust, Mayor

4/12/13

Date



Debbie Stickney, City Recorder

Adopted: April 9, 2013

CHAPTER 8.30 – UNSAFE BUILDING ABATEMENT

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Sections:

- 8.30.010 Title.**
- 8.30.020 Definitions.**
- 8.30.030 Purpose.**
- 8.30.040 General Provisions.**
- 8.30.050 Unsafe Buildings Prohibited.**
- 8.30.060 Closing and Securing of Unsafe Building.**
- 8.30.070 Commencement and Proceedings.**
- 8.30.080 Notice and Order.**
- 8.30.090 Service of Notice and Order.**
- 8.30.100 Method of Service.**
- 8.30.110 Repair, Vacation and Demolition.**
- 8.30.120 Appeal and Hearing Procedures - General Requirements.**
- 8.30.130 Appeal and Hearing Procedures - Review of Decision.**
- 8.30.140 Reserved.**
- 8.30.150 Administrative Abatement Warrant.**
- 8.30.160 Reserved.**
- 8.30.170 Hardship Waivers of Enforcement Action.**
- 8.30.180 Enforcement Action for Violations; Penalties.**
- 8.30.190 Receivership Authority.**
- 8.30.200 Lien.**
- 8.30.210 Severability.**
- 8.30.220 Application of Other Codes.**
- 8.30.230 Administrative Enforcement Fees.**
- 8.30.240 Saving Clause.**

8.30.010 – Title.
This chapter shall be known as the "Unsafe Building Abatement Ordinance."

8.30.020 – Definitions.
Words stated in the present tense include the future; the singular number includes the plural and the plural the singular. Where terms are not defined in this chapter or other code sections and are defined in the state building, plumbing, or mechanical codes, such terms shall have the meaning ascribed to them in those codes. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used.

- A. Building Official is the City’s Building Official or such other person as may be designated as such by the Building Official or City Manager.
- B. Building Code has the meaning given by the terms of ORS 455.010 to “state building code” and includes all specialty codes as defined in ORS 455.010.
- C. Any building or structure which has any of the conditions or defects described in this section or in Section 15.04.050 A. shall be considered unsafe, if the conditions or

1 defects are found to endanger the life, health, property or safety of the public or the
2 occupants. Any building or structure found to be unsafe under this subchapter is
3 declared to be a public nuisance and shall be abated by repair, rehabilitation,
4 demolition or removal. A building is unsafe whenever the building official
5 determines:

- 6 1. Any door, aisle, passageway, stairway or other means of exit is not in
7 conformance with the building code effective at the time of construction.
- 8 2. Stress in any structural materials or member or portion of a member, due to all
9 loads, both vertical and lateral, is more than one and one-half times the working
10 stress or stresses allowed by this chapter for new buildings of similar
11 construction, purpose or location.
- 12 3. Any portion has been damaged by fire, earthquake, wind, flood, deterioration or
13 such other cause as to result in wracking, warping, buckling or settling of any
14 portion of the structure so as to reduce structural strength or stability 33% or more
15 for supporting members, or 50% or more for nonsupporting members, below the
16 minimum strength requirements of current building code requirements.
- 17 4. Any portion, or any member, appurtenance or ornamentation, either interior or
18 exterior, is not of sufficient strength or stability, or is not anchored, attached or
19 fastened in place securely and is therefore reasonably likely to fall, become
20 detached or dislodged, or collapse and cause injury to persons or damage to
21 property.
- 22 5. Exterior or interior bearing walls or other vertical structural members list, lean or
23 buckle to the extent that a plumb line passing through the center of gravity does
24 not fall within the middle one-third of the base of the vertical component.
- 25 6. Any building or structure used or intended to be used for dwelling purposes,
26 because of inadequate maintenance, dilapidation, decay, damage, contamination
27 by toxic chemicals, faulty construction or arrangement, inadequate light, air or
28 sanitation facility, is determined to be unsanitary, unfit for human habitation or to
29 be in such condition as would likely cause injury, sickness or disease.

30
31 **8.30.030 – Purpose.**

32 The council finds and declares that conditions that promote blight and deterioration, or
33 that create a hazard to the health and safety of any person, are injurious to the health,
34 safety, and general welfare of the public. The purpose of this chapter is to:

- 35 A. Protect the public health, safety, and general welfare by regulating the conditions of
36 existing structures and existing premises by establishing minimum requirements and
37 standards for conditions of structures and premises for the protection from the
38 elements, life safety, other hazards, and for safe and sanitary maintenance;
- 39 B. Fix the responsibility of owners in the care and maintenance of their property; and
- 40 C. Provide for administration, enforcement, and penalties.
- 41 D. Provide a method (cumulative with and in addition to any other remed(ies) available
42 to the City by law) whereby buildings or structures which from any cause endanger
43 the life, limb, health, property, safety or welfare of the general public or the
44 building's occupants such that they should be required to be repaired, vacated or
45 demolished

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8.30.040 – General provisions.

- A. The Building Official is hereby authorized to enforce the provisions of this Chapter. The Building Official shall have the power to render interpretations of this Chapter and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this Chapter.
- B. The Building Official and others such as the Fire Marshall and Multnomah County Health Department officials are authorized to make such inspections and take such other actions as may be required to enforce the provisions of this Chapter, including (but not limited to) the issuance of stop work or similar abatement orders.
- C. When necessary to make an inspection to enforce the requirements imposed by the terms of this Chapter (or when the Building Official has reasonable cause to believe there exists in a building or upon a premises a condition contrary to or in violation of this Chapter making the building or premises unsafe, dangerous or hazardous) the Building Official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this Chapter. Except when an emergency exists, the Building Official 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.
- D. If such building or premises be unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the building or premises and request entry. If entry is refused, the Building Official shall have recourse to the remedies provided by law and this chapter to secure entry.

8.30.050 – Unsafe Buildings Prohibited.

- A. No structure shall be left unoccupied and unsecured, partially constructed, abandoned, maintained in a condition that is unfit for human habitation, or maintained in a condition that is an imminent danger, or which constitute a fire hazard, or a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment.
- B. All unsafe buildings or appendages are hereby declared to be public nuisances and shall be abated in accordance with the procedures set forth in this Chapter 8.30 of the code. As an alternative, the city building official, the city manager or the manager's designee, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

8.30.060 – Closing and Securing of Unsafe Buildings.

Whenever, in the opinion of the building official a structure is an unsafe building or structure, the building official may order the boarding-up of openings or other appropriate measures to render the structure secure from entry. The securing of the structure shall be by methods calculated to render entry very difficult including, but not limited to, the use of screws or lag bolts in the boarding of entry points, instead of nailing.

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2 **8.30.070 -- Commencement of Proceedings.**

3 When the Building Official has inspected or caused to be inspected any building and has
4 found and determined that such building to be an Unsafe Building, the Building Official
5 or City Manager has the authority to cause commencement of proceedings to effect the
6 repair, vacation or demolition thereof.
7

8 **8.30.080 -- Notice and Order.**

9 The Building Official shall issue a notice and order directed to the record owner of the
10 building. The notice and order shall contain:

- 11 A. The street address and a description sufficient for identification of the premises upon
12 which the building is located.
- 13 B. A statement that the Building Official has found the building unsafe with a brief
14 factual description of the conditions found to render the building unsafe.
- 15 C. A statement of the action(s) required to be taken by the Building Official:
- 16 1. If the building must be repaired, the notice and order shall require all required
17 permits be secured therefore and the work physically commenced within such
18 time (not to exceed 60 days from the date of the order) and completed within such
19 time as the Building Official shall determine reasonable under all of the
20 circumstances.
- 21 2. If the building must be vacated, the order shall require that the building or
22 structure be vacated within a time certain from the date of the order as determined
23 by the Building Official to be reasonable.
- 24 3. If the building or structure is to be demolished, the order shall require that the
25 building be vacated within such time as the Building Official determines
26 reasonable (not to exceed 60 days from the date of the order); that all required
27 permits be secured therefore within 30 days of the date of the order; and that the
28 demolition be completed within such time as the Building Official determines
29 reasonable thereafter.
- 30 D. Statement advising that if any required repair or demolition work (without vacation
31 also being required) is not commenced within the time specified, the Building
32 Official:
- 33 1. will order the building vacated and posted to prevent further occupancy until the
34 work is completed; and
- 35 2. may proceed to cause the work to be done and charge the costs thereof against the
36 property or its owner. As an alternative, the city building official, the city
37 manager or the manager's designee, may institute any other appropriate action to
38 prevent, restrain, correct or abate the violation.
- 39 E. Statements advising:
- 40 1. that any person having any record title or legal interest in the building may appeal
41 from the notice and order or any action of the Building Official to the city
42 hearings officer provided the appeal is made in writing as provided in this Chapter
43 and filed with the Building Official within 14 days from the date of service of
44 such notice and order; and
- 45 2. that failure to appeal will constitute a waiver of all right to a hearing and
46 determination of the matter.

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8.30.090 -- Service of Notice and Order.

The notice and order (and any amended or supplemental notice and order) shall be served upon the record owner and posted on the property with a copy thereof being served on each of the following (if known to the Building Official or disclosed from official public records):

- A. the holder of any mortgage or deed of trust or other lien or encumbrance of record;
- B. the owner or holder of any lease of record; and
- C. the holder of any other estate or legal interest of record in or to the building or the land on which it is located.

The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

8.30.100 -- Method of Service.

Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, to each such person at their address as it appears in the Multnomah County tax records or as otherwise known to the Building Official. If no address of such person appears or is known to the Building Official, then a copy of the notice and order shall be mailed (addressed to such person) at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

8.30.110 -- Repair, Vacation and Demolition.

- A. Any building or structure declared an unsafe building or structure under this Chapter shall be made to comply with one of the following:
 - 1. The building or structure shall be repaired in accordance with the current state building code or other current code applicable to the type of substandard conditions requiring repair; or
 - 2. The building or structure shall be demolished consistent with subsection below.
- B. If the building or structure does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured and maintained against entry.
- C. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or the building's occupants, it shall be ordered vacated, secured and maintained against entry.
- D. If a building or structure is found to be or becomes unsafe and if (in the opinion of the Building Official) the building or structure is not, under current circumstances likely to be repaired so as to be habitable within 120 days, it may be ordered demolished by the Building Official with the cost thereof borne by the owners. In the event the Building Official determines that a building is to be demolished, the Building Official shall make a written order which includes the circumstances supporting demolition. The order shall be served on all persons entitled to notice

1 under 8.30.090 and is subject to a 14 day appeal consistent with the provisions of
2 8.30.120.
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4 **8.30.120 – Appeal and Hearing Procedures—General requirements.**

- 5 A. Any person receiving a notice under Section 8.30.080 of this chapter, may request a
6 hearing by writing the building official within fourteen days of the date of the notice.
7 B. The building official shall, upon receipt of a request for a hearing, promptly notify the
8 hearings officer who shall set a time and place for the hearing at the earliest possible
9 time and shall promptly notify the person requesting the hearing as to the time and
10 place for the hearing. Notice may be by any means of giving actual notice. Notice
11 may also be given to all persons entitled to notice under 8.30.090.
12 C. The person requesting the hearing and the building official may make argument,
13 submit testimony, cross-examine witnesses and submit rebuttal evidence on the
14 pertinent issues. Any person may be represented by counsel.
15 D. If requested by either party, all hearings shall be recorded in a manner which will
16 allow for written transcription to be made and all materials submitted at the hearing
17 shall be retained by the hearings officer for a period of two years.
18 E. Failure of the persons requesting the hearing to appear at the hearing shall constitute a
19 waiver of the right to a hearing.
20 F. After the hearing, the hearings officer shall issue and mail a copy of the order
21 determining the question within fifteen days from the date of the hearing, or any
22 continuance thereof not to exceed fifteen days from the date of the hearing, to the
23 person requesting the hearing and the building official.
24 G. If the hearings officer finds the nuisance to exist, the order shall set a date for
25 abatement to be accomplished by the owner or affirm the abatement was proper if the
26 nuisance has already been abated.
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28 **8.30.130 – Appeal and Hearing Procedures—Review of Decision.**

29 Review of any action of the hearings officer taken under this chapter and the rules
30 adopted under them shall be taken solely and exclusively by writ of review in the manner
31 set forth in Oregon Revised Statutes Sections 34.010 through 34.100.
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33 **8.30.140 – Reserved.**
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35 **8.30.150 – Administrative Abatement Warrant.**

- 36 A. If a violation of this chapter that occurs on private property for which a Notice and
37 Order has been issued is not corrected, the building official may cause the violation to
38 be removed and abated upon issuance of an abatement warrant.
39 B. An abatement warrant shall be issued only upon cause, supported by affidavit,
40 particularly describing: the applicant's status in applying for the warrant; the
41 ordinance or Troutdale Development Code provision requiring or authorizing the
42 removal and abatement; the building or property to be entered; the basis upon which
43 cause exists to remove or abate the violation; and a statement of the violation to be
44 removed or abated. The affidavit shall also contain either a statement that consent to
45 enter onto the property to abate the violation has been sought and refused or the facts
46 and circumstances that reasonably justify the failure to seek such consent.

1 C. Cause shall be deemed to exist if there is reasonable belief that a code violation exists
2 with respect to the designated property, and that the property owner has been given
3 notice and an opportunity to abate the violation and has not responded in a timely
4 fashion.

5 D. Procedure for Issuance of an Abatement Warrant.

6 1. Examination. Before issuing an abatement warrant, the judge may examine the
7 applicant and any other witness under oath and shall be satisfied of the existence
8 of grounds for granting such application.

9 2. Issuance. If the judge is satisfied that cause for the removal and abatement of the
10 violation(s) exists and that the other requirements for granting the application are
11 satisfied, the judge shall issue the abatement warrant, particularly describing the
12 person or persons authorized to execute the warrant, the property to be entered,
13 and a statement of the general types and estimated quantity of the items to be
14 removed or conditions abated. The warrant shall contain a direction that it be
15 executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or
16 where the judge has specially determined upon a showing that it cannot be
17 effectively executed between those hours, that it be executed at any additional or
18 other time of the day or night.

19 3. Police Assistance. In issuing an abatement warrant, the judge may authorize any
20 peace officer, as defined in Oregon Revised Statutes, to enter the described
21 property to remove any person or obstacle and to assist in any way necessary to
22 enter the property and, remove and abate the violation.

23 E. Execution of Abatement Warrants.

24 1. Occupied Property: In executing an abatement warrant, the person authorized to
25 execute the warrant shall, before entry into the occupied premises, make a
26 reasonable effort to present the person's credentials, authority and purpose to an
27 occupant or person in possession of the property designated in the warrant and
28 show the occupant or person in possession of the property the warrant or a copy
29 thereof upon request. A copy of the warrant shall be left with the occupant or the
30 person in possession. The warrant is not required to be read aloud.

31 2. Unoccupied Property. In executing an abatement warrant on unoccupied property,
32 the person authorized to execute the warrant need not inform anyone of the
33 person's authority and purpose, but may promptly enter the designated property if
34 it is at the time unoccupied or not in the possession of any person or at the time
35 reasonably believed to be in such condition. In such case a copy of the abatement
36 warrant shall be conspicuously posted on the property.

37 3. Return. An abatement warrant must be executed within 14 working days of its
38 issue and returned to the judge by whom it was issued within 14 working days
39 from its date of execution. After the expiration of the time prescribed by this
40 subsection, the warrant, unless executed, is void.

41 4. If an abatement warrant to secure entry onto the property subject to the notice of
42 violation has been obtained, no property owner, occupier; or other person in
43 charge the property, shall refuse, fail or neglect, after proper request, to promptly
44 permit entry by authorized persons to abate the violation(s). It shall be unlawful
45 for any property owner, occupier, or other person in charge of the property to
46 refuse to permit entry by authorized persons to abate the violations for which an

1 abatement warrant has been obtained. Violation of this section may be as
2 described in Section 8.30.180.
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4 **8.30.160 – Reserved**
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6 **8.30.170 – Hardship Waivers of Enforcement Action.**

- 7 A. The building official may issue a hardship waiver of enforcement action only if the
8 owner currently legally resides on the property. A hardship waiver may be issued
9 only in those instances when the building official finds the owner to be over 65 years
10 of age, disabled, or classified as “very low income” under the U.S. Department of
11 Housing and Urban Development (HUD) standards. Hardship waivers shall not
12 exceed three years. The income level of the owner will be reevaluated before the end
13 of the three-year waiver period. Application for a hardship waiver must be filed with
14 the building official in writing. The building official may require the owner to supply
15 all information necessary to demonstrate the owner’s eligibility for the waiver. The
16 owner must submit a separate application for waiver for each notice of complaint and
17 violation.
- 18 B. The building official may revoke the waiver if any of the conditions that allowed the
19 owner to qualify for a waiver change. Because the waiver is granted to a specific
20 property owner, the waiver automatically terminates upon change in ownership of the
21 property.
- 22 C. The owner may reapply for new hardship waivers to become effective at the
23 expiration of the term of any hardship waiver previously granted.
- 24 D. The building official may assist the owner in obtaining information concerning
25 financial or other assistance to make the necessary repairs.
26

27 **8.30.180 – Enforcement Action for Violations; Penalties.**

- 28 A. Violation of any section of this chapter is subject to a fine not to exceed \$1,000. A
29 violation is considered a separate violation for each day it continues.
- 30 B. In addition to any other penalty provided by law, a person determined to be
31 responsible for violation of any section of this chapter may be ordered by the court to
32 correct the violation.
- 33 C. The City also may, as an alternative to other remedies that are legally available for
34 enforcing this code, proceed to cause the work to be done and charge the costs thereof
35 against the property or its owner.
- 36 D. The City also may, as an alternative to other remedies that are legally available for
37 enforcing this code, institute injunction, mandamus, or other appropriate proceedings
38 to prevent, enjoin, abate, or remove the nuisance.
39

40 **8.30.190 – Receivership Authority.**

41 In addition to, and not in lieu of, any other provisions of this chapter, when the building
42 official finds residential property in violation of this chapter, and believes that the
43 violation is a threat to the health, safety, and general welfare of the public and the legal
44 owner has not acted in a timely manner to correct the violation, the building official may
45 apply to a court of competent jurisdiction for the appointment of a receiver to perform an
46 abatement pursuant to the Oregon Housing Receivership Act (ORS 105.420 to 105.455).

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8.30.200 – Lien.

Administrative enforcement fees, abatement costs, interests, or other fees or charges imposed under this chapter shall constitute a valid lien against the property in favor of the City of Troutdale, if not paid within 30 days of imposition. The lien shall remain valid against the property until fully paid. The lien provided for in 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, and shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments.

8.30.210 – Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this chapter which shall continue in full force and effect, and to this end the provisions of this chapter are hereby declared to be severable.

8.30.220 – Application of Other Codes.

Nothing in this chapter shall be construed to relieve a person from complying with any federal, state, or local law, including any other provisions of this code, or the requirement to obtain all necessary permits and approvals.

8.30.230 – Saving Clause.

This chapter shall not affect violations of any other ordinance, code, or regulation existing prior to the effective date hereof, and any such violation shall be governed by and be punishable under the provisions of these ordinances, codes, or regulations in effect at the time the violation was committed.

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

19. Vehicle storage and repair in violation of Section 8.28.075 of this chapter;
 20. 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;
 21. 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;
 22. 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.
 23. 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 twenty-four 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 manager to investigate or declare any other condition a nuisance which is within the scope of Section 8.28.020(I) of this chapter.

15.04.040 - Adoption of codes.

- A. The city adopts and enforces the State Building Code per ORS 455 and ORS 479 and the rules adopted thereunder.
- B. The city adopts and enforces the Oregon Structural Specialty Code.
- C. In addition to any fines, penalties, remedies or other enforcement powers authorized by the State Building Code or the Oregon Structural Specialty Code, any violation shall also constitute a public nuisance under Chapter 8.28 or Chapter 8.30, subject to abatement, and shall be subject to the general penalty provisions in Chapter 1.04.

15.04.050 - Unsafe buildings.

- A. All buildings regulated by this chapter, which are structurally unsafe, which do not have adequate egress, which constitute a fire hazard, or which are otherwise dangerous to human life are deemed to be unsafe. Any use of buildings constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is deemed to be unsafe. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in this chapter are hereby designated as unsafe building appendages.
- B. All unsafe buildings or appendages are hereby declared to be public nuisances and shall be abated in accordance with the procedures set forth in Chapter 8.30 of this code. As an alternative, the city building official, the city manager or the manager's designee, may institute any other appropriate action to prevent, restrain, correct or abate the violation.

1.04.095 - Violations—Penalty.

- A. It is unlawful for any person to violate any provision of this code, an ordinance adopted by the city council, an agreement with the city, a permit issued by the city or any condition imposed by the city.
- B. Any person violating any provision of this code, an ordinance adopted by the city council, an agreement with the city, a permit issued by the city or any condition imposed by the city, where no specific penalty is provided in the agreement, permit, condition, ordinance or separate section of the this code, may be ordered to:
 - 1. Pay a fine in an amount up to but not exceeding one thousand dollars;
 - 2. Engage in conduct, or disengage in the conduct that constituted the violation;
 - 3. Pay restitution to the city or a third party in an amount equal to the damages and costs that were incurred as a result of the violation; and/or
 - 4. Perform community service.
- C. Each such person charged with violating any provision of this code, an ordinance adopted by the city council, an agreement with the city, a permit issued by the city, or any condition imposed by the city, shall be guilty of a separate violation for each and every day during any portion of which any violation is committed, continued, or permitted by such person. A separate penalty may be imposed for each violation.
- D. In addition to the penalties stated in this section, any condition caused or permitted to exist in violation of any provision of this code is a public nuisance and may be abated by the city. Any person that the municipal court finds has violated this code may be ordered to abate the nuisance that exists as a result of the violation. If the person fails to abate the nuisance, the city may abate the nuisance in accordance with Section 8.28.140 or Section 8.30.180 of this code.

May 13, 2014

RE: Clerical Error in Ordinance #818, Section 8.28.070

Ordinance #797, adopted on July 14, 2009 amended Chapter 8.28, Nuisances, adding a provision to prohibit camping and making other changes.

Ordinance #818, adopted on April 9, 2013, created a new Chapter 8.30, Unsafe Building Abatement, and amended TMC Sections 8.28.070, 15.04.040, 15.04.050 and 1.04.095.

Ordinance #818: This ordinance amends Section 8.28.070 by eliminating subsections 8.28.070(A)(17) (vacant, unsecured buildings) and 8.28.070(A)(20) (contamination) which are both covered in the new Chapter 8.30. In the attached redlined version of Section 8.28.070(A) you can see that the subsections have been renumbered due to the elimination of subsections 17 and 20. However, in the new subsection 23 (was 25) in the last sentence it makes reference to 8.28.070(22). That should have been revised to reflect the renumbering of the subsections to read 8.28.070(20).

TMC Section 2.04.010(C) – In processing adopted resolutions and ordinances, the city manager or designee shall not alter the sense, meaning, effect or substance of any ordinance, but with such limitations, may renumber sections and parts of sections, change capitalization for the purpose of uniformity, correct any clerical, typographical or similar non-substantive errors.

I hereby authorize the City Recorder to modify Ordinance #818 by making the following change to Attachment B of Ordinance #818:


Section 8.28.070(A)(23): 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 twenty-four hours, except as provided in Section 8.28.070(~~22~~**20**) of this chapter.

Approved by:


Craig Ward, City Manager

5/15/14
Date

Changes made by:


Debbie Stickney
City Recorder

Change sent to MCC to codify on:

5/15/2014

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 manager, 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;~~
 17. Signs placed illegally within the public right-of-way;

189. 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;~~

1924. Vehicle storage and repair in violation of Section 8.28.075 of this chapter;

202. 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;

213. 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;

224. 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.

235. 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 twenty-four 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 manager to investigate or declare any other condition a nuisance which is within the scope of Section 8.28.020(I) of this chapter.



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: An ordinance adopting Troutdale Municipal Code Chapter 8.30, the "Unsafe Building Abatement Ordinance" and amending Troutdale Municipal Code Sections 8.28.070, 15.04.040, 15.04.050 and 1.04.095.

<p>MEETING TYPE: City Council Regular Mtg.</p>	<p>MEETING DATE: March 12, 2013</p> <p>STAFF MEMBER: David Ross DEPARTMENT: Legal</p>
<p>ACTION REQUIRED Ordinance - Introduction</p> <p>PUBLIC HEARING Yes</p>	<p>ADVISORY COMMITTEE/COMMISSION RECOMMENDATION: Not Applicable</p> <p><u>Comments:</u></p>

STAFF RECOMMENDATION:

- EXHIBITS:**
- A. Proposed Chapter 8.30 - Unsafe Building Abatement Ordinance
 - B. Redlined version of amendments required to Chapter 8.28
 - C. Redlined version of amendments required to Chapter 15.04
 - D. Redlined version of amendments required to Chapter 1.04

Subject / Issue Relates To:

Council Goals
 Legislative
 Other (describe)

- Issue / Council Decision & Discussion Points:**
- ◆ Necessity of a standalone ordinance versus Chapter 8.28, the Nuisance Control Ordinance;
 - ◆ Cost of enforcement;

Reviewed and Approved by City Manager:

BACKGROUND:

One of the Council Goals for 2012-13 is to improve and support the livability of Troutdale, by among other things, updating city codes to enhance economic vitality and protect community safety. One of the performance measures of this objective was to "Revisit the derelict property code."

In order to remove as much subjectivity as possible, the ordinance has been recast in terms of unsafe building, rather than derelict property, abatement, using the existing definition of unsafe building found in TMC 15.04.050 and supplemented by definitions couched in terms of building code violations. Because abatement of these particular nuisances are frequently more involved, and often require the procurement of appropriate permits, the time limes contained in Chapter 8.28 were not particularly workable, suggesting that a separate ordinance was more practical.

The ordinance has also been designed to provide that, if a nuisance is found to exist, in addition to the standard remedy of causing the work to be done and charging the costs back to the owner, the city has the option to institute any other appropriate action to prevent, restrain, correct or abate the violation.

The ordinance amends TMC Sections 1.04.095 by including an appropriate reference, and 8.28.070 by eliminating subsections 17 (vacant, unsecured buildings) and 20 (contamination) which subject matter is covered in 8.30, in order to avoid claims that the City is being arbitrary in deciding which ordinance to proceed under. Lastly, the ordinance amends Sections 15.04.040 and 15.04.050 by including an appropriate reference, as well as some housekeeping to 15.04.040 A. and B. by deleting an outdated reference and adding a current one.

The Finance Director has offered the following financial impact estimate:

During the February 5, 2013 Council Work Session the Council discussed at length the potential costs of the potential ordinance and agreed that a definitive cost for the potential ordinance was unknown. It was agreed that a financial analysis of some type would be provided for Council consideration.

During the discussion several cost components were identified. The costs are broadly categorized as productivity or soft costs, enforcement and abatement costs, and litigation costs. Additionally the benefit of potential improved property value was identified. All the factors will be highly dependent upon the volume and severity of cases pursued.

Soft Costs:

As was noted the salaries of the Building Official and City Manager are already covered, however, time spent on unsafe building abatement is time not spent on other City business. The productivity cost is in what else does not get accomplished. Other soft costs may be other staff such as the City Attorney and or support staff. The combined salary and benefits cost for all three staff exceeds \$200 per hour, while it is reasonable to presume that each case would involve a minimum of an hour for each of them, and with an unknown maximum number of hours.

Abatement Costs:

Considerable soft costs noted above, will be incurred prior to reaching the process stage where the City can perform direct abatement work. The direct abatement costs will vary per case dependent upon the unsafe condition to be remedied. Presumably there will also have been other direct costs such as \$125+ hour for the Hearings Officer, and cost associated with Municipal Court to obtain the necessary inspection and/or abatement warrant.

Litigation Costs:

As was stated by an audience member that evening: "...*this [ordinance] is for the property owner that isn't reasonable.*" and stated: "*If it is a landowner that allows that [derelict condition] to happen you are going to be in for a fight anyway, but the fight will be well worth it in the end. It is the right thing to do; it is the best thing to do for the City.*"

These comments point toward a higher likelihood of litigation associated with this proposed ordinance. For those cases appealed to Circuit Court, costs would include additional staff time, the soft costs noted above.

Cost Recovery:

During the cost discussion Councilor Ripma specifically inquired if the proposed ordinance would bring in enough money to cover the costs. While the ordinance, as currently proposed, would allow for the potential future recovery of the direct abatement costs through a lien on the property, the soft cost and litigation costs would not be recovered. Additionally based on the anticipated operation of the proposed ordinance the fines are expected to occur infrequently.

(Also during the cost discussion Councilor Ripma specifically inquired regarding the problem of a derelict vacant lot. This proposed ordinance would not address a derelict vacant lot if it is defined as overgrown with weeds, littered with trash and junk, but otherwise empty, with no structure. That type of lot would be covered by the existing nuisance code. However, a lot with the "ruins" of a former structure could be covered by this proposed ordinance, depending on the condition/hazard of the ruins.)

Potential Improved Property Value:

The potential benefits that could come from the proposed ordinance would be both tangible, in the form of property tax increases, and intangible, in the form of improved city livability quality of life.

The magnitude of abatement costs compared to increased property value would drive the scale of potential increased property taxes received over the discussed five year period.

As an example, the demolition, removal of hazardous material and contaminated soil, and engineered fill has been estimated in the \$250,000 to \$350,000 range for 10,000 square foot abandoned commercial site.

If subsequently the site is improved with a \$1,500,000 structure (\$150 per square foot) an incremental tax revenue increase of \$ 5,648 in the first year and potentially \$29,985 over five years could result.

Summary:

Assigning a dollar value to the potential improved livability is up to the Council, as are the overall cost, volume and severity assumptions.

PROS & CONS:

Pros:

- Provides a more focused enforcement tool for dealing with unsafe property.

Cons

- Potential costs of enforcement.

Current Year Budget Impacts Yes (*describe*) N/A
Dependent on case volume and severity.

Future Fiscal Impacts: Yes (*describe*) N/A
Dependent on case volume and severity.

Community Involvement Process: Yes (*describe*) N/A