

City of Brookings WORKSHOP Agenda

CITY COUNCIL

Monday May 6, 2019, 4:00pm

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

A. Call to Order

B. Roll Call

C. Topics

1. Nuisance Ordinance Review [City Manager, Pg. 2]
 - a. Brookings Municipal Code, Ch. 8.15 Nuisances [Pg. 3]
 - b. City of Grants Pass – Nuisance Ordinance (Nuisance Dog Defined) [Pg. 16]
 - c. City of Coos Bay – Ch. 6 (Animal Control) [Pg. 17]
2. Prohibiting consumption of alcohol and open containers of alcohol in public places [Police, Pg. 20]
 - a. ORS 801.458 Sidewalk [Pg. 21]
 - b. City of Bend Chapter 5.15 Alcoholic Liquor [Pg. 22]
 - c. City of Portland Section 14A.50.010 Alcohol in Public Property and Public Right of Way [Pg. 23]
 - d. City of Ashland Ch. 14.40 Liquor Regulations [Pg. 24]
 - e. City of Eugene Section 4.190 Consumption or Possession in Unlicensed Public Places Prohibited [Pg. 25]
3. Azalea Park Foundation Memorandum of Understanding [Parks, Pg. 26]
 - a. APF Statement of Purpose [Pg. 27]
 - b. APF grant letter 3/28/96 [Pg. 28]
 - c. APF grant letter 7/23/96 [Pg. 30]
 - d. APF 1/15/13 MOU [Pg. 32]
 - e. 1/14/13 Counsel Report [Pg. 34]
 - f. 2/12/19 revised draft MOU [Pg. 35]
 - g. APF revisions to draft 2/12/19 MOU [Pg. 37]
4. KCIW Agreement [City Manager, Pg. 39]
 - a. Agreement [Pg. 41]

D. Council Member Requests for Workshop Topics

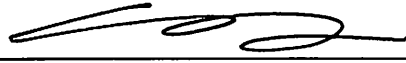
E. Adjournment

All public City meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS

COUNCIL WORKSHOP REPORT

Meeting Date: May 6, 2019


Signature (submitted by)

Originating Dept: PW/DS


City Manager Approval

Subject: Nuisance Ordinance Review

Background/Discussion: City Council received a complaint at the March 25, 2019 meeting from a resident regarding noise from a neighbors peacock(s). In addition, a question came up regarding the City's blight ordinance. Both are addressed in Brookings Municipal Code (BMC) Chapter 8.15 attached.

The abatement process defined in Chapter 8.15 has been procedurally problematic and proven to be in-effective for various violations within this chapter. A review of the abatement process at this workshop is also recommended.

Attachments:

- a. Brookings Municipal Code, Chapter 8.15 Nuisances
- b. City of Grants Pass – Nuisance Ordinance (Nuisance Dog Defined)
- c. City of Coos Bay – Chapter 6 (Animal Control)

Chapter 8.15 NUISANCES

Sections:

- 8.15.010 Definitions.
- 8.15.015 Policy.
- 8.15.020 Control of domestic animals.
- 8.15.030 Public health.
- 8.15.040 Hazards.
- 8.15.045 Deteriorated condition.
- 8.15.050 Noxious vegetation.
- 8.15.060 *Repealed.*
- 8.15.065 Trees and fences.
- 8.15.067 Surface waters and drainage.
- 8.15.070 Earth from abutting property falling into street.
- 8.15.080 Noise prevention.
- 8.15.083 Chronic disorderly property.
- 8.15.084 Chronic disorderly property – Enforcement.
- 8.15.085 *Recodified.*
- 8.15.087 Temporary use of a recreational vehicle or travel trailer.
- 8.15.090 General abatement procedure.
- 8.15.100 Summary abatement.
- 8.15.110 Penalties.

8.15.010 Definitions.

A. "Chronic disorderly property" means:

1. Any real property on which three or more prohibited activities have occurred during any 60-day period; or
2. Any real property within 200 feet of which any person associated with the property has engaged in three or more prohibited activities during any 60-day period; or
3. Any combination of subsections (A)(1) and (2) of this section totaling three occurrences during any 60-day period.

B. "Code enforcement officer" means any city employee authorized by the city manager to enforce the provisions of this chapter, including but not limited to building inspectors, police officers, public works inspectors and fire department employees.

C. "Construction" includes, but is not limited to, constructing any of the following: a building, an addition to a building, landscaping, sidewalks, or driveways, irrespective of size.

D. "Contaminant" means any substance or material such as, but not limited to, oil, gasoline, antifreeze, animal waste, lawn and yard fertilizers, defoliants, paint, or chemicals intended for insect control, that could cause harm, or otherwise have an adverse effect on the city's storm drain system.

E. "Controlled substance" has the same definition as is contained in ORS [475.005](#).

F. "Debris" means any foreign material such as, but not limited to, trackout, sediment from erosion, landscaping supplies, lawn clippings, leaves, brush, tree trimmings, household trash, litter, and concrete.

G. "Landscaping" means the process of arranging soil, trees, shrubs, grass, irrigation systems, or other commonly used landscaping materials on a piece of property. For this chapter, landscaping does not include routine lawn or yard maintenance such as grass mowing.

H. "Person" means a natural person, firm, partnership, association or corporation.

I. "Person in charge of property" means an agent, occupant, lessee, contract purchaser, tenant or other person having possession or control of property.

J. "Person responsible for abatement" means the person responsible for abating a nuisance and liable for any penalties imposed hereunder and shall include, jointly and severally, the following:

1. The owner;
2. The person in charge of property;
3. The person who caused to come into or continue in existence a nuisance as defined in this chapter.

K. "Prohibited activity" means any of the following:

1. Harassment as defined in ORS [166.065](#)(1)(a);
2. Intimidation as provided in ORS [166.155](#) through [166.165](#);
3. Disorderly conduct as provided in ORS [166.025](#);
4. Assault or menacing as provided in ORS [163.160](#), [163.165](#), [163.175](#), [163.185](#), or [163.190](#);
5. Sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as provided in ORS [163.415](#), [163.425](#), [163.427](#), [163.435](#), or [163.445](#);
6. Public indecency as provided in ORS [163.465](#);
7. Prostitution or related offenses as provided in ORS [167.007](#), [167.012](#), and [167.017](#);
8. Alcoholic liquor violations as provided in ORS [471.105](#) through [471.482](#);
9. Offensive littering as provided in ORS [164.805](#);
10. Criminal trespass as provided in ORS [164.243](#), [164.255](#) and [164.265](#);
11. Theft as provided in ORS [164.015](#) through [164.140](#);
12. Possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS [167.203](#), [475.005](#) through [475.285](#), or [475.940](#) through [475.980](#);

13. Illegal gambling as provided in ORS [167.117](#), [167.122](#) or [167.127](#);
14. Criminal mischief as provided in ORS [164.345](#) through [164.365](#);
15. Property which, in addition to or in combination with the prescribed number and duration of prohibited activities, upon request for execution of a search warrant, has been the subject of a determination by a court that probable cause that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS [167.203](#), [475.285](#) or [475.940](#) to [475.980](#) have occurred;
16. Violation of BMC [8.15.020](#)(D), dog fighting;
17. Violation of BMC [9.10.040](#), discharge of firearms;
18. Frequenting a place where controlled substances are used as provided in ORS [167.222](#); or
19. Violation of BMC [8.15.080](#), noise prevention.

L. "Public place" means a building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

M. "Recreational vehicle" or "travel trailer" means a self-propelled or towable mobile unit used for temporary dwelling purposes by travelers.

N. "Recreational vehicle park" means a commercially developed lot upon which two or more recreational vehicles occupied for living or sleeping purposes are located, regardless of whether a fee is paid for such service or accommodations.

O. "Responsible party" or "person responsible" means an owner, occupant or other person entitled to possession.

P. "Storm drainage system" means the system of pipes, manholes, curbs, gutters, curb inlets, catch basins, canals, ditches, detention basins, ponds and streams intended to convey storm water runoff.

Q. "Trackout" means the tracking of mud, soil, debris, or contaminant onto any street, alley, sidewalk, or public way. [Ord. 18-O-773 § 2 (Exh. A); Ord. 16-O-761 § 2; Ord. 14-O-736 § 2; Ord. 13-O-713 § 3; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 2; Ord. 86-O-406 § 1.]

8.15.015 Policy.

It is expressly found and determined by the city of Brookings that the conditions and objects specifically enumerated within this chapter do, in one or more particulars, constitute a public nuisance by promoting blight, deterioration, unsightliness, plundering, fire hazards, flood hazards, hazards to the health and safety of minors, disruption of the public peace, harborage for rodents, insects and vermin, and other circumstances generally injurious or detrimental to the health, safety and general welfare of the inhabitants and occupants of the city of Brookings. [Ord. 18-O-773 § 2 (Exh. A).]

8.15.020 Control of domestic animals.

A. *Repealed by Ord. 14-O-736.*

B. The owner or keeper of any dog or other domestic animal shall not allow such animal to be a public nuisance. A dog, cat, or other such animal is deemed herein to be a public nuisance if it bites a person; chases persons or vehicles; damages or destroys property of persons other than the animal's owner; scatters garbage; trespasses on private property of persons other than the animal's owner; disturbs any

person or neighborhood by frequent or prolonged barking, yelping, howling or any other such noise making; defecates on the property of another or of the public; or is a female in heat and running at large. Such animal shall not be considered a public nuisance if it bites a person who wrongfully is assaulting the animal or the animal's owner or if it bites a person trespassing upon premises owned or occupied by said animal's owner.

C. No person owning or harboring or having the care or custody of a vicious dog or other animal shall permit such animal to go unconfined beyond the premises of such person unless such an animal is securely leashed and muzzled or otherwise restrained. "Vicious" as herein defined means any dog or other animal or fowl with a known propensity, tendency or disposition to attack unprovoked, to cause injury or to otherwise endanger the safety of human beings or domestic animals, any animal which attacks a human being or domestic animal without provocation, or any dog or other such animal owned or harbored primarily or in part for the purpose of dog or animal fighting.

D. No person shall own or harbor any dog for the purpose of dog fighting or train, torment, badger, bait or use any dog for the purpose of dog fighting or for the purpose of causing or encouraging said dog to unprovoked or willfully provoked attacks upon human beings or domestic animals.

E. No dog is allowed to run at large within the corporate limits of the city of Brookings.

F. The city of Brookings hereby adopts by reference all provisions, as contained in Curry County Code Section 4.01.030 through and including Section 4.01.200 et seq.

G. The Brookings police department is authorized and directed to provide mutual aid assistance to county officers, employees and volunteers engaged in animal control activities within the city of Brookings.

H. No person shall own, harbor, take care of, or have in custody any dog without it being licensed with Curry County. Said person is responsible for payment of licensing fees, as well as securing any and all shots, vaccinations, or records which may be needed to license the animal.

I. No person shall permit the carcass of any animal owned or controlled by him to remain upon the public streets or ways to be exposed on private property for a period of time any longer than is necessary to remove the said carcass. It shall be the duty of such owner or occupant forthwith to cause such carcass to be buried or have other disposition made of the same. [Ord. 14-O-736 § 2; Ord. 14-O-729 § 2; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 3; Ord. 86-O-406 § 2.]

8.15.030 Public health.

No owner or person in charge of property shall cause or permit to be or remain on public or private property the following objects or conditions:

A. Privies. Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the health division regulations.

B. Debris. Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the city.

C. Stagnant Water. An open pit, quarry, cistern, well, cesspool or other excavation in which stagnant water affords a breeding place for mosquitoes and other insect pests.

D. Water Pollution. Pollution of a body of water, well, spring, stream, drainage facilities or drainage ditch by sewage, industrial wastes, construction wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

E. Food. Decayed or unwholesome food which is offered for human consumption, or which causes an offensive odor.

F. Odor. Premises which are in such a state or condition as to cause an offensive odor, or premises which are in an unsanitary condition.

G. Surface Drainage. Drainage of liquid wastes from private premises.

H. Cesspools. Cesspools or septic tanks which are in an unsanitary condition or which cause an offensive odor.

I. Garbage Containers. Garbage and noncombustible refuse that is not stored in flytight, watertight, and rodent-proof containers that are kept clean and in good repair.

J. *Repealed by Ord. 14-O-736.*¹

K. Sanitation. A business or residence that is kept or maintained in such a condition as to permit rats, rodents, vermin, or other pests to burrow or live therein. [Ord. 14-O-736 § 2; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A § 4; Ord. 86-O-406 § 3.]

8.15.040 Hazards.

No responsible party shall permit thereon:

A. Unguarded machinery, equipment or other devices which are attractive, dangerous and accessible to children;

B. Lumber or logs stored in a manner so as to be attractive, dangerous, and accessible to children;

C. An open pit, quarry, cistern, well, cesspool or other excavation without safeguards or barriers to prevent such places from being used by children. Any such opening or hole having a depth of four feet or more and a top width of 12 inches or more shall be covered or fenced with suitable protective construction;

D. Any junk unless such is completely enclosed within a building or kept in a duly licensed junkyard or automobile wrecking house. The term "junk" as used in this section includes all motor vehicles, machinery, or appliances, and any parts thereof or therefor; discarded or abandoned vehicles or components thereof; and old iron or other metal, glass, paper or discarded materials. "Discarded" shall mean any vehicle which does not have properly affixed thereto an unexpired license plate and is either inoperative, wrecked, dismantled (or partially so), or abandoned;

E. Failure to maintain or obstruction of private storm drainage conveyance. [Ord. 13-O-713 § 3; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 4.]

8.15.045 Deteriorated condition.

No owner or person in charge of property having frontage on Chetco Avenue, between the Chetco River Bridge and Easy Street; or Railroad Street, between Mill Beach Road and Alder Street, shall defer maintenance of a structure to cause or permit the following conditions:

A. Paint that is peeling, faded or mildewed over an area greater than 25 percent of any exterior wall area; windows and door openings shall be excluded from the area calculation.

B. Siding material that is failing over an area greater than 25 percent of any exterior wall; windows and door openings shall be excluded from the area calculation.

C. Fascia board that is failing over an area greater than 25 percent of the fascia board.

D. Roofing which is failing over an area greater than 25 percent of the roof area.

If any of the above conditions are deemed to be present, the building official shall file a report with the city manager who may declare such conditions as a public nuisance. The property owner shall be notified of such finding in the same manner as provided in BMC [8.15.090](#), General abatement procedure.

A property owner may appeal such finding of a public nuisance under this section to the city council within 15 days of the date of such notice. The city council shall hear the appeal within 30 days of receipt of an appeal, and shall render a decision within 15 days thereafter. [Ord. 14-O-740 § 2.]

8.15.050 Noxious vegetation.

The Department of Agriculture has declared many species of vegetation to be a menace to the public welfare (ORS [570.505](#)). A list of the vegetation covered under this declaration may be found in OAR [603-052-1200](#). It shall be unlawful for the owner, occupant, agent, or other person in possession of any lot, tract, or parcel of land within the corporate limits of the city of Brookings to permit the following:

A. The growth or propagation of gorse. The city may allow an abatement plan to be filed if it is determined that the gorse infestation is severe enough to merit a long-range eradication program.

B. The uncontrolled growth of nuisance vegetation. "Nuisance vegetation" is defined as vegetation that:

1. Encroaches onto the property of another; the encroachment must be by the plant itself and not by seed or underground root systems; and
2. Is listed in OAR [603-052-1200](#).

Exception: Vegetation growing on slopes of greater than 15 percent or adjacent to a water course or body of water that is providing erosion control. [Ord. 11-O-686 § 2; Ord. 10-O-671 § 3; Ord. 07-O-591 § 2; Ord. 93-O-406.A §§ 5, 6; Ord. 93-O-134.A § 2; Ord. 86-O-406 § 5; Ord. 59-O-134 § 8.]

8.15.060 Scattering rubbish.

Repealed by Ord. 14-O-735. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 6.]

8.15.065 Trees and fences.

No owner or person in charge of property that abuts upon a street or public sidewalk shall:

A. Permit trees or bushes on his property to interfere with street or sidewalk traffic. It shall be the duty of an owner or person in charge of property that abuts upon a street or public sidewalk to keep all trees and bushes on his premises, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than 13.5 feet above the roadway;

B. Allow to stand a dead or decaying tree that is a hazard to the public or to persons or property on or near the property;

C. Allow to stand a tree that has been identified as a high potential blowdown hazard by a professional engineer or forester, as designated by the city;

D. Construct or maintain a barbed-wire fence thereon, or permit barbed-wire to remain as part of a fence along a sidewalk or public way; except such wire may be placed above the top of other fencing not less than six feet, six inches high;

E. Construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person. [Ord. 11-O-686 § 2; Ord. 07-O-589 § 2; Ord. 06-O-572 § 1; Ord. 94-O-406.B § 2; Ord. 86-O-406 § 7.]

8.15.067 Surface waters and drainage.

No responsible party shall:

A. Suffer or permit rainwater, ice or snow to fall from any building or structure onto a street or public sidewalk or to flow across the sidewalk;

B. Fail to install and maintain in a proper state of repair adequate drainpipes or a drainage system, so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk;

C. Fail to maintain or cause the obstruction of a private storm drainage conveyance;

D. No person shall, intentionally or unintentionally, allow any debris, water contaminant, or potential water contaminant to enter the city's storm drainage system;

E. No person or persons shall allow any debris, contaminant, or potential contaminant to accumulate on any city street, alley, sidewalk, or public way adjacent to his/her property to an extent that said debris, contaminant, or potential contaminant, if allowed to enter the city's storm drainage system, could cause a disruption to the proper functioning of the system and necessitate cleaning of any portion of the city storm drainage system. [Ord. 13-O-713 § 3; Ord. 11-O-686 § 2; Ord. 86-O-406 § 8.]

8.15.070 Earth from abutting property falling into street.

Any earth, debris, or other material which caves or falls into or upon any street or sidewalk from any adjacent or abutting real property is a nuisance, and the owner or occupant of such real property shall remove forthwith said earth, debris, or material. It shall be unlawful for any owner or occupant of any real property to permit such earth, debris, or other material to remain upon any street or sidewalk. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 51-O-013 § 99.]

8.15.080 Noise prevention.

A. It shall be unlawful for any person to create, assist in creating, permit, continue, or permit the continuation of any unreasonably loud, disturbing, or unnecessary noise; and further, no person shall conduct or maintain any condition, activity, operation, vocation or avocation which causes unreasonably offensive noise to either the neighborhood or the public at large. In the case of noise that is generated due to an activity that is permitted within the zone, specifically in the case of industrial or manufacturing zones, such noise shall not be deemed unreasonably offensive.

B. The following acts are declared to be violations of this chapter, but said enumeration shall not be deemed to be exclusive:

1. The use of any automobile or other vehicle, engine, stationary or moving instrument, device or thing so out of repair or used in such manner as to create a loud or unnecessary grating, grinding, rattling or other such noise;

2. The sounding of any horn or signaling device on any automobile or other vehicle on any street or public place, except as a necessary warning of danger to property or persons or as so used on emergency equipment;

3. Entertainment devices used in an abusive manner for the creation of prolonged and excessively loud noise;
4. The use of an electrical, mechanical or other device, apparatus, instrument or machine that causes interference with radio or television reception by radio or television receiver of good engineering design unless said device or apparatus is duly licensed, approved and operated under the rules and regulations of the Federal Communications Commission;
5. Any person who operates powered construction equipment; erects, constructs, demolishes, excavates for; alters or repairs any building, structure, roadway or utility within the city in such a manner as to cause noise to be received beyond the boundaries of the property on which the construction work is occurring shall comply with the following:
 - a. Except for the pouring of concrete and roofing, no construction work shall be performed before 7:00 a.m. or after 7:00 p.m. on weekdays.
 - b. Except for the pouring of concrete and roofing, no construction work shall be performed before 8:00 a.m. or after 7:00 p.m. on weekends or holidays.
 - c. Provided, however, that in case of urgent necessity, permission may be granted by the city manager for construction activities to occur during otherwise proscribed hours. [Ord. 11-O-686 § 2; Ord. 10-O-674 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 9.]

8.15.083 Chronic disorderly property.

A. When the chief of police receives two or more police reports documenting the occurrence of prohibited activity on or within 200 feet of a property in a residential neighborhood within the city, the chief of police will independently review the reports to determine whether they describe prohibited activities enumerated in BMC [8.15.010](#). Upon such a finding, the chief of police may take the following actions:

1. Notify the person in charge of property, in writing, that the property is in danger of becoming a chronic disorderly property. The notice must contain the following information:
 - a. The street address or legal description sufficient for identification of the property.
 - b. A statement that the chief of police has information that the property may be a chronic disorderly property, with a concise description of the prohibited activities that may exist, or that have occurred.
 - c. Demand that the person in charge of property respond to the chief of police within 10 days to discuss the prohibited activities.

B. After notification of the occurrence of prohibited activities to the person in charge of property, when the chief of police receives a police report documenting the occurrence of a third prohibited activity at or within 200 feet of a property within a 60-day period and determines that the property has become a chronic disorderly property, the chief of police must:

1. Notify the person in charge of property in writing that the property is a chronic disorderly property. The notice must contain the following information:
 - a. The street address or legal description sufficient for identification of the property.
 - b. A statement that the chief of police has determined the property to be a chronic disorderly property with a concise description of the prohibited activities leading to the finding.

c. Demand that the person in charge of property respond within 14 days to the chief of police and propose a course of action (“abatement plan”) to abate the prohibited activities giving rise to the violation. The abatement plan may include actions such as measures to increase security, evict problem tenants, or change business practices, such as operating hours. The abatement plan must also include a timeline for implementation.

d. Service must be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge of property at the address of the property determined to be a chronic disorderly property, or any other place which is likely to give the person in charge of property notice of the determination.

e. A copy of the notice must also be served on the owner at the address shown on the tax rolls of the county in which the property is located, and the occupant, at the address of the property, if these persons are different from the person in charge of property, and must be made either personally or by first class mail, postage prepaid.

f. A copy of the notice must also be posted at the property.

g. The failure of any person to receive notice that the property may be a chronic disorderly property, if notice was given in accordance with subsections (B)(1)(d), (e) and (f) of this section, will not invalidate or otherwise affect the proceedings under this section.

2. Chronic disorderly property, as defined by BMC [8.15.010](#), is entitled only to the notification requirements of subsection (B) of this section.

3. The chief of police will review and approve or deny the abatement plan within 10 days of its receipt. If the abatement plan is approved, the person in charge of property must proceed in accordance with the plan. If the abatement plan does not result in the abatement of the prohibited activity(s) or if no plan for abatement is approved within the time allowed, then the chief of police may refer the matter to the city attorney to commence a legal proceeding to abate the nuisance caused by the chronic disorderly property.

4. Concurrent with the notification procedures set forth in subsections (A) and (B) of this section, the chief of police will send copies of the notice, as well as any other documentation which supports legal proceedings against the property, to the city attorney.

C. When a person in charge of the property makes a response to the chief of police as required by subsection (B)(1)(c) of this section, any conduct or statements made in connection with the furnishing of that response do not constitute an admission that any prohibited activities have occurred or are occurring. This subsection does not require the exclusion of any evidence that is otherwise admissible or offered for any other purpose. [Ord. 18-O-773 § 2 (Exh. A).]

8.15.084 Chronic disorderly property – Enforcement.

A. Commencement of Action.

1. In an action seeking the closure of a chronic disorderly property, the city will have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic disorderly property.

2. It is a defense to an action for chronic disorderly property that neither the owner nor the person in charge of property at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic disorderly property, or could not, in spite of the

exercise of reasonable care and diligence, control the conduct leading to the determination that the property is a chronic disorderly property.

3. In establishing the amount of any civil penalty requested, the court may consider the following factors:

- a. The actions taken by the owner, or other person in charge of property, to mitigate or correct the problem at the property;
- b. Whether the problem at the property was repeated or continuous;
- c. The magnitude or gravity of the problem;
- d. The cooperativeness of the owner, or other person in charge of property, with the city;
- e. The cost to the city of investigating and handling the problem;
- f. Any other factor the court deems relevant.

B. Closure During Pendency of Action. If it is determined that the property is an immediate threat to the public health, safety and welfare, the city may apply to the court for interim relief deemed by the city to be appropriate, including the temporary closure of the property.

C. Enforcement of Closure Order – Civil Penalties.

1. If the court determines property to be chronic disorderly property, the court may order that the property be closed and secured against all use and occupancy for a period of not less than 30, but not more than 180, days. The court may employ any other remedy(s) it deems appropriate to abate the prohibited activity(s) in addition to or instead of closure of the property. The court may authorize the city to physically close the property against use or occupancy if the owner fails to do so within the time specified in the court's order. The court will retain jurisdiction during any period of closure.

2. In addition to the remedies provided in subsection (C)(1) of this section, the court may impose upon the owner of the property/person in charge of property a civil penalty in the amount of up to \$500.00 per day, payable to the city, for each day the owner/person in charge of property had actual knowledge that the property was a chronic disorderly property and permitted the property to remain a chronic disorderly property. The owner/person in charge of property is considered to have actual knowledge if notice was provided to the owner/person in charge of property in accordance with BMC [8.15.083](#). The penalties must be set forth as part of the court's judgment.

3. If the city is authorized to secure the property, all costs reasonably incurred by the city to effect the closure will be awarded to the city as part of the judgment.

a. "Costs" means those costs actually incurred by the city for the physical securing of the structures on the property and any attorneys' fees awarded by the court.

b. The city manager may prepare a statement of costs and submit it to the court for its review as prescribed by Oregon Rule of Civil Procedure 68.

4. Any monetary judgment imposed pursuant to this chapter will bear interest at the statutory rate.

5. A lien will be created against the property for the amount of the city's monetary judgment and will be entered in the city's lien docket.

6. Unless otherwise specifically ordered by the court, all persons who are assessed a civil penalty by the court will be jointly, severally and personally liable for payment to the city.

D. Relief from Closure Order.

1. An owner of property determined to be a chronic disorderly property may obtain relief from the court's order if:

- a. The owner of the property appears and pays all costs associated with proceedings under this chapter;
- b. The owner of the property files a bond in such a place and form as the court may by order direct in an amount not less than the tax-assessed value of the property, and maintains said bond in force for a period of not less than one year or for such period as the court directs; and
- c. The owner enters into a stipulation with the city that he or she will immediately abate the conditions giving rise to the chronic disorderly property and prevent the same from being established or maintained for a period of one year thereafter. The stipulation will then be made part of the court's order.

2. If the owner violates the terms of the stipulation, the city may apply to the court for an order awarding up to the entire amount of the bond to the city as a penalty and such other relief, including closure for an additional period of up to one year.

E. Attorneys' Fees. In an action seeking closure of the property under this chapter, the court may, in its discretion, award attorneys' fees to the prevailing party.

F. Cumulative Remedies. The rights and penalties provided in this chapter are cumulative and not exclusive, and are in addition to any other rights, remedies and penalties available to the city under other provision of law. The city's actions in pursuit of remedies under this chapter are not to be construed as an election of remedies and such other remedies as may be available by law may also be pursued. [Ord. 18-O-773 § 2 (Exh. A).]

8.15.085 Motor vehicles.*

Recodified at BMC 10.30.005. [Ord. 07-O-591 § 2; Ord. 06-O-571 §§ 1 – 5.]

* Code reviser's note: Ords. 06-O-571 §§ 1 – 5 and 07-O-591 § 2 were recodified at the request of the city.

8.15.087 Temporary use of a recreational vehicle or travel trailer.

A. All recreational vehicle parks within the city of Brookings shall conform to the electrical, fire, health, building, and plumbing ordinances of the city of Brookings, as amended, except as hereinafter specified.

B. It is a violation to use a recreational vehicle or travel trailer for living purposes within the city of Brookings except when parked within a licensed recreational vehicle park. A recreational vehicle or travel trailer may be used for temporary sleeping purposes within the city of Brookings provided as follows:

1. That the recreational vehicle or travel trailer is located entirely on private property that is residentially zoned and developed with a dwelling unit or there is an active building permit for a dwelling unit;
2. That no connection of any kind may be made to the city's water or sewer system; and
3. That the period of use for the property shall not exceed 14 days out of any calendar year.

C. It shall be a violation for any person, firm, or corporation owning or operating a recreational vehicle park in the city of Brookings to violate any of the provisions of this chapter. It shall be a violation for any person, firm, or corporation owning, maintaining, or in control of any recreational vehicle or travel trailer, or the occupant or tenant of any recreational vehicle or travel trailer in whatever capacity, to violate any provisions of this chapter. [Ord. 11-O-686 § 2; Ord. 09-O-642 § 2; Ord. 07-O-591 § 2.]

8.15.090 General abatement procedure.

A. Upon determination by a code enforcement officer that a nuisance/violation exists, the city shall cause a notice to be posted at the site of the nuisance/violation or mail the notice by certified mail or personally deliver the notice to the responsible party, directing the person responsible to abate the nuisance/violation.

B. The notice to abate shall contain:

1. A general description, location or address of the real property on which the nuisance/violation exists;
2. A direction to abate the nuisance/violation within 10 days from the date of the notice;
3. A description of the nuisance/violation;
4. A statement that, unless the nuisance/violation is removed, the city may abate the nuisance/violation and charge the person responsible for abatement and administrative costs;
5. A statement that failure to abate a nuisance/violation may warrant imposition of a penalty;
6. An error in the name or address of the person responsible shall not make the notice void.

C. The person responsible for maintaining said nuisance shall remove or abate the nuisance/violation within 10 days of receipt or posting of notice. If, within such time, the abatement has not been completed, or a plan for abatement has not been approved by the code enforcement officer, the code enforcement officer may cite the responsible person into municipal court for a violation of this chapter pursuant to BMC [8.15.110](#). In addition to the levying of a fine, if the city so requests, the municipal judge may order the nuisance abated by the city, the cost of such abatement to be recovered through a lien against the property. In BMC Title [17](#) cases, where the potential violation is a matter of ambiguity, the code enforcement officer determination of violation may be appealed to the planning commission pursuant to Chapter [17.156](#) BMC.

D. If the city abates the nuisance/violation, the following shall apply:

1. The city, its officers and employees so charged with abatement of the nuisance/violation shall have the right at all reasonable times to enter into or upon the property to investigate and cause the removal of the nuisance/violation.
2. The city shall keep an accurate record of the expense incurred in abating the nuisance/violation, and shall additionally include a charge of \$150.00 or 15 percent of the abatement expenses, whichever is greater, for administrative overhead. Any bill unpaid from 30 days of mailing shall carry interest at the statutory rate per annum. The administrative services director, by registered or certified mail, shall forward to the person responsible a notice stating:
 - a. The total cost of abatement, including the administrative overhead;
 - b. That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice;

- c. That the administrative services director will temporarily enter the cost of abatement in the city's lien docket;
- d. That if the person responsible objects to the cost of the abatement as indicated, he/she may file a notice of objection with the administrative services director not more than 10 days from the date of the notice.

3. If an objection is received on or before the expiration of 10 days after the notice was served, the city manager shall consider the objection and make a final determination regarding the cost to be assessed.

4. The lien shall thereupon be entered in the docket of the city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance/violation was removed or abated. The lien shall be enforced and shall bear interest at the statutory rate. The interest shall commence to run from the date of the entry of the lien in the lien docket. An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. [Ord. 16-O-761 § 3; Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 93-O-406.A §§ 7, 8; Ord. 86-O-406 § 10.]

8.15.100 Summary abatement.

The procedure provided by this chapter is not exclusive, but is in addition to procedures provided by other chapters and the general police powers of the city; and the city manager, the chief of the fire department, the chief of the police department and the building/fire safety officer may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property. [Ord. 11-O-686 § 2; Ord. 07-O-591 § 2; Ord. 86-O-406 § 11.]

8.15.110 Penalties.

Pursuant to Chapter [1.05](#) BMC. [Ord. 11-O-686 § 2; Ord. 10-O-671 § 3; Ord. 07-O-591 § 2; Ord. 86-O-406 § 12.]

¹Code reviser's note: Ord. 14-O-736 stated that Section [8.15.020\(J\)](#) was repealed. The intent of the city was to repeal Section [8.15.030\(J\)](#).

[Mobile Version](#)

City of Grants Pass Municipal Code

5.08.010 Nuisance Dog Defined

A dog is a nuisance and may be impounded, and its owner or custodian fined as provided in this Chapter, if it:

- A. Howls or barks in such a manner as to deprive any person of peace and quiet; or
- B. Be on property not owned by the owner or custodian of said dog unless the dog is restrained by a leash not longer than eight feet, except with the prior consent of the recreation division of the field services department, dogs may participate in off-leash organized activities in the City parks; or
- C. Injures, damages or destroys any property, whether real, personal or mixed, not owned by or under the control or custody of the owner or custodian of the dog; or
- D. Bites a person; or
- E. Shows a propensity to bite a person; or
- F. Habitually chases vehicles of any kind, or persons; or
- G. Injures or kills an animal or fowl belonging to a person other than the owner or custodian of the dog. (Ord. 4327 §1, 1980)
- H. Notwithstanding Subsection B of this Section, dogs are hereby prohibited and may be impounded from Riverside Park, during the Boatnik weekend and during the Frog O'Faire. During Boatnik weekend, the prohibition will start on Thursday at noon, and operate continuously until Monday night at midnight. During Frog O'Faire, the prohibition will start on the day of the event one hour before the event opens until one hour after the event closes. (Ord. 5554 §18, 2012)

This prohibition does not apply to:

- 1. Dogs for the handicapped; or
- 2. Dogs used for law enforcement purposes; or
- 3. Dogs that are participating in official events or programs. (Ord. 4590 §1, 1987)
- I. Defecates in a public park, on public property, or on private property without the consent of the private property owner. It is a defense to this subsection if the owner or custodian of the dog immediately cleans up the defecation without being instructed to do so. (Ord. 4949 §1, 1998, Ord. 5555 § 16, 2012)

6.05.010 Short title.

This chapter shall be referred to as the animal control ordinance of Coos Bay. [Ord. 42 § 1, 1985].

6.05.020 Definitions.

For purposes of this chapter, the following mean:

“Animal” means any mammal, reptile, amphibian, insect or bird.

“Animal at large” means any animal, excluding cats, off the premises of its owner and not under complete physical control of its owner or other person.

“Owner” means any person having a property right in the animal or who harbors the animal or who has it in his care, custody, or control or knowingly permits the animal to remain on or about his premises.

“Vicious animal” means any animal which has the capacity to inflict serious harm on a person and has previously attacked or bitten any person without provocation or which behaves in such a manner that the owner knows or should reasonably know that the animal has a predisposition to attack or bite persons without provocation. [Ord. 42 § 2, 1985].

6.05.030 Animal control.

It is unlawful for any owner to:

- (1) Permit or allow an animal to run or be at large.
- (2) Permit an animal to trespass upon property of another.
- (3) Keep a vicious animal.
- (4) Permit any animal to cause annoyance, alarm or noise disturbance at any time of the day or night, by repeated barking, whining, screeching, howling, braying, or other like sounds which may be heard beyond the boundary of the owner's property.
- (5) Leave an animal unattended for more than 24 consecutive hours without adequate care.
- (6) Deprive an animal of proper facilities or care, including but not limited to food, potable water, shade or shelter.
- (7) Physically mistreat any animal either by deliberate abuse or failure to furnish adequate care, including medical attention.
- (8) Allow any stable or place where any animal is or may be kept to become unclean or odiferous.
- (9) Confine an animal within or on a motor vehicle at any location under such conditions as may endanger the health or well-being of the animal.
- (10) Allow an animal to deposit its solid wastes in any public area not designed to receive those wastes, including but not limited to streets, sidewalks, parking strips, and parks, unless such wastes are removed immediately. This section shall not apply to a blind person while walking his guide dog.
- (11) Allow the carcass of an animal to remain on public property or exposed on private property for a period of time longer than is reasonable and necessary to remove and properly dispose of such carcass.
- (12) Lead, ride, tie, or fasten any animal described in CBMC 6.05.050 in such a manner as to permit it to remain on or go along any sidewalk, driveway or pedestrian pathway. [Ord. 107, 1987; Ord. 42 § 3, 1985].

6.05.040 Licensing.

All dogs kept within the city of Coos Bay shall be licensed according to the laws of the state of Oregon and/or Coos County. [Ord. 42 § 4, 1985].

6.05.050 Animals for which a special permit must be obtained.

(1) No horse, mule, donkey, pony, cow, pig, goat, sheep, llama, poultry, rabbit, or animal raised for fur-bearing purposes shall be kept within the city limits unless a special written permit therefor is issued by the city after inspection of the premises and a finding of fact that no nuisance will be created thereby.

(2) The following animals may not be kept within the city limits unless a special written permit therefor is issued by the city after an inspection of the premises and a finding of fact that no nuisance will be created thereby:

- (a) Any cat other than the *Felis catus*.
- (b) Any nonhuman primate.
- (c) Any wolf, coyote or other canine not of the species *Canis familiaris*.
- (d) Any poisonous reptile or any reptile whose average adult length is greater than two feet.
- (e) Any bat.
- (f) Any bear.
- (g) Any bees kept in a collection of hives or colonies.
- (h) Any mammal, reptile or amphibian not native to North America.

(3) Fees for such special permits shall be set by resolution of the city council.

(4) A permit shall be for the term of one year, and no renewal shall be issued without a reinspection. The number of such animals allowed under such special permit may be specified. A violation of any of the provisions of CBMC [6.05.030](#) or this section shall be grounds for revocation of such permit.

(5) Every stable or other building wherein any animal listed in subsection (1) of this section is kept shall be constructed of such material and in such manner that it can be kept clean and sanitary at all times.

(6) Every such stable or other building occupied by authority of a special permit for animals listed in subsection (1) of this section, located within 200 feet of any apartment, house, motel, hotel, restaurant, boardinghouse, retail food store, building used for school, religious or medical purposes, or residence other than that occupied by the owner or occupant of the premises upon which said creatures are kept, shall be provided with a water-tight and fly-tight receptacle for manure, of such dimension as to contain all accumulations of manure, which receptacle shall be emptied sufficiently often and in such manner as to prevent its becoming a nuisance. Said receptacle shall be kept securely covered at all times except when open during the deposit or removal of manure or refuse. No manure shall be allowed to accumulate except in such receptacle. If such measures are necessary in order to avoid a nuisance, any such building shall be screened tightly against flies; serviced with running water; serviced with adequate sewers; be floored in such a manner as to be impervious to water; and such other measures be taken as may be necessary to ensure proper protection to public health and safety, as conditions precedent to the issuance of any such special permit.

(7) Every animal permitted under subsection (2) of this section shall be at all times kept or maintained in a safe manner or confined securely so that keeping the animal will not constitute a danger to human life or property. [Ord. 47 § 1, 1985; Ord. 42 § 7, 1985].

6.05.060 Exemptions.

(1) Notwithstanding any restrictions or prohibitions of this chapter, animals of any kind and any number may be kept for exhibition of amusement purposes, temporarily, by a circus, carnival, or other exhibition licensed in accordance with the applicable city ordinance.

All rules as to sanitation and humane treatment contained in this chapter shall govern the keeping of the animals and maintenance of the premises or buildings where such animals are kept.

(2) Notwithstanding any restrictions or prohibitions of this chapter, animals of any kind and in any number may be kept by a school, museum or zoo for educational purposes. All rules as to sanitation and humane treatment contained in this chapter shall govern the keeping of the animals and maintenance of the premises or buildings where such animals are kept.

(3) Police service dogs, while in the exercise of their law enforcement duties, are exempt from any restrictions or prohibitions of this chapter. [Ord. 42 § 8, 1985].

6.05.070 Impoundment.

Any animal which is the subject of a violation of this chapter may be impounded by any city employee, law enforcement officer or county dog control officer. The procedures established by the county dog control board shall control the release or disposal of animals so impounded. [Ord. 42 § 11, 1985].

6.05.080 Penalties.

(1) Any person convicted of violating any of the provisions of this chapter shall be fined in an amount not to exceed \$500.00.

(2) Each day on which the violation continues shall be a separate offense.

(3) The abatement of the nuisance by impoundment or otherwise shall be in addition to the penalty imposed hereunder. [Ord. 42 § 12, 1985].

CITY OF BROOKINGS

Council WORKSHOP Report

Workshop Date: May 6, 2019


Signature (submitted by)

Originating Dept: Police Department

City Manager Approval

Subject:

City ordinance prohibiting both the consumption of alcohol and open containers of alcoholic beverages, in public places.

Background/Discussion:

Mayor Pieper has previously requested information regarding the adoption of a city ordinance which prohibits the possession and consumption of alcoholic beverages in public places, with exceptions. Brookings Municipal Code Chapter 12.40 makes it "... unlawful for any person to drink, consume, transport, carry, or possess, sell or consume any alcoholic beverage, on city premises ..." with exceptions. "City premises" is defined as "... city parks, city buildings, city parking lots, and other premises under the control of the city, but shall not include public highways". This in no way restricts persons from possessing or consuming an alcoholic beverage while on a sidewalk (a sidewalk is considered part of the highway by Oregon Revised Statute 801.485) in the City of Brookings.

Attached are municipal codes from Bend, Portland, Ashland, and Eugene which all prohibit the consumption of alcohol or the possession of an open container of an alcoholic beverage in a public place or premises open to the public unless the place has been licensed by the Oregon Liquor Control Commission or has a city permit authorizing them to do so.

Attachments:

- a. ORS 801.485 Sidewalk
- b. City of Bend Chapter 5.15 Alcoholic Liquor
- c. City of Portland Section 14A.50.010 Alcohol on Public Property and Public Rights of Way
- d. City of Ashland Chapter 10.40 Liquor Regulations
- e. City of Eugene Section 4.190 Consumption or Possession in Unlicensed Public Places Prohibited

2017 ORS 801.485¹

“Sidewalk”

“Sidewalk” means the area determined as follows:

(1)On the side of a highway which has a shoulder, a sidewalk is that portion of the highway between the outside lateral line of the shoulder and the adjacent property line capable of being used by a pedestrian.

(2)On the side of a highway which has no shoulder, a sidewalk is that portion of the highway between the lateral line of the roadway and the adjacent property line capable of being used by a pedestrian. [1983 c.338 §89]

Bend Municipal Code

Chapter 5.15.005 Drinking on Unlicensed Premises

- 1) No person shall drink, or be in possession of an open container of alcoholic beverages in a public place or premises open to the public unless the place or premise has been licensed by the Oregon Liquor Control Commission to sell intoxicating liquor for consumption or on premises for which a permit has been issued by the City.
- 2) Except when authorized by the Bend Metropolitan Park and Recreation District, no person shall drink, or be in possession of an open container of alcoholic beverages in a park under the control of Bend Metro Park and Recreation District without having first obtained an alcohol consumption permit referenced in Chapter 5.55.
- 3) A violation of this section is a Class B Civil Infraction.

5-19-2010

Portland City Code

Section 14A.50.010 Alcohol on Public Property and Public Rights of Way

(Amended by Ordinance No. 184596, effective June 17, 2011.)

- 1) It is unlawful for any person to drink alcoholic liquor upon any street, sidewalk, or other public right of way.
- 2) It is unlawful for any person to have in his possession while upon any street, sidewalk, or other public right-of-way any bottle, can, or other receptacle containing any alcoholic liquor which has been opened or a seal broken or the contents of which have been partially removed.
- 3) This Section does not apply to prohibit the consumption of alcoholic liquor in sidewalk cafes which have been issued permits under Chapter 17.25 of this Code.
- 4) This Section does not prohibit the use of alcohol in the street area where a Community Event Street Closure–Alcohol Allowed permit has been issued by the Bureau of Transportation under PCC Chapter 17.44 provided the Permittee is in compliance with all applicable Oregon Liquor Control Commission requirements.

Ashland Municipal Code

10.40.030 Consumption of alcoholic liquors in public places prohibited

- 1) A. No person shall drink or consume alcoholic liquor in or upon any street, alley, public ground, or other public place unless the place has been licensed for that purpose by the Oregon Liquor Control Commission.
- 2) B. Any person who violates any provision of this Chapter is subject to Section 1.08.020 of the Ashland Municipal Code. Any violation of this section is a Class III Violation. (Ord. 3137, amended, 2017; Ord. 3026, amended, 08/03/2010).

10.40.040 Open Containers Prohibited

A person commits the offense of violation of the open container law if the person possesses on one's person, while in or upon any street, alley, public ground, or other public place unless the place has been licensed for that purpose by the Oregon Liquor Control Commission, any bottle, can or other receptacle containing any alcoholic liquor, which has been opened, or a seal broken, or the contents of which have been partially removed. It shall not be a violation of this section, however, if the bottle, can or other receptacle is within a motor vehicle and in compliance with ORS 811.170, the open container law in a motor vehicle. Open containers prohibited is a Class III violation. (Ord. 3026, amended, 08/03/2010).

2-19-2019

Eugene Municipal Code

Section 4.190 Consumption or Possession in Unlicensed Public Places Prohibited

- 1) Except as provided in subsections (2), (3), and (4) of this section, consumption of alcoholic liquor or possession of an open alcoholic beverage container is prohibited in a public place and on private property extended to the public for use, and no person shall drink, consume alcoholic liquor, or possess an open alcoholic beverage container in such a place or on such property, unless authorized by the Oregon Liquor Control Commission or other provisions of this code.
- 2) Alcoholic liquor may be drunk or consumed in any place licensed, in advance, for that purpose by the commission.
- 3) Malt beverages and alcoholic liquor other than hard liquor may be drunk or consumed within city parks or county parks within the city limits, provided such drinking or consumption takes place only as authorized by the director of parks and recreation of the city pursuant to a park rule adopted in accordance with provisions of sections 2.019 et seq. of this code and so long as, if required by state law, the activity has been licensed, in advance, for drinking or consumption purposes by the commission.

(4) Omitted from this review as it speaks specifically to Autzen Stadium regulations.

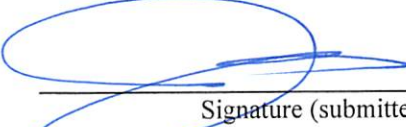
8-31-2018

CITY OF BROOKINGS

COUNCIL WORKSHOP REPORT

Meeting Date: May 6, 2019

Originating Dept: Parks



Signature (submitted by)

City Manager Approval

Subject:

Azalea Park Foundation Memorandum of Understanding

Background/Discussion:

The Azalea Park Foundation (APF) has been instrumental in the development of the Formal Gardens in Azalea Park. Founded November 29, 1995 they have volunteered thousands of hours and raised money to build and maintain the formal garden area of the park.

On January 15, 2019, we received a letter requesting that the City provide \$3,000 per year to APF for plants, materials and supplies.

Staff drafted an Memorandum of Understanding (MOU) revision that included the City reimbursing up to \$3,000 to APF, along with updates to several other section, including taking over maintenance and operational control of the water system. APF submitted to staff a revised MOU requesting additional adjustments.

Upon researching historical documents with APF, it was realized that the original intent of APF as documented in their Statement of Purpose, dated June 23, 1996, was that "Funding for this project again will not impact on either city nor tax monies but will be obtained through private donations and grants. All labor will be done by volunteers." This has been reiterated in several APF letters for grant support.

The MOU dated January 15, 2013 transferred several areas of maintenance of the Formal Gardens to the City. Now there is a request to assist with funding in addition to taking responsibility for more areas of the Formal Gardens. Staff would like direction on how to proceed with APF.

Attachments:

- a. APF Statement of Purpose
- b. APF grant letter 3/28/96
- c. APF grant letter 7/23/96
- d. APF 1/15/13 MOU
- e. 1/14/13 Counsel Report
- f. 2/12/19 revised draft MOU
- g. APF revisions to draft 2/12/19 MOU

AZALEA PARK FOUNDATION:

STATEMENT OF PURPOSE: 6/23/96

Established in 1995 The Azalea Park Foundation is a non-profit tax-exempt Charitable Foundation. As of June 18, 1996 The Internal Revenue Service has assigned the Case Number 956018023 and the Employer Identification 93-1192259 to The Foundation.

The purpose of The Azalea Park Foundation is to work with the City of Brookings in the enhancement and maintenance of Azalea Park.

There are no paid officers, no membership fees nor dues. All labor has been done and will continue to be done by volunteers. All funds have been raised by donations only. No city funds nor tax monies have been used.

The primary project for 1996 has been the establishment of two garden areas. One has already been completed consisting of the planting of 27 ornamental flowering trees, 186 rhododendrons and numerous other shrubs. Installation of an underground water system to maintain the garden areas and the 8,800 square feet of sod lawn is complete. Non-skid, handicapped-accessible cement sidewalks, consisting of 675 lineal feet are complete. A stone shed in the park has been repaired and made vandal-proof for the storage of tools required for maintenance.

The second project for 1996 will consist of a garden area of approximately 5,500 square feet in the area abutting the lower parking lot of Azalea Park. This will require installation of a 240' drainage system, a sump and additional fill soil and soil amendments. This garden is to have a large circular patio area replete with vandal-proof benches, suitable plantings and an additional 650 lineal feet of non-skid, handicapped accessible cement sidewalks which will connect with those in the existing garden area.

Funding for this project again will not impact on either city nor tax monies but will be obtained through private donations and grants. All labor will continue to be done by volunteers.

The slate of officers for the 1996-1997 term of office are:

President: Elmo Williams
Vice-President: Lee Rogers
Treasurer: Olivia Abbott
Secretary: Jean Sheldon

Grant letter draft: Cheney Foundation. 3/28/96

In August, 1992 the City of Brookings accepted the transfer of Azalea Park from the State of Oregon. Long accepted by the citizens of the area as something that had simply always been there, the years of minimal maintenance had taken a grievous toll on the entire 37 acres, particularly on the majestic old native azaleas, some of which are reputed to be two to three hundred years old.

So a group of local citizens undertook the task of not only cleaning up the debris and freeing the hundreds of native azaleas from the stranglehold of berry vines but also decided to establish a Master Plan to continue to enhance and maintain the park. To achieve this they have already contributed more than 4,800 hours of volunteer labor and have established the Azalea Park Foundation to supervise continuing improvements and provide a tax-exempt status for financial donations.

The first phase of the Master Plan will soon be completed. It entailed the planting of almost three hundred rhododendrons, twenty-two ornamental trees, and borders of spring bulbs to provide color when the native azaleas three-to-four week blooming period ends. In order to facilitate the many elderly members of the community being able to visit the park, two hundred and eighty linear feet of five-foot wide, handicapped-accessible cement sidewalks have already been installed and by mid-April another three hundred and twenty five additional linear feet will be poured. Eventually the Foundation hopes to extend these walkways to the amphitheater area and install benches for the benefit of those who are not now able to attend the outdoor performances and other activities held in the park.

The area now under development comprises approximately 19,000 square feet, the focal point of which will be a 9,000 square foot lawn with a circular flagstone pedestal to be eventually capped by a suitable large sculpture and surrounded by a flagstone walk with a raised flower bed around the edges.

All that has been done so far has been done entirely with volunteer labor and donations: not one cent of city or tax money has been used.

In order to continue this enhancement and maintenance of Azalea Park, the Foundation has formulated a budget for the additional improvements which it feels will be of great value in many respects. Protection of a unique area of natural beauty and endangered plants, a safe place for the enjoyment of local citizens, a showplace for tourists, and a quiet haven for the handicapped children and adults of the area, Azalea Park can become one of the finest examples of the creation of an exceptional place of beauty by the devotion and hard work of caring and involved citizens.

In the hope that The Cheney Foundation will consider our request for participation in this plan, indeed an ambitious one for a community trying to recover from setbacks in both the timber and fishing industries, we respectfully submit the following request.

AZALEA PARK FOUNDATION:

BROOKINGS, OREGON

The Directors are:

**Elmo Williams, President
1249 Iris Street
Brookings, Oregon
(541) 469-6079**

**Lee Rogers, Vice-President
131 Marine Drive
Brookings, Oregon
(541) 469- 0450**

**Olivia Abbott, Treasurer
713 5th Street
Brookings, Oregon
(541) 469- 0157**

**Jean Sheldon, Secretary
610 Mardon Court
Brookings, Oregon
(541) 469- 0703**

Current Financial Status: as of March 30, 1996

**\$6,987.35 - operating funds
5,320.00 - designated for Memorial Gardens**

\$12,307.35

Sources of actual or potential support:

No city or tax monies will be solicited. All funds are tax-exempt donations from members of the community. All labor is done by volunteers of all ages with generous assistance from local professional landscapers and equipment operators with little or no remuneration.

It is hoped that additional sources of revenue can be found through grants and donations of plants and necessary supplies in order to continue the enhancement of the existing gardens and their maintenance in the future.

Date requested funds would be appreciated:

With Spring weather coaxing both the native and new rhododendrons into bloom, we would like to have the funds to complete the first three phases of development by the time Summer fills the park with grateful members of our community and the tourists who come to Brookings, the most beautiful gateway to the great State of Oregon.

AZALEA PARK FOUNDATION:

July 23, 1996

GRANT REQUEST

**Leslie G. Ehmann Trust
Portland, Oregon**

Dear Ladies and Gentlemen:

Enclosed is information regarding the Azalea Park Foundation in Brookings, Oregon. It includes a history of the park, the need for improvements and maintenance and the significance that it has for the residents of this area.

We volunteers began improving our park last year and, to date, have put in more than 7,000 hours of physical labor. Many business concerns have supported us by donating needed materials. Many professional engineers, contractors and landscapers have either donated time, labor and heavy equipment or given it to us at their most reasonable cost. Our local newspaper and radio and television stations have given us splendid on-going publicity and Sunset magazine has promised an article in a forthcoming issue.

In the first seven months of Azalea Park Foundation we have raised sufficient funds without benefit of any city or tax monies to complete the First Phase of our Master Plan. We are now embarked on the start of Phase Two but, as you can see by our financial statement we are in need of additional funding. You will also note the generosity of our local citizens in their contributions. However, being a small community and with many requests for their financial assistance, we cannot continue asking these same generous people for yet more support.

This, then, is why we are writing Grant Proposals. We do not intend to be a long-range on-going project. Once we have completed Phases One, Two and Three, we will not be doing any more intensive landscaping but will continue to work cleaning up and maintaining the remainder of the park in its natural state. Eventually we would very much like to be able to install a low stone wall along the outer perimeter of the gardens to keep interlopers from cutting through them and have a local artist and craftsman design and execute a suitable piece of statuary for the stone pedestal in the garden's center.

We shall be very grateful if the Leslie G. Ehmann Trust can find us worthy of consideration for financial assistance and will be especially grateful if such assistance can be provided as soon as possible.

Sincerely,

Elmo Williams

AZALEA PARK FOUNDATION:

July 23, 1996

GRANT REQUEST

Blanche Fischer Foundation
Portland, Oregon

Dear Ladies and Gentlemen:

Enclosed is information regarding the Azalea Park Foundation in Brookings, Oregon. It includes a history of the park, the need for improvements and maintenance and the significance that it has upon the residents of this area.

We volunteers began improving our park last year and, to date, have put in more than 7,000 hours of physical labor. Many business concerns have supported us by donating needed materials. Many professional engineers, contractors and landscapers have either donated time, labor and heavy equipment or given it to us at their most reasonable cost. Our local newspaper and radio and television stations have given us splendid on-going publicity and Sunset magazine has promised an article in a forthcoming issue.

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We shall be very grateful if the Blanche Fischer Foundation can find us worthy of consideration for financial assistance and will be especially grateful if such assistance can be provided as soon as possible.

Sincerely,

Elmo Williams

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF BROOKINGS
AND
AZALEA PARK FOUNDATION**

The parties to this Memorandum of Understanding (MOU) are the City of Brookings (CITY), an Oregon municipal corporation, and the Azalea Park Foundation (FOUNDATION), an Oregon non-profit corporation.

WHEREAS, CITY owns that certain area known as Azalea Park, inclusive of the areas bordered by Lundeen Lane, Old County Road & North Bank Road.

WHEREAS, FOUNDATION currently cares for, and maintains an area within Azalea Park known as the "Formal Gardens", boundary of which is described on a map called Exhibit A.

WHEREAS, FOUNDATION has demonstrated ability to maintain public landscape areas;

WHEREAS, CITY is restructuring the manner in which it maintains its public landscape areas and desires to work with non-profit groups in the maintenance of these areas;

WHEREAS, FOUNDATION has expressed interest in partnering with the CITY in this regard.

NOW, THEREFORE, the parties agree as follows:

1.0 FOUNDATION OBLIGATIONS

- 1.01. Provide pruning, trimming, weed removal, mulching and general maintenance within the Azalea Park Formal Gardens identified in Exhibit A,
- 1.02. Manage planted areas by dividing existing and/or installing new plants as determined by FOUNDATION.
- 1.03. Perform general litter clean-up in Formal Gardens as needed.
- 1.04. Remove all vegetation debris and place at a location provided by City within the park.
- 1.05. Provide consultation services as needed, to City and volunteer organizations during yearly maintenance and service projects undertaken outside the Formal Gardens.

2.0 CITY OBLIGATIONS

- 2.01. Provide and maintain all irrigation systems and water service in Azalea Park and within the Formal Gardens.
- 2.02. Mow all grass areas in the Formal Gardens
- 2.03. Perform general litter and animal feces clean up in grassy areas.
- 2.04. Coordinate its maintenance activities with those of the FOUNDATION.
- 2.05. Provide new plants, fertilizer, mulch, sprays and collection bags

3.0 INSURANCE REQUIREMENTS

FOUNDATION will provide CITY with proof of an insurance policy covering general commercial liability on an occurrence basis, with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury, personal injury and property damage.

4.0 MEETINGS

Duly appointed representatives of the parties shall meet as needed to address mutual maintenance concerns and review the respective parties' responsibilities under this Memorandum. Further, the parties agree to consider jointly undertaking improvement projects or major cleanup projects when resources beyond those normally available for maintenance become available to either party.

5.0 HOLD HARMLESS CLAUSE

FOUNDATION shall defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions of whatever nature resulting from or arising out of the activities of FOUNDATION or its officers, employees, subcontractors, or agents under this MOU.

WHEREFORE, the parties have caused this MOU to be executed by their authorized representatives on this 15th day of January, 2013.

CITY OF BROOKINGS
An Oregon Municipal Corporation

Ron Hedenskog
Ron Hedenskog, Mayor

ATTEST:

Joyce Hefington
Joyce Hefington, City Recorder

AZALEA PARK FOUNDATION
An Oregon Non-profit Corporation

Name:

Title:

Shirley G. Old
President

CITY OF BROOKINGS
COUNCIL AGENDA REPORT

Meeting Date: 1/14/13

Originating Dept: Parks



Signature (submitted by)

City Manager Approval

Subject: Memorandum of Understanding with Azalea Park Foundation

Recommended Motion: To authorize the Mayor to execute the Memorandum of Understanding (MOU) with the Azalea Park Foundation with regards to the maintenance of Azalea Park.

Financial Impact: None

Background/Discussion: In response to the concerns raised by the Azalea Park Foundation (APF) in a workshop on August 6 2012, Parks staff began a series of meetings with APF representatives Shirley Hiatt and Gil Kirk to formulate an agreement regarding the duties and responsibilities between the APF & City staff at Azalea Park. Staff drafted an MOU and presented it during the APF meeting in September to memorialize the agreement.

Under the terms of the MOU, Azalea Park Foundation will continue to maintain the formal gardens as they have in the past. Changes to previous verbal agreements include the elimination of boundary maps describing areas of responsibility. They also agreed to expand APF responsibilities to include consultation to City staff for maintenance of all native azaleas, shrubs and trees in the park.

Attachment(s):

- a. Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF BROOKINGS
AND
AZALEA PARK FOUNDATION**

The parties to this Memorandum of Understanding (MOU) are the City of Brookings (CITY), an Oregon municipal corporation, and the Azalea Park Foundation (FOUNDATION), an Oregon non-profit corporation.

WHEREAS, CITY owns that certain area known as Azalea Park, inclusive of the areas bordered by Lundeen Lane, Old County Road & North Bank Road.

WHEREAS, FOUNDATION currently cares for, and maintains an area within Azalea Park known as the "Formal Gardens", boundary of which is described on a map called Exhibit A.

WHEREAS, FOUNDATION has demonstrated ability to maintain public landscape areas;

WHEREAS, CITY is restructuring the manner in which it maintains its public landscape areas and desires to work with non-profit groups in the maintenance of these areas;

WHEREAS, FOUNDATION has expressed interest in partnering with the CITY in this regard.

NOW, THEREFORE, the parties agree as follows:

1.0 FOUNDATION OBLIGATIONS

- 1.01. Provide a minimum of 20 hours of volunteer service within the Azalea Park Formal Gardens per month; pruning, trimming, weed removal, mulching and general maintenance identified in Exhibit A.
- 1.02. Prepare and provide monthly reports to the CITY on volunteer hours provided.
- 1.03. Update the CITY Parks and Recreation Commission with quarterly financial and progress reports.
- 1.04. Provide receipts for all plants, fertilizer, mulch, sprays and collection bags, not to exceed \$3000.00 per fiscal year.
- 1.05. Manage planted areas by dividing existing and/or installing new plants as determined by FOUNDATION.
- 1.06. Perform general litter and animal feces clean up in grassy areas
- 1.07. Remove all vegetation debris and place at a location provided by City within the park.

2.0 CITY OBLIGATIONS

- 2.01. Provide, control and maintain all irrigation systems and water service in Azalea Park and within the Formal Gardens.
- 2.02. Mow all grass areas in the Formal Gardens
- 2.03. Coordinate its maintenance activities with those of the FOUNDATION.
- 2.04. Budget \$3000.00 per fiscal year for new plants, fertilizer, mulch, sprays and collection bags.

3.0 INSURANCE REQUIREMENTS

FOUNDATION will provide CITY with proof of an insurance policy covering general commercial liability on an occurrence basis, with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury, personal injury and property damage.

4.0 MEETINGS

Duly appointed representatives of the parties shall meet as needed to address mutual maintenance concerns and review the respective parties' responsibilities under this Memorandum. Further, the parties agree to consider jointly undertaking improvement projects or major cleanup projects when resources beyond those normally available for maintenance become available to either party.

5.0 HOLD HARMLESS CLAUSE

FOUNDATION shall defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions of whatever nature resulting from or arising out of the activities of FOUNDATION or its officers, employees, subcontractors, or agents under this MOU.

WHEREFORE, the parties have caused this MOU to be executed by their authorized representatives on this ____ day of _____, 2019.

CITY OF BROOKINGS
An Oregon Municipal Corporation

Jake Pieper, Mayor

ATTEST:

City Recorder

AZALEA PARK FOUNDATION
An Oregon Non-profit Corporation

Name:
Title:

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF BROOKINGS
AND
AZALEA PARK FOUNDATION**

The parties to this Memorandum of Understanding (MOU) are the City of Brookings (CITY), an Oregon municipal corporation, and the Azalea Park Foundation (FOUNDATION), an Oregon non-profit corporation.

WHEREAS, CITY owns that certain area known as Azalea Park, inclusive of the areas bordered by Lundeen Lane, Old County Road ~~&~~ and North Bank ~~Chetco~~ River Road.

WHEREAS, FOUNDATION currently cares for, and maintains an area within Azalea Park known as the "Formal Gardens", ~~the~~ boundary of which is described on a map ~~called~~(**Exhibit A**).

WHEREAS, FOUNDATION has demonstrated ability to maintain public landscape areas;

WHEREAS, CITY ~~is restructuring the manner in which it maintains its public landscape areas and~~ desires to work with non-profit groups in the maintenance of ~~these~~ **its public landscaped** areas;

WHEREAS, FOUNDATION has expressed interest in partnering with the CITY in this regard.

NOW, THEREFORE, the parties agree as follows:

1.0 FOUNDATION OBLIGATIONS

- 1.01. Provide pruning, trimming, weed removal, mulching and general maintenance within the Azalea Park Formal Gardens identified in Exhibit A.
- 1.02. Prepare and provide quarterly reports to CITY on hours worked under the direction of the FOUNDATION.
- 1.03. Update the CITY Parks and Recreation Commission with an annual progress report of FOUNDATION's projects/operations, including the cost of said projects/operations.
- 1.04. Provide receipts for plants, fertilizer, mulch, sprays and collection bags, up to \$3,000 per fiscal year, for reimbursement by CITY.
- 1.05. Manage planted areas by dividing existing and/or installing new plants as determined by FOUNDATION.
- 1.06. Perform general litter clean up in Formal Gardens as needed, including grassy areas.
- 1.07. Remove all vegetation debris and place at a location provided by CITY within the park.
- 1.08. Provide consultation services as needed, to CITY and volunteer organizations in support of projects undertaken outside the Formal Gardens.

2.0 CITY OBLIGATIONS

- 2.01. Provide, control and maintain all irrigation systems and water service in Azalea Park including within the Formal Gardens.
- 2.02. Mow, maintain and sod when necessary all grassy areas in the Formal Gardens.
- 2.03. Coordinate its maintenance activities with those of the FOUNDATION.
- 2.04. Budget \$3,000 per fiscal year for new plants, fertilizer, mulch, sprays and collection bags.
- 2.05. Provide large tree pruning and removal when necessary within the Formal Gardens.

3.0 INSURANCE REQUIREMENTS

FOUNDATION will provide CITY with proof of an insurance policy covering general commercial liability on an occurrence basis, with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury, personal injury and property damage.

4.0 MEETINGS

Duly appointed representatives of the parties shall meet as needed to address mutual maintenance concerns and review the respective parties' responsibilities under this Memorandum. Further, the parties agree to consider jointly undertaking improvement projects or major cleanup projects when resources beyond those normally available for maintenance become available to either party.

5.0 HOLD HARMLESS CLAUSE

FOUNDATION shall defend, save, hold harmless, and indemnify ~~the~~ CITY, its officers, agents, and employees from all claims, suits, or actions of whatever nature resulting from or arising out of the activities of FOUNDATION or its officers, employees, subcontractors, or agents under this MOU.

WHEREFORE, the parties have caused this MOU to be executed by their authorized representatives on this ____ day of _____, 2019.

CITY OF BROOKINGS
An Oregon Municipal Corporation

Jake ~~Piper~~ Pieper, Mayor

ATTEST:

City Recorder

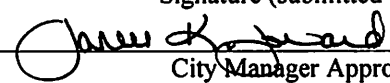
AZALEA PARK FOUNDATION
An Oregon Non-profit Corporation

Name:
Title:

CITY OF BROOKINGS
Council WORKSHOP Report

Workshop Date: May 6, 2019

Originating Dept: City Manager

Signature (submitted by)


City Manager Approval

Subject:

KCIW Agreement

Background/Discussion:

On September 8, 2014, the City Council authorized the City Manager to prepare and execute an agreement with Curry Coast Community Radio to install and maintain a radio broadcast antenna on the City public safety communications tower, with the term of the agreement to be three years and with the applicant to pay all costs associated with installing and maintaining the antenna, including electricity costs.

The Memorandum of Understanding (MOU) between the City of Brookings and Curry Coast Community Radio (KCIW) was signed in March 2015.

This MOU has expired. Staff is looking for direction on how to proceed.

Attachments:

Agreement

MEMORANDUM OF UNDERSTANDING
City of Brookings and Curry Coast Community Radio (KCIW)

This Memorandum of Understanding (MOU) is executed by and between the **CITY OF BROOKINGS** (City) and **CURRY COAST COMMUNITY RADIO, Inc.** (KCIW) a non-profit corporation, City and KCIW hereinafter collectively referred to as the "Parties."

1.0 RECITALS

- 1.1 WHEREAS, KCIW is a non-profit organization.
- 1.2 KCIW desires to develop and operate a broadcast antenna on the Emergency Communications Tower (Tower) owned and operated by the City of Brookings, at 898 Elk Drive, Brookings, Oregon.
- 1.3 Public radio services provided by KCIW will include:
 - 1.3.1 Public service announcements provided by the City.
 - 1.3.2 Community event and City meeting schedules.
 - 1.3.3 Emergency notification and information broadcasts.
- 1.4 The City desires to support the efforts of KCIW, as described above, recognizing the value of this service to the Brookings community.

NOW, THEREFORE, the Parties promise and agree as follows:

2.0 TERMS AND CONDITIONS

- 2.1 The above-recitals are hereby incorporated by reference as though fully set forth herein.
- 2.2 KCIW will work through the City's tower management contractor to secure a lease for the installation of a broadcast antenna and all associated equipment on Tower. The specific location of all such facilities shall be as determined by the tower management contractor.
- 2.3 City shall waive that portion of Tower lease agreement fees that it would normally receive from such lease for tower space.
- 2.4 All costs associated with installing and maintaining an antenna and related equipment shall be borne by KCIW.
- 2.5 Use of Tower by KCIW shall be secondary to the City's primary use of Tower for emergency communications. All KCIW facilities shall be removed from Tower at the expense of KCIW upon reasonable written notice from City or tower management contractor.
- 2.6 All City facilities, within which KCIW facilities are located, are under the security control of the City of Brookings Police Department, which shall establish rules, policies and procedures for KCIW access to those areas.

2.7 Term: The term of this MOU shall be three years from the date of execution by the Parties. Notwithstanding the foregoing, the parties may terminate this MOU upon ninety (90) days notice, with or without cause.

3.0 NOTICE:

3.1 Notice to either of the parties shall be (1) by personal delivery, (2) by facsimile and regular U.S. mail, or (3) by U.S. Mail, registered receipt requested. Notice shall be deemed effective upon personal delivery, or, in the case of a mailing, upon the depositing of the mail with the United States postal service. Notice shall be given as follows:

TO THE CITY: City of Brookings
 Attention: City Manager
 898 Elk Drive
 Brookings, OR 97415

TO KCIW: KCIW
 Attention: President
 PO Box 565
 Brookings, OR 97415

4.0 INSURANCE AND INDEMNITY

4.1 Insurance terms shall be contained in the tower lease agreement.

5.0 MISCELLANEOUS

5.1. This MOU shall be deemed by the Parties to have been executed and delivered within the State of Oregon, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of Oregon.

NOW, THEREFORE, in agreement with the terms and conditions set forth herein, the duly authorized signators for the respective parties hereto execute this MOU.

CITY OF BROOKINGS

CURRY COAST COMMUNITY RADIO, INC.

By: 
Gary Milliman, City Manager

By: 
Thomas Bozack, President

Date: 03/20/15

Date: 3/28/15