

ORDINANCE NO. 875

AN ORDINANCE AMENDING, RESTATING, SUPERCEDING, REPLACING AND REPEALING CITY OF MADRAS ORDINANCE NO. 822, COMMONLY KNOWN AND REFERRED TO AS THE "MADRAS NUISANCE AND ABATEMENT ORDINANCE," WHICH ORDINANCE ESTABLISHES DEFINITIONS OF NUISANCE, PENALTIES, AND PROCEDURES FOR ABATEMENT OF NUISANCE IN THE CITY OF MADRAS; SUPERSEDING AND REPEALING ANY AND ALL ORDINANCES, RESOLUTIONS, AND/OR POLICIES IN CONFLICT WITH THIS ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Madras, an Oregon municipal corporation ("City"), adopted Ordinance No. 822 (the "Nuisance Ordinance"), commonly known and referred to as the Madras Nuisance and Abatement Ordinance, pursuant to which City established certain definitions of nuisance, penalties, and procedures for the abatement of nuisance; and

WHEREAS, the Madras City Council (the "Council") has determined that the Nuisance Ordinance is outdated, fails to properly address derelict structures, and must be amended; and

WHEREAS, the Council finds and declares that derelict structures tend to (a) reduce the value of private property, (b) promote blight and deterioration, (c) create a hazard to the health and safety of minors, (d) create a harborage for pests, and (e) may be injurious to the health, safety, and general welfare of the public; and

WHEREAS, by the adoption of this Ordinance No. 875, the Council (a) hereby amends and restates the Nuisance Ordinance in its entirety to address, among other things, derelict structures.

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

1. Findings. The above-stated findings are hereby adopted.
2. Short Title. This Ordinance No. 875 will be known as the "City of Madras Nuisance and Abatement Ordinance" and will be cited and referred to herein as this "Ordinance" or "ordinance."
3. Nuisance Definitions, Penalties, and Procedures for Abatement Established. City hereby establishes the nuisance and derelict structure definitions, penalties, and procedures for abatement set forth in the attached Exhibit A, which Exhibit A will be deemed part of this Ordinance.
4. Amendment and Restatement. This Ordinance amends, restates, supersedes, replaces, and repeals the Nuisance Ordinance in its entirety, and supersedes and repeals all ordinances, resolutions, and/or policies in conflict with this Ordinance; provided, however, City may continue the enforcement, prosecution, conviction, and/or punishment of any person who has or will violate the Nuisance Ordinance prior to the effective date of this Ordinance.

5. Interpretation; Severability; Errors. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, rule, regulation, code, or ordinance includes the law, rule, regulation, code, or ordinance as now in force and which may hereafter be amended. The provisions of this Ordinance are hereby declared severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors.

6. Emergency Declaration. The Council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City's citizens by establishing certain definitions of nuisance and derelict structures, penalties, and procedures for abatement. The Council further finds that a delay of thirty (30) days prior to the effective date of this Ordinance may result in acts, omissions, and/or conditions detrimental to the public health, safety, and welfare. Therefore, an emergency is declared to exist and this Ordinance will be in full force and effect upon its passage by the Council and approval of the mayor.

EXHIBIT A

SECTION 1. TITLE

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

SECTION 2. PURPOSE

The provisions of this ordinance will be construed to secure, protect, and ensure public health, safety, and welfare insofar as they are affected by the occupancy and maintenance of buildings, structures, and property. Existing buildings, structures, and property that do not comply with the provisions of this ordinance will be abated, altered, and/or repaired to provide a minimum level of health, safety, and maintenance as required under this ordinance. Nothing in this ordinance will be construed to relieve a person from complying with any applicable federal, state, and/or local laws, regulations, and/or ordinances, including, without limitation, any applicable building codes and the requirement to obtain all necessary permits and approvals.

SECTION 3. EXEMPTIONS; HARDSHIPS; JOINT AND SEVERAL

- (1) Unless specifically provided otherwise, this ordinance does not apply to the following: (a) disposal sites operated in compliance with regulations promulgated by the Environmental Quality Commission and/or Department of Environmental Quality and all other applicable federal, state, and local laws, regulations, and ordinances;

- (b) 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; and/or (c) permitted sound amplification with appropriate permits from the city that includes date, time, and hour restrictions.
- (2) Where there are extreme hardships involved in carrying out the provisions of this ordinance, the city administrator may vary or modify such provisions upon application of an owner or person in charge of property provided that the intent of the law is observed and that the public health, safety, and welfare is ensured.
- (3) If more than one person is responsible for a nuisance, they will be jointly and severally liable under this ordinance, including, without limitation, for abating the violation and for any costs incurred by the city to abate the nuisance.

SECTION 4. DEFINITIONS

Abate or abatement. The removal or correction of conditions deemed to constitute a violation of this ordinance or the making of improvements needed to effect a rehabilitation of the property consistent with maintaining safe and habitable conditions.

Attractive nuisance(s). Buildings, structures, and/or property that are in an unsecured, derelict, and/or dangerous condition so as potentially to constitute an attraction to minors, vagrants, criminals, and/or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing an unlawful act. Attractive nuisances include, without limitation, (a) unguarded machinery, equipment, and/or other devices that are attractive, dangerous, and accessible, (b) uncovered excavation without proper barriers, and (c) lumber, logs, and/or pilings placed or stored in a manner as to be attractive.

Building(s). A structure designed for habitation, shelter, storage, trade, manufacture, business, education, and/or other similar purposes.

City. City of Madras, an Oregon municipal corporation.

City administrator. The city administrator for the city and/or his or her designee.

City council. The city's elected legislative body.

County. Jefferson County, Oregon.

Day(s). Calendar days unless specifically provided otherwise.

Derelict building(s) or structure(s). A derelict building or structure includes any one or more of the following:

(1) A building or structure that is unfit for human habitation and/or poses an imminent hazard. A building or structure is "unfit for human habitation" if the building or structure is in disrepair or suffers from lack of maintenance, is unsanitary, is pest infested, contains filth and contamination, and/or lacks ventilation, illumination, sanitary, and/or heating facilities, such that habitation would be injurious or detrimental to the health, safety, and/or welfare of any occupant. A building or structure "poses an imminent hazard" if the condition of the building or structure places public health, safety, and/or welfare in risk of immediate or impending peril.

(2) A building or structure that is detrimental to the public health, safety, and/or welfare as a result of one or more of the following conditions: (a) the building or structure is not legally occupied and unsecured (i.e., unlocked or otherwise open to entry); (b) the building or structure has been left in a state of partial construction for more than six months or has not been completed prior to the expiration of any building permit; (c) the building or structure is vacant and in a dangerous condition so as potentially to constitute an attraction to minors, vagrants, criminals, and/or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing an unlawful act; (d) the building or structure is in a condition of deterioration characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, and/or any other evidence of physical decay, neglect, excessive use, and/or lack of maintenance; and/or (e) the building or structure has an infestation of pests such that the large number of pests are harmful or bothersome to the building or structure and/or any adjacent building or structure.

(3) A building or structure that creates a negative impact on any surrounding buildings and/or areas by presenting an unattractive appearance compared to the design, care, and upkeep of neighboring properties, or by being the site of vandalism and other crimes and misdemeanors, thereby increasing incidents or potential for incidents on surrounding properties, such that the derelict building or structure degrades the economic activity or economic potential of surrounding properties by discouraging (a) customer visits, (b) investment in new or remodeled buildings, (c) property rentals or sales, (d) maintenance of surrounding properties, (e) employment of qualified employees, and/or (f) general economic activity, value, utility, and/or vitality in surrounding areas.

Owner(s). An owner means (a) the person recorded in the official records of the county as holding title to the property, (b) any person who has purchased or otherwise acquired a property but whose ownership is not yet reflected in the official records of the county, (c) a trustee, executor, administrator, guardian, and/or mortgagee in possession and having control of the property, (d) a person who has care and control of a property in the case of the absence or disability of the person holding title thereto, and/or (e) a lessee or tenant in possession.

Person(s). A natural person, partnership, corporation, limited liability partnership, limited liability company, co-operative, governmental entity, association, or other entity in law or fact.

Person(s) in charge of property. An owner, agent, occupant, lessee, tenant, contract purchaser, and/or other person having possession or control of the property or the supervision of a construction project on the property.

Structure(s). A structure is (a) that which is built or constructed, (b) an edifice or building of any kind, including mobile or manufactured homes and mobile outbuildings, and/or (c) any work that is built up as an addition to or fixture on a 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 may be abated as provided in this ordinance.

- (1) An open vault or privy, except those approved and maintained during construction in accordance with applicable federal, state, and local laws, regulations, and ordinances.
- (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 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 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, without limitation, the following:
 - a. Buildings made uninhabitable by fire as determined by the reasonable discretion of a city building official or the 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, and/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 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 property 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; and
 - e. Junked.

For purposes of this section, 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, without limitation, the following:
- 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 twenty (20) feet.
 - e. Noxious vegetation on public or private property. Noxious vegetation includes:
 - i. All noxious weeds as defined by the current county noxious weeds list; and
 - ii. Vegetation more than ten (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 ten (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 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.
- (7) Derelict building or structure on any property. Derelict buildings and structures are identified and administered in accordance with Section 10, below. No person will inhabit a derelict building or structure, and no owner will allow any person to inhabit a derelict building or structure, or a building or structure ordered vacated under Section 10, below.

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 under Ordinance No 325 or any future noise ordinance.
- (2) Radio and television interference caused by reasonably preventable interference through the use of electrical, mechanical, and/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, and/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 attractive nuisance. Attractive nuisances may be abated as provided under this ordinance.

SECTION 9. UNENUMERATED NUISANCES

In addition to the acts and conditions specifically enumerated in this ordinance, any condition, thing, substance, and/or activity that is detrimental to, injurious to, and/or constitutes a danger to

public health, safety, and/or welfare is declared to be a nuisance and is subject to the abatement procedures set forth in this ordinance.

SECTION 10. IDENTIFICATION AND DECLARATION OF DERELICT STRUCTURES

- (1) The city administrator shall determine if a building or structure is potentially a derelict building or structure as defined under Section 4. The city administrator may consult with the building official, fire marshal, public health officer, police chief, and/or other qualified authority when making this determination.
- (2) The city administrator shall notify the owner and person in charge of property of any building or structure found derelict of the (a) circumstances leading to the determination, and (b) process of the city council's declaration, enforcement, and abatement. Notification shall be made in accordance with Section 11(4) and shall provide a reasonable period for the owner and/or person in charge of property to correct the circumstances leading to the city administrator's declaration that the structure is potentially derelict.
- (3) If the owner and/or person in charge of property do not timely correct the circumstances leading to the city administrator's potential derelict structure determination, the city administrator shall set a hearing before the city council on the matter. Notice of the public hearing shall be given in the manner provided under Section 11(4); provided, however, notice of the hearing may also be posted on or near the derelict building or structure.
- (4) At the hearing, the city administrator will present whatever information, evidence, or testimony the city council may deem relevant in support of the city administrator's determination. The owner and/or person in charge of property will similarly be afforded an opportunity to present evidence and rebut the city administrator's determination. Any information, opinion, testimony, or evidence may be received which the city council deems material, relevant, and probative of the matters in issue. At the conclusion of the public hearing, the city council will determine if the subject building or structure is a derelict building or structure as defined under Section 4 of this ordinance. The owner and/or person in charge of property may represent himself or herself or be represented by legal counsel provided that such legal counsel is admitted to the practice of law in the State of Oregon.
- (5) If the city council finds that the subject building or structure is a derelict building or structure and, therefore, a nuisance under this ordinance, the city council shall adopt an order declaring the building or structure to be derelict and a violation of this ordinance. The city council's order shall include (a) the city council's findings supporting the declaration, and (b) an order requiring that the conditions creating the derelict building or structure be abated. If the city council finds the subject building or structure is not a derelict building or structure as defined under Section 4 of this ordinance, the city council may dismiss the matter.

- (6) If abatement of the derelict building or structure is not commenced and completed within the timeframes set forth in the city council's order, the city may perform any necessary or appropriate abatement and, in addition to all other city rights and remedies, the cost thereof assessed as a lien against the property upon which the derelict building or structure is located. The city's abatement may include, without limitation, demolition of the derelict building or structure, removal of property, and/or site cleanup. The cost of abatement and a twenty-five percent (25%) charge for administrative overhead will be assessed.
- (7) Notwithstanding any other provisions of this ordinance to the contrary, whenever, as determined by the city administrator, a building or structure poses an imminent hazard, the city administrator may order and/or cause to be performed any necessary or appropriate work (including, without limitation, any necessary or appropriate abatement) to render such building or structure temporarily safe and secure whether or not proceedings to abate the hazard have been instituted, including, without limitation, fencing the property and boarding of openings. In addition to the temporary safeguards described in the immediately preceding sentence, the owner and person in charge of property will cause such other actions to be taken that the city administrator deems necessary or appropriate to render the building or structure temporarily safe and secure.
- (8) In addition to any other rights, remedies, and abatement procedures provided under this ordinance, the city administrator and/or city council may order that a placard be posted on any derelict building or structure and order that the derelict building or structure be vacated. The placard will contain the information required under Section 11(5). It is unlawful to remove any placard posted on a property. In addition to any other rights and remedies provided under this ordinance, a building or structure found to be derelict and a nuisance under this ordinance is subject to the enforcement provisions of Section 11 and the abatement provisions of Section 12. However, the city council, in its declaration, may waive any or all of the provisions of Sections 11 and/or 12 as the city council determines necessary or appropriate.

SECTION 11. ENFORCEMENT

(1) Warnings, Citations, Orders, and Fines

- a. The city administrator may issue warnings, citations, and/or orders to any owner and/or person in charge of property for nuisances, charging such persons with violating this ordinance.
- b. Each violation shall be a civil offense and subject to a fine of not less than \$500.00 for the first failure to comply and \$1,000.00 for each subsequent failure to comply committed within one year of the first occurrence. In addition to any other rights or remedies provided under this ordinance, the city may file a civil action to recover unpaid fees, fines, and costs, including, without limitation, the city's attorney fees and other fees, costs, and expenses incurred by city to enforce this ordinance.

- c. The city and/or its designee may enter upon any property in connection with the city's provision of any notice or order provided under this ordinance, determining compliance with this ordinance, and/or to enforce this ordinance, including, without limitation, performing any abatement; the city and/or its designee shall not be liable for trespass or conversion in connection therewith.
- d. If any provision of this ordinance is violated by a firm, corporation, limited liability company, or any other legal entity, the officers, members, managers, shareholders, partners, and/or directors (as the case may be) will be personally subject to the penalties imposed by this ordinance.

(2) Continuing Violation; Cumulative Remedies

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. The city's rights and remedies under this ordinance are not exclusive. The city may pursue all other rights and remedies provided under applicable federal, state, and local laws, regulations, and ordinances to address nuisance violations. All available rights and remedies are cumulative and may be exercised singularly or concurrently.

(3) Notice of Abatement

The city administrator shall have the authority to enforce this ordinance and may cause a 10-day written notice of violation to be issued to the owner and/or person in charge of property. The notice will contain (a) a description of the nuisance, (b) identification of the property upon which the nuisance is located by address or otherwise, and (c) inform the owner and/or person in charge of property that if the nuisance is not abated within ten (10) days, or such longer period as may be provided in the notice, it will be abated by the city and the owner and person in charge of property will be assessed for the cost of abatement as provided under this ordinance.

(4) Service

Except as otherwise provided in this ordinance, any notice or order required under this ordinance will be (a) personally delivered to the owner and person in charge of property, (b) sent to the owner and person in charge of property by first class mail to their last known residence or business address, and/or (c) posted at the property and also sent via first class mail to the owner and person in charge of property to their last known residence or business address. Any notice or order served by mail will be deemed received three (3) days after the date mailed. Failure of any owner and/or person in charge of property to receive notice or the order or an error in the name or address of any owner and/or person in charge of property will not render the notice or order void; the notice and/or order will be deemed proper and sufficient. Refusal to accept the registered or certified mail will not be deemed to, and will not, render the notice or order invalid.

(5) Posting; Recording with County Clerk

a. The city may place a sign on the property warning of the nuisance or derelict building or structure. The sign may include, without limitation, the following:

NUISANCE NOTICE
BUILDING IS NOT SAFE TO OCCUPY

It is a violation of the City of Madras Nuisance and Abatement Ordinance to occupy this building or structure or to remove this notice.

b. The city may record a notice of violation with the county clerk. Failure to record a notice of violation will not affect the validity of the notice. When the property is brought into compliance, a satisfaction of notice of violation will be recorded.

SECTION 12. ABATEMENT BY CITY; COSTS; LIEN

- (1) If an order of abatement has been issued by the city administrator and ten (10) days following the notice mailed pursuant to Section 11(4) specifying said abatement the act or condition remains unabated and no appeal has been filed, the city administrator may cause abatement of the nuisance by entering the property, if necessary, and abating the nuisance, which abatement may include, without limitation, demolition of buildings, removal of property, and site cleanup.
- (2) Any personal property removed during an abatement process may be returned to the possession of the owner following abatement or may be sold, discarded, or destroyed at the discretion of the city in accordance with applicable law. Proceeds of any sale shall be used to help defray the abatement costs. Any proceeds in excess of the abatement costs shall be turned over to the owner or person in charge of property, as appropriate.
- (3) Accurate records of the abatement costs shall be kept and shall include a surcharge of twenty-five percent (25%) of the cost of the abatement for administrative overhead and all other costs, expenses, fees, and penalties. A billing for the amount of the costs shall be sent to the owner and/or person in charge of property. Full payment shall be due to the city within thirty (30) days after the date of the billing.
- (4) The city administrator shall file a lien against the property in the county real property records if payment is not timely made as provided in this Section 12. Interest on the lien shall accrue on the amount of assessment due at the rate of nine percent (9%) per annum from the date the lien is recorded. Any error in the name of the owner and/or person in charge of property shall not void the lien. Neither shall failure to receive the notice of the proposed assessment render the lien void. Only payment of the total amount due for the abatement shall remove the lien. Once full payment is

received by the city, the city shall record a release of the abatement lien. The lien provided for in this Section 12(4) shall be given priority over all liens except those for taxes and assessments. Collection of abatement costs, fees, and penalties are in addition to any other remedies, civil or criminal, available to the city under applicable law.

- (5) In addition to, and not in lieu of, any other provision in this ordinance, when the city administrator finds residential property in violation of this ordinance and believes that the violation is a threat to the public health, safety, and/or welfare, and the owner and/or person in charge of property has not acted in a timely manner to correct the violations, the city administrator may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement pursuant to the Oregon Housing Receivership Act (ORS 105.420 to 105.455).

SECTION 13. APPEALS

- (1) Any person affected by a city administrator's notice or order under this ordinance may request reconsideration by filing a request with the city administrator. The request must be received by the city administrator within ten (10) days after the effective date of the applicable notice or order. The request for reconsideration must be in writing and include (a) the name, address, and telephone number of the person requesting reconsideration, (b) a copy of the notice or order being requested for reconsideration, and (c) a statement that the person requests that the city administrator reconsider the notice or order.
- (2) The city administrator's response to the request for reconsideration will be personally delivered to the person requesting reconsideration, or sent to the person via first class mail at the address listed on the request for reconsideration. Any request for reconsideration may be granted or denied by summary order of the city administrator.
- (3) Any person affected by a notice or order of the city administrator may appeal the notice or order to the city council by filing a notice of appeal with the city recorder, subject to the provisions of this Section 13. A person must first request that the city administrator reconsider the notice or order as provided in Section 13(1) and (2). The filing of a notice of appeal will stay all proceedings for abatement until the final disposition of the appeal; provided, however, the filing of a notice of appeal will not prevent or impair the city administrator from addressing a building or structure that poses an imminent hazard under Section 10(7) of this ordinance.
- (4) The notice of appeal must be filed within ten (10) days after the date the city administrator's response to the request for reconsideration is delivered to the person. A copy of the notice of appeal must also be filed with the city administrator.

- (5) The notice of appeal must be in writing and include (a) the name, address, and telephone number of the appellant, (b) a copy of the notice or order being appealed, (c) a statement that the person wishes to appeal the notice or order, and (d) the basis for the appeal, stating with specificity why the notice or order was issued in error, based on one or more of the following: (1) the city failed to follow the procedures prescribed in this ordinance and such failure has prejudiced the person with respect to some substantial right; (2) no violation exists on the property that is the subject of the notice or order; and/or (3) the time for or method of compliance required in the notice or order is impossible to comply with or, because of circumstances particular to the person or property, would cause an unreasonable hardship.
- (6) The city council's hearing upon the appeal will be limited to the reasons why the notice or order is incorrect, as set forth in the notice of appeal. A notice of appeal that is filed after the period provided for filing an appeal will be dismissed by the city council as untimely. Failure to appeal as provided under this Section 13 will be a waiver of all right to review the notice or order. The city recorder will provide the appellant with written notice of the hearing on the appeal not less than ten (10) days prior to the hearing.
- (7) The person requesting the appeal will be afforded the opportunity to provide evidence or a statement in opposition to the notice or order. The city administrator will be afforded the opportunity to present any evidence, argument, or statement in support of the notice or order. At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel, and any additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of the city council is final and conclusive. The decision of the city council will be recorded in the minutes.
- (8) The city council will adopt findings and conclusions supporting a decision which either (a) affirms the notice or order as given, (b) modifies the notice or order, or (c) rescinds the notice or order. Upon a final disposition ordering abatement of a nuisance, and unless another period for compliance is provided in the decision, the owner and/or person in charge of property will have a period equal to that specified in the original notice, commencing from the date of the final disposition, in which to abate the nuisance prior to action by the city.

APPROVED AND ADOPTED by the Council and signed by the Mayor this 23rd day of June, 2015.