



# City of Union

## Agenda

**Council Work Session Meeting**

**Monday, July 28, 2025 @ 6:00 PM**

**Leonard Almquist Council Chambers, 342 S. Main St,  
Union, OR 97883**

For More Information, Please Contact Celeste Tate, City Administrator at 541-562-5197

### **Zoom Information**

Join Zoom Meeting

<https://us06web.zoom.us/j/9315921644?pwd=VW50QUVkbV2dwUzF6eW5nYTZGcmVjZz09>

Meeting ID: 931 592 1644

Passcode: 760310

Dial by your location

• +1 253 215 8782 US (Tacoma)

Page

1. **CALL TO ORDER AND ROLL CALL:**

**Mayor:**

Hawkins

**Councilors:**

Cox, Middleton, Seale, Black, George  
and Boyer-Davis

2. **PRESENTATIONS:**

3. **UPCOMING BUSINESS DISCUSSIONS:**

3.1. Defensible Space

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[Defensible Space Homeowners Guide](#)

[Defensible Space Graphics](#)

[Defensible Space Assessment Tool](#)

[ORS Defensible Space Code Language Draft 2024](#)

3.2. Fire Hazards, Public Nuisances, Abandoned Properties

40 - 102

[Chapter 92 Fire Protection and Regulation](#)

[Chapter 95 Inspection Warrants for Public Nuisances](#)

[Chapter 97 Abatement of Dangerous and Nuisance Buildings](#)

[Chapter 98 Noxious Vegetation](#)

[Chapter 99 Regulating Solid and Other Wastes](#)

[Chapter 131 General Offenses](#)

[Example from other town Abandoned Vehicles and Personal Property](#)

[Example from other town Public Nuisances](#)

4. **COMMITTEE DISCUSSIONS:**

5. **ORDINANCE/CHARTER REVIEW:**

6. **OTHER:**

7. **ADJOURNMENT:**



# DEFENSIBLE SPACE **HOMEOWNER GUIDE**

OREGON STATE FIRE MARSHAL

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2024

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# ABOUT THIS GUIDE

Welcome to this comprehensive guide on defensible space, crafted by the Oregon State Fire Marshal. In this technical manual, we dive into crucial strategies and practices to safeguard properties against the threat of wildfires. Discover a wealth of actionable insights and expert advice to fortify your home and property and protect your community from the ever-present danger of wildfire in Oregon.

## WHAT IS DEFENSIBLE SPACE

Defensible space is the buffer you create between your home or business and the grass, trees, shrubs, or any wildland area that surrounds it. Proper defensible space can slow or stop the spread of wildfire and help protect your home or business.

Defensible space can offer protection from embers that can travel several miles from the fire front. Studies show that well-maintained defensible space can increase a structure's chances of surviving a wildfire, providing protection even if firefighters cannot reach it.

This guide provides more detail about the recommendations in the **Oregon defensible space assessment tool** and can help you get started on creating defensible space on your property or in your community.

If you want personalized expert advice, the Oregon State Fire Marshal and fire service partners provide free defensible space assessments to Oregonians. During an assessment, a fire service member will walk with you around your property and provide recommendations to become better prepared for wildfire.



**TO SCHEDULE A FREE ASSESSMENT,  
SCAN THE QR CODE.**



According to the Insurance Institute for Business & Home Safety, embers, or firebrands, cause up to 90% of structural ignitions during wildfires. Flying embers can travel several miles ahead of the wildfire. When creating defensible space, it is important to think about these embers and how they may ignite things on or near your home or business during a wildfire.

# EMBERS

# THE ROOF

Your roof is an integral part of your defensible space plan. Embers and radiant heat are the primary culprits in roof ignitions during wildfires. A well-maintained roof, free from debris and constructed with fire-resistant materials, serves as a vital barrier against ember intrusion. By paying attention to your roof—its materials, condition, and maintenance—you significantly increase your property's resilience and reduce the likelihood of fire spreading and causing extensive damage to your home and surroundings.



Regularly remove leaves, needles, and other debris from the roof and gutters, especially before and during summer months.



Check your roof at least once a year and keep it maintained. Consider applying treatments to prevent moss from growing on the roof and inside the gutters.



Pay special attention to areas where materials can gather on the roof, especially under eaves or against walls.



Covering your gutters with metal covers to keep leaves and needles out. If the gutters are covered, the gutters still need to be checked once a year.

## OTHER CONSIDERATIONS

Install a fire-resistant or noncombustible roof made of asphalt, metal, clay tile, slate, or concrete products.

The first **five feet** around your home is the front line in defending against wildfire. This space is important because it's the closest to your house. Clearing this area from things that can catch fire, like dry leaves, plants, or firewood, makes a big difference. By creating this buffer zone, you reduce the chances of a fire reaching your house. It's like giving your home a protective shield, making it safer and more secure.



Make sure flammable vegetation is removed from directly under the eaves. A minimum of **five feet** from the structure is recommended.



Remove vegetation and mulch from within **five feet** of the building.



Install a **5-foot** non-flammable buffer around the building, using materials like river rock, gravel, paver stones, or concrete.



Consider using fire-resistant plants in your landscaping at least **five feet** away from the home. Allow space between each plant so they don't touch each other. If one plant catches fire, this prevents the flames from transferring to other plants.

# VENTS

Embers can enter openings into the home, including through small vent spaces . Most homes are built with wire mesh covering attic and soffit vents. However, most of this wire mesh is **1/2" to 1/4"** wide, may be plastic, and is installed mainly to prevent critters from entering the home.

To prevent embers from entering your home, it's recommended **1/8"** wire mesh is installed over any vent openings and/or the top of any preexisting wire mesh.

Exterior attic vents, soffit vents, and areas below decks and patios should be covered.

Research shows that embers are less likely to get through **1/8"** wire mesh. Wire mesh is inexpensive and easy to install.

## MESH SIZE EXAMPLES



**1/2"**

**1/4"**

**1/8"**



Make sure siding and skirting around the building is in good condition. Rotting or missing siding and skirting can give flames and embers a place to catch the side of a building on fire. Well-maintained siding—even made of wood—can be fire-resistant if maintained and far from flammable vegetation or material.

## **OTHER CONSIDERATIONS**

Install noncombustible or ignition-resistant siding such as brick, stone, fiber, cement, plaster, or metal.

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# DECKS

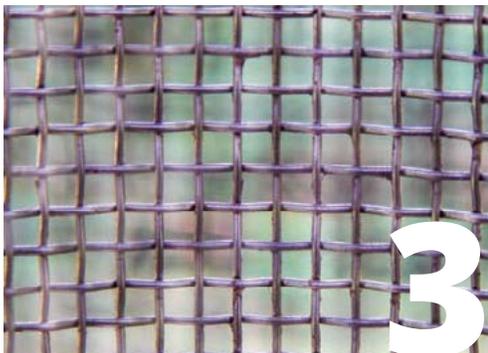
Keep decks and patios clean of leaves, conifer needles, wood, bark mulch, and other debris. This flammable material should be removed from the surface, around, and under decks. Even for fire-resistant decks and fences, it is important to clear away flammable material that might end up on the surface of or below decks and fences.



Pay special attention to places and pockets where material can gather against the side of the building.



Consider using non-flammable patio furniture and/or bring inside flammable materials— like chair cushions or umbrellas—when not home or during an evacuation.



Consider installing **1/8"** wire mesh below deck openings. Closing these openings can stop flammable materials and embers (and critters!) from collecting under your deck and reduce maintenance.



Make sure spaces between deck boards are clear of debris, especially during summer.

Fence attachments touching the structure should be made of a noncombustible alternative like metal.

Wood and other flammable fences can act like a wick and carry fire from the fence to the side of your building. Replacing the entire fence with noncombustible material can be expensive, but simply replacing the first **five feet** of a fence from your building with noncombustible material can stop fire from traveling to the side of your building.

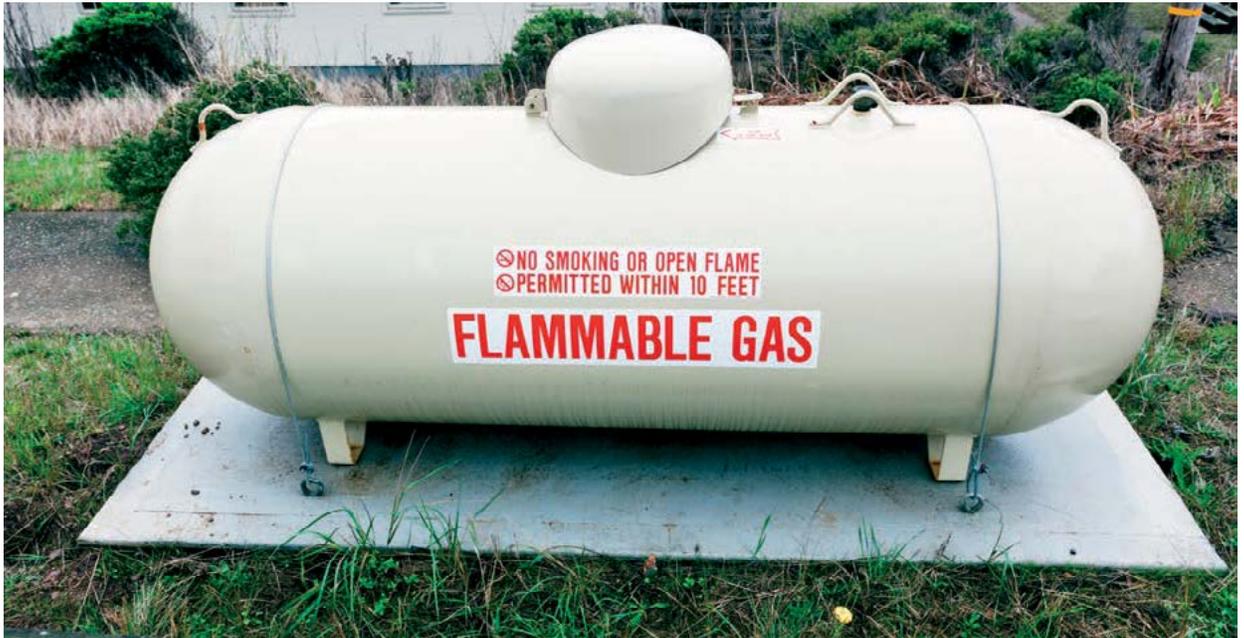
If you cannot replace the first **five feet** of your fence with noncombustible material and you need to evacuate because of wildfire, open the gate and secure it when you leave to break up the wick to your home.



### OTHER CONSIDERATIONS

Install a **5-foot** fire-resistant buffer, like metal fencing or other non-flammable material, when replacing fencing within **five feet** of a home or structure.

# PROPANE



Keep combustible vegetation **10 feet** away from permanent propane tanks. These tanks will vent when overheated and aren't typically at risk of exploding during a wildfire. It is important not to create an environment where a tank could have a direct flame on it. Keep all vegetation cleared **10 feet** away from them. Do not completely cover or surround the propane tank with anything, like a wall or roof, as this will prevent vented gases from dispersing into the air properly and cause a safety hazard.



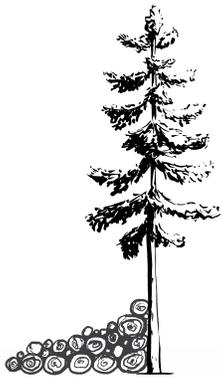
Small BBQ tanks can vent when overheated. They are smaller and cannot take as much heat as the large, permanent propane tanks. Make sure your empty or partially used BBQ tanks are stored **30 feet** from your structure, placed in an outbuilding, or brought to a recycling center.



# FIREWOOD

Keeping wood piles away from your home is a smart move for defensible space. Wood piles are fuel during a wildfire—they can ignite quickly and spread to your house. Keeping them at a distance reduces the risk. It creates a safe zone around your home, making it harder for a fire to get close and cause damage.

- Keep firewood piles and lumber at least **30 feet** from any structure or enclose the wood pile in a shed or building.



← 30' →

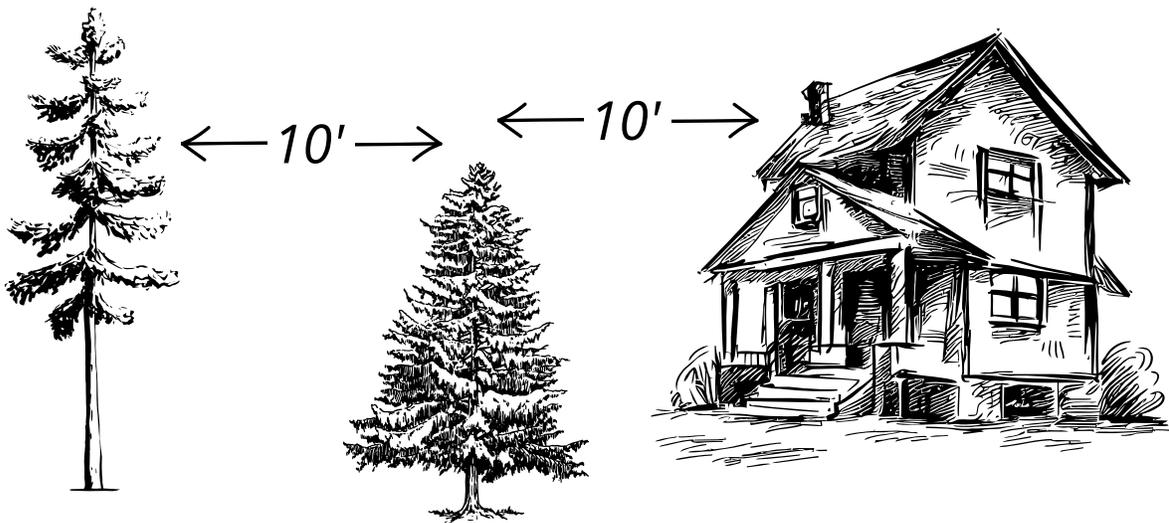


# TREES

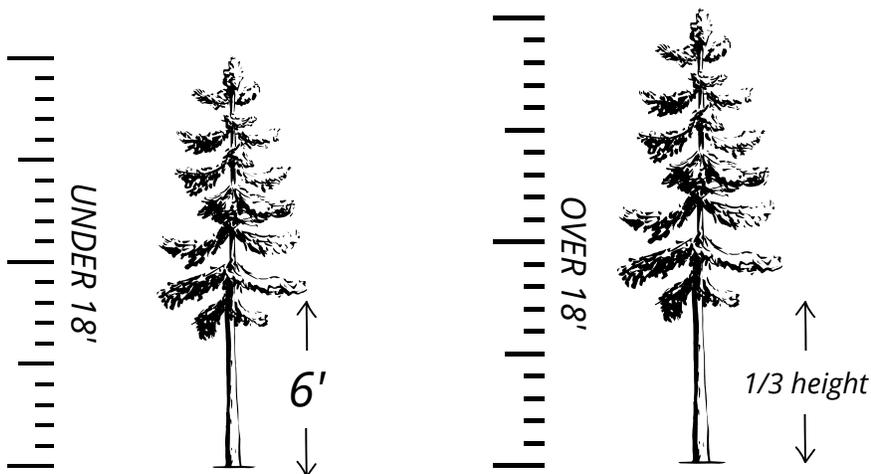
Trees are an essential part of a property's defensible space. Many trees in Oregon have experienced fire for hundreds of years and are well-adapted to the fire ecosystem. Trees can provide shading around homes and businesses, helping keep moisture high and flammability low around buildings.

Trees can become a problem if fire can move from branches and/or the canopy to your home or business.

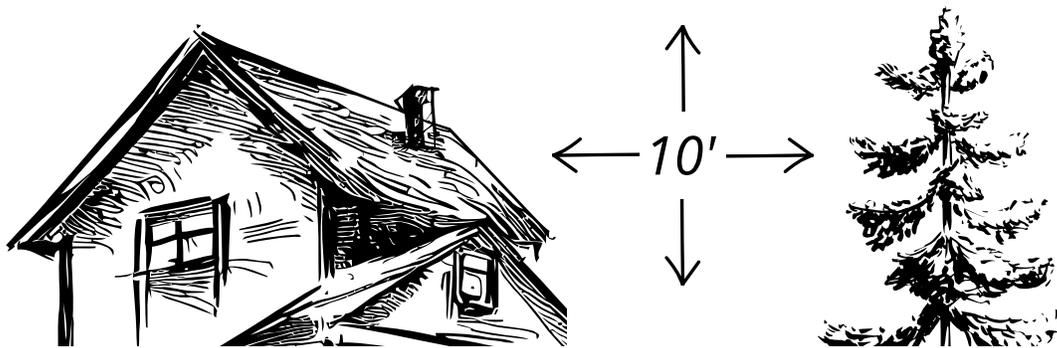
For the first **100 feet** from buildings, it is recommended to maintain a **10-foot** spacing between individual tree crowns and a **10-foot** spacing from buildings and powerlines.



It is recommended to limb trees up **six feet** (for trees greater than **18 feet** tall) or up **1/3** the tree height (for trees less than **18 feet** tall).



Tree removal can be time-consuming and dangerous. Please consult a professional tree service or arborist when considering removing trees near your home or business. Tree removal can also be expensive. Where cost-prohibitive, consider limbing trees near your home or business so branches are not touching the side or roof of your building. Maintain **10 feet** of vertical and horizontal spacing from chimneys.



Consider the tree species when modifying your defensible space. Deciduous trees, which shed their leaves in the fall—like bigleaf maple and quaking aspen hold their moisture in the summer and can reduce heat, slow fire spread, and block embers. Coniferous trees—like Ponderosa pine and western larch—grow thick bark and naturally prune their lower limbs, making them fire-resistant. Ensure leaves and needles are raked away from your home to remove fuels and prevent fire from spreading.



For more information about tree species, see the fire-resistant plant guide on the [resource page](#).

If considering the wildfire preparedness of your privately-owned forested acres beyond the first **100 feet** from your home or business, please contact your local Oregon Department of Forestry office to speak with a community wildfire forester or stewardship forester.

# PLANTS

Thinking about the plants near your home in a defensible space plan matters. When plants are too close to your house, they can catch fire easily during a wildfire. This fire can then spread to your home.

By keeping plants farther away and choosing fire-resistant ones, you create a safer zone around your house. It makes it harder for a fire to reach your home and helps protect it from getting damaged or destroyed during a wildfire.



CAROL MACKIE



LILY OF THE VALLEY



LAVENDER

Make sure fire-resistive plants are spaced within the designated defensible space area. Keep grass mowed to less than **four inches**.

No plant is entirely fireproof, but some plants are more resistant to catching fire than others. The key characteristics of fire-resistive plants are:

- Plants that have a high moisture content and/or are drought-tolerant so they hold onto their moisture during the dry season.
- Plants that require little maintenance, mainly because they accumulate little to no dead vegetation every year.
- Plants that are nonresinous and have little flammable chemical component.



Remove leaves, conifer needles, wood, bark mulch, and other debris from within **100 feet** of the structure or to the property line. These materials can spread fire from wildlands to your home or business.

This recommendation does not require you to moonscape your property for **100 feet**; instead, it suggests breaking up the material around your building so fire cannot travel from wildlands to your home.



Rake leaves and remove dead materials that could spread fire to your home or business.



Chip, compost, or take debris to a recycling center. If burning yard debris, follow local regulations.

Defensible space requires ongoing maintenance. Make sure you check around your home and property regularly to remove debris that has accumulated.



Find the closest recycling or compost center in your area.



Your local fire agency is the best contact to learn about yard debris burning regulations.

# DEBRIS

# DRIVEWAY



Ensure your driveway is accessible to first responders. It should be clear of debris and obstructions; meet local height and width requirements; and have clearly marked road signs, bridges, and culverts.

During a wildfire, first responders may need to access your property to fight the fire. It is important that emergency vehicles can drive onto your property.

- Make sure any trees or bushes along your driveway are cut back to meet local height and width requirements (typically a height of **13 feet, 6 inches** and a width of **20 feet**).
- Make sure any bridges or culverts are properly marked with their weight limit. Consider upgrading bridges and culverts for standard emergency vehicle weight limits (**75,000 pounds**).

Make sure the home has an address sign at the entrance to the property visible from the road.



For firefighters to be able to fight a fire at your property, they must be able to find your location quickly. Having a clear, legible address sign at the entrance of your property will help first responders find you quickly.

- Ensure address signs are legible from both directions of a road.
- Consider installing reflective signs so they are easier to see at night.
- Ask your local fire agency if they have an address sign program to provide a sign for your property.

# WHEN TO DO PROJECTS

Spring and fall are ideal times for defensible space projects because the weather is often mild. In these seasons, it's easier to work outside without extreme heat or cold. During spring, plants are starting to grow, making it a good time for clearing debris before they become fire hazards. In fall, you can prepare for winter by cleaning up dead plants and leaves that could fuel fires. This is also a good time to prune trees.

Summer can be risky for defensible space work because it's hotter and drier, increasing fire danger. Winter might have snow or icy conditions, making outdoor work challenging or unsafe. So, tackling defensible space projects in spring and fall allows you to prepare your property without facing extreme weather conditions and reduces the risk of fire-related accidents.

## SPRING/EARLY SUMMER

- Install **1/8-inch** wire mesh over/behind vent openings on buildings and under your deck
- Clean debris from your gutters, roof, and deck
- Remove leaves and debris from within **100 feet** of buildings
- Check the condition of your roof, siding, and fencing for maintenance needs
- Replace vegetation in your landscaping with fire-resistant plants
- Keep your firewood and lumber piles **30 feet** from your building
- Install a **5-foot** noncombustible buffer on fencing attached to your building
- Keep combustible vegetation **10 feet** away from permanent propane tanks

# SUMMER

- Store empty or partially used BBQ tanks **30 feet** away from buildings or in an enclosed outbuilding
- Keep your gutters, roof, fencing, and deck free from debris
- Keep **five feet** from your building and deck clear of leaves, needles, and debris
- Keep firewood and lumber piles **30 feet** away from buildings

# FALL/WINTER

- Trim vegetation and prune tree branches growing within **five feet** of your building, deck, and fencing
- Limb tree branches up **six feet** or **1/3** of the tree height
- Trim or remove understory vegetation growing under your trees
- Trim vegetation and tree branches encroaching on your driveway
- Ensure your address and road signs are visible



# RESOURCES

Scan the QR code to access each resource



**OSU Fire-Resistant Plants  
for Home Landscapes**



**Oregon Defensible Space  
Assessment Sign Up**



**Building Codes**

bcd.firehardening@dcbs.oregon.gov  
503-378-4133



**Oregon Wildfire  
Hazard Map**



**Department of Financial  
Regulation: Wildfire and Insurance**

1-888-877-4894



**OSU Extension Service:  
Fire Program**



**Local Burn Restrictions**  
Contact local fire agency



**Department of Land  
Conservation and Development:  
Wildfire Adapted Communities**

*Disclaimer: The purpose of this document is to serve as a guide for property owners about wildfire preparedness including ways to limit property loss or damage during a wildfire. These recommendations are based on best practices developed by industry professionals using their experience and research. The Oregon State Fire Marshal and its affiliates disclaim all warranties and guarantees concerning the information in this document and assume no liability or responsibility for loss or damage caused to any person or property by using these recommendations. The Oregon State Fire Marshal and its affiliates disclaim all warranties and guarantees concerning putting these recommendations into practice and the survivability of a structure during a wildfire event. Local jurisdictions may have codes for vegetation management and building materials. Check with your local code authority before making any modifications to your property.*



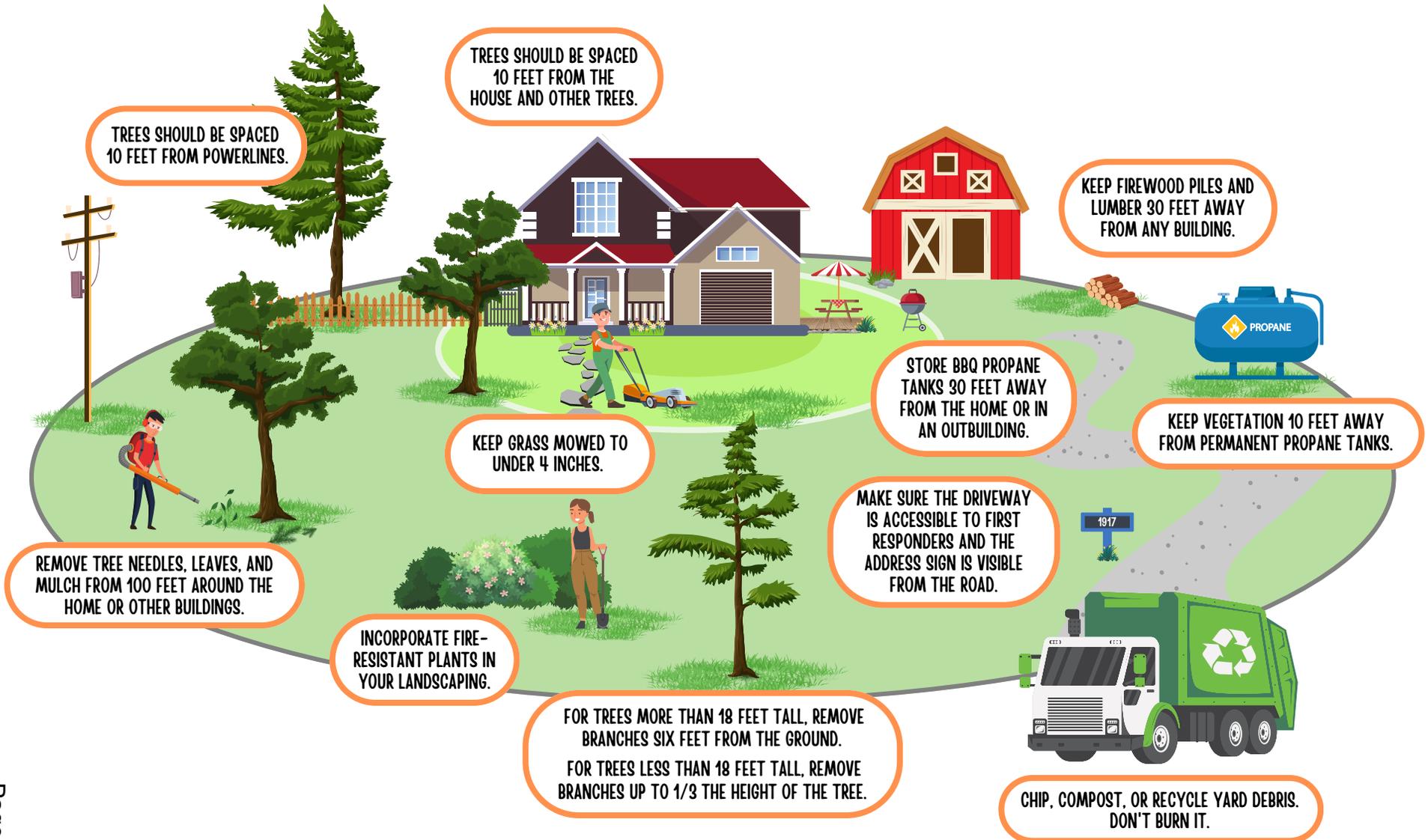


## **OSFM DEFENSIBLE SPACE PROGRAM**

[osfm.defensiblespace@osfm.oregon.gov](mailto:osfm.defensiblespace@osfm.oregon.gov)  
[oregondefensiblespace.org](http://oregondefensiblespace.org)

# DON'T GIVE EMBERS A PLACE TO CALL HOME.

Create **defensible space** and give your property an increased chance of surviving a wildfire.



# DEFENSIBLE SPACE MAKES A DIFFERENCE.



Give your home an increased chance of surviving a wildfire, even if firefighters cannot reach your home.

# OREGON

## DEFENSIBLE SPACE FOR HOMEOWNERS & RENTERS

Creating defensible space can help all Oregonians be prepared for wildfire.

Defensible space is the buffer you create between your business or home and the grass, trees, shrubs, or any wildland area that surrounds it. Proper defensible space can slow or stop the spread of wildfire and help protect your home or business. This checklist provides recommendations for getting started and includes actions you can take in the short term, such as over a weekend, and options to consider when upgrading your home or landscape.

Defensible space can offer protection from firebrands and embers that can travel several miles from the firefront. Studies show that well-maintained defensible space can increase structures' chances of surviving a wildfire, providing protection even if firefighters cannot reach it.

Following these recommendations can increase the likelihood your home or business will survive a wildfire, but they may not eliminate wildfire threat, so it is important to follow all evacuation orders in the event of a wildfire.

If you have questions about this tool, request assistance with completing your assessment, or want to learn more about defensible space, please contact your local fire agency or the Oregon State Fire Marshal online at [oregondefensiblespace.org](https://oregondefensiblespace.org).

### MORE INFORMATION

#### DEFENSIBLE SPACE PROGRAM

Oregon State Fire Marshal  
[oregondefensiblespace.org](https://oregondefensiblespace.org)



#### INSURANCE

Division of Financial Regulation  
503-947-7980  
[DFR.InsuranceHelp@oregon.gov](mailto:DFR.InsuranceHelp@oregon.gov)

#### LOCAL BURN RESTRICTIONS

Contact your local fire agency

#### EVACUATION INFORMATION

Oregon Wildfire Response & Recovery  
503-378-2911  
[oem\\_publicinfo@oem.oregon.gov](mailto:oem_publicinfo@oem.oregon.gov)

#### FIREWISE USA®

Scan the QR code to learn more.



#### FIRE-RESISTIVE PLANTS

Oregon State University's plant guide:



# OREGON

## DEFENSIBLE SPACE & BEST PRACTICES



**1** Trees and vegetation should be 10 feet from powerlines.

**2** Trees and vegetation should be 10 feet from buildings and chimneys.

**3** For trees and vegetation more than 18 feet tall, remove branches six feet from the ground.

For trees and vegetation less than 18 feet tall, remove branches up to 1/3 the height of the tree.

**4** Trees and vegetation should be 10 feet from other trees.

### LIMBING TREES



Trees and vegetation more than 18 feet, remove limbs up to six feet.

Trees and vegetation less than 18 feet, remove limbs up to 1/3 height.

### POWER LINES



*Removing or trimming trees near powerlines is dangerous. Only use an experienced, licensed contractor to perform this work.*

# CHECKLIST

## DEFENSIBLE SPACE & BEST PRACTICES

### DEFINITIONS

**DEFENSIBLE SPACE:** Any area where combustible materials are treated, cleared, or modified to slow and reduce intensity of wildfire and allow space for fire suppression operations to occur.

**FIRE-RESISTIVE PLANTS:** Plants that can be used to reduce the likelihood of fire spread. See OSU's guide on page 1 for characteristics of fire-resistive plants.

**LADDER FUEL:** Low-hanging branches, leaves, needles, and other combustible plant matter that may allow wildfire to spread from low-growing plants to high-growing plants.

### STRUCTURE

- Roofs and gutters are clean from leaves, conifer needles, and other debris.
- Flammable vegetation is removed from growing directly under the eaves. A minimum of five feet from the structure is recommended.
- Exterior attic vents, soffit vents, and areas below decks and patios are covered with 1/8" metal wire mesh.
- Siding and skirting are in good condition.
- Leaves, conifer needles, wood, bark mulch, and other debris removed from the surface of, around, and below decks and fences.
- Fence attachments to the structure have a noncombustible alternative such as a metal gate or fence.

### DEFENSIBLE SPACE *(within 100 ft of structures OR to property line, whichever is closer)*

- Trees are spaced and pruned following the example of the figure on page 2.
- Leaves, conifer needles, wood, bark mulch, and other debris removed from within 100 feet of the structure or to the property line.
- Fire-resistive plants are spaced within the designated defensible space area. Grass is mowed to less than four inches.
- Debris is taken to a recycling center or chipped, composted. Local regulations are followed if burning yard debris.
- Firewood piles and lumber at least 30 feet from any structure.
- Combustible vegetation 10 feet away from permanent propane tanks.
- Small BBQ tanks, not in use, are stored at least 30 feet away or in an outbuilding.

# CHECKLIST

## DEFENSIBLE SPACE & BEST PRACTICES

### OTHER CONSIDERATIONS

- The driveway is accessible to first responders (e.g., clear of debris and obstructions; meets local height and width requirements; has clearly marked road signs, bridges, & culverts).
- The home has an address sign at the entrance to the property.
- Roof:** Install a fire-resistant or noncombustible roof made of materials such as asphalt, metal, clay tile, slate, or concrete products.
- Siding:** Install noncombustible or ignition-resistant siding such as brick, stone, fiber cement, plaster, or metal.
- Fencing:** Install a 5-foot fire-resistant buffer such as metal fencing or other non-flammable material when replacing fencing within five feet of a home or structure.

NOTES

*CREATED IN PARTNERSHIP WITH: OREGON STATE FIRE MARSHAL, OREGON FIRE MARSHALS ASSOCIATION, OREGON FIRE CHIEFS ASSOCIATION, OREGON STATE FIRE FIGHTERS COUNCIL, DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, OREGON VOLUNTEER FIREFIGHTERS ASSOCIATION, & OREGON DEPARTMENT OF FORESTRY.*



## CHAPTER 2 DEFINITIONS

### User note:

*About this chapter: Codes, by their very nature, are technical documents. Every word, term, and punctuation mark can add to or change the meaning of a technical requirement. It is necessary to maintain a consensus on the specific meaning of each term contained in the code. Chapter 2 performs this function by stating clearly what specific terms mean for the purpose of the code*

### SECTION 201 GENERAL

**201.1 Scope.** Unless otherwise expressly stated, the following words and terms shall, for the purposes of this code, have the meanings shown in ORS 476.390 and in this chapter.

**201.2 Interchangeability.** Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; and the singular number includes the plural and the plural the singular.

**201.3 Terms defined in other codes.** Where terms are not defined in this code and are defined in other International Codes, such terms shall have the meanings ascribed to them as in those codes.

**201.4 Terms not defined.** Where terms are not defined through the methods authorized by this section, such terms shall have their ordinarily accepted meanings such as the context implies.

### SECTION 202 DEFINITIONS

**ACCESSORY DWELLING UNIT (ADU).** A residential structure that is used in connection with, or that is auxiliary to, a single-family dwelling in accordance with ORS 215.501. ADU's must have adequate access for firefighting equipment and be served by a fire protection service provider with professionals who have received training or certification described in ORS 181A.410. [Section 301.1.1]

**[A] APPROVED.** Acceptable to the *code official*. [Section 302.4.1]

**BEST MANAGEMENT PRACTICES.** Means *defensible space* requirements specific to Oregon, and not contained in the International Wildland-Urban Interface Code, in accordance with the best practices provisions of ORS 476.392. The Oregon Department of State Fire Marshal has included best management practices to establish the minimum defensible space requirements of this code. Best management practices adopted locally must be approved by the Oregon Department of State Fire Marshal in accordance with OAR 837-039-0006. Locally adopted best management practices may be related to, species-specific concerns, special hazards, management practices of recognized local, state, or national programs, or other relevant fuel modification concerns. [Section 105]

User note:

Local government may adopt requirements that address conditions that are of particular concern or interest in their area. Amongst others, these could include the following areas:

- **Species-specific.** The requirements of the Oregon Defensible Space Code may not be practical for all vegetation, including some trees or ground cover. For example, lodgepole pine trees are prone to blowing over in strong winds without the protection of being grown in clusters. In other areas of the state the intensity and rate of fire spread created by some highly volatile plant species such as rabbitbrush, juniper or sagebrush may be of local concern, while fire-resistant species such as oak and maple may be of less concern.
- **Special hazards.** In some cases, locals may want to address hazards that are particularly prevalent in their jurisdiction. An example would be areas where the heating of homes with firewood is especially common, and its storage is nearly always within the defensible space. The adoption and enforcement of local requirements to mitigate this danger would be appropriate.
- **Recognized programs.** Many established programs, at both the local, state, and national level, can provide greater requirements than the minimum state-wide code provided by the Oregon Department of State Fire Marshal. Many

communities, particularly those in regions of the state prone to *wildland-urban interface* wildfires, have successfully utilized programs such as Wildfire Ready (FEMA), Firewise USA (NFPA), Fire Adapted Oregon (OSFM), Project Wildfire (Deschutes County), and many others.

**Important:** Draft copies of locally proposed amendments to the ODSC must be evaluated by the OSFM and comply with the OAR 837-039-0006 process. The review will ensure that the proposed requirements are lawful, consistent with the intent of the ODSC, and will be approved by local resolution.

**[A] CODE OFFICIAL.** The official designated by the jurisdiction to interpret and enforce this code, or the code official's authorized representative in accordance with ORS 476.060. [Chapter 1, Section 302]

**DEFENSIBLE SPACE.** A natural or human-made area in which material capable of supporting the spread of fire has been treated, cleared or modified to slow the rate and intensity of advancing wildfire and allow space for fire suppression operations to occur. See also ORS 476.390.

**FIRE-RESISTANT VEGETATION.** Plants with the characteristics compiled in Appendix F of this code that can be used to reduce the likelihood of fire spread. [Section 302.5/App. F]

**User note:**

While no vegetation can be regarded as truly "fire-proof", and while all will burn under severe fire conditions, fire resistant vegetation can lower that likelihood and severity.

There is a large variety of fire resistant vegetation that can be found commercially and assist an owner in an overall strategy to modify the fuels on their property. This may include groundcovers such as kinnikinnick and periwinkle, perennials such as iris and lupine, shrubs such as azalea and rhododendron, and trees such as maple and crabapple.

Details are available at the Oregon Department of State Fire Marshal homepage. Additional resources are widely available online, including:

- "*Safer from the start: A Guide to Firewise-Friendly Developments*" published by the National Fire Protection Association (NFPA).
- "*Firewise Toolkit*" published by the National Fire Protection Association (NFPA).
- "*Fire-Resistant Plants for Oregon Home Landscapes*" published by the OSU extension service and the USDA.
- "*Choosing the Right Plants for Northern Nevada's High Fire Hazard Areas*" published by the University of Nevada Reno Extension
- "*Firewise Landscaping for Southern Idaho*" brochure published by the Bureau of Land Management.

**FIRE-RESISTANT VEGETATION, NON.** Flammable plants, including *vegetative fuels*, that ignite readily, can add to the intensity of a wildfire and may increase its spread. Generally, these fuels have fine dry material such as twigs, leaves and needles, or have high oil and resin content. [302.3, 402.2, 402.3]

**FUEL MODIFICATION.** A method of modifying fuel load by reducing the amount of *nonfire-resistant vegetation* or altering the type of vegetation to reduce the fuel load. [Section 302]

**HAZARD RATING.** A numerical value describing the likelihood and intensity of a fire, based on specific factors or conditions including weather, climate, topography, and vegetation. [Chapter 3 Scope]

**LADDER FUEL.** Branches, leaves, needles, and other combustible vegetation that may allow a wildfire to spread from lower growing vegetation to higher growing vegetation. [Section 302.4]

**MAP.** The comprehensive statewide map that displays the three wildfire hazard zones and populates Oregon Wildfire Risk Explorer, the official wildfire planning and hazard mapping tool for the State of Oregon, coordinated by the Oregon Department of Forestry. See ORS 477.027. [Chapter 1, Section 301 and 401.]

**OTHER HUMAN DEVELOPMENT.** Means essential facilities, special occupancy structures, or hazardous facilities as defined in ORS 455.447 that support community functions, public communication, energy, or transportation. See OAR 629-044-1005. [Throughout]

**STRUCTURE.** Means:

- A residential building that requires a Certificate of Occupancy.
- A commercial building that requires a Certificate of Occupancy.
- A manufactured dwelling that has received a Housing and Urban Development certification label (Insignia of Compliance).
- A structure that has received a temporary Certificate of Occupancy under the state building code; or
- A structure constructed prior to adoption of the state building code, that would have required a Certificate of Occupancy or Insignia of Compliance under the state building code, if one was not was obtained. [Throughout]

**TREE CROWN.** The primary and secondary branches growing out from the main stem, together with twigs and foliage. [Sections 302.4]

**VEGETATIVE FUELS.** Means both live and dead plant material that constitute a wildfire hazard, including *ladder fuels*. [Section 302.5. See also OAR 629-044-1005]

**WILDFIRE.** An uncontrolled fire spreading through vegetative fuels, exposing and possibly consuming structures. [other definitions]

**WILDFIRE HAZARD.** Means the wildfire impacts to values based on scientifically modeled wildfire frequency and wildfire intensity. [Section 101, Section 302.2. See 629-044-1005]

**WILDLAND.** An area in which development is essentially nonexistent, except for roads, railroads, power lines and similar facilities. [Sections 101, 301]

**WILDLAND FUELS.** Means natural vegetation that occurs in an area where development is essentially non-existent, including grasslands, brushlands, rangelands, woodlands, timberlands, or wilderness. Wildland fuels are a type of *vegetative fuels*. [Sections 101, 301]

**WILDLAND-URBAN INTERFACE.** Means a geographical area where structures and other human development meets or intermingles with wildland or vegetative fuels. [Throughout]

## CHAPTER 3 DEFENSIBLE SPACE

### User note:

*About this chapter:* Chapter 3 establishes minimum fire protection requirements to mitigate the hazards to life and property from fire in the wildland-urban interface. The chapter includes strategies to reduce the hazards of fire originating within a structure spreading to wildland and fire originating in wildland spreading to structures and other human development. These requirements, and those in Chapter 4, are the result of a law made effective by the Oregon Legislature July 19, 2021 and resulted in the creation of ORS 476.390 through 476.398.

### SECTION 301 GENERAL

**301.1 Scope.** The provisions of this chapter establish general requirements statewide for all *structures* and *other human development* on lands in the *wildland-urban interface* that are designated with a *hazard rating* of high, as identified on the comprehensive statewide *map* facilitated by the Oregon Department of Forestry, and in accordance with ORS 476.392.

#### Exceptions:

1. Vineyards, crops, and other cultivated vegetation that are irrigated and maintained, or non-irrigated but maintained, throughout the year.
2. *Structures* and *other human development* exempted under ORS 455.315.

ORS 455.315 is not a part of this code but is reprinted or paraphrased here for the reader's convenience:

ORS 455.315 provides for the exemption of the application of a state structural specialty code to agricultural buildings such as structures used for storage of farm machinery, crops, forest products, or used as equine facilities.

**301.1.1 Accessory dwelling units.** *Accessory dwelling units* on lands in the *wildland-urban interface* that are designated with a *hazard rating* of high shall be in conformance with this section. *Accessory dwelling units* not identified on the comprehensive statewide *map* must comply with any applicable local requirements for defensible space established by a local government pursuant to ORS 476.392.

**301.2 Intent.** The intent of this chapter is to establish minimum requirements to mitigate the risk to life and property from *wildland* fire exposures, exposures from adjacent *structures* and *other human development*, and to prevent *structure* fires from spreading to *wildland fuels*.

### SECTION 302 DEFENSIBLE SPACE REQUIREMENTS

**302.1 Objective.** Provisions of this section are intended to modify the fuel load in areas adjacent to *structures* and *other human development* to create a *defensible space*.

**302.2 Fuel modification.** *Structures* and *other human development* located in areas designated as high hazard in accordance with OAR 629-044-1020 shall comply with the *fuel modification* distances contained in Table 302.2. Distances specified in Table 302.2 shall be measured on a horizontal plane from the perimeter or projection of the *structure* and *other human development* as shown in Figure 302.2.

OAR 629-044-1020 is not a part of this code but is reprinted or paraphrased here for the reader's convenience:

OAR 629-044-1020 defines *wildfire risk* classifications by a range of wildfire hazard values that illustrate likely wildfire behavior.

**302.3 Responsible party.** Persons owning, leasing, controlling, operating or maintaining *structures* and *other human development* requiring defensible space are responsible for modifying or removing *nonfire-resistant vegetation* on the property owned, leased or controlled by said person.

**302.4 Trees.** Trees are allowed within the defensible space provided they are in accordance with Sections 302.4.1 and 302.4.2

**302.4.1 Tree spacing.** Single trees, or *approved* groups of trees considered as a single crown, shall comply with at least one of the following:

1. Trees with *ladder fuels* removed in accordance with Section 302.4.2 shall have the horizontal distance between crowns of adjacent trees, structures and other human development, outlets of chimneys, and overhead electrical facilities be not less than 10 feet (3048 mm). See Fig. 302.4.1(1)
2. Trees pruned to remove *ladder fuels* a minimum of 15 feet (4572 mm) above the ground shall be maintained a minimum of 10 feet (3048 mm) above the surface of a roof and 10 feet from overhead electrical facilities and outlets of chimneys. See Fig. 302.4.1(2).

**302.4.2 Ladder fuel.** Trees 18 feet or taller, the *tree crowns* within the *defensible space* shall be pruned to remove limbs located less than 6 feet (1829 mm) above the ground surface adjacent to the trees. Trees less than 18 feet shall be pruned to remove limbs equal to no more than 1/3 the trees height. To protect tree health, no more than 1/2 of the live crown shall be required to be removed at one time.

**302.4.2.1 Deadwood.** Deadwood and litter shall be regularly removed from within trees and on the ground around trees.

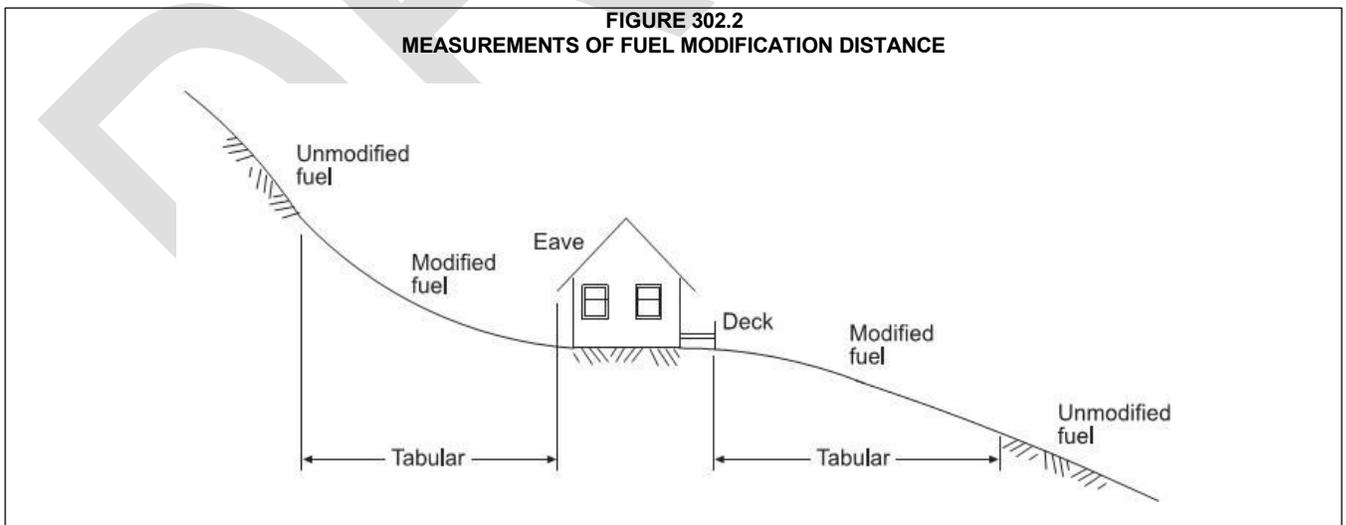
**302.5 Ground cover.** Where *vegetative fuels*, *fire-resistant vegetation*, or cultivated ground cover, such as green grass, ivy, succulents or similar plants are used as ground cover, they are allowed to be within the designated *defensible space*, provided that they do not form a means of transmitting fire from the native growth to any *structure* or *other human development*.

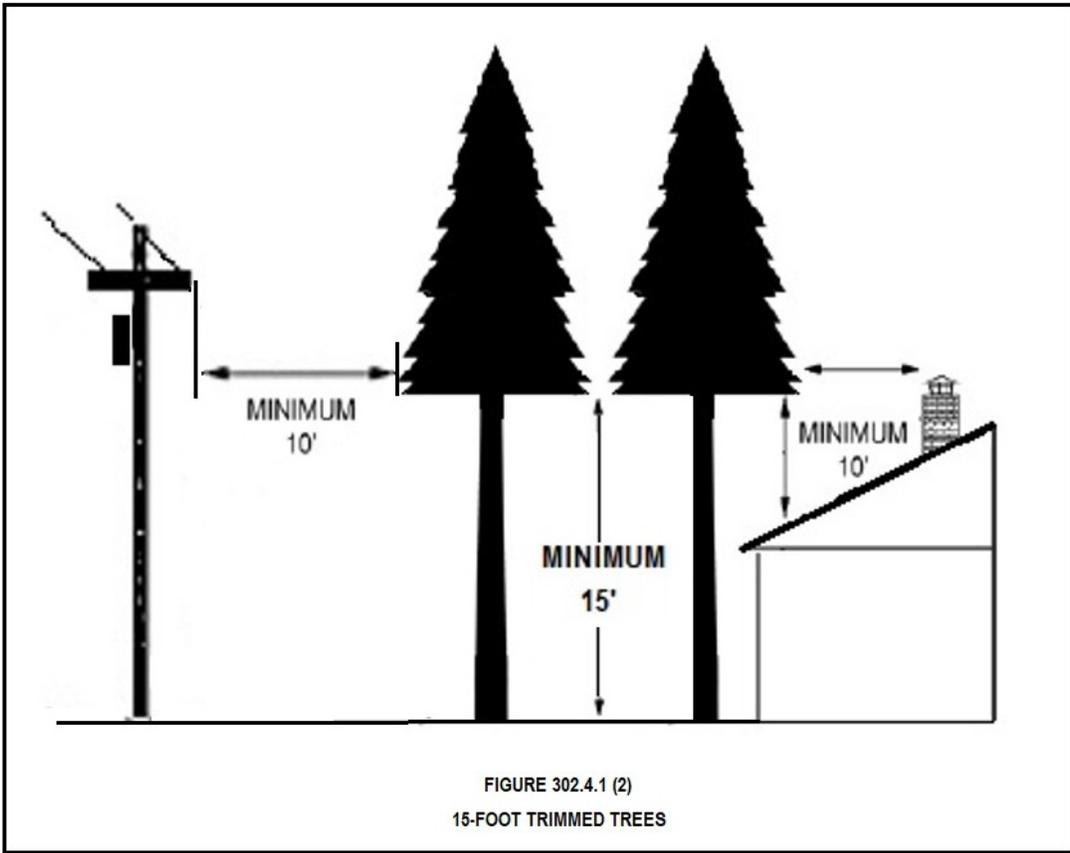
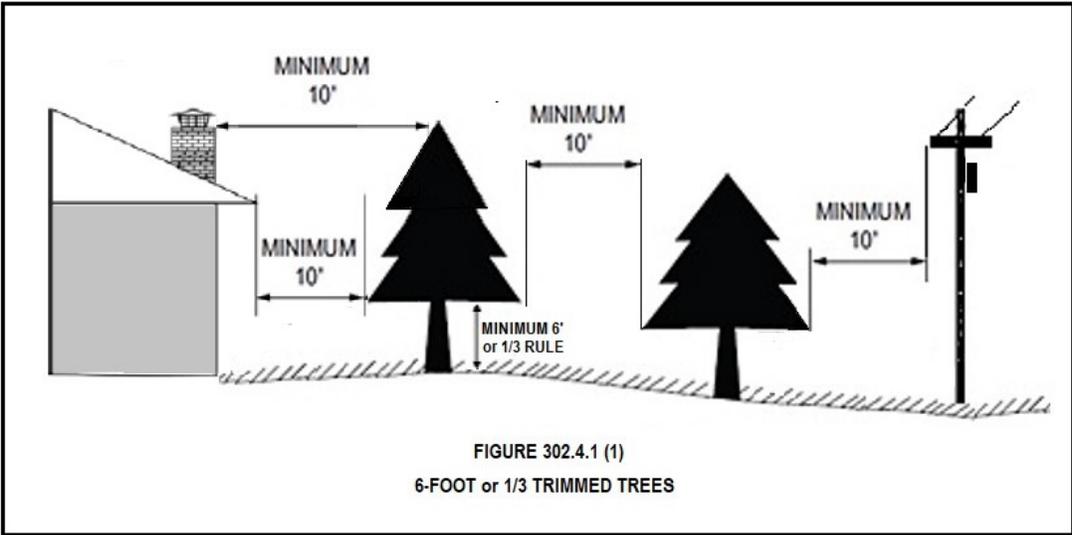
**TABLE 302.2  
REQUIRED DEFENSIBLE SPACE**

WILDLAND-URBAN INTERFACE AREA	FUEL MODIFICATION DISTANCE (feet)
High Hazard	50

For SI: 1 foot = 304.8 mm.

**FIGURE 302.2  
MEASUREMENTS OF FUEL MODIFICATION DISTANCE**





## CHAPTER 4 MAINTENANCE OF DEFENSIBLE SPACE

**User note:**

*About this chapter:* Chapter 4 provides the maintenance provisions of the Defensible Space requirements in Chapter 3 and may be cited for enforcement purposes.

### SECTION 401 GENERAL

**401.1 Scope.** The provisions of this chapter establish the general requirements statewide for maintenance of defensible space on all lands in the *wildland-urban interface* that are designated as high hazard, as identified on the comprehensive statewide map facilitated by the Oregon Department of Forestry.

**401.2 Intent.** The intent of this chapter is to establish the minimum maintenance requirements required in Chapter 3.

### SECTION 402 MAINTENANCE REQUIREMENTS

**402.1 General.** Defensible space required by Chapter 3 shall be maintained in accordance with this chapter. In addition to citing a code specified herein, compliance notices shall also include a plain statement of the facts in consideration of Chapter 3 and in accordance with Section 104.3.

**402.2 Modified area.** Nonfire-resistant vegetation or growth shall be kept clear of *structures* and *other human development* in accordance with Chapter 3, in such a manner as to provide a clear area for fire suppression operations.

**402.3 Responsibility.** Persons owning, leasing, controlling, operating or maintaining *structures* and *other human development* are responsible for maintenance of *defensible spaces*. Maintenance of the *defensible space* shall include modifying or removing nonfire-resistant vegetation and keeping leaves, needles and other dead vegetative material regularly removed from roofs of *structures* and *other human development*.

**402.4 Trees.** Trees shall be maintained in accordance with Section 302.4.

**402.5 Ground cover.** Ground cover shall be maintained in accordance with Section 302.5.

## APPENDIX F

# CHARACTERISTICS OF FIRE-RESISTANT VEGETATION

*This appendix is for information purposes and is not intended for adoption.*

### User note:

*About this appendix: Appendix F is an informational appendix provided for the convenience of the code user. It is simply a compilation of the eight characteristics of fire-resistant vegetation that can be used effectively within wildland-urban interface areas to reduce the likelihood of fire spread through vegetation.*

## SECTION F101 GENERAL

**F101.1 Characteristics of fire-resistant vegetation.** All plants will burn under extreme fire weather conditions such as drought. However, plants burn at different intensities and rates of consumption. Fire-resistant plants burn at a relatively low intensity, slow rates of spread and with short flame lengths. The following are characteristics of fire-resistant vegetation:

1. Growth with little or no accumulation of dead vegetation (either on the ground or standing upright).
2. Nonresinous plants (willow, poplar or tulip trees).
3. Low volume of total vegetation (for example, a grass area as opposed to a forest or shrub-covered land).
4. Plants with high live fuel moisture (plants that contain a large amount of water in comparison to their dry weight).
5. Drought-tolerant plants (deeply rooted plants with thick, heavy leaves).
6. Stands without ladder fuels (plants without small, fine branches and limbs between the ground and the canopy of overtopping shrubs and trees).
7. Plants requiring little maintenance (slow-growing plants that, when maintained, require little care).
8. Plants with woody stems and branches that require prolonged heating to ignite.

## **CHAPTER 92: FIRE PROTECTION AND REGULATION**

### Section

#### General Provisions

92.01 Adoption of Oregon Fire Code; enforcement; effective date

#### Burning Regulations

92.15 Definitions

92.16 General regulations and prohibitions

92.17 Open burning allowed conditionally

92.18 Burning permits

92.19 Revocation of permits

92.20 Right of entry

92.21 Responsibility; penalties; enforcement

92.22 Abatement and assessment of costs

92.23 Discontinuance

92.24 Use of wood stoves restricted

92.25 Explosives storage

92.26 Liquified gas storage

92.27 Traffic and water control; reporting

92.28 Modification

92.29 Appeals

#### Public Fire and Safety Surcharge

92.40 Purpose and intent

92.41 Definitions

92.42 Imposition of fire protection surcharge

92.43 Dedication of funds

92.44 Collection

92.45 Program administration

92.46 Appeal process

## 92.47 Enforcement

### GENERAL PROVISIONS

#### § 92.01 ADOPTION OF OREGON FIRE CODE; ENFORCEMENT; EFFECTIVE DATE.

(A) The 2010 Oregon Fire Code promulgated by the Oregon State Fire Marshal is hereby adopted as if fully set forth herein.

(B) The City of Union Fire Chief, or the Fire Chief's designee, shall be the "Fire Code Official" referred to in the Oregon Fire Code. However, the provisions of this Chapter 92, and all codes, laws, and regulations adopted by reference herein, may be enforced by the Union City Council or its designee, any peace officer or constable hired by the city, any member of any police agency with which the city contracts for police services, the Union Fire Chief or his or her designee, and any other city official given general ordinance enforcement duties by the city.

(C) Because the provisions of this chapter are necessary to protect the health and safety of the citizens of Union, this chapter shall take effect immediately following its adoption by the City Council.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

### BURNING REGULATIONS

#### § 92.15 DEFINITIONS.

The definitions set forth in the Oregon Fire Code shall apply to the application and enforcement of the Fire Code by the City of Union. The following definitions shall apply to the remainder of this chapter.

**BURNING CONTAINER.** An enclosed container of non-combustible material such as ferrous metal or masonry and screened with metal wire mesh. The container shall be constructed so as to entirely contain the allowable material and to prevent any burning materials from leaving the container while burning.

**COOKING FIRE.** An open burning fire used exclusively for cooking food, excluding gas or charcoal fired cooking grill fires.

**NUISANCE BURNING.** Any burning that is in violation of this chapter, of any ordinance of the city, of any provision of any code, law, or regulation adopted by reference within this chapter, of any lawful limitation imposed by the Union City Council or the Union Fire Chief or his or her designee, or of any applicable state or federal statute or regulation; also, any burning that creates a public or private nuisance.

**OPEN BURNING.** All burning conducted outside the limits of an enclosed building such as a residence, shop, store, garage, and the like.

**RESPONSIBLE PERSON.** An adult person who is reasonably capable of extinguishing an authorized fire or an accidental secondary fire.

**SAFETY AREA.** An area free of combustible materials surrounding the burning activity of sufficient size so as to prevent the kindling of any secondary fire.

**SAFETY EQUIPMENT.** Water, either in containers or by garden hose, shovels, rakes or any other items that are required for extinguishing of a permitted fire.

**UNCONFINED BURNING PILE.** A pile of combustible vegetative debris suitable for burning.

**VEGETATIVE DEBRIS.** Yard debris which includes dry limbs, twigs, trees, shrubbery, and leaves, but excludes any such materials that are wet, grass clippings, or green, or other slow burning vegetative matter.

**WIRE MESH or SCREENING.** A ferrous metal wire mesh or screen with openings small enough to entirely confine the burning material within the burning container. Openings within the screen or mesh shall not exceed 3/4 of an inch.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 92.16 GENERAL REGULATIONS AND PROHIBITIONS.

(A) Nuisance burning is prohibited. No person shall set or conduct a nuisance fire.

(B) Open burning is prohibited within the city except as provided in § 92.17 of this chapter.

(C) This chapter shall not apply to controlled burning conducted by the Union Fire Department.

(D) All authorized burning shall be done within the confines of the owner's or occupant's property, and in no event shall any burning be done in the city streets or on the city aprons or rights-of-way.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 10.99

#### § 92.17 OPEN BURNING ALLOWED CONDITIONALLY.

(A) Recreational fires.

(1) The following types of fires are allowed recreational fires and may be conducted without a permit:

(a) Cooking fires as defined in this chapter;

(b) Fires in fire pits associated with supervised campsites with spark arresters composed of wire mesh or screening as defined herein, in outdoor fireplaces with chimneys and spark arresters composed of wire mesh or screening as defined herein, and in patio fireplaces with spark arresters composed of wire mesh or screening as defined herein, provided that only clean dry wood may be used in such fires; and

(c) Fires in propane, natural gas or briquette barbeques that meet applicable federal and state requirements.

(2) All recreational fires must be completely extinguished before being left unattended.

(3) There are no restrictions on hours for recreational fires unless ordered by the Union City Council or the Union Fire Chief or his or her designee.

(4) Recreational burning shall be conducted only by a responsible person or a person directly supervised by a responsible person.

(5) All recreational fires shall be in open and well ventilated places and at a safe distance from structures, trees, and combustible material.

(B) Unconfined burning pile fires. Unconfined burning pile fires may be conducted under the following conditions:

(1) Only vegetative debris, as defined in this chapter, may be burned. No other material, including but not limited to, garbage, tires, paper, cardboard, lumber, furniture, plastics, magazines, and diapers may be burned;

(2) A responsible person must first obtain a burn permit for the fire;

(3) No pile may exceed two feet in height and three feet in diameter except when first inspected and approved by the Fire Chief or his or her designee;

(4) There must be a responsible person present at all times;

(5) The person must comply with all applicable federal and state statutes and regulations on open burning;

(6) The burning shall be limited to the hours of from dawn to dusk and shall be completely extinguished by dark;

(7) All burn piles and cooking fires shall have a 25-foot safety area; and

(8) All burn piles shall be constantly supervised, and reasonably sufficient safety equipment, such as water and shovels, for use in extinguishing the fire or any accidental secondary fire, shall be readily available during burning.

(C) Burning container fires. Burning container fires may be conducted under the following conditions:

(1) Only clean and not colored paper, dry limbs or twigs may be burned. No other material, including but not limited to, garbage, tires, colored paper, cardboard, lumber, furniture, plastics, magazines, and diapers may be burned;

(2) There shall be a 15-foot safety area around the container, and the person shall make adequate provisions for fire control;

(3) The person must first obtain a burn permit;

(4) Prior to the issuance of any permit, the burning container shall be approved by the Fire Chief and shall consist of non-combustible material such as an open top barrel or masonry structure, covered with a well-fitting, heavy gauge screen not exceeding three-quarter inch mesh;

(5) The person must comply with all applicable federal and state statutes and regulations on open burning; and

(6) The burning shall be limited to the hours from dawn to dark unless otherwise specified by resolution of the Union City Council, or by order of the Union Fire Chief or his or her designee, and the fire shall be completely extinguished outside of the applicable time limits.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 92.18 BURNING PERMITS.

(A) No person shall set or conduct any fire for which a permit is required by the terms of this chapter without first obtaining a permit from the Union City Hall and without conducting the fire as required by the terms of this chapter.

(B) Permits will be issued on a calendar year basis for approved burning containers.

(C) The cost of the permit shall be set by resolution of the City Council.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 10.99

#### § 92.19 REVOCATION OF PERMITS.

(A) Any burning permit may be revoked at any time if:

(1) The permit holder is, or would be, in violation of any applicable provision of this chapter or of any adopted code; or

(2) The burning would, in the opinion of the Fire Chief, be a hazard to another person's health or otherwise be unsafe.

(B) The revocation of a permit as well as the suspension of the right to obtain a burning permit may be imposed as a penalty for a violation of this chapter in addition to any other penalty that may be imposed for such violation.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 92.20 RIGHT OF ENTRY.

Upon compliance with all applicable procedures, all officials authorized to enforce this chapter or to otherwise carry out its terms, and all officials with duties hereunder that require entering upon private property in order to carry out such duties, are authorized to enter private property at all reasonable times in furtherance of the official's duties.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

§ 92.21 RESPONSIBILITY; PENALTIES; ENFORCEMENT.

(A) The responsible person in charge of a fire, as well as any person conducting the fire, shall be responsible for violations of this chapter and shall be liable for all damages, penalties, and fines resulting from burning in violation of this chapter.

(B) A person violating a provision of this chapter shall, upon conviction, be guilty of a violation which shall be punishable by a fine set by the Union City Council by resolution or ordinance. Such a person shall also be subject to any civil remedies available to the city as set forth in this chapter or as otherwise provided for by law.

(C) All persons authorized to enforce the terms of this chapter shall be entitled to issue citations for any violation.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

§ 92.22 ABATEMENT AND ASSESSMENT OF COSTS.

(A) The Union Fire Department is hereby authorized to respond to and suppress a fire burning in violation of this chapter or to a secondary fire caused by such a fire. If the Union Fire Department reasonably responds to or suppresses any such fire, the person or persons responsible for the violation, as set forth in § 92.21, shall pay the city for all costs associated with the response and/or suppression efforts. Such persons shall be jointly and severally liable.

(B) When the city responds to or suppresses a fire set or conducted in violation of this chapter, or to a secondary fire caused by such a fire, it may do so using any lawful means, and the city or its agents may enter upon the subject property and may extinguish any fire or secondary fire. The city may also seek such judicial process as it deems necessary.

(C) No person shall obstruct, impede, or interfere with the city or its agents in the implementation of this chapter, or with any person retained or hired by the city to effect fire response or suppression efforts, or with any person who is a person in charge of the property performing any acts necessary to correct a violation.

(D) Assessment of costs.

(1) The city shall maintain a record of all expenses incurred in responding to a violation and/or suppressing a fire. The record shall include, but is not necessarily limited to, charges for labor and personal services, equipment rentals, the costs of contractors, materials expense, fuel costs, reasonable charge for use of city-owned equipment, the costs of transportation, and an additional charge of 15% of the amount of the total cost for administrative overhead.

(2) A notice of assessment of the costs shall be sent by certified mail with return receipt to the responsible party or parties. The notice shall contain:

(a) The total costs of response and/or suppression, including the administrative overhead;

(b) A statement that the costs are presently due and owing and are the personal obligation of the person or persons responsible pursuant to this chapter; and

(c) A statement that if the person or persons object to the costs, he or she may file a notice of objection with the City within 15 days of the date of the notice.

(3) Objections to the proposed assessment shall be heard and determined by the City Council, or by the City Council's designee, without the right to further administrative review.

(4) If the costs are not paid within 60 days from the date of the issuance of the notice of costs, or if an objection was timely filed, from the date of the city's determination of costs the total amount due shall accrue interest at the rate of 9% per annum. The city is hereby authorized to enforce this obligation by any legal means including the filing of a legal action.

(5) Any person aggrieved by a final decision of the City Council, or the Council's designee, may appeal to the Circuit Court of the State of Oregon for Union County for judicial review of the City Council's decision. The appeal shall be filed within 30 days from the effective date of the decision. The failure of any person to file a timely request for judicial review in accordance with the provisions of this section shall constitute a waiver of the right to judicial review, and the decision of the City Council shall then be final. There shall be no right to judicial review if the person appealing did not timely seek a hearing before the City Council, or the Council's designee, and then thereafter pursue to conclusion the hearing.

(6) On judicial review to Circuit Court, all rules governing the form of pleadings, procedures, the taking of evidence, and such other matters as may affect the proceeding shall be governed by the Oregon Rules of Civil Procedure, the Oregon Evidence Code, and such other rules and laws applicable to proceedings in circuit court and/or as directed by the judge presiding over the proceedings.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 92.23 DISCONTINUANCE.

Notwithstanding anything to the contrary in this chapter, the Union City Council may by resolution, or the Union Fire Chief may by order, prohibit or otherwise limit any or all open burning within the city if the City Council or the Fire Chief in their respective discretion determines that smoke emissions may be offensive to occupants of surrounding properties or that open burning may be a hazardous condition under the prevailing circumstances.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 92.24 USE OF WOOD STOVES RESTRICTED.

Wood stoves, fireplaces or outdoor fireplaces must be used for heating and cooking purposes only and may not be used to burn household garbage, tires, furniture, colored paper, cardboard, plastics, leaves, green material or other yard or vegetative debris.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 10.99

#### § 92.25 EXPLOSIVES STORAGE.

No explosives or blasting agents shall be stored within the Union city limits.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 10.99

#### § 92.26 LIQUIFIED GAS STORAGE.

The bulk storage of liquefied petroleum gas is prohibited within the Union city limits, provided, however, that liquefied petroleum gas in amounts of 1,200 gallons or less used for domestic or commercial purposes may be kept within the city limits if kept within containers meeting the requirements of and installed in conformance with the Oregon State Fire Code and all other applicable laws, codes and regulations.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 10.99

#### § 92.27 TRAFFIC AND WATER CONTROL; REPORTING.

(A) It shall be unlawful to drive a vehicle over any fire hose line used by the Fire Department unless the hose line is protected by an approved bridge.

(B) It shall be unlawful at all times to park any vehicle in front of any hotel or motel entrance or exit, within ten feet of any fire hydrant, or in front of any theater entrance or exit during theater hours.

(C) During periods of water use restrictions imposed by the City Council, it shall be unlawful to fail or refuse to turn off and keep turned off all water faucets and fixtures connected with the water system of the city upon the sounding of the fire alarm siren-horn.

(D) It shall be the duty of any person owning, occupying or in control of any building, other than a private dwelling, upon learning that an accidental fire of any kind or source has occurred or is occurring therein, to report the fire immediately to the Fire Department; and any person who fails to so act shall be deemed guilty of a violation hereof.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 10.99

#### § 92.28 MODIFICATION.

(A) The Union Fire Chief shall have the authority to modify the application of § 92.17 upon application in writing by the owner or occupant of any property affected hereby if it is shown that there are difficulties unique to the applicant's property that make carrying out the strict letter of this chapter impractical or inequitable, providing that the spirit of this chapter shall be observed, public safety secured, and substantial justice done.

(B) The particulars of the modification, when allowed, shall be reduced to writing by the Fire Chief and shall be entered upon the records of the Department; a signed copy shall be furnished to the applicant. The modification shall be effective only upon the delivery of the copy of the applicant, and no modification shall apply to, diminish, or mitigate a violation that occurred prior to the issuance of the Fire Chief's modification.

(C) No person has a right to a modification under this § 92.28. An application shall be determined by the Fire Chief in his or her sole discretion, and the decision is not appealable.

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 92.29 APPEALS.

Whenever any city official with the authority to issue a permit pursuant to this chapter disapproves an application or refuse to grant a permit applied for, the applicant may appeal the decision in writing addressed to the City Recorder. The appeal shall be presented by the appellant to the City Recorder within 30 days from the date of the decision appealed from. The appeal shall be determined by a committee composed of the Mayor, Chief of the Fire Department, and the Fire Commissioner. Any further appeal shall be to the Circuit Court of the State of Oregon for Union County pursuant to the procedures set forth in § 92.22(D)(5) and (6).

(Ord. 543, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### PUBLIC FIRE AND SAFETY SURCHARGE

#### § 92.40 PURPOSE AND INTENT.

(A) The principal purpose of this subchapter is to safeguard, facilitate and encourage the health, safety, and welfare of the citizens and businesses of the city. The City Council also finds that a continuous and consistent fire protection and emergency medical response program provides a multitude of economic and social benefits to the public, including, but not limited to:

- (1) Reduction in the incidence of fire;
- (2) Improved response to fire and other disaster situations;
- (3) Enhanced protection of property;
- (4) Promotion of business and industry;
- (5) Promotion of community spirit and growth; and
- (6) Promotion of the health and safety of city residents.

(B) It is the intent of this subchapter to provide a funding mechanism to help pay for the benefits conferred on city residents and businesses by the provision of an adequately funded Fire Department for fire safety and emergency medical response, and further to help bring the Fire Department up to acceptable service levels and keep it there.

(C) The structure of this subchapter is intended to be a public fire and safety surcharge for Fire Department service within the city limits. In the event that the collected surcharge revenues are insufficient to properly operate the Fire Department, additional funding may be allocated by the City Council from other non-dedicated city funds provided, however,

the City Council may direct the reimbursement to such other non-dedicated city funds if additional public fire and safety surcharge revenues are collected.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 92.41 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DEVELOPED PROPERTY.** A parcel or portion of real property on which a dwelling, structure, or building exists.

**NON-RESIDENTIAL UNIT.** Developed property that is not primarily for personal domestic accommodation, such as a business or commercial enterprise. A non-residential structure which provides facilities for one or more businesses including, but not limited to, permanent provisions for access to the public, shall have each distinct business facility considered as a separate non-residential unit. Motels and hotels shall be considered NON-RESIDENTIAL UNITS for these purposes.

**PERSON.** A natural person, unincorporated association, tenancy in common, partnership, corporation, limited liability company, cooperative, trust, any governmental agency, including the State of Oregon but excluding the City of Union, and other entity in law or in fact.

**RESIDENTIAL UNIT.** Developed property with a residential structure which provides complete living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, and sanitation. A home business in a residential zone will be regarded only as a residential unit, not as a non-residential unit. Multi-family residential property consisting of two or more dwelling units, condominium units or individual mobile home units shall have each unit considered as a separate residential unit. A lot or parcel which contains a non-residential building or structure used primarily for personal purposes, not primarily for business or commercial purposes, shall be considered a RESIDENTIAL UNIT.

**RESPONSIBLE PARTY.** The person owing the public fire and safety surcharge.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 92.42 IMPOSITION OF FIRE PROTECTION SURCHARGE.

(A) There is hereby created a public fire and safety surcharge to accomplish the above-stated purposes.

(B) The public fire and safety surcharge is hereby established and shall be assessed to each residential unit and to each non-residential unit within the city limits in accordance with a fee structure set forth by the city council by resolution.

(C) Except as the fees may be reduced or eliminated under § 92.46, the obligation to pay a public fire and safety surcharge arises when a responsible party uses or otherwise

benefits from the services of the Fire Department. It is presumed that such services are used and that a benefit arises whenever the subject real property is developed property.

(D) Undeveloped properties shall not be charged a public fire and safety surcharge.

(E) Annually, as part of the budget review process, a determination shall be made as to whether a change in the surcharge would be appropriate or not.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 92.43 DEDICATION OF FUNDS.

All public fire and safety surcharge revenues derived shall be distinctly and clearly noted in both the revenue and expenditure sections of the city budget and shall be used for the improvement, maintenance, administration and operation of the fire department and costs incidental thereto and for no other purpose in order to help provide for a safe, well-functioning fire protection and emergency medical response program. The surcharges paid and collected by virtue of this chapter shall not be used for general or other governmental or proprietary purposes of the city.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 92.44 COLLECTION.

(A) Public fire and safety surcharges shall be collected monthly. Statements for the surcharge shall be included as an additional item on the city monthly utility billing wherever feasible, unless otherwise specified below.

(B) Unless another person has agreed in writing to pay and a copy of that writing is filed with the city, the person normally responsible for paying the city's water and sewer utility charges is responsible for paying the public fire and safety surcharge.

(C) In the event a developed property is not served by a domestic water meter or sewer hook-up, or if water and sewer service is discontinued, the public fire and safety surcharge shall be paid by the person or persons having the right to occupy or use the property.

(D) A request for water or sewer service by a person, a person's request for the issuance of a building permit, or a person's occupancy of a building will automatically cause the person to become the person responsible to pay the surcharge if that person has not already been the responsible party.

(E) There shall be no public fire and safety surcharge for undeveloped property until such time as building permits are issued for that property.

(F) The imposition of surcharges shall be calculated on the basis of the number of residential or non-residential units supported, without regard to the number of water meters serving the property.

(G) Late charges may be assessed in an amount determined by the city council by resolution for any public fire and safety surcharges that become thirty days past due.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

§ 92.45 PROGRAM ADMINISTRATION.

(A) Except as provided below, the City Administrator shall be responsible for the administration of this subchapter and for the collection of fees hereunder.

(B) The City Council shall be responsible for designating three members to administer the appeal process under § 92.46. The body shall be known as the Public Fire and Safety Surcharge Appeal Committee.

(C) The City Administrator is authorized and directed to review the operation of this subchapter and, where appropriate, to recommend supplemental provisions thereto in the form of administrative procedures for adoption by the city council by resolution. Such procedures, if adopted by the council, shall be given full force and effect, unless clearly inconsistent with this subchapter.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

§ 92.46 APPEAL PROCESS.

(A) A public fire and safety surcharge may be appealed for change or relief in accordance with the following criteria:

(1) Any responsible party who disputes any interpretation given by the city as to the classification of property may appeal such interpretation.

(2) A person responsible to pay the public fire and safety surcharge may seek a reduction or elimination of the surcharge by demonstrating to the Public Fire and Safety Surcharge Appeal Committee that the services of the Fire Department cannot be beneficially used.

(3) If the appeal is successful, relief will be granted as appropriate. In such instances, reimbursement will be given for any overpayment, retroactive to the filing date of the appeal. Factors to be taken into consideration include, but are not limited to: availability of more accurate information; equity relative to billing classifications assigned to other developments of a similar nature; changed circumstances; and situations uniquely affecting the party filing the appeal.

(4) Any responsible party may claim a financial hardship. The Public Fire and Safety Surcharge Appeal Committee is authorized the discretion to determine financial hardships on a case-by-case situation or to establish guidelines for making such a determination. These guidelines shall be approved by the City Council by resolution before going into effect.

(B) Application for appeal shall state the reason for appeal, with supporting documentation to justify the requested change or relief.

(C) The Public Fire and Safety Surcharge Appeal Committee shall be responsible for evaluating appeals. If the committee decides information provided through the appeal

process justifies a change, the committee may authorize this change (up or down) retroactive to the date the appeal was filed.

(D) The Public Fire Safe Surcharge Appeal Committee shall make all reasonable attempts to resolve appeals utilizing available existing information, including supporting documentation filed with the appeal, within thirty days of the date the appeal was filed. If, however, more detailed site-specific information is necessary, the committee may request the applicant to provide such information.

(E) In any event, the Public Fire and Safety Surcharge Appeal Committee shall file a report within 90 days of the date the appeal was filed explaining the disposition of the appeal, along with the rationale and supporting documentation for the decision reached.

(F) Decisions of the Public Fire and Safety Surcharge Appeal Committee may be further appealed to the City Council, and shall be heard at a public meeting. Upon such further appeal, the City Council shall at its first regular meeting thereafter set a hearing date. The matter shall be heard solely upon the record. In no event shall a final decision be made later than ninety days after the matter was formally appealed to the City Council.

(G) The filing fee for an appeal shall be \$50. An additional \$50 fee is required for further appeal to the City Council. These fees are fully refundable should the appellant adequately justify and secure the requested change or relief.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 92.47 ENFORCEMENT.

(A) In the event funds received from city utility billings are inadequate to satisfy in full all of the water charges, sewer charges, and public fire and safety surcharge for a responsible person, credit shall be given first to the public fire and safety surcharge, second to the sewer services charges, third to the charges for water service.

(B) Notwithstanding any provision herein to the contrary, the city may institute any necessary legal proceedings to enforce the provisions of this subchapter, including but not limited to injunctive relief and collection of charges owing. The city's enforcement rights shall be cumulative.

(Ord. 546, passed 12-8-2014; Ord. 547, passed 4-13-2015)

## **CHAPTER 95: INSPECTION WARRANTS FOR PUBLIC NUISANCES**

### Section

- 95.01 Issuance of warrants
- 95.02 Grounds for issuance of inspection warrants
- 95.03 Procedure for issuance of inspection warrant
- 95.04 Execution of inspection warrant
- 95.05 Assistance of Circuit Court

### § 95.01 ISSUANCE OF WARRANTS.

The Municipal Judge of the Municipal Court of the City of Union may, upon application of the City Administrator, acting in the course of official duties, issue an inspection warrant whenever an inspection or investigation of any property, real or personal, is required or authorized by any provision of any regulation of the city or of any applicable state or federal regulation. The term "regulation" shall include legislative and administrative enactments as well as the Charter of the City of Union. The inspection warrant is an order authorizing the inspection at a designated place for the purposes set forth in the authorizing regulation.

(Ord. 539, passed 9-8-2014; Ord. 547, passed 4-13-2015)

### § 95.02 GROUNDS FOR ISSUANCE OF INSPECTION WARRANTS.

(A) An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the regulation requiring or authorizing the inspection or investigation, the place to be inspected or investigated, and the purposes for which the investigation or inspection is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and not given, that the property is vacant, or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without an inspection warrant.

(B) Cause shall be deemed to exist if one or more of the following is shown by the affidavit:

(1) There is probable cause to believe that a condition of or on the property is in violation of any applicable regulation with respect to the particular place for which an inspection or investigation is sought;

(2) An investigation or inspection is reasonably believed to be necessary in order to determine or verify the cause of an occurrence such as a structure collapse, fire, or injury to person or property, reasonably believed to be a result of a condition of property regulated by the authorizing regulation; or

(3) In a prior proceeding the property has been found to be in violation of the applicable regulation or to contain a public nuisance, and the current inspection or investigation is for purposes of follow-up to assure that all violations and nuisances have been corrected.

(Ord. 539, passed 9-8-2014; Ord. 547, passed 4-13-2015)

#### § 95.03 PROCEDURE FOR ISSUANCE OF INSPECTION WARRANT.

(A) Before issuing an inspection warrant, the Municipal Judge may examine under oath the person signing the supporting affidavit or affidavits, and any other witness, and shall be satisfied of the existence of grounds for granting such application.

(B) If the Municipal Judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the application are satisfied, the Judge shall issue the warrant, particularly describing the name and title of the person or persons authorized to execute the warrant, the place to be entered and the purpose for the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 o'clock a.m. and 6:00 o'clock p.m., or where the Judge has specifically determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night. The warrant may give authorization for the indicated person or persons to re-enter on as many days reasonably required to complete the inspection.

(Ord. 539, passed 9-8-2014; Ord. 547, passed 4-13-2015)

#### § 95.04 EXECUTION OF INSPECTION WARRANT.

(A) Except as provided in division (B) of this section, in executing an inspection warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to identify him or herself, and to state his or her authority and purpose to an occupant or person in possession of the place to be inspected or investigated designated in the warrant and show the occupant or person in possession of the place the warrant or a copy thereof upon request.

(B) If the designated place is at the time the warrant is executed unoccupied or not in the possession of any person or at the time reasonably is believed to be in such condition, in executing an inspection warrant, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as is described in division (A) of this section, but may promptly enter.

(C) The person or persons authorized to enter may be accompanied by a peace officer to assist in the execution of the inspection warrant.

(D) An inspection warrant must be executed and returned to the Municipal Judge by whom it was issued within fourteen calendar days from its date, unless such Judge before the expiration of such time, by endorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant is void, however, upon

the initiation of a new application may be again issued if the terms of this ordinance are otherwise satisfied.

(Ord. 539, passed 9-8-2014; Ord. 547, passed 4-13-2015)

§ 95.05 ASSISTANCE OF CIRCUIT COURT.

If for any reason the Municipal Court Judge of the City of Union is unable to exercise the authority granted by this chapter, a judge in the Circuit Court of the State of Oregon for Union County shall have all the powers and authority granted the Municipal Court Judge by this chapter.

(Ord. 539, passed 9-8-2014; Ord. 547, passed 4-13-2015)

## **CHAPTER 97: ABATEMENT OF DANGEROUS AND NUISANCE BUILDINGS**

### Section

- 97.01 General
- 97.02 Abatement of dangerous buildings
- 97.03 Violations
- 97.04 Inspection of work
- 97.05 Dangerous and nuisance buildings defined
- 97.06 Nuisance declared
- 97.07 Notices and orders of Building official
- 97.08 Appeal
- 97.09 Procedures for conduct of hearing appeals
- 97.10 Judicial review
- 97.11 Enforcement of the order of the Building official or City Council
- 97.12 Performance of work, repair, or demolition
- 97.13 Repair and Demolition Fund
- 97.14 Recovery of cost of repair or demolition
- 97.15 Joint and several responsibility
- 97.99 Penalty

### § 97.01 GENERAL.

(A) Administration. All references to the “building official” shall mean reference to any and all designees of the City Council for the purposes of the administration of this chapter.

(B) Inspections. The building official is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter.

(C) Right of entry. When it is necessary to make an inspection to enforce the provisions of this chapter, or when the building official or the building official’s authorized representative has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this chapter, the building official and/or the building official’s authorized representatives may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this chapter, provided that if such building or premises be occupied, credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the building

official and/or the building official's authorized representatives, shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

(D) AUTHORIZED REPRESENTATIVE as used herein shall include the building official and their authorized inspection personnel. The City Council may delegate its authority under this chapter to any City of Union official or agent except for the duties of the City Council set forth in § 97.09(H)(5) through (7) and § 97.14(E).

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.02 ABATEMENT OF DANGEROUS BUILDINGS.

All buildings or portions thereof which are determined after inspection by the building official to be in violation of this chapter are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in this chapter.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.03 VIOLATIONS.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this chapter.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 97.99

#### § 97.04 INSPECTION OF WORK.

All buildings or structures within the scope of this chapter and all construction or work for which a permit is required shall be subject to inspection by the building official in accordance with and in the manner provided by this chapter.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.05 DANGEROUS AND NUISANCE BUILDINGS DEFINED.

For the purpose of this chapter, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a DANGEROUS OR NUISANCE BUILDING:

(A) When any portion or member of the structure is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(B) Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

(C) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(D) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(E) Whenever the building or structure has become so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become an attractive nuisance to children.

(F) Whenever a building or structure, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, the presence of chemicals or chemical residue or otherwise, is determined by the building official to be unsanitary, unsafe, or unfit for human habitation or use, or in such a condition that it is likely to cause injury, sickness or disease, or to present the possibility of collapse.

(G) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

(H) Whenever for lack of proper repairs or maintenance, or because of age and dilapidated condition, or because of poorly installed electrical wiring or equipment, defective chimney, gas connection or heating apparatus, or for any other reason a building or structure is liable to cause fire, or which is situated or occupied in a manner that endangers other property or human life.

(I) Whenever any building, its contents, or its yard areas are in a filthy or unsanitary condition.

(J) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of one year so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.06 NUISANCE DECLARED.

Every building or structure found by the City Council or the Council's designee, or by the building official, to be a dangerous or nuisance building, or otherwise in violation of this chapter, is hereby declared to create a condition tending to reduce the value of private property, to promote blight, deterioration and unsightliness, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects, and to be injurious to the health, safety and general welfare of the inhabitants of the city. Therefore, the presence of any building or structure in violation of this chapter is hereby declared to constitute a public nuisance which may be abated in accordance with the provisions of this chapter.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

§ 97.07 NOTICES AND ORDERS OF BUILDING OFFICIAL.

(A) Commencement of proceedings. When the building official has inspected or caused to be inspected any building and has found and determined that such building is a dangerous or nuisance building, the building official may commence proceedings to cause the repair, vacation or demolition of the building.

(B) Notice and order. The building official shall cause a notice and order directed to the record owner of the building. The notice and order shall contain:

(1) The street address or a legal description sufficient for identification of the premises upon which the building is located.

(2) A statement that the building official has found the building to be dangerous and/or to constitute a nuisance, with a brief and concise description of the conditions found to render the building dangerous, or a nuisance, under the provisions of this chapter.

(3) A statement of the action required to be taken as determined by the building official.

(a) If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefore and the work physically commenced within such time (not to exceed sixty days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances. The notice given under this paragraph shall contain a list of the items to be repaired which constitute violations of this chapter.

(b) If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a time certain from the date of the order as determined by the building official to be reasonable. A notice given pursuant to this paragraph shall list the items that have caused the building official to determine that the building or structure must be vacated.

(c) If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed 60 days from the date of the order); that all required permits be secured therefore within sixty days from the date of the order; and that the demolition be completed within such time as the building official shall determine is reasonable. A notice given under this division shall list the aspects of the structure that the building official has determined as justifying the demolition.

(4) Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official (i) will order the building vacated and posted to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the cost thereof against the property or its owner.

(5) Statements advising (I) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to

the City Council, provided the appeal is made in writing as provided in this chapter and filed with the City Council within thirty days from the date of service of such notice and order, or if a notice to vacate is the subject of the appeal, then within ten days of service of the notice to vacate; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter, and shall also constitute a waiver of all judicial appellate rights.

(C) Service of notice and order. The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the building official or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such other person from any duty or obligation imposed by the provisions of this section.

(D) Method of service. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last tax assessment roll of the county or as known to the building official. If no address of any such person so appears or is known to the building official, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

(E) Proof of service. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons affecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the building official.

(F) Repair, vacation and demolition. The following standards shall be followed by the building official (and by the City Council if an appeal is taken) in ordering the repair or vacation of any dangerous or nuisance building or structure:

(1) Any building declared a dangerous or nuisance building for which repairs are ordered under this chapter shall be repaired in accordance with any applicable current building code or other current code applicable to the type of substandard conditions requiring repair, or the building may be demolished at the option of the building owner.

(2) If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

(G) Notice to vacate.

(1) Every notice to vacate shall in addition to being served as provided in §§ 97.07(C) and (D), be posted at or upon each exit of the building and shall be substantially the following form:

DO NOT ENTER

UNSAFE TO OCCUPY

It is a violation of City Ordinance to occupy  
this building, or to remove or deface this notice.

City of Union

By: \_\_\_\_\_

(2) Whenever such notice is posted, the building official shall include a notification thereof in the notice and order issued under § 97.07(B), reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a certificate of occupancy issued pursuant to the provisions of the applicable building code.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.08 APPEAL.

(A) Form of appeal. Any person entitled to service under § 97.07(C) may appeal from any notice, order, or action of the building official under this chapter by filing at the office of the City Council a written appeal containing:

- (1) A heading in the words: "Before the City Council of the City of Union."
- (2) A caption reading: "Appeal of \_\_\_\_\_," giving the names of all appellants participating in the appeal.
- (3) A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
- (4) A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
- (5) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
- (6) The signatures of all parties named as appellants and their official mailing addresses.

(7) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(8) The appeal shall be filed within thirty days from the date of the service of such order or action of the building official; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with § 97.07(G), such appeal shall be filed within ten days from the date of the service of the notice and order of the building official.

(B) Processing of appeal. Upon receipt of any appeal filed pursuant to this section, the building official shall present it at the next regular or special meeting of the City Council.

(C) Scheduling and noticing appeal for hearing. As soon as practicable after receiving the written appeal, the City Council shall fix a date, time and place for the hearing of the appeal by the City Council. Such date shall not be less than ten days nor more than 60 days from the date the appeal was filed with the building official. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the City Council either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal, by ordinary first-class mail.

(D) Effect of failure to appeal. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of the right to an administrative hearing before the City Council, and shall also constitute a waiver of the right to a judicial appeal.

(E) Scope of hearing on appeal. Only those matters or issues specifically raised by the appellant in the written notice of appeal, filed pursuant to this section shall be considered in the hearing of the appeal.

(F) Staying of order under appeal. Except for vacation orders made pursuant to § 97.07, enforcement of any notice and order of the building official issued under this chapter shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.09 PROCEDURES FOR CONDUCT OF HEARING APPEALS.

(A) General; hearings examiners. The City Council shall hear all appeals, but in lieu thereof may appoint one or more hearing examiners, or designate one of its own members, to serve as a hearing examiner to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted to the City Council for decision. Once the examiner's decision is presented to the Council, as provided below, only those City Council members attending the presentation may participate in the decision.

(B) Record. A record of the entire proceedings shall be made by tape recording.

(C) Continuances. The City Council may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by the examiner for good cause shown so long as the matter remains before the examiner.

(D) Oaths - certification. In any proceedings under this section, the City Council, any council member, the city attorney, or the hearing examiner has the power to administer oaths and affirmations.

(E) Reasonable dispatch. The City Council and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

(F) Form of notice of hearing. The notice to appellant shall be substantially in the following form, but may include other information:

“You are hereby notified that the hearing related to your appeal will be held before (the City Council or name of hearing examiner) at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. If you do not appear, your appeal may be denied.”

(G) Conduct of hearing.

(1) Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(2) Oral evidence shall be taken only on oath or affirmation.

(3) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions pursuant to the Rules of Civil Procedure applicable to the Circuit Courts for the State of Oregon.

(4) Any relevant evidence shall be admitted if it is of the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions pursuant to the Oregon Rules of Civil Procedure applicable in Circuit Court.

(5) Irrelevant and unduly repetitious evidence shall be excluded.

(6) Each party shall have these rights, among others:

(a) To call and examine witnesses on any matter relevant to the issues of the hearing;

(b) To introduce documentary and physical evidence;

(c) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

(d) To impeach any witness regardless of which party first called the witness to testify;

(e) To rebut the evidence; and

(f) To be represented by anyone who is lawfully permitted to do so.

(7) Official notice.

(a) In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of this city.

(b) Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

(c) Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the City Council or the hearing examiner.

(d) The City Council or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the City Council or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the City Council or hearing examiner. A request for an appeal before the City Council shall constitute irrevocable permission for any and all inspections deemed necessary or important by the City Council or hearing examiner.

(H) Method and form of decision.

(1) When a contested case is heard before the City Council itself, a member thereof who did not hear the evidence shall not vote on or take part in the decision.

(2) If a contested case is heard by one or more hearing examiners, the examiner, or examiners as the case may be, shall within a reasonable time (not to exceed 45 days from the date the hearing is closed) submit a written report to the City Council. Such report shall contain a brief summary of the evidence considered and state the findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the City Council as its decision in the case. All examiner's reports filed with the City Council shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party listed as an appellant on the notice of appeal on the date they are filed with the City Council. With the approval of the City Council, the examiner may have the assistance of the city attorney in drafting the report and other required documents.

(3) The City Council shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than

five days prior to the date fixed, unless it is otherwise stipulated by all of the parties. At such time as the examiner's report is considered, there shall be no more evidence submitted, nor arguments made by any party except as provided in § 97.09(H)(4). The consideration of the examiner's report, and the meeting called therefore, is solely for the opportunity of the City Council to deliberate.

(4) Not later than three business days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision.

(5) The City Council may adopt or reject the proposed decision in its entirety, or may modify the proposed decision with or without the assistance of the city attorney.

(6) If the proposed decision is not adopted as provided in § 97.09(H)(5), the City Council may decide the case upon the entire record before it, or may refer the case to the same or another hearing examiner or examiners to take additional evidence. If the case is reassigned to a hearing examiner or examiners, the examiner(s) shall prepare a report and proposed decision as provided in § 97.09(H)(2) hereof after any additional evidence is submitted. Consideration of such proposed decision by the City Council shall comply with the provisions of this section.

(7) The decision of the City Council shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant, or appellants, personally or sent by certified mail, postage prepaid, return receipt requested.

(8) The effective date of the decision shall be as stated therein.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.10 JUDICIAL REVIEW.

(A) Circuit Court. Any appellant may appeal to the Circuit Court of the State of Oregon for Union County for judicial review of the City Council's decision. The appeal shall be filed within thirty days from the effective date of the decision. The failure of any person to file a request for judicial review in accordance with the provisions of this section, and within the 30 days required, shall constitute a waiver of the right to judicial review, and the decision of the City Council shall then be final.

(B) Rules. On judicial review to Circuit Court, all rules governing the form of pleadings, procedure, the taking of evidence, and such other matters as may affect the proceedings shall be governed by the Oregon Rules of Civil Procedure, the Oregon Evidence Code, and such other applicable rules and laws for proceedings in Circuit Court.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.11 ENFORCEMENT OF THE ORDER OF THE BUILDING OFFICIAL OR CITY COUNCIL.

(A) General. After any order of the building official or the City Council made pursuant to this chapter shall have become final, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order.

(B) Failure to obey order. If, after any order of the building official or City Council made pursuant to this chapter has become final, the person to whom such order is directed shall fail, neglect, or refuse to obey such order, the building official may institute any appropriate action to abate such building as a public nuisance.

(C) Failure to commence work. Whenever the required repair or demolition does not commence within thirty days after any final notice and order issued under this code becomes effective:

(1) The building official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice of the form set forth in § 97.07(G).

(2) No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the building official, or the City Council as the case may be, have been completed.

(3) The building official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order require demolition, to cause the building to be sold and demolished, or demolished and the materials, rubble, and debris thereof removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the costs thereof paid and recovered in the manner hereinafter provided in this chapter. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto. Nothing stated herein shall prevent the building official from causing the building to be demolished by fire.

(D) Extension of time to perform work. Upon receipt of an application from the person required to conform to the order and by agreement of such person to comply with the order if allowed additional time, the building official may grant an extension of time, not to exceed an additional 120 days, within which to complete the repair, rehabilitation or demolition, if the building official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The building official's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal the notice and order.

(E) Interference with repair or demolition work prohibited. No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this chapter, or with any person to whom such building has been lawfully sold pursuant to the provisions of this chapter, whenever such officer, employee, contractor or authorized representative

of the city, a person having an interest or estate in such building or structure, or a purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this chapter.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015) Penalty, see § 97.99

#### § 97.12 PERFORMANCE OF WORK, REPAIR, OR DEMOLITION.

(A) Procedure. When any work of repair or demolition is to be done pursuant to § 97.11(C)(3) of this chapter, the building official shall issue an order therefore to the City Council, and the work shall be accomplished by private contract under the direction of the City Council. Plans and specifications therefore may be prepared by City Council, or the City Council may employ such architectural and engineering assistance on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed. In the alternative, and as may be allowed by state law, the City may employ its own personnel to accomplish the work.

(B) Costs. The cost of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, and/or may be made a personal obligation of the property owner, whichever the City Council shall determine is appropriate.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.13 REPAIR AND DEMOLITION FUND.

(A) General. If city funds are used for repairs or demolition, the City Council shall establish a special revolving fund to be designated as the Repair and Demolition Fund. Payments shall be made out of the fund upon the demand of the City Council to defray the costs and expenses which may be incurred by the city in doing or causing to be done the necessary work of repair or demolition of dangerous buildings.

(B) Maintenance of Fund. The City Council may at any time transfer to the Repair and Demolition Fund, out of any money in the General Fund of this jurisdiction, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and any sums so transferred shall be deemed a loan to the Repair and Demolition Fund and shall be repaid out of the proceeds of the collections hereinafter provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the city, and credited to the Repair and Demolition Fund. Nothing stated in this chapter shall require the city to at any time appropriate funds to the Repair and Demolition Fund if no expenses are expected to be incurred in a given budget year.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.14 RECOVERY OF COST OF REPAIR OR DEMOLITION.

(A) Account of expense, filing of report. The City Council or building official shall keep an itemized account of the expense incurred by the city in the repair or demolition of any building done pursuant to provisions of this chapter. Upon the completion of the work of repair or demolition, the City Council or building official shall prepare and file with the clerk of the City Council a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice pursuant to § 97.07(C).

(B) Notice of hearing. At the next regularly scheduled meeting of the City Council following the filing of the report referred to in division (A) of this section, the City Council shall fix a time, date and place for hearing the report and any protest and objections thereto. The City Council, or its designee, shall cause notice of the hearing to be posted upon the property involved, published once in a newspaper of general circulation in Umatilla County, and served by certified mail, postage prepaid, addressed to the owner of the property as the owner's name and address appears on the last tax assessment roll of the county, if such so appears, or as is known by the City Council, and to the other persons referred to in § 97.07(C). Such notice shall be given at least ten days prior to the date set for the hearing and shall specify the day, hour and place when the City Council will hear and pass upon the report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

(C) Protests and objections. Any person interested in or affected by the proposed charge may file written protests or objections with the City Council no later than one day prior to the time set for the hearing on the report referred to in division (A) of this section. Each such protest or objection must contain a description of the property in which the signer thereof is interested, the nature of the signer's interest in the property, and the grounds of such protest or objection. Such protests or objections shall be considered by the City Council at the time set for the hearing, and no other protests or objections shall be considered.

(D) Hearing of protests.

(1) Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report referred to in division (A) of this section together with any such objections or protests. The City Council may make such revision, correction or modification in the report or the charge as it may deem just; and when the City Council is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. Notwithstanding the foregoing, the City Council may refer the hearing referred to in this section to a hearing examiner, whose decision will have the same effect as a decision by the City Council.

(2) The City Council or hearing examiner may thereupon order that the charge shall be made a personal obligation of the property owner and/or may assess the charge against the property involved.

(3) If the City Council or hearing examiner orders that the charge shall be a personal obligation of the property owner, the city may use all appropriate legal remedies that may

be reasonable under the circumstances given the amount to be recovered and the chances of actual payment.

(4) If the City Council or hearing examiner orders that the charge shall be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter the assessment shall constitute a special assessment against and a lien upon the property.

(5) The decision on the report, charges, and assessments shall be final and conclusive except as state or federal law may otherwise require a right for judicial review, in which case the procedures and deadlines set forth in § 97.10 shall apply.

(E) Authority for installment payment of assessments with interest. The City Council, in its discretion, may determine that assessments in amounts of \$500 or more may be payable in not to exceed five equal annual payments. The City Council's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be by a resolution and is not appealable.

(F) Lien of assessment.

(1) Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessment shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be in parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(2) All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 9% per annum from and after the date.

(3) The lien may be enforced, collected upon and foreclosed in accordance with the provisions of O.R.S. 223.505 through 223.650 or other state law, and by suit in equity or at law in Circuit Court.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.15 JOINT AND SEVERAL RESPONSIBILITY.

If more than one person is a person responsible or liable under any provision of this chapter, they shall be jointly and severally liable.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

#### § 97.99 PENALTY.

(A) A person violating a provision of this chapter or an order issued under authority of this chapter shall, upon conviction, be guilty of a violation punishable by a fine set by the Union City Council by resolution or ordinance. Such a person shall also be subject to any

civil remedies available to the city as set forth in this chapter or as otherwise provided for by law.

(B) Each day's violation of a provision of this chapter or of an order issued under authority of this chapter constitutes a separate violation. The abatement of a nuisance is not a penalty for violating this chapter, but instead is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement of a nuisance within ten days of the date of notice to abate, or if a protest or appeal has been filed pursuant to the terms of this chapter, abatement within ten days of the disposition of the protest or appeal if a nuisance is found to exist, will excuse the person responsible from the imposition of any fine.

(C) The statement of a penalty within this chapter is not preclusive, and shall not prevent the imposition of other penalties that may be applicable under any other ordinance, statute, regulation, or resolution.

(Ord. 542, passed 11-10-2014; Ord. 547, passed 4-13-2015)

## **CHAPTER 98: NOXIOUS VEGETATION**

### Section

- 98.01 Nuisances prohibited
- 98.02 Abatement of nuisances
- 98.03 Assessment of costs
- 98.04 Liability
- 98.05 Joint and several responsibility
- 98.99 Penalty

### § 98.01 NUISANCES PROHIBITED.

(A) Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**NOXIOUS WEED.** A terrestrial, aquatic, or marine plant designated by the Oregon State Weed Board under O.R.S. 569.615 as among those representing the greatest public menace and as a top priority for action by weed control programs.

**NUISANCE WEED.** Any trees, plants, shrubs, grass, brush, weed, or other vegetation growing upon any property, which:

- (a) Has grown and died or has dried or is in a desiccated state and has become a fire hazard and/or a menace to public health, safety, and welfare; or
- (b) Are weeds or grass, except ornamental grasses, averaging more than ten inches in height.

**PERSON.** Any natural person, firm, partnership, association, legal entity, or corporation.

**PERSON IN CHARGE OF PROPERTY, PERSON IN CHARGE OF THE SUBJECT PROPERTY,** or other similar phrase. Any one or more than one occupant, lessee, contract purchaser, owner, or person having possession of, control of, occupancy at, or title to, the subject property.

(B) Responsibility. A person in charge of property shall have responsibility for all vegetation on the subject property.

(C) Nuisances. Noxious or nuisance weeds existing anywhere within the city limits are declared to be a public nuisance.

(D) Enforcing authority. The City Council shall have full authority of law to enforce the provisions of this chapter. The City Council may delegate any portion or all of this authority to its agents. Nothing herein shall limit the responsibility, authority, or powers of

enforcement given under other city ordinances or other state law. The term COUNCIL as used in this chapter, shall mean the City Council or its agent.

(E) Prohibition. No person in charge of property may allow nuisances to exist on the property. It shall be the duty of a person in charge of property to remove nuisance and noxious weeds in violation of this chapter as often as needed to prevent them from becoming a fire or health hazard, or to prevent them from going to seed. A breach of any of these stated duties shall be a violation of this chapter. Failure to abate a nuisance within the time required by this chapter shall also be a violation of this chapter.

(Ord. 544, passed 12-8-2014; Ord. 547, passed 4-13-2015; Ord. 564, passed 11-8-2021)  
Penalty, see § 98.99

#### § 98.02 ABATEMENT OF NUISANCES.

(A) Public hearing. The City Council may compile a list of properties in violation of this chapter as often as needed and may convene a public hearing to consider abatement of noxious vegetation as a nuisance.

(B) Notice.

(1) At least ten days prior to the public hearing, the City Council shall cause a notice to be forwarded by registered or certified mail, postage prepaid, to the persons in charge of the subject property, or properties as the case may be, including any person with a recorded interest in such property, at such person's last known address.

(2) The notice to abate shall contain:

(a) A description of the real property, by street address or otherwise, on which the nuisance exists;

(b) A direction that the nuisance be abated, and if the nuisance consists of any of the weeds that are identified in § 98.01(A) that they must be destroyed and/or prevented from producing seed or spreading within ten days from the date of the notice, or that the owner appear before the council at the public hearing to show just cause why the nuisance should not be abated;

(c) A description of the nuisance;

(d) A statement that failure to abate the violation within the time provided may warrant imposition of a fine for each day of non-compliance;

(e) A statement that unless the nuisance is abated, as directed in the notice, the city may abate the nuisance, and the cost of abatement will be charged to the persons in charge of the property and become a lien against the property;

(f) A statement that it will be the responsibility of the person in charge of the property to notify the City Council of any chemical abatement efforts once they are completed, and that if the notification is not given and the city thereafter abates the

nuisance, the person in charge of property will nonetheless be responsible for the city's costs.

(3) Upon compliance with the above notice requirements, the person undertaking the mailing shall execute and file certificates with the City Council or its designee stating the date and place of mailing and attaching a copy of the mailing.

(4) An error in the name and/or address of the person in charge of property, or of the persons with recorded interests, shall not make the notice void.

(C) Resolution. At the conclusion of the public hearing, the council may pass a resolution authorizing the abatement of any identified nuisance at the cost of the person in charge of the subject property. The resolution will include the authorization for the City Council or its agent at reasonable times to enter into or upon property to investigate or cause the removal of a nuisance.

(D) Judicial assistance.

(1) At the election of the City Council, this chapter may be enforced by suit in a court of competent jurisdiction, including the Circuit Court of the State of Oregon for Union County. In any such legal action, the Court shall have the authority to award to the city all remedies that are provided for in this chapter including, but not limited to, directing the defendants to abate the nuisance, imposing fines against the defendants payable to the city, and granting the city the right to proceed with abatement and to charge the defendants with the cost thereof and to have such costs be a lien against the subject property. The Court shall also have the authority to allow for any other remedy available at law or in equity, including, but not limited to, injunctive relief.

(2) In any legal action, all rules governing the form of pleadings, procedures, the taking of evidence, and such other matters as may affect the proceeding shall be governed by the Oregon Rules of Civil Procedure, the Oregon Evidence Code, and such other rules and laws applicable to proceedings in Circuit Court and/or as directed by the judge presiding over the proceedings.

(Ord. 544, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 98.03 ASSESSMENT OF COSTS.

(A) The City Council shall keep an accurate record of the expenses incurred by the city in physically abating the nuisance and shall include therein a charge of \$15 or 15% of those expenses, whichever is greater, for administrative overhead.

(B) The City Council by registered or certified mail, postage prepaid, shall forward to the persons in charge of the property and any person with a recorded interest in the property a notice stating:

(1) The total cost of abatement, including the administrative overhead;

(2) 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, and shall be the personal obligation of the person or persons in charge of property; and

(3) That if the person in charge of property objects to the costs of the abatement as indicated, the person may file a notice of objection with the City Council not more than ten days from the date of the notice.

(C) After the expiration of ten days following the date of the notice, but in the regular course of business, the council shall hear and determine the objections to the costs assessed. Upon such determination, the amount of the costs assessed shall be the personal obligation of the person or persons in charge of the subject property.

(D) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as determined by the council, shall be made by resolution and shall thereupon be entered in the docket of city liens. Upon the entry being made, it shall constitute a lien upon the property from which the nuisance was removed or abated.

(E) The lien and personal obligation to pay shall bear interest at the rate of 9% per annum. The interest shall begin to run from the date the City Council determines by resolution the amount of the assessment. The City Council may foreclose the lien in accordance with O.R.S. 223.505 through 223.650, and in accordance with any other legal procedures available at law or in equity.

(F) Neither an error in the name of the person in charge of property nor a failure of such person to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid personal obligation and lien against the property.

(Ord. 544, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 98.04 LIABILITY.

(A) Any person in charge of property containing vegetation in violation of this chapter shall be liable to any person who is injured or otherwise suffers damage by reason of such vegetation or the by reason of a failure to abate or removed the same.

(B) Neither the city, or any of its officers, agents, employees, or city council members, shall be liable to any person who is injured or otherwise suffers damage by reason of vegetation existing in violation of this chapter. However, if this exemption from liability is unenforceable, and in any event, the person in charge of the subject property shall be primarily liable to the injured party and shall indemnify the city, its officers, agents, city council members, and employees, for any judgment against any of them, and shall be liable to them for any expense paid or incurred, including attorney's fees, to defend themselves or to settle the claim of any injured person.

(Ord. 544, passed 12-8-2014; Ord. 547, passed 4-13-2015)

#### § 98.05 JOINT AND SEVERAL RESPONSIBILITY.

If more than one person is a person responsible or liable under any provision of this chapter, they shall be jointly and severally liable.

(Ord. 544, passed 12-8-2014; Ord. 547, passed 4-13-2015)

§ 98.99 PENALTY.

(A) A person violating a provision of this chapter or an order issued under authority of this chapter shall, upon conviction, be guilty of a violation punishable by a fine set by the Union City Council by resolution. Such a person shall also be subject to any civil remedies available to the city as set forth in this chapter or as otherwise provided for by law.

(B) Each day's violation of a provision of this chapter or of an order issued under authority of this chapter constitutes a separate violation. The abatement of a nuisance is not a penalty for violating this chapter, but instead is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement of a nuisance within ten days of the date of notice to abate, or if a protest or appeal has been filed pursuant to the terms of this chapter, the abatement within ten days of the disposition of the protest or appeal if a nuisance is found to exist, will excuse the person responsible from the imposition of any fine.

(C) The City Council may, in its discretion, suspend, cancel, or delay the imposition of fines provided for by this chapter. Also, at the City Council's discretion, fines may be suspended or otherwise abated during the period during which the rights of review provided for herein are properly exercised; in exercising the discretion provided for in this sentence, the City Council shall consider the degree to which the review sought has been frivolous as well as other factors considered relevant in the Council's judgment.

(D) The statement of a penalty within this chapter is not preclusive, and shall not prevent the imposition of other penalties or remedies that may be available to the city under any other ordinance, statute, regulation, law, or resolution.

(Ord. 544, passed 12-8-2014; Ord. 547, passed 4-13-2015)



## **CHAPTER 99: REGULATING SOLID AND OTHER WASTES**

### Section

- 99.01 General provisions
- 99.02 Accumulation and stockpiling prohibited; declaration of public nuisance
- 99.03 Investigation
- 99.04 Entry on private property
- 99.05 Form of request for hearing
- 99.06 Hearing before City Council or hearing examiner
- 99.07 Abatement by the city
- 99.08 Lien of assessment
- 99.09 Judicial review and enforcement
- 99.10 Joint and several responsibility
- 99.99 Penalty

### § 99.01 GENERAL PROVISIONS.

(A) Definitions. For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CITY OFFICIAL.** Any designee of the City Council and city officer, agent, or employee, acting in the course of official duties for purposes of the enforcement of this chapter.

**PERSON.** Any natural person, firm, partnership, association, legal entity, or corporation.

**PERSON IN CHARGE OF PROPERTY or PERSON IN CHARGE OF THE SUBJECT PROPERTY.** Any one or more than one occupant, lessee, contract purchaser, owner, or person having possession of, control of, occupancy at, or title to, the subject property.

**WASTE.** Matter or material that is:

- (a) Hazardous to health and safety of the public;
- (b) Organic materials that can decompose, giving rise to foul smelling products, or creating a health hazard, or which are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies and other vectors; and
- (c) Materials and matter accumulated on property so as to constitute a public nuisance recognized by common law.

(B) Exceptions.

(1) This chapter does not apply to materials or items that might otherwise constitute waste if such is kept and maintained in a business licensed as a junk yard or automobile wrecking yard which is operating in accordance with all applicable rules and regulations, including zoning laws, or to items or materials accumulated for recycle in a recycling business operating as such and in accordance with all applicable rules and regulations, including zoning laws. To be exempted by this paragraph, such items and materials must be enclosed by a secure fence that is no less than six feet tall and is so sight obscuring as to prevent a person from seeing into the enclosed area from other property or from a right of way or sidewalk, and such items and materials must be stored in a fashion that does not otherwise constitute a nuisance at common law.

(2) This chapter does not apply to the accumulation of firewood, nor does it apply to the accumulation of construction materials at the location of properly permitted construction work when the stored materials are exclusively for use at the site.

(Ord. 555, passed 11-9-2014)

#### § 99.02 ACCUMULATION AND STOCKPILING PROHIBITED; DECLARATION OF PUBLIC NUISANCE.

(A) No person shall deposit, accumulate, store, maintain, allow to exist, or display waste on any property within the city, except as specifically permitted by this chapter or as otherwise authorized by law.

(B) No person or occupant of any land in the city shall authorize, permit or suffer violation of any provision of this chapter.

(C) Exceptions. The prohibitions of this chapter do not apply to the following:

(1) The temporary accumulation of limited quantities of waste in standard garbage or recycling collection receptacles provided for that purpose pending disposal or recycling in a legal manner, providing that the waste does not create offensive odors, unsightly conditions, or hazards to health; and

(2) The accumulation and distribution of compost, silage, or livestock manure in conjunction with normal crop or animal husbandry activities, so long as such activity is in compliance with all applicable zoning regulations, does not physically encroach upon the land of another, violates no statutes, rules, regulations, ordinances of the Department of Environmental Quality or the city, and is conducted in a reasonable manner so as to minimize any offensive odor, unsightly condition, or hazard to health.

(D) The accumulation and storage of waste is hereby found to create a condition tending to reduce the value of private property, to promote blight, deterioration and unsightliness, to invite plundering, to create fire hazards, to create a harborage for rodents and insects, and to be injurious to the health, safety and general welfare of the inhabitants of the city. Therefore, the presence of waste on private property in violation of this chapter is hereby declared to constitute a public nuisance which may be abated in accordance with provisions of this chapter.

(E) Nothing stated within this chapter shall be construed to allow the accumulation or stockpiling of any waste prohibited by any other ordinance or regulation of the city or by any land use regulations or any other applicable laws, or to declare any noncommercial accumulation or stockpiling of waste as commercial, or to override provisions of any ordinance of the city regarding home occupations, or commercial endeavors relating to the storage and accumulation of commercial products. Nothing stated in this chapter shall be construed as authorizing any activity which at common law would constitute a public or private nuisance nor as legislatively amending or changing common law nuisance principles.

(Ord. 555, passed 11-9-2014)

#### § 99.03 INVESTIGATION.

When a city official has determined that a violation of this chapter exists on property which should be abated, the official shall:

(A) Attempt to discover the name and address of the owner and occupant of the property, the person responsible for the accumulation or deposit of the waste, and all persons who may be in charge of the real property on which the violation exists as such persons are defined in § 99.01(A);

(B) Give written notice to the persons described in division (A) of this section by regular first class mail and registered or certified mail requiring a return receipt that there is a violation of this chapter. If the owner or occupant of the property is not found, the city official shall place a notice posted on the property where it can easily be seen;

(C) Contents of notice. The notice referred to in the preceding division shall contain:

(1) A description of the real property by street address or otherwise, on which the violation exists;

(2) A direction to abate the violation within no less than 15 days from the date of the notice;

(3) A description of the violation;

(4) A statement that unless the violation is abated, the city may enter, abate the violation, and charge the costs of abatement to the person responsible and/or impose a lien against the real property on which the violation was abated;

(5) A statement that failure to abate the violation within the time provided may warrant imposition of a fine;

(6) A statement that the alternative to compliance with the notice is to make a written request within 15 calendar days of the date of the notice for a hearing before the City Council to show why abatement should not be required or why more time for abatement may be needed. This statement shall list the required contents of the request for hearing that are set forth in § 99.05.

(7) A statement that if there is no request for a hearing before the City Council within 15 calendar days of the date of the notice, the determination as set forth in the notice shall be final with no right to further protest or otherwise appeal.

(D) Upon completion of posting and mailing, the persons posting and mailing shall execute and file certificates with the City Council stating the date and place of the mailing and posting.

(Ord. 555, passed 11-9-2014)

#### § 99.04 ENTRY ON PRIVATE PROPERTY.

Upon compliance with all applicable procedures, city officials are authorized to enter onto private property at all reasonable times to examine items and materials reasonably suspected to constitute wastes in violation of this chapter and following the procedures set forth to take steps necessary to abate violations hereof.

(Ord. 555, passed 11-9-2014)

#### § 99.05 FORM OF REQUEST FOR HEARING.

(A) Any person entitled to service of a notice under this chapter may within 15 calendar days of the date of the notice file a request for hearing before the City Council. The request need not be in any particular form but shall include the following:

(1) The name of the person requesting a hearing and all other persons joining in the request;

(2) A brief statement setting forth the legal interest of each of the persons requesting the hearing;

(3) A brief statement in ordinary and concise language of the specific order or action protested;

(4) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed that the protested order or action should be reversed, modified, or otherwise set aside;

(5) The signatures of all the parties requesting a hearing and their official mailing addresses; and

(6) A statement by declaration under penalty of perjury that all of the matters stated within the request for hearing are true.

(B) Normally a late request for a hearing before the City Council will not be considered. However, in unusual circumstances the City Council may excuse an untimely request if the requesting party provides information excusing a lack of timely response by certifying the date of actual notice to the requesting party and accounting for all delay between the day of actual notice and the day of delivering the request for hearing to the City Council. General press of personal business shall not excuse an untimely request.

(Ord. 555, passed 11-9-2014)

§ 99.06 HEARING BEFORE CITY COUNCIL OR HEARING EXAMINER.

(A) Following a request for a hearing, the City Council shall itself or through a hearing examiner provide a hearing for the requesting party to show cause why a violation does not exist, or why the violation should not be abated within the time provided, and to receive evidence and the testimony of the city official and other interested persons, or other witnesses, concerning the existence, location, and condition of the alleged violation.

(1) After the hearing, the City Council may order the property a nuisance in violation of this chapter and direct that the violation be abated by the person responsible, and/or by other person or persons in charge of the property, and/or by the city in accordance with the provisions of this chapter.

(2) If the hearing was referred to a hearing examiner by the City Council, the hearing examiner and the City Council shall proceed in the fashion provided for in § 97.09(H), relating to dangerous building.

(B) Persons entitled to the notice specified in § 99.03(A) shall be sent copies of the order in the manner provided for in that section.

(C) The City Council may impose conditions and take other actions considered appropriate under the circumstances to carry out the purposes of this chapter. The City Council may delay the time for abatement of the nuisance when, in the council's opinion, circumstances justify such action. The City Council shall refuse to order abatement of the violation when the property, in the opinion of the City Council, is not subject to the provisions of this chapter. The City Council shall not be bound by technical rules of evidence in conducting the hearing.

(D) Nothing stated in this chapter shall prevent the City Council from entering into a consent agreement with the person or persons responsible, or person or persons in charge of property, that provides for the manner and means of abatement other than as provided for herein, provided that the consent agreement is in the form of a final contract enforceable in a court of law or equity and the contract specifically waives any right of the person contracting with the City Council to contest whether a violation of this chapter exists or existed or whether the condition of the subject property constitutes a nuisance.

(Ord. 555, passed 11-9-2014)

§ 99.07 ABATEMENT BY THE CITY.

(A) The city may abate the violation, or cause the violation to be abated, when:

(1) The terms of any consent agreement between the city and the person responsible or person in charge of property so provide, or when the terms of a consent agreement have been violated by the person or persons signing the consent agreement;

(2) The person responsible has been mailed the notice required by § 99.03, and the violation stated within the notice has not been abated within the time provided in the notice and no hearing has been requested;

(3) Following hearing the corrective action required by the City Council has not been completed by the date specified; or

(4) There have been court proceedings which have become final, resulting in an order by the court directing abatement, and abatement has not been completed within the time required by the court's order.

(B) The decision to proceed to abatement by the city shall be made by the City Council.

(C) Summary abatement. Whenever a violation causes a condition the continued existence of which constitutes an immediate or emergent threat to the public health, safety, or welfare, or to the environment, the city may summarily and without prior notice, abate the condition. Notice of such abatement, including the reason for it, shall be given to the person or persons responsible for the violation as soon as reasonably possible. The costs of summary abatement shall be charged to the person responsible and become a lien upon the property in accordance with the provisions of this chapter applicable to costs of non-summary abatements.

(D) When the city proceeds to abate as provided for herein it may do so using any lawful means, the city or its agents may enter upon the subject property and may remove or correct a violation which has become the proper subject of abatement. The city may also seek such judicial process as it deems necessary to effect the abatement.

(E) Interference prohibited. No person shall obstruct, impede, or interfere with the city or its agents, or with any person retained or hired by the city to effect the abatement, or with any person who is a person in charge of the property, in performing any acts necessary to correct a violation.

(F) The city shall maintain a record of all expenses incurred in abating a waste violation. The record shall include, but is not necessarily limited to, the costs of mailing notices, the expense of title reports, title searches, and lien searches, charges for labor and personal services, equipment rentals, the costs of contractors, materials expense, fuel costs, survey expenses, reasonable charge for use of city-owned equipment, land fill fees, the costs of transportation, etc., and an additional charge of 15% for administrative overhead.

(G) A notice of assessment for the costs of abatement shall be sent by certified mail with return receipt to the responsible party or parties and those entitled to receive the notice provided for in § 99.03 hereof. The notice shall contain:

(1) The total costs of abatement, including the administrative overhead;

(2) A statement that the costs of abatement are the personal obligation of the person in charge of the subject property and will become a lien against the property unless paid within 60 days;

(3) A statement that if person in charge of the property objects to the cost of the abatement, he or she may file a notice of objection with the city within 15 days of the date of the notice; and

(4) A statement that a fee for recording the costs of abatement as a lien against the property may be added to the cost of abatement.

(H) Objections to the proposed assessment shall be heard and determined by the City Council before the proposed assessment becomes a lien against the property.

(I) If the costs of the abatement are not paid within 60 days from the date of the notice of costs, or if an objection was timely filed, from the date of the city's determination of costs, the costs of abatement shall be filed and recorded as a lien upon the property and shall be entered into the docket of city liens. When the entry is made, it shall constitute a lien on the property from which the violation was abated.

(Ord. 555, passed 11-9-2014)

#### § 99.08 LIEN OF ASSESSMENT.

(A) Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessment shall be liens against the lots or parcels of land assessed, respectively. The lien shall continue until the assessment and all interest due and payable thereon are paid.

(B) All such personal obligations and assessments remaining unpaid after thirty days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 9% per annum from and after said date.

(C) The lien may be enforced, collected upon and foreclosed in accordance with the provisions of O.R.S. §§ 223.505 through 223.650 and by suit in equity or at law in circuit court.

(Ord. 555, passed 11-9-2014)

#### § 99.09 JUDICIAL REVIEW AND ENFORCEMENT.

(A) Judicial review.

(1) Any person aggrieved by a final decision of the City Council may appeal to the Circuit Court of the State of Oregon for Union County for judicial review of the City Council's decision. The appeal shall be filed within 30 days from the effective date of the decision. The failure of any person to file a request for judicial review in accordance with the provisions of this chapter, and within the thirty days required, shall constitute a waiver of the right to judicial review, and the decision of the City Council shall then be final. There shall be no right to judicial review if the person appealing did not timely seek a hearing before the City Council, or receive from the City Council an order excusing the late request, and then thereafter pursue to conclusion the hearing and then timely seek an appeal.

(2) On judicial review to Circuit Court, all rules governing the form of pleadings, procedures, the taking of evidence, and such other matters as may affect the proceeding shall be governed by the Oregon Rules of Civil Procedure, the Oregon Evidence Code, and such other rules and laws applicable to proceedings in circuit court and/or as directed by the judge presiding over the proceedings.

(3) Unless the violation is one subject to summary abatement, all abatement activities shall be stayed during the course of the appeal.

(B) Judicial enforcement.

(1) At the election of the City Council, the city may dispense with the notice and hearing procedures set forth above, and in lieu thereof enforce this chapter by a civil action initiated by the City Attorney or special counsel in any court of competent jurisdiction, including the Circuit Court of the State of Oregon for Union County. Prior to the initiation of such suit the person or persons in charge of the property shall be sent a notice which contains:

(a) A description of the real property by street address or otherwise, on which the violation exists;

(b) A direction to abate the violation within no less than 15 days from the date of the notice;

(c) A description of the violation;

(d) A statement that unless the violation is abated within the stated time or within the time of any extension granted by the city, the city will initiate legal action to enforce the terms of the city's solid waste ordinance; and

(e) A statement that failure to abate the violation within the time provided may warrant imposition of a fine.

(2) Upon completion of mailing, the persons doing so shall execute and maintain in the city's records certificates stating the date and place of the mailing and posting.

(3) If an enforcement proceeding is initiated using the notice provisions of § 99.03, the City Council may at any time terminate such proceedings and direct the City Attorney or special counsel to file legal action, in which case the notice provided for in division (B)(1) of this section shall not be required. Instead the persons in charge of the subject property shall be advised by first class letter that the pending proceedings before the City Council are terminated and that the City Attorney or special counsel as the case may be has been directed to file suit to enforce this chapter.

(4) In any legal action, the court shall have the authority to award to the city all remedies that are provided for in this chapter including, but not limited to, directing the defendants to abate the nuisance, imposing fines as set by generally set by the City Council against the defendants payable to the city, and granting the city the right to proceed with abatement and to charge the defendants with the cost thereof and to have such costs be a

lien against the subject property. The court shall also have the authority to allow for any other remedy available at law or in equity, including, but not limited to, injunctive relief.

(5) In any legal action, all rules governing the form of pleadings, procedures, the taking of evidence, and such other matters as may affect the proceeding shall be governed by the Oregon Rules of Civil Procedure, the Oregon Evidence Code, and such other rules and laws applicable to proceedings in Circuit Court and/or as directed by the judge presiding over the proceedings.

(Ord. 555, passed 11-9-2014)

#### § 99.10 JOINT AND SEVERAL RESPONSIBILITY.

If more than one person is a person responsible or liable under any provision of this chapter, they shall be jointly and severally liable.

(Ord. 555, passed 11-9-2014)

#### § 99.99 PENALTY.

(A) A person violating a provision of this chapter or an order issued under authority of this chapter shall, upon conviction, be guilty of a violation punishable by a fine set by the Union City Council by resolution. Such a person shall also be subject to any civil remedies available to the city as set forth in this chapter or as otherwise provided for by law.

(B) Each day's violation of a provision of this chapter or of an order issued under authority of this chapter constitutes a separate violation. The abatement of a nuisance is not a penalty for violating this chapter, but instead is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement of a nuisance within ten days of the date of notice to abate, or if a protest or appeal has been filed pursuant to the terms of this chapter, the abatement within ten days of the disposition of the protest or appeal if a nuisance is found to exist, will excuse the person responsible from the imposition of any fine.

(C) The City Council may, in its discretion, suspend, cancel, or delay the imposition of fines provided for by this chapter. Also, at the City Council's discretion, fines may be suspended or otherwise abated during the period during which the rights of review provided for herein are properly exercised; in exercising the discretion provided for in this sentence, the City Council shall consider the degree to which the review sought has been frivolous as well as other factors considered relevant in the Council's judgment.

(D) The statement of a penalty within this chapter is not preclusive, and shall not prevent the imposition of other penalties or remedies that may be available to the city under any other ordinance, statute, regulation, law, or resolution.

(Ord. 555, passed 11-9-2014)

## **CHAPTER 131: GENERAL OFFENSES**

### **§ 131.170 OFFENSIVE LITTERING.**

(A) No person shall create an objectionable stench or degrade the beauty or appearance of property or detract from the natural cleanliness or safety of property by intentionally:

(1) Discarding or depositing any rubbish, trash, garbage, debris, carcass or other refuse upon the land of another without permission of the owner, or upon any public way;

(2) Draining, or causing or permitting to be drained, sewage or the drainage from cesspools, septic tanks, recreational or camping vehicle waste holding tank or other contaminated sources upon the land of another without permission of the owner; or upon any public way; and

(3) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which he or she is operating; except that this section shall not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Public Utility Commissioner of Oregon or a person operating a school bus, as defined in O.R.S. 801.460.

(B) As used in this section, PUBLIC WAY includes, but is not limited to roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the city, state or county for use by the general public.

(C) Fines will be double if littering occurs on private property, public park, golf course or waterway.

(Ord. 461, passed 6-8-1998) Penalty, see § 131.999

### **§ 131.171 CREATING A HAZARD.**

No person shall create a hazard by:

(A) Intentionally maintaining or leaving in a place accessible to children a container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside; or

(B) Being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more, intentionally fail or refuse to cover or fence it with a suitable protective construction.

(Ord. 461, passed 6-8-1998) Penalty, see § 131.999

# Chapter 8.10

## ABANDONED AND JUNK VEHICLES AND PERSONAL PROPERTY

### Sections:

- 8.10.010 Declaration of findings, intent, and purpose.
- 8.10.020 Definitions.
- 8.10.030 Vehicles or property abandoned on streets or public places.
- 8.10.040 Prohibition against junk vehicles or junk personal property.
- 8.10.050 Exemptions.
- 8.10.060 Public nuisance.
- 8.10.070 Order to remove junk vehicle.
- 8.10.080 Notice of removal.
- 8.10.090 Contents of notice.
- 8.10.100 Appeals.
- 8.10.110 Removal of junk vehicles.
- 8.10.120 Procedure for removal of nuisance at property owner's expense.
- 8.10.130 Notice of unlawful use of property.
- 8.10.140 Hindering authorized person.
- 8.10.150 Allowance of nuisance unlawful.
- 8.10.160 Violation – Penalty.

Cross-reference: See also DCC [13.10.010](#).

### **8.10.010 Declaration of findings, intent, and purpose.**

The city council of the city of Donnelly hereby finds that there is within the city limits, and has been for some years past, an accumulation, on private as well as public property, of abandoned, dismantled, inoperative, wrecked or stolen vehicles, or parts thereof, and of other abandoned, unused, inoperable, dilapidated or deteriorating personal property; that such property, or an accumulation thereof, is an aesthetic pollution detracting from the beauty of the city and is unsightly; that it detracts from tourism and the economic welfare of the city; that it detracts from the city's ability to attract new business and industry; that such property or an accumulation thereof promotes blight and deterioration; invites plundering, looting and theft; creates, and is, a fire hazard; can be, and is, a harborage for rodents and

insects; and can be, and is, an attractive nuisance for children where they may be injured or harmed; that such property, or accumulations thereof, reduces property values; and that it is injurious to the health, safety and general welfare of the residents of the city, whether it be located on public or private property.

The city is authorized and empowered, pursuant to Idaho Code, Section 50-302, to make and adopt all such ordinances as may be expedient to maintain the peace, good government and general welfare of the city and its trade, commerce, and industry, and pursuant to Idaho Code, Section 50-334, is authorized and empowered to declare what shall be deemed nuisances, to prevent, remove and abate nuisances at the expense of the parties creating, causing, committing or maintaining the same and to levy a special assessment, as provided in Idaho Code, Section 50-1008, on the land or premises whereon the nuisance is situated to defray the cost or reimburse the city for abating the same. The above specific provision which allows a special assessment on the land where the nuisance is located is interpreted to mean that the city has the authority to abate nuisances on private land and property as the city has no authority to assess a special levy on any land or property other than private property.

The presence of abandoned, wrecked, dismantled, inoperative or stolen vehicles, or parts thereof, and other unused, inoperable, dilapidated, or deteriorating personal property on private or public property, except as expressly hereinafter permitted, is hereby declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter.

It is the purpose and intent of this chapter to allow city officials to require the owners of real property within the city limits to clean up their real property and remove any or all abandoned, dismantled, inoperative, wrecked or stolen vehicles, or parts thereof, and any or all abandoned, unused, inoperative, dilapidated or deteriorating personal property.

It is the policy of the city and the declared intent and purpose of this chapter that it is the owner of the real property who has the duty and responsibility to maintain his own land and comply with this chapter and abate said nuisances or pay the cost of such abatement. [Ord. 137 § 1, 1995.]

#### **8.10.020 Definitions.**

"Abandon," for purposes of this chapter only, means to leave a junk vehicle or personal property on private property without the permission of the owner or the person having rights to the possession of the property for any period of time, or on a highway or street or other property open to the public for the purposes of vehicular traffic or parking, or upon or within the right-of-way of any highway or street, for 72 hours or longer; provided, however, that even where the owner or the person entitled to possession of the property grants permission to leave a vehicle or personal property or where it is the owner or the person entitled to possession of the property who leaves the vehicle or personal property on his own property, the vehicle or personal property shall be deemed abandoned if left open to public view and unmoved, unattended, or unused for 72 hours or longer.

"Abandoned vehicle," for the purposes of this chapter only, shall mean a vehicle which has been abandoned.

"Junk personal property," for purposes of this chapter only, shall mean personal property that is refuse or waste or valueless or is not being used for the originally intended manufactured use of the personal property or is not being used for any beneficial purpose under a reasonable person's standard or is in a dilapidated condition or is in a state of disrepair or is not capable of being used for its original purpose or constitutes litter or garbage or trash or rubble.

"Junk vehicle," for purposes of this chapter only, shall mean a wrecked, dismantled, or inoperative vehicle, or a part thereof.

"Personal property," for purposes of this chapter only, shall mean all property other than real property.

"Stolen vehicle," for the purposes of this chapter only, shall mean a vehicle or property which has been reported to the Donnelly police department or a state or county peace officer to be stolen or which is reasonably believed by such department or peace officer to be stolen.

"Unidentified vehicle" or "unidentified property," for the purposes of this chapter only, shall mean any vehicle or property of which the ownership cannot be ascertained.

"Vehicle," for purposes of this chapter only, shall have the same definition as contained in

Idaho Code, Section 49-123V.(1)(a).

“Wrecked vehicle,” “dismantled vehicle” or “inoperable vehicle,” for purposes of this chapter only, shall be defined as any vehicle, or parts thereof, which meets any of the following qualifications:

1. It does not carry a current, valid state registration or license plate.
2. It cannot be safely operated under its own power.
3. It is not in a garage or other building.
4. It does not have any one of the following: foot brakes, hand brakes, headlights, tail lights, horn, muffler, rearview mirrors, windshield wipers or adequate fenders.
5. Part or parts of the vehicle have been removed.
6. It is in a dilapidated condition. [Ord. 137 § 2, 1995.]

#### **8.10.030 Vehicles or property abandoned on streets or public places.**

It shall be unlawful and a misdemeanor for any owner or any person in charge of a vehicle or other personal property to leave or abandon the same upon the streets or public places or on private property. [Ord. 137 § 3, 1995.]

#### **8.10.040 Prohibition against junk vehicles or junk personal property.**

It shall be unlawful and a misdemeanor for any person to maintain, store, park or keep a junk vehicle, vehicles or parts thereof or junk personal property on real property, public or private, in the city, except as authorized in this chapter. [Ord. 137 § 4, 1995.]

#### **8.10.050 Exemptions.**

This chapter shall not apply to:

A. A junk vehicle, or part thereof, or junk personal property, which is completely enclosed within a building or in such manner that it is not visible from the street or other public or private property.

B. A junk vehicle or junk personal property or part thereof which is:

1. Stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or junk dealer; or
2. When such storage or parking is necessary to the operation of a lawfully conducted business, industry or commercial enterprise; and
3. Pertaining to both subsections (B)(1) and (B)(2) of this section, such business is conducted in a zone wherein such business is allowed to be conducted.

C. Real property upon which construction is actually taking place and ongoing. [Ord. 137 § 5, 1995.]

#### **8.10.060 Public nuisance.**

Abandoned vehicles, stolen vehicles, junk vehicles, and junk personal property are hereby declared to be a public nuisance. [Ord. 137 § 6, 1995.]

#### **8.10.070 Order to remove junk vehicle.**

The city clerk, and any member of the police department, fire department or building department, jointly hereafter referred to as the "city official," may order any junk vehicle, vehicles or part thereof, or junk personal property, not within the exceptions of this chapter, removed after 10 days' prior notice of intention to remove the junk vehicle or personal property. [Ord. 137 § 7, 1995.]

#### **8.10.080 Notice of removal.**

Notice of such order shall be placed upon said junk vehicle, vehicles or parts thereof or junk personal property. Copies of said notice shall be served personally or by certified mail, return receipt requested, upon any adult occupying or owning the real estate on which the junk vehicle, vehicles or parts thereof or junk personal property are located and upon the owner of the junk, if known. If no occupant of the real estate or owner of the junk vehicle, vehicles or parts thereof or junk personal property can be found, a notice affixed to any building on the real estate or upon the junk vehicle or junk property shall constitute notice to the owner or occupant of the real estate and to the owner of the junk vehicle, vehicles or parts thereof or junk property. If there is no building on the real estate, said notice may be affixed elsewhere on the real estate. [Ord. 137 § 8, 1995.]

#### **8.10.090 Contents of notice.**

If it is determined by the city official that a public nuisance, as herein defined, exists on any lot, place or area, or upon any street, sidewalk, or public right-of-way abutting the same, the city official shall cause a notice to be issued to abate such nuisance. Such notice shall be headed "Notice to Clean Premises," shall contain a description of the property in general terms reasonably sufficient to identify the location of the nuisance; shall describe the nuisance in terms reasonably sufficient to identify the same; shall direct the abatement of the nuisance; shall specify the penalty provisions as provided herein; shall specify the appeal process as provided herein; and shall state that if the city removes the junk vehicle or junk property the city may sell it and retain the proceeds to defray the costs of enforcement of this chapter. [Ord. 137 § 9, 1995.]

#### **8.10.100 Appeals.**

Within 10 days from the date of posting, mailing or personal service of the required notice, the owner or person occupying or controlling such lot, place or area affected may appeal to the city council of the city. Such appeal shall be in writing and shall be filed with the city clerk. At the regular meeting or regular adjourned meeting of the city council, not less than 10 days nor more than 26 days after receipt of the appeal, the city council shall proceed to hear and pass upon such appeal, and the decision of the city council thereupon shall be final and conclusive. [Ord. 137 § 10, 1995.]

#### **8.10.110 Removal of junk vehicles.**

It shall be the duty of the owner or person occupying or controlling any lot, place or area in the city upon which there is situated any junk vehicle or junk personal property which has been declared a public nuisance as provided herein within 10 days from the date of notification, as provided herein, or in case of an appeal to the city council, within 10 days from the determination thereof, unless the same is sustained, to remove the nuisance as stated. [Ord. 137 § 11, 1995.]

#### **8.10.120 Procedure for removal of nuisance at property owner's expense.**

Upon the failure, neglect or refusal of any owner or occupant so notified to remove a public nuisance as herein defined, within the time specified in this chapter, the city official may notify the city council in writing of the last known legal owner and property description in general terms, the city council may direct that civil action be taken to obtain a court order

enjoining the maintenance of said public nuisance and the city shall be awarded its court costs and attorney's fees for prosecuting the action.

Regardless of the action to enjoin such nuisance or in addition thereto, upon direction of the city council and at the city council's discretion, upon the failure, neglect or refusal of any owner or occupant so notified to remove the public nuisance as herein defined within the time specified in this chapter, the city official knowing of the violation shall notify the city clerk's office in writing of the known legal owner, if known, and property description in general terms and the nature of the violation. The city clerk's office shall proceed with the work specified in the notice. The cost of the work shall be transmitted to the council, who shall cause the same to be paid and levy a special assessment against the property as allowed in Idaho Code, Section 50-1008. The owner of the property shall be notified of the assessment and may pay the same prior to its certification on the tax rolls. [Ord. 137 § 12, 1995.]

#### **8.10.130 Notice of unlawful use of property.**

The notice given as provided in DCC 8.10.080 shall also contain a notice to the owner or occupant of the property, or whoever the notice is given to, that the property may not be used to maintain, store, park or keep junk vehicles or junk personal property, and that additional violations or continued violations are unlawful and continued violations shall be punishable as provided in DCC 8.10.160. The notice shall also contain a provision that additional or continued violations by the same person on the same property do not require the notice required in DCC 8.10.080 prior to removal or prosecution. One notice that the property may not be used to violate this chapter shall be sufficient. [Ord. 137 § 13, 1995.]

#### **8.10.140 Hindering authorized person.**

It shall be unlawful and a misdemeanor to interfere with, hinder or refuse to allow any authorized city official, agent or employee to enter upon private or public property to enforce the provisions of this chapter. [Ord. 137 § 14, 1995.]

#### **8.10.150 Allowance of nuisance unlawful.**

The owner of any lot, place or area within the city who shall permit or allow the existence of a public nuisance, as defined in this chapter, upon any such lot or premises owned, occupied or controlled by him shall be guilty of a misdemeanor. [Ord. 137 § 15, 1995.]

#### **8.10.160 Violation – Penalty.**

A. Any person convicted of the first violation of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than \$100.00, or to imprisonment in county jail, for a period not exceeding 30 days, or both such fine and imprisonment.

B. Any person who pleads guilty to or is found guilty of a violation of this chapter, who previously has been found guilty of or has pled guilty to a violation of the provisions of this chapter, is guilty of a misdemeanor and shall be punished as follows: shall be sentenced to jail in the county jail for a mandatory minimum period of not less than 10 days, and may be sentenced to not more than six months or fined in an amount not to exceed \$300.00, or be sentenced to both such fine and imprisonment. [Ord. 137 § 16, 1995.]

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The Donnelly City Code is current through Ordinance 267, passed April 21, 2025.

Disclaimer: The city clerk's office has the official version of the Donnelly City Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.cityofdonnelly.org/>

City Telephone: (208) 325-8859

Codification services provided by General Code

## CHAPTER 96: NUISANCES

### Section

#### *General Provisions*

#### **GENERAL PROVISIONS**

96.01 Definitions

#### **§ 96.01 DEFINITIONS.**

#### *Nuisances Regulated*

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For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CITY MANAGER.** Any designated person.

**PERSON.** A natural person, firm, partnership, association, or corporation, whether he is acting for himself or representative or agent of another.

**PERSON IN CHARGE OF PROPERTY.** An agent, lessee, contract purchaser or other person having possession or control of property or the supervision of any construction project.

**PERSON RESPONSIBLE.** The person responsible for abating a nuisance shall include:

#### *Abatement*

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(1) The owner.

(2) The person in charge of property, as defined above in this section.

(3) The person who caused to come into or continue in existence a nuisance as defined in this chapter or another ordinance of this city.

96.99 Penalty

**PREMISES.** Includes property, landscaping, plantings, trees, bushes, fences, buildings, fixtures and the exterior storage of personal property, equipment, supplies and vehicles.

**PUBLIC PLACE.** A building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.  
(Ord. 96-15, passed 6-10-96)

***NUISANCES REGULATED*****§ 96.10 NUISANCES CONCERNING ANIMALS.**

(A) *Dangerous animals.* No owner or person in charge of an animal shall permit an animal which is dangerous to the public health or safety to be exposed in public. If the animal is exposed in public, it may be taken into custody by the city and disposed of in accordance with the procedures provided by ordinance for the impoundment of dogs, except that before the animal is released by the city, the municipal judge must find that proper precautions will be taken to ensure the public health and safety.

(B) *Keeping of animals.* Unless specifically authorized by the City Council for educational or entertainment purposes, no person shall keep or maintain livestock, bees, poultry or other animals, excluding household pets, inside the city limits. This section shall not apply to parade permits issued by the City Manager, or areas of the city specifically zoned to allow animals.

(C) *Animals at large.* Except for household pets, no owner or person in charge of an animal shall permit the animal to be at large. Animals at large may be taken into custody by the city and disposed of in accordance with the procedures provided by ordinance for the impoundment of dogs.

(D) *Removal of carcasses.* No person shall permit an animal carcass owned or controlled by him to remain upon public property, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.11 NUISANCES AFFECTING THE PUBLIC HEALTH.**

No person shall cause, or permit on property owned or controlled by him, a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter:

(A) *Privies.* An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with State 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.* Stagnant water which affords a breeding place for mosquitoes and other insect pests.

(D) *Water pollution.* Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial 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.

(F) *Odor.* Premises which are in such a state or condition as to cause an offensive odor or 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) *Slaughterhouses and the like.* A slaughterhouse, tannery or pigsty.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.12 ABANDONED REFRIGERATORS.**

No person shall leave in a place accessible to children an abandoned or discarded icebox, refrigerator or similar container without first removing the door.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.13 ATTRACTIVE NUISANCES.**

(A) No owner or person in charge of property shall permit thereon:

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

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

(3) An open pit, quarry, cistern or other excavation without safeguards or barriers to prevent such places from being used by children.

(B) Any attractive nuisance which may prove detrimental to children whether in a building, on the premises of a building, occupied or unoccupied lot. This includes but is not necessarily limited to any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; or any structurally unsound fences or structures; or any lumber, logs, pilings, trash, fences, debris or vegetation which may prove a hazard for inquisitive minors.

(C) This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.  
(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.14 RUBBISH.**

No person shall deposit upon public or 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.  
(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.15 JUNK.**

(A) No person shall keep any junk outdoors on any street, lot or premises, or in a building that is not

wholly or entirely enclosed, except doors used for ingress and egress.

(B) The term “junk” as used in this section includes all motor vehicles not currently licensed, old or unusable motor vehicle parts, with a value of less than \$200, vehicles rendered inoperable by the removal of parts required to self-propel same, old machinery and old machinery parts with a value of less than \$200, old appliances or parts, old iron or other metal, glass, paper, lumber, wood or other waste or discarded material.

(C) This section shall not apply to junk kept in a duly licensed junk yard, automobile wrecking house, automobile sales lot, or automobile repair shop.  
(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.16 NOXIOUS VEGETATION.**

(A) The term “noxious vegetation” does not include vegetation that constitutes a flower or vegetable garden, unless that vegetation is a health hazard or a fire or a traffic hazard within the meaning of division (B).

(B) The term “noxious vegetation” does include:

(1) Weeds more than six inches high.

(2) Grass more than six inches high.

(3) Poison oak.

(4) Poison ivy.

(5) Blackberry bushes that extend into a public thoroughfare or across a property line.

(6) Vegetation that is:

(a) A health hazard.

(b) A fire hazard because it is near other combustibles.

(c) A traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous.

(7) Noxious weeds identified in the 1995 Oregon Department of Transportation Noxious Weed Management Program and any future amendments or additions.

(Ord. 96-15, passed 6-10-96)

***Cross-reference:***

*Conditions declared nuisances, see § 96.23*

**§ 96.17 TREES.**

(A) No owner or person in charge of property that abuts upon a street or public sidewalk shall permit trees or bushes on this 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 of the lowest branches of 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 13½ feet above the roadway.

(B) No owner or person in charge of property shall 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.

(Ord. 96-15, passed 6-10-96; Am. Ord. 2003-12, passed 11-24-03) Penalty, see § 96.99

**§ 96.18 FENCES.**

(A) No owner or person in charge of property shall construct or maintain a barbed-wire fence, 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.

(B) No owner or person in charge of property shall construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.19 SURFACE WATER AND DRAINAGE.**

(A) No owner or person in charge of a building or structure shall suffer or permit rainwater, ice or snow to fall from the building or structure onto a street or public sidewalk, or to flow across the sidewalk.

(B) The owner or person in charge of property shall install and maintain in 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) No owner or person in charge of property shall allow overflow water from a building to drain onto the property of another.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.20 RADIO AND TELEVISION INTERFERENCE.**

(A) No person shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonable preventable interference with radio or television reception by a radio or television receiver of good engineering design.

(B) This section does not apply to devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

**§ 96.21 UNNECESSARY NOISE.**

(A) No person shall make, assist in making, continue or cause to be made any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others.

(B) Loud, disturbing and unnecessary noises in violation of this section include but are not limited to the following:

(1) The keeping of any bird or animal which, by causing frequent or long-continued noise, shall disturb the comfort and repose of any person in the vicinity.

(2) The attaching of a bell to an animal, or allowing a bell to remain on an animal.

(3) The use of a vehicle or engine, either stationary or moving, so out of repair, loaded or operated as to create any loud or unnecessary grating, grinding, rattling or other noise.

(4) The sounding of a horn or signaling device on a vehicle on a street, public place, or private place, except as a necessary warning of danger.

(5) The blowing of a steam whistle attached to a stationary boiler; except to give notice of the time to begin or stop work, as a warning of danger, or upon request of city authorities.

(6) The use of a mechanical device operated by compressed air, steam, or otherwise, unless the noise thereby created is effectively muffled.

(7) The erection, including excavation, demolition, alteration or repair of a building in residential districts other than between the hours of 7:00 a.m. and 6:00 p.m., except in case of urgent necessity in the interest of the public welfare and safety, and then only with a permit granted by the City Manager for a period not to exceed ten days. If the City Manager determines that the public health, safety and welfare will not be impaired by the erection, demolition, alteration, or repair of a building between the hours of 6:00 p.m. and 8:00 a.m., and if the City Manager shall further determine that loss or inconvenience would result to any person unless the work is permitted within those hours, the City Manager may grant permission for such work to be done within specified hours between 6:00 p.m. and 8:00 a.m. upon application being made at the time the permit for the work is awarded or during the progress of the work. The actual owner of property may do work on property actually occupied by him between the hours of 6:00 p.m. and 9:00 p.m. without obtaining a permit as required.

(8) The use of a gong or siren upon a vehicle, other than police, fire or other emergency vehicle.

(9) The creation of excessive noise on a street adjacent to a school, institution of learning, church or court of justice, while the same are in use; or on a street adjacent to a hospital, nursing home, or other institution for the care of the sick or infirm, which unreasonably interferes with the operation of such institution or disturbs or unduly annoys patients.

(10) The discharge in the open air of the exhaust of a steam engine, internal combustion engine, motorboat or motor vehicle, except through a muffler, or other device, which will effectively prevent loud or explosive noises and the emission of annoying smoke.

(11) The use or operation of any device for producing or amplifying sound so loudly as to disturb persons in the vicinity, or in such a manner as renders the use a nuisance. However, upon application to the City Manager, permits may be granted to responsible persons or organizations for the broadcast or amplification or programs of music, news, speeches or general entertainment as a part of a national, state or city event, public festivals or outstanding events of a noncommercial nature. The broadcast or amplification shall not be audible for a distance of more than 1,000 feet from the instrument, speaker or amplifier; and in no event shall a permit be granted where any obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result.

(12) The making of a noise by crying, calling or shouting or by means of a whistle, rattle, bell, gong, clapper, horn, hammer, drum, musical instrument or other device for the purpose of advertising goods, wares or merchandise, attracting attention, or inviting patronage of a person to a business.

(13) The conducting, operating or maintaining of a garage within 100 feet of a private residence, apartment, rooming house, or hotel in such manner as to cause loud or disturbing noises to be

emitted between the hours of 10:00 p.m. and 7:00 a.m.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

#### § 96.22 NOTICES AND ADVERTISEMENTS.

(A) No person shall affix or cause to be affixed a placard, bill, advertisement, or poster upon real or personal property, public or private, without first securing permission from the owner or person in control of the property. 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.

(B) No person shall scatter, distribute or cause to be scattered or distributed on private property any placards, advertisements or other similar material without first securing permission from the owner or person in control of the property.

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

(D) Any placard, bill, advertisement or poster found posted or otherwise affixed upon any property contrary to the provisions of this section may be removed by the City Manager or a designee. The person responsible for such illegal posting shall be liable for the cost incurred in its removal.

(Ord. 96-15, passed 6-10-96) Penalty, see § 96.99

#### § 96.23 DECLARATION OF NUISANCE.

(A) The acts, conditions or objects specifically enumerated and defined in §§ 96.10 through 96.22 are declared public nuisances; and such acts, conditions, or objects may be abated by any of the procedures set forth in §§ 96.35 through 96.41 and 96.99 of this chapter.

(B) In addition to the nuisances specifically enumerated within this chapter, every other thing, substance, or act which is determined by the City Manager to be injurious or detrimental to the public health, safety or welfare of the city is declared a

nuisance and may be abated as provided in this chapter.

(Ord. 96-15, passed 6-10-96)

#### *ABATEMENT*

#### § 96.35 NOTICE TO ABATE.

(A) Upon determination that a nuisance exists, the City Manager or designee shall post a notice of abatement on the property, and serve a written notice of abatement by certified mail to the owner of record of the property.

(B) The notice to abate shall contain:

(1) A description of the real property, by street address or otherwise, on which the nuisance exists.

(2) A direction to abate the nuisance within a specified time frame.

(3) A description of the nuisance.

(4) A statement that, unless the nuisance is removed, the city may abate the nuisance and the cost of abatement will be charged to the owner.

(5) A statement that failure to abate a nuisance may warrant citation into municipal court with the imposition of a fine.

(6) A statement that the person responsible may protest the notice to abate by giving notice to the City Manager, ten days from the date or posting of the notice.

(C) The City Manager, or a designated representative, posting the notice shall execute and file with the city a certificate before a notary public, stating the date and place of the posting, required in division (A) of this section.

(D) An error in the name or address of the person responsible shall not make the notice void. (Ord. 96-15, passed 6-10-96)

#### **§ 96.36 TIME FRAME FOR ABATEMENT.**

The nuisance shall be abated within a reasonable time, but not more than 30 days from the date of notice of abatement. (Ord. 96-15, passed 6-10-96)

#### **§ 96.37 ABATEMENT BY PERSON RESPONSIBLE.**

(A) Within the time frame specified in the notice to abate, the person responsible shall remove the nuisance, or file a protest within ten days from the date of notice.

(B) The person responsible may request an extension of time from the City Manager, or a designee, who may grant a reasonable extension or accommodations to the specified time frame.

(C) The person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the City Manager.

(D) The statement shall be referred to the City Council as a part of its regular agenda at its next meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council. In all cases the Council shall determine whether a nuisance in fact exists, and set a time frame for the abatement of the nuisance. The determination shall be entered in the official minutes of the Council.

(E) If the Council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within the time frame specified. (Ord. 96-15, passed 6-10-96)

#### **§ 96.38 JOINT RESPONSIBILITY.**

If more than one person is responsible for the

nuisance, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance. (Ord. 96-15, passed 6-10-96)

#### **§ 96.39 ABATEMENT BY CITY.**

(A) If the nuisance has not been abated by the person responsible within the time allowed, the Council may cause the nuisance to be abated.

(B) The officer charged with the abatement of the nuisance shall have the right to enter into or upon property at reasonable times to investigate or cause removal of a nuisance.

(C) The City Manager shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include a charge equal to 20% of those expenses for administrative costs. (Ord. 96-15, passed 6-10-96)

#### **§ 96.40 ASSESSMENT OF COSTS.**

(A) The City Manager shall forward to the person responsible, by certified mail, a notice of assessment stating:

(1) The total cost of the abatement, including administrative costs.

(2) That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(3) That if the owner or the person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the City Manager not more than five days from the date of the notice of assessment.

(B) No later than 30 days after the date of objection, the Council, in regular course of business, shall hear and make a decision on the objections to the costs assessed.

(C) If the costs of the abatement are not paid within 30 days from the date of the notice of assessment, an assessment of the costs, as stated or as decided by the Council, shall be made by resolution and it shall constitute a lien on the property from which the nuisance was removed or abated.

(D) The lien shall be enforced in the same manner as liens for street improvements, utility bills and other city liens and shall bear interest at an annual rate of 18%. The interest rate shall begin to run on the thirty-first day from the date of notice of abatement.

(E) An error in the name of the owner or the person responsible or a failure to receive the notice of assessment will not void the assessment, and it shall remain a valid lien against the property.  
(Ord. 96-15, passed 6-10-96)

#### **§ 96.41 SUMMARY ABATEMENT.**

City officials may proceed to summarily abate a health or other nuisance which imminently endangers human life or property. The person responsible for such a nuisance shall reimburse the city for costs incurred in abating the nuisance.  
(Ord. 96-15, passed 6-10-96)

#### **§ 96.99 PENALTY.**

(A) A violation of any provision of this chapter is a misdemeanor and shall, upon conviction, be punishable by a fine not to exceed \$700.

(B) Each day a violation of a provision of this chapter constitutes a separate violation.

(C) The abatement of a nuisance is not a penalty for violation of this chapter, but is an additional remedy. The imposition of a fine does not relieve a person of the duty to abate the nuisance.  
(Ord. 96-15, passed 6-10-96)