

BAY CITY ORDINANCES
ORDINANCE NO. 694

AN ORDINANCE DEFINING NUISANCES; PROVIDING
FOR NUISANCE ABATEMENT; ESTABLISHING
PENALTIES; AND REPEALING ORDINANCE #691

The City Council of the City of Bay City ordains as follows:

Section 1. REPEAL. Bay City Ordinance #691 is hereby repealed in its entirety.

Section 2. PURPOSE. The purpose of this ordinance is to protect the public health and safety and to improve the aesthetics of the City by eliminating health and safety hazards and prohibiting or restricting conditions and acts that adversely impact the beauty and livability of the City. The Nuisance process described in this ordinance is intended to abate ongoing conditions, but some Nuisances may be of short duration and the City may also use the civil infraction process in Ordinance #690 to abate violations of this ordinance.

Section 3. DEFINITIONS.

3.1. Council. The City Council of the City of Bay City.

3.2 Chronic Nuisance. Any condition(s) on any real property which is a Nuisance under this Ordinance and has resulted in three violation letters issued by the City within any consecutive 24-month period.

3.3. Dangerous Animal. An animal reasonably considered as wild or exotic which has the ability to harm or to frighten people. Dangerous animals include, but are not necessarily limited to, the following:

- 3.3.1 Venomous snakes capable of inflicting serious physical harm or death to human beings;
- 3.3.2. Non-human primates and prosimians;
- 3.3.3 Non-domesticated species of canines and their hybrids, including wolf and coyote hybrids;
- 3.3.4 Crocodiles, alligators, caiman and gavials;
- 3.3.5 Non-domesticated species including; but not limited to: lions, tigers, lynx, leopards, cougars and bobcats;
- 3.3.6 Raccoons, wolverines and weasels;
- 3.3.7 Any animal reasonably considered a pest, dangerous, or which has threatened or attacked persons or domesticated pets within the City of Bay City.
- 3.3.8 Any animal that creates conditions which endanger the public health, safety, or welfare.

3.4 Code Enforcement Officer. The City Manager, Public Works Director, Fire Chief, City Planner, Building Inspector, and all other persons designated by the City Manager to serve as Code Enforcement Officer.

3.5 Inoperable or Abandoned Vehicle. Any vehicle which has no current valid state vehicle license, or which cannot be moved without being repaired or dismantled, or which is no longer usable for the purpose for which it was intended, and which has been in that condition for at least 15 days.

3.6 Junk. The term “junk” is personal property, waste, or material that in the sole discretion of the Enforcement Officer should be discarded and includes, but is not limited to:

3.6.1 Refuse, garbage, glass, scrap metal, paper products, scrap lumber, concrete or asphalt chunks, cans and tires.

3.6.2 Abandoned or unused furniture, machinery, toys, stoves, sinks, toilets, cabinets or other fixtures, appliances or equipment or any parts thereof.

3.6.3 Combustible material likely to become easily ignited or debris resulting from any fire or any material which constitutes a fire hazard, as defined in the Uniform Fire Code.

3.6.4 Inoperative, abandoned, or dismantled motor vehicles, trailers, campers and boats or any parts thereof.

3.7 Municipal Court. The Tillamook County Justice Court, which provides municipal court services to the City pursuant to an agreement under ORS 51.037.

3.8 Municipal Judge. The Tillamook County Justice of the Peace or other judge providing court services to the City.

3.9 Noxious Vegetation. Noxious vegetation is any vegetation that is, or is likely to become:

3.9.1 A health hazard;

3.9.2 A fire hazard

3.9.3 A traffic hazard because it impairs the view of the public thoroughfare, or otherwise makes the thoroughfare hazardous;

3.9.4 Poison Oak;

3.9.5 Poison Ivy;

3.9.6 Blackberry bushes that extend into a public way or pathway frequented by children, cross a property line, or are used for habitation by trespassers;

3.9.7 Grass or weeds more than 12 inches high;

3.9.8 Scotch Broom, English Ivy, Hogwood, Knotweed, and Purple Loosestrife; and

3.9.9 All other vegetation included in the State Department of Agriculture “Oregon Department of Agriculture Noxious Weed Control Policy and Classification System”.

3.10 Nuisance. A thing, condition, substance or activity which is injuring or endangering the public peace, health, safety or welfare; including, but not limited to, the things, conditions, substances and activities specified in this ordinance.

3.11. Responsible Party. The Responsible Party for abating a nuisance may include:

3.11.1 The owner of the property;

3.11.2 Any agent of the owner, lessee, occupant, contract purchaser, tenant, or other person having possession or control of the property; and

3.11.3 The person who caused a nuisance to come into or to continue in existence.

3.12 Right-of-way. All property dedicated to the public for transportation and public utilities and administered by the city, including: City streets, roads, highways, alleys, sidewalks, public easements, and other similar public ways generally open to vehicular or non-vehicular transit, including the subsurface under and air space over these ways; but does not include parks, parkland, bridges unless pre-approved, or other City property not generally open to public transit or to vehicular transit.

ANIMALS

Section 4. Animals. No person shall possess a dangerous animal, as defined above, within the City.

4.1. No owner or caretaker of domesticated animals shall allow such animals to be at large in the City or to enter or remain on any private property without the consent of the Responsible Party for the property.

4.2 No Responsible Party shall feed non-domesticated animals or keep food available outdoors, where it can be reached by raccoons, rats or other nuisance type animals.

4.3. A Code Enforcement Officer may destroy a dangerous animal at large in the City if the animal is too hazardous to apprehend.

4.4 No Responsible Party shall permit an animal carcass owned or controlled by the person to remain upon public property, or to remain outdoors on private property, for more than 24 hours from the time of death.

NUISANCES AFFECTING PUBLIC HEALTH

Section 5. Nuisances Affecting Public Health. No Responsible Party shall cause or permit any Nuisance that affects public health to exist. The following are Nuisances that affect public health, which the City may abate as provided in this Ordinance:

5.1. Offensive Substances. No, human or animal excrement, sewage, industrial waste or any putrid, nauseous, decaying, deleterious, offensive, hazardous or dangerous substance shall be allowed in a stream, well, spring, brook, ditch, pond, body of water, river or other inland or tidal waters within the City, nor shall it be allowed if the location of such

substances creates a risk that high water or natural seepage will carry the same into such waters; nor shall such substances be allowed to pool or remain on the surface of any land, whether it be in public or private ownership.

5.2. Human remains. No Responsible Party shall bury human remains other than in designated and approved cemeteries.

5.3. Privies. No Responsible Party shall maintain an open vault, privy, or portable toilet, except those constructed or maintained in connection with construction projects or City-approved events and in accordance with State Health Division regulations. No Responsible Party shall maintain any open vault, privy, or portable toilet longer than one (1) week after the conclusion of the project or event without the written permission of the City.

5.4. Surface drainage. No Responsible Party shall allow drainage of liquid wastes, commonly known as “gray water,” to pool or become stagnant in a manner that affords a breeding place for mosquitoes and other insect pests.

5.5. Cesspools. No Responsible Party shall maintain a cesspool or septic tank on his or her property without the prior written permission of the City.

5.6. Odors. No Responsible Party shall cause or permit offensive odors to spread from his or her property.

5.7. Food Storage. No Responsible Party shall store food in a manner that makes it available to rats, raccoons or other wild scavengers.

5.8. Slaughterhouses, etc. No Responsible Party shall operate a slaughterhouse or tannery without the prior written permission of the City.

5.9. Animal Cages. No Responsible Party shall maintain a barn, stable or corral, pen, chicken coop, rabbit hutch, pigsty or other place where animals are caged or housed, in an unsanitary condition or in a condition that creates an offensive odor.

5.10. Obstruction of drains. No Responsible Party shall obstruct or interfere with the flow of water in any ditch, drain or catch basin located in a public Right-of-Way or on public property or which causes water to flood public Rights-of-Way or public property.

5.11 Insectaries. No Responsible Party shall operate an insectary of any kind for commercial purposes within the City. An insectary does not include bee hives or bee keeping within the City.

NUISANCES AFFECTING PUBLIC SAFETY

Section 6. Abandoned Refrigerators. No Responsible Party shall leave in a place accessible to children an abandoned or discarded icebox, freezer, refrigerator or similar container or appliance of more than 1.5 cubic feet capacity without first removing the door.

Section 7. Attractive Nuisances. No Responsible Party shall permit thereon:

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

7.2 Lumber, logs or pilings placed or stored in a manner so as to be attractive, dangerous and accessible to children.

7.3 An open pit, quarry, cistern, cesspool or other excavation or hole of a depth of 4 feet or more and a top width of 12 inches or more without safeguards, fencing, covers or barriers to prevent such places from being used by children.

7.4 This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.

Section 8. Dangerous Excavations.

8.1. No Responsible Party shall allow an excavation to remain unguarded by suitable barriers.

8.2. Any obstruction on a Right-of-Way shall be marked by red or yellow warning lights during the hours of darkness. It shall be the responsibility of the person creating, maintaining or in charge of such obstruction to ensure the installation and operation of the warning lights.

8.3 No excavations shall be done in a Right-of-Way unless permitted or authorized in writing by the Bay City Public Works Director.

Section 9. Snow and Ice Removal.

9.1. A Responsible Party shall maintain the sidewalk abutting his or her property in a reasonably good condition that allows for safe and unobstructed pedestrian traffic.

9.2. No Responsible Party shall allow ice to remain on the sidewalk for more than two hours of daylight after the ice has formed unless covered with ash, sand, salt or other suitable materials.

Section 10. Public Rights of Way.

10.1 No person shall place in a public Right-of-Way any bushes, trees, structures including park benches, play structures, storage sheds and animal shelters or coops, unless the person obtains ROW permit from the City.

10.2 No person shall obstruct, partially or fully, passage of any person or vehicle on a public Right-of-Way, whether improved or unimproved. Obstruction includes, but is not limited to: planting of hedges, ropes, barriers, fences, cement blocks, storing of disabled equipment or vehicles or any other activity which inhibits the free movement of a person walking or, if improved, riding in a vehicle over the Right-of-Way.

10.3 On any dirt, gravel or unimproved Right-of-Way, no person shall operate any motorized bicycle, dirt bike or other motorized vehicle in a manner that causes road gravel to

scatter, that degrades the Right-of-Way, or creates or causes potholes or other dangerous conditions in the Right-of-Way.

Section 11. Trees.

11.1 No Responsible Party shall allow any brush, bushes, trees, limbs, shrubbery, flowers or other growth, whether grown for food, fuel, shade or ornamentation, to project over a sidewalk at an elevation of less than eight feet above the level of the sidewalk, or over a street at an elevation of less than 18 feet above the level of the public way.

11.2 No Responsible Party shall allow a dead or decaying tree to stand that is a hazard to the public or to persons or other property on or near the property.

11.3 A tree is considered a hazard if its condition would allow the tree to fall during winds normally experienced in the area and it is foreseeable that damage would result to a person or other property from the fall of the tree.

11.4 No Responsible Party shall plant or keep trees or bushes over water lines or sewer lines servicing the property, or in close proximity to any fire hydrants where the plant growth would inhibit use of the hydrant.

11.5 Nothing in this ordinance shall be deemed to impose any liability upon the City, its officers or employees. Nothing in this ordinance shall be deemed to relieve a Responsible Party from the duty to keep trees and shrubs and other vegetation upon private property or under the owner or occupier's care and control in a safe condition.

Section 12. Grass, Shrubby, Weeds and Noxious Growth. No Responsible Party shall permit weeds or other Noxious Vegetation to grow upon their property, or onto the public Right-of-Way abutting their property. It shall be the duty of a Responsible Party to cut down or to destroy grass, shrubbery, brush, bushes, weeds or other noxious vegetation as often as needed.

Section 13. Junk and Debris.

13.1. No Responsible Party shall keep or cause to be deposited on their property any Junk, as defined in this Ordinance, for a period of more than ten (10) consecutive days, without preventing visibility from public Rights-of-Way.

13.2. A Responsible Party may have Junk on their property, so long as said Junk is wholly blocked from public view and meets the requirements of Section 3.1 of City Ordinance #374 (Development Ordinance).

13.3. A Responsible Party shall be responsible for removing Junk from the premises if it is visible from a public Right-of-Way, if it constitutes a hazard or Nuisance.

13.4. This Section 13 shall not apply to:

13.4.1 Junk kept in a duly licensed junkyard, automobile wrecking house, automobile sales lot or automobile repair shop.

13.4.2 Stacked firewood.

13.4.3 Construction debris occurring pursuant to a valid building permit, provided it does not constitute a threat to public health and safety.

Section 14. Scattering Rubbish. No person shall deposit upon public or upon private property any kind of rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal or vehicle traveling upon a public way.

Section 15. Fences.

15.1. No person in charge or control of property shall construct or maintain a barbed-wire or razor-wire fence thereon, or permit barbed or razor-wire fences to remain as part of a fence along a Right-of-Way.

15.2. No person in charge of property shall construct, maintain or operate an electric fence along a Right-of-Way or along the adjoining property line of another person.

15.3. No person in charge of property shall construct, maintain or operate an electric fence within 10 feet of a property line unless a solid barrier fence is located on the outer perimeter of the electric fence.

Section 16. Surface Waters, Drainage and Culverts.

16.1. No Responsible Party shall direct or redirect rainwater, wetlands, streams or intermittent water sources onto another person's property, or onto a Right-of-Way, other than incidental runoff.

16.2. A Responsible Party shall install and maintain, in proper state of repair, adequate drainpipes or drainage system so that any overflow water accumulating on the roof or about the building is not carried across or upon Right-of-Way or neighboring property, unless a stormwater easement is provided.

16.3. A Responsible Party shall not remove snow or ice from his or her property and cast it or deposit it onto Right-of-Way or onto the property of another.

16.4. A Responsible Party shall not fill or divert any natural drainage ways existing on their property, unless authorized by the City in writing.

16.6. A Responsible Party shall not cover, obstruct, or interfere with any components of sewer or drainage systems in the public Right-of-Way.

NUISANCES AFFECTING THE PUBLIC PEACE

Section 17. Notices and Advertisements.

17.1. This provision only covers signage not addressed under the City's sign ordinance, if any. No person shall affix or cause to be affixed a placard, bill, notice, advertisement poster

or sign of any kind upon real or personal property, public or private, without first securing permission from the owner or person in control of the property. All such temporary placards, bills, notices, advertisement posters or signs of any kind shall be removed within twenty-four (24) hours after the close of the event being advertised. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the City regulating the use of and the location of signs and advertising.

17.2 A Responsible Party shall not allow any sign to obstruct the Right-of-Way and shall not allow any sign to be affixed to public property.

17.3 This section does not prohibit the distribution of advertising material during a parade or approved public gathering.

Section 18. Unreasonably Loud Noise. No person shall cause unreasonably loud or raucous noise that disturbs, injures, or endangers the comfort, peace, and safety of reasonable individuals of ordinary sensitivity within the City without written permission from the City.

ABATEMENT PROCEDURE

Section 19. Declaration of Nuisance; Unenumerated Nuisances.

19.1 The acts or conditions specified in Sections 3 through 18 of this Ordinance are declared Nuisances and such acts or conditions may be abated by any of the procedures set forth in Section 19 through 26 of this Ordinance.

19.2 In addition to the Nuisances specifically provided and identified within this ordinance, every other thing, substance, or act which is determined by the Code Enforcement Officer to be injurious or detrimental to the public health, safety or welfare of the City, or any of its citizens, is declared a Nuisance and may be abated as provided in this Ordinance.

Section 20. Abatement Citation.

20.1 Upon determination by the Code Enforcement Officer that a Nuisance exists, the Officer shall issue a citation consistent with Section 20.3 of this Ordinance directing the Responsible Party to abate the Nuisance within thirty (30) days of the date of posting. The Code Enforcement Officer shall serve the citation to the Responsible Party in accordance with Section 13 of City Ordinance No. 690.

20.2. At the time of posting, the Code Enforcement Officer shall cause a copy of such citation to be mailed by registered or certified mail, postage prepaid, to the Responsible Party at his or her last known address and to the address shown on the county tax records. After posting and mailing a copy of the citation, the Code Enforcement Officer shall also file a copy of the citation and a return of service with the Municipal Judge.

20.3. The citation shall include all the information specified in Section 12(B) of City Ordinance No. 690 (Civil Infractions).

20.4. Upon completion of the posting and mailing, the person posting and mailing the citation shall execute and file a certificate stating the date and place of the mailing and posting.

20.5. An error in the name or address of the owner or person in charge or control of the property or the use of name other than that of an owner or other person shall not make the notice void, and in such case, the posted citation shall be sufficient.

Section 21. Abatement by the Responsible Party.

21.1. Within the time allowed after posting and mailing of such citation, as provided in Section 19 of this Ordinance, or a different period of time authorized in writing by the City Manager, the Responsible Party shall abate the nuisance or show cause that no Nuisance exists.

21.2. Within ten (10) days of posting the citation under Section 20.1, a Responsible Party may respond in the manner provided in Section 15 of City Ordinance No. 690 to either protest that no Nuisance exists or admit the infraction. If a Responsible Party protests, the Municipal Judge shall schedule a hearing of the Municipal Court.

21.3. The Responsible Party's appearance in Municipal Court shall be governed by Section 15(D) of City Ordinance No. 690. The Responsible Party may request a hearing with the Municipal Judge in accordance with Sections 16 and 17 of City Ordinance No. 690 and the Municipal Judge shall thereupon determine whether or not a Nuisance in fact exists. If the Municipal Judge determines that a Nuisance exists, he or she may issue a judgment directing the Responsible Party to abate the Nuisance. If the Municipal Judge issues a judgment to abate, the City shall also mail a copy of the judgment to the last known address of the Responsible Party or to the address listed in the county tax records for that person.

21.4. If the Municipal Judge determines that a Nuisance does in fact exist, the Responsible Party shall, within the time specified in the judgment to abate, abate the Nuisance. The judgment of the Municipal Court is final. The Responsible Party may appeal the judgment by filing a writ of review with Tillamook County Circuit Court under ORS Chapter 34.

Section 22. Joint Responsibility.

If more than one person or entity is a Responsible Party, they shall each be jointly and severally liable for abating the Nuisance, or for the costs incurred by the City in abating the Nuisance.

Section 23. Abatement by the City.

23.1 If, within the time allowed, the Nuisance has not been abated, the City may cause the nuisance to be abated.

23.2 The Code Enforcement Officer charged with abatement of the Nuisance may enter onto private property to investigate or abate a Nuisance if: a) the City obtains permission from the property owner or occupant; b) the City obtains an administrative warrant to enforce an abatement order from the Municipal Judge or a Circuit Court Judge, referred to collectively as "Judge" in Sections 23.2.1 to 23.2.5 of this Ordinance; c) emergency

conditions exist on the property that present an imminent danger to the public health, safety, or welfare; or d) the City has other lawful authority to enter the property. The following procedures shall apply when the City is seeking an administrative warrant:

23.2.1 The Judge may issue an administrative warrant if cause for abatement of the Nuisance is demonstrated by the City, supported by affidavit that particularly describes the City's reasons for requesting the warrant, the law requiring or authorizing the abatement of the Nuisance, the property or building subject to entry, the basis for cause to abate the Nuisance, and a statement of the general types and estimated quantity of items to be removed or conditions to be abated.

23.2.2 Cause exists if the affidavit indicates a reasonable likelihood that a building or property is in violation of this Ordinance.

23.2.3 If the Judge determines that cause exists, the Judge shall issue an administrative warrant that particularly describes the person or persons authorized to execute the warrant, the property subject to entry, the general types and estimated quantity of items to be removed or conditions abated, and the days and times that the City may execute the warrant.

23.2.4 If property subject to the administrative warrant is occupied, the person executing the warrant shall make a reasonable effort to present their credentials, state the purpose for entering the property, and provide the person occupying the property with a copy of the warrant. If the property is unoccupied, the person executing the administrative warrant shall post a copy of the warrant in a conspicuous location. The City shall execute the nuisance abatement warrant within ten working days of its issue and shall return the warrant to the Judge within ten working days of execution.

23.2.5 The City may dispose of items removed during abatement in any lawful manner.

23.3 The City shall keep an accurate record of the expenses incurred in abating the Nuisance, including the City's attorney's fees, staff time and out-of-pocket expenses and in addition, there may be a surcharge of twenty (20) percent of the total costs to the City for reimbursement of administrative overhead.

Section 24. Assessment of Costs.

24.1 The City, by registered or certified mail, postage prepaid, shall forward a notice to the Responsible Party stating:

24.1.1 The total cost of abatement, including the administrative overhead, the City's attorney's fees and civil fines, if any.

24.1.2 The cost, as indicated, will be assessed to and become a lien against the property unless paid within thirty days from the date of notice.

24.1.3 A statement that upon the recording of the abatement lien, that interest will accrue at the rate of 9% per annum.

24.1.4 If the owner or person in charge or control of the property objects to the cost of the abatement as indicated, that person may file a written notice of objection with the City Recorder not more than ten days from the date of the notice.

24.2. Upon the expiration of ten days after the date of the notice, the Municipal Judge, in the regular course of business, shall hear and determine the objections to the costs to be assessed.

24.3. If the costs of the abatement are not paid within thirty days from the date of the citation, an assessment of the costs as stated or as determined by the Municipal Judge shall be made by order and shall thereupon be entered in the lien docket of the City; and upon such entry being made, shall constitute a lien upon the property from which the Nuisance was removed or abated by the City.

24.4. The lien shall be enforced in the same manner as set forth in ORS 223.510 et. seq.

24.5. An error in the name of the Responsible Party 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.

Section 25. Emergency Abatement.

25.1 The City Manager, Chief of the Fire Department, the Code Enforcement Officer, or other person designated by the Council or City Manager, may proceed summarily to abate a Nuisance which imminently endangers human life, health or property.

25.2 Summary abatement may be performed immediately by a Code Enforcement Officer subject to applicable law and without notice by the City to a Responsible Party.

Section 26. Penalties. A violation of this Ordinance constitutes a Class C Violation under City Ordinance No. 690 (Civil Infractions). However, the City Council may designate any violation of this Ordinance as a different class under Ordinance No. 690 by resolution. This penalty shall be in addition to and unaffected by any other remedy taken by the City. Each day's violation of a provision of this ordinance constitutes a separate violation.

26.1 The imposition of a penalty under this Ordinance does not relieve a person of the duty to abate the Nuisance.

26.2 The City shall have all other remedies available to it allowed by law. The remedies provided in this Ordinance are nonexclusive and the City may seek and impose more than one remedy for any Nuisance.

Section 27. Severability. The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections of subsections.

PASSED and ADOPTED by the City Council this 9th day of March 2021 and APPROVED by the Mayor this 9th day of March, 2021.

/David McCall/
By: _____
David McCall, Mayor

/Kristin Rawson/
ATTEST: _____
Kristin Rawson, City Recorder

First Reading: 3/9/2021
Second Reading: 3/9/2021
Adoption: 3/9/2021
Ayes:
Nays:
Abstentions: