

ORDINANCE NO. 822**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADRAS PROVIDING DEFINITIONS OF NUISANCE, PENALTIES, PROCESS FOR NUISANCE ABATEMENT OF NUISANCE AND REPEALING ORDINANCES 541 AND 544.**

NOW, THEREFORE, the City of Madras ordains as follows:

SECTION 1. TITLE

This ordinance shall be known as the "City of Madras Nuisance and Abatement Ordinance."

SECTION 2. PURPOSE

- (1) To protect the public health, safety, general welfare and peace of the people of the City of Madras, Oregon.
- (2) To provide for penalties for violation of nuisance ordinance and to provide abatement procedures.
- (3) To provide an expedited procedure, whereby a building may be declared a nuisance in the event that it is unfit for human occupancy due to violation of building codes, or is used for illegal drug manufacturing or other hazardous materials on the site, which would cause contamination or danger to other individuals that may occupy the premises.

SECTION 3. EXEMPTIONS

Unless specifically provided otherwise, this ordinance does not apply to:

- (1) Disposal sites operated in compliance with regulations promulgated by the Environmental Quality Commission, Department of Environmental Quality, or other ordinances or regulations of the City or County.
- (2) Outdoor storage of inoperable or unregistered vehicles within a zoning district that permits or conditionally permits outdoor storage of inoperable or used vehicles and the vehicles are stored in accordance with applicable provisions.
- (3) Permitted sound amplification with appropriate permits from City Council that includes date, time and hour restrictions.

SECTION 4. DEFINITIONS

Person. Includes individuals, corporations, associations, firms, partnerships and joint stock companies.

Person in Charge of Property. An owner, agent, occupant, lessee, tenant, contract purchaser, or other responsible person having possession or control of the property or the supervision of a construction project on the property.

Responsible Person. The person responsible for abating a nuisance shall include:

- a. The person in charge of property on which the nuisance exists.
- b. The person who causes the nuisance to come into or continue in existence or
- c. The owner of the property.

SECTION 5. NUISANCE TO PUBLIC HEALTH

No owner or person in charge of property shall cause or permit any nuisance affecting public health. The following are nuisances affecting public health and safety and may be abated as provided in this ordinance.

- (1) An open vault or privy, except those approved and maintained during construction in accordance with State health Regulations
- (2) An accumulation of debris, rubbish, solid waste, manure, organic material that decomposes and gives rise to foul or offensive odors or foul or offensive by-products and other refuse that is not removed within a reasonable amount of time and that affects the health or livability of adjacent property owners.
- (3) Stagnant water that allows mosquitoes or other insect pests to breed
- (4) Water pollution
- (5) Properties or buildings that are designated unfit for use by a Jefferson County or Oregon Health Division Official pursuant to ORS 453.876 and that has not been decontaminated and recertified for use by ORS 453.885 within 180 days after the ORS 453.876 determination. For example properties that were the site of illegal drug manufacture and therefore may be contaminated with hazardous chemicals or substances are not fit for use until appropriate site assessment and any necessary contamination reduction procedures have been performed by a licensed drug laboratory decontamination contractor.

- (6) A residential or commercial building is in violation of building or housing codes therefore making the building uninhabitable to the extent that the City, in the exercise of reasonable discretion, believes constitutes a threat to the public health, safety, and or welfare of the people residing in the building or the public. This may apply to one or more housing units or rental units in a development with multiple units. Examples include but are not limited to:
- a. Buildings made uninhabitable by fire as determined by the reasonable discretion of a City of Madras Building Official or Fire Marshal.
 - b. Abandoned buildings in dangerous disrepair with broken or missing windows, broken or missing exterior doors, or that are used by trespassers. Abandoned buildings may include buildings under construction but failing to be completed in a timely and safe manner.
- (7) Failure to remove snow or ice from sidewalks adjacent to property.
- (8) Storm water and storm water runoff not contained on the property.
- (9) Dangerous excavations without proper signs and warnings.
- (10) Property that has been used for the unlawful delivery, manufacture or possession of a controlled substance as defined in ORS 475.005.

SECTION 6. NUISANCE TO PUBLIC SAFETY AND WELFARE

No owner or person in charge of property shall cause or permit any nuisance affecting public safety and welfare. The following are nuisances affecting public safety and welfare and may be abated as provided in this ordinance.

- (1) Any abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and an airtight door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside.
- (2) Storing or permitting to be stored vehicles, recreational vehicles, and any type of trailer, for more than 72 hours in any City of Madras right-of-way.
- (3) Storing or permitting to be stored vehicles with expired license tags or discarded motor vehicle(s) or portion thereof, at any one time on any private property, unless the vehicle(s) is completely enclosed within a building, or is not visible from any public way and is located more than 200 feet from any property line, or unless it is stored on the premises of a business enterprise dealing in used vehicles lawfully

conducted within the City. Discarded motor vehicles are defined as a vehicle in one or more of the following conditions:

- a. Inoperable;
 - b. Wrecked;
 - c. Dismantled or partially dismantled including major parts of motor vehicles;
 - d. Abandoned;
 - e. Junked;
 - f. For purposes of this section, a showing that the vehicle(s) in question is unlicensed and, if operated on a public highway of this state, would be in violation of one or more of the following provisions: ORS 815.020, 815.100, 815.125, 815.155, 815.160, 815.170, 815.180, 815.195, 815.235, 815.245 through 815.260, 815.270, and 815.295 constitutes a rebuttable presumption that it is inoperable.
- (4) Vegetation that is a hazard to pedestrian or vehicular use of any sidewalk or street by obstructing passage or vision. The hazards include, but are not limited to:
- a. Vegetation that encroaches upon or overhangs a pedestrian way or parking strip or encroaches upon or overhangs a street.
 - b. Vegetation which obstructs motorist or pedestrian view of traffic signs and signals, street lights and name signs, or other safety fixtures or markings placed in the public way.
 - c. Vegetation that is an obstruction of access to a use of any public facilities placed within the public way.
 - d. Between the months of May and October, the accumulation of dry vegetation (including but not limited to grasses, weeds, shrubs etc.). Lots less than one acre shall be completely free of dry vegetation and lots greater than one acre shall maintain a fire break around the exterior of the property of at least 20 feet.
 - e. Noxious vegetation on public or private property. Noxious vegetation includes.
 - i. All noxious weeds as defined by the current Jefferson County noxious weeds list;
 - ii. Vegetation more than 10 inches high unless that vegetation is an agricultural crop and does not create a fire hazard or traffic hazard.

- (5) Notwithstanding the year around abatement authority of the City, between April 1 and June 15 of each year, the City Recorder may cause to be published three (3) times in a newspaper of general circulation in the city the following statement:

“No owner or person in charge of property may allow noxious vegetation to be on the property or in the public right-of-way abutting the property. It shall be the duty of an owner or person in charge of property to cut down or to destroy grass, shrubbery, brush, and bushes, to prevent them from becoming a fire hazard, or, in the case of weeds or other noxious vegetation, from maturing or from going to seed. All lots less than one acre shall be maintained completely free of dry grass and weeds that may constitute a fire hazard. Lots one acre or more in area shall be maintained with a twenty (20) foot fire break around the perimeter of the lot that is clear of all dry grass and weeds; in addition the entire property must be free of noxious weeds as defined by the Jefferson County noxious weeds list. If the owner or person in control of the property is unwilling to abate the nuisance the City shall cause such abatement in 10 or more days after notification by mail of said nuisance and to charge the cost of doing so on any particular parcel or property to the owner thereof, or the property itself. “

- (6) The storage of 10 or more used tires, unless the tires are used for agricultural or landscaping purposes. The storage of tires on private property is permitted only if the property owner is conducting a legally operated business that normally deals in tires, or if the tires are completely enclosed within a building and do not constitute a fire hazard or health hazard.

SECTION 7. NUISANCE TO PUBLIC PEACE

No owner or person in charge of property shall cause or permit any nuisance affecting public peace. The following are nuisances affecting public peace and may be abated as provided in this ordinance.

- (1) Noise offenses as defined by Ordinance No 325 or any future noise ordinance.
- (2) Radio and television interference caused by reasonably preventable interference through the use of electrical, mechanical or other devices.
- (3) Odors related to the condition of a property such as but not limited to the existence of cesspools, decaying organic matter or animal feces. Odors shall not be offensive to properties beyond the offending party.

SECTION 8. ATTRACTIVE NUISANCE

No owner or person in charge of property shall cause or permit any nuisance that attracts children or others to engage in dangerous activities. The following are attractive nuisances and may be abated as provided in this ordinance.

- (1) Unguarded machinery, equipment, or other devices that are attractive, dangerous and accessible.
- (2) An uncovered excavation without proper barriers
- (3) Lumber, logs, or pilings placed or stored in a manner as to be attractive.

SECTION 9. UNENUMERATED NUISANCES

In addition to the acts and conditions specifically enumerated in this ordinance, any condition, thing, substance, or activity that is detrimental to, injurious to, or constitutes a danger to public health, safety or welfare is declared to be a nuisance and is subject to the abatement procedures set forth in this ordinance.

SECTION 10. ENFORCEMENT**(1) Warning or Citation with Fine**

- a. The City Administrator or designee may issue warnings or citations to any Responsible Person for nuisances, charging such persons with violating this ordinance.
- b. Each violation shall be a civil offense and be subject to a fine of not less than \$500 for the first failure to comply and \$1,000 for each subsequent failure to comply committed within one year of the first occurrence.

(2) Continuing violation

Each separate calendar day of uninterrupted nuisance may be a separate offense. The citation for continuing violation shall state the date the violation is alleged to have first occurred, the date or range of dates of continuing violation, and the amount of the fine for each day's violation.

(3) Notice of Abatement

- a. The City Administrator or designee shall have the authority to enforce this ordinance and may cause a 10 day written notice of violation to be issued to the Responsible Person (as defined above and including the property owner).
- b. A nuisance notice shall:
 - i. describe the nuisance,
 - ii. contain a description of the real property upon which the nuisance is located by address or otherwise, and
 - iii. inform the person responsible that if the nuisance is not abated within 10 days, or such longer period as may be provided in the notice, it will be abated by the City and the person responsible and the property will be assessed for the cost of abatement as provided in this ordinance.
 - iv. Administrative Appeal: Within 10 days of the Notice of Abatement the Responsible Person may appeal to the City Administrator by written notice. The written notice must be filed on forms available from the City Administrator at City Hall. The City Administrator will issue a written response to the written notice within 14 days that will be sent via first class mail to the Responsible Person at the address provided on the original written notice of appeal.
 - v. Appeal to City Council. Any appeal of the written response of the City Administrator must be made within 10 days of service of the City Administrator written response. Such appeal shall be filed with the City Recorder on forms provided by the City and shall be heard at the next available City Council meeting in a quasi judicial hearing allowing the person responsible to submit evidence, testify and provide witnesses in accordance with the Oregon Administrative Rules for judicial hearings. The determination of whether or not a nuisance exists and whether or not it should be abated shall be determined by City Council and recorded in the City Council minutes.
- c. Service: Any notice or decision shall be deemed served three days after sent via first class mail to the last known address of the Responsible Person(s) including the property owner if the Responsible Person's address is within the state of Oregon or seven days after sent via first class mail to an address outside of the state of Oregon. If unable to deliver via certified mail, the notice shall be deemed served when posted on the property.

- d. Any error in the name or address of the property owner or Responsible Person shall not make the notice void, and in such case posted notice on the property shall be sufficient.
- e. After the notice period the City may place a sign on the property warning of the nuisance.
- f. If necessary to vacate a building for public health, safety or welfare the City Administrator or its designee shall cause the nuisance to be abated and cause the building to have posted at each entrance a notice stating:

**NUISANCE NOTICE
BUILDING IS NOT SAFE TO OCCUPY**

It is a violation of City of Madras Code to
occupy this building or remove this notice.

- g. The City or its agents shall not be liable for trespass or conversion required for providing notice or ensuring compliance with notices and abatement procedures.
- (4) The procedures for fines and abatement of a nuisance are not the exclusive remedy. The City of Madras may use any other procedures provided by any other City ordinance or applicable Oregon law to address nuisance violations.

SECTION 11. ABATEMENT BY CITY; COSTS; WAIVER; LIEN

- (1) If an order of abatement has been issued by the City Administrator and 10 days following the notice mailed pursuant to Section 10(b) specifying said abatement the act or condition remains unabated and no appeal has been filed, the City Administrator may cause abatement of the nuisance.
- (2) Accurate records of the abatement costs shall be kept and shall include a surcharge of 25% of the cost of the abatement for administrative overhead. A billing for the amount of the costs shall be sent by certified or registered mail, return receipt requested, to the Responsible Person(s). Payment shall be due to the City of Madras within 30 days from the date of the billing. If more than one person is responsible they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city for abating the nuisance.
- (3) Within 14 days of the date of the notice of assessment costs, the property owner or Responsible Person may object in writing to the City Administrator. Any objections

must be heard at the next City Council meeting according to the procedures required for a quasi judicial hearing. The decision of City Council must be recorded in the minutes.

- (4) The cost of abatement may be waived for indigent persons, if upon timely application it appears to the City Administrator that the following conditions are met:
- a. The owner is indigent, as that determination is provided for in ORS 151.485;
 - b. The owner is living on the property from which the nuisance is to be abated; and
 - c. The nuisance is incapable of being remediated by the owner.
- (5) Applications for waiver of abatement costs shall be filed with the City Administrator on forms supplied by the City within 14 days from the date of notice of the amount of cost of abatement. All information required to be given on the forms shall be supplied by and verified by the applicant. An application for waiver of nuisance abatement costs must be submitted for each cost of abatement notice sent to the applicant.
- (6) The City Administrator shall file a lien against the property in Jefferson County real property records if payment is not made as provided in this section or waived under this section. Interest on the lien shall accrue on the amount of assessment due at the rate of (9%) nine percent per annum from the date the lien is recorded. The lien shall be enforced in the same manner as assessments for public improvements. Any error in the name of the owner or Responsible Person shall not void the lien. Neither shall failure to receive the notice of the proposed assessment render the lien void. Only final payment of the total amount due for the abatement of the assessment shall remove the lien. Once final payment is received the City of Madras shall record a release of the abatement lien. The lien provided for in this section shall be given priority over all liens except those for taxes and assessments.

SECTION 12. REPEAL

Ordinance No. 541 and 544 are hereby repealed. This repeal does not affect or invalidate any proceedings, actions or assessments brought under Ordinance No. 541 and 544 prior to the adoption of this ordinance.

SECTION 13. CORRECTIONS

This ordinance may be corrected by order of the City Council to cure editorial and/or clerical errors.

SECTION 14. CONSTITUTIONALITY AND SAVINGS CLAUSE

If any clause, sentence, paragraph, section, article, or portion of this ordinance shall for any reason be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance shall remain in full force and effect.

PASSED by the Council and Signed by the Mayor April 13, 2010.