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STAFF REPORT AMD-20-10

Date Submitted: November 11, 2020
Agenda Date Requested: November 18, 2020
To: John Day Planning Commission
From: Daisy Goebel, City of John Day
Associate Planner
Subject: Ordinance No. 20-187-08, An Ordinance Amending the John Day Development Code to Strengthen and Clarify Enforcement Provisions within the Code (Type IV Procedure)
Location: Citywide

Type of Action Requested

Resolution Ordinance
 Formal Action Report Only

1. BACKGROUND

The City of John Day Development Code (the “Code”) currently contains enforcement provisions that are unclear, insufficient and difficult to enforce and administer. With increased rates of development in John Day, there is an increased need and capacity for development code enforcement. The City is proposing a Code amendment to clarify compliance provisions, redefine violations as a nuisance rather than a misdemeanor, and provide provisions for remediation. The amendment will also provide a definition for “Planning Official” that clarifies this role to include qualified designees appointed by the City Manager to administer the Code.

2. APPLICABLE CRITERIA

This request is a legislative amendment to amend the John Day Development Code. The approval criteria in section 5-4.1.050.G apply.

3. PLANNING COMMISSION CONSIDERATIONS

The Planning Commission's review must focus on the relevant code criteria and follow the public hearing requirements for a Type IV Legislative Amendment under section 5-4.7.020. The Planning Commission should recommend the City Council approve the request if it conforms to the approval criteria.

4. STAFF RECOMMENDATION

Staff recommends that the Planning Commission make a recommendation to the City Council to **adopt Ordinance 20-187-08 as presented in Exhibit A**, along with the findings in this report, subject to applicable comments submitted to the Planning Commission as part of the public hearing.

5. PUBLIC NOTIFICATION

The City of John Day mailed public notice to all affected property owners on October 27th and published notice in the Blue Mountain Eagle on October 28th as required by the Development Code. Staff reports were made available for public inspection on November 11—seven days prior to the hearing date.

Public comments received: No public comments were received at the time of the staff report's publication but comments are expected from Riverside Home Park. The City held a pre-application conference with Riverside and its legal representative along with the City's attorney on Thursday, November 5th, to discuss proposed text amendments. A follow up meeting will occur the week of November 9th. An addendum to this staff report and any agreed upon changes to the ordinance language will be provided to the Planning Commission along with any comments received prior to the public hearing.

Staff note(s): Following the teleconference with Riverside Home Park, the City agreed to clarify and reconsider portions of the proposed amendment, as follows:

- (1) Section B. The intent of declaring violations of the Code as a public nuisance as noted in Section B is to provide an opportunity for due process of development code violations by using the City's existing enforcement and abatement procedures adopted under the John Day Nuisance Ordinance, rather than defining and adopting a separate set of procedures for enforcement of development code violations. These due process procedures are described in Sections 33-46 of the Nuisance Ordinance (Exhibit B).
- (2) Sections C(1) and C(4). Section C Paragraph 1 prohibits the City from issuing permits or land use approvals for properties deemed to be in violation of the Code, except for those conditions described in Paragraph 4(a) through 4(d) under which the City may issue permits to properties in violation of the Code.

The City is evaluating the option of adding a 4(e) to this ordinance to allow for approvals at the discretion of the City Planning Official where the proposed development meets all applicable code requirements. The purpose of this adjustment would be to allow owners of home parks or other multi-family developments to continue with development actions that meet the standards of the Code while unrelated violations are being adjudicated and/or abated.

- (3) Section D. Revocation procedures created herein and imposed on applicants who fail to comply with those conditions and limitations placed upon the exercise of the permit or approval are consistent with similar provisions in state law. Specifically, the *2002 Oregon Manufactured Dwelling Park and Specialty Code (the "MD&P")*, Section 1-7.8 "Permit Validity" and Section 1-7.9 "Permit Suspension or Revocation," provide that "the issuance of a permit based on plans, specifications and related material shall not prevent the authority having jurisdiction from requiring the correction of errors in plans, specifications and related material or from preventing the building from being operated in violation of this code (Section 1-7.8)." The 2002 Specialty Code further authorizes suspension or revocation of permits "according to the provisions of the Oregon Administrative Procedures Act or local ordinances (Section 1-7.9, *italics added*)." Similar language exists in the *2010 Oregon Manufactured Dwelling Installation Specialty Code*, Section 1-11 Stop Work Orders, which requires "The stop work order shall be in writing and shall be given to the owner of the property involved, to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume" (Section 1-11.2). Section D has been updated to reflect similar language for this ordinance.
- (4) Section E. The fees imposed for violations has been updated to be consistent with the language in Section 47.1 of the Nuisance Ordinance, except that additional fine of *not more than* \$250 may be assessed for each day that the violation persists, which differs from the Nuisance Ordinance, which assesses fines of *not less than* \$250. The fines and penalties imposed by Section E of this ordinance 20-187-08 shall supercede those of the Nuisance Ordinance.
- (5) Section I. Vicarious liability is imposed by this ordinance on both the property owner and its employees, agents, contractors, tenants, invitees, and any other occupant of the owner's real property. This section is consistent with Section 1-12 "Violations and Penalties" of the *MD&P* as it relates to manufactured home park developments, which states: "When an inspection reveals a manufactured dwelling installation, alteration, repair, or conversion violates any portion of this code, law, rule, or regulation, the authority having jurisdiction shall serve a Notice of Violation upon the owner or contractor" (Section 1-12.1(a)). This vicarious liability is also consistent with Oregon Revised Statute (ORS) 446.111 Regulation of structures in parks, which states: "No stationary structure may be erected within a mobile home or manufactured dwelling park *without the consent of the owner or operator*; and when giving consent, it shall be the duty of the mobile home or manufactured dwelling park manager to advise the tenant or builder of the standards

required by ORS 446.003 (Definitions for ORS 446.003 to 446.200 and 446.225 to 446.285 and ORS chapters 195, 196, 197, 215 and 227) to 446.200 (Exemption from additional regulations) and 446.225 (Administration and enforcement of federal manufactured housing safety and construction standards) to 446.285 (Advisory board training and education programs) and the rules issued thereunder. [1961 c.665 §3; 1967 c.247 §7; 1969 c.533 §22; 1973 c.560 §11; 1975 c.546 §11; 1989 c.648 §11]” (*italics added*).

6. ADOPTION PROCEDURE AND FINDINGS

The following section shown in italics and boldface provides the decision making criteria as required by John Day Development Code Section 5-4.1.050.G.

Decision-Making Criteria. The recommendation by the Planning Commission shall be based on the following factors:

1. ***Approval of the request is consistent with the Statewide Planning Goals;***
2. ***Approval of the request is consistent with the Comprehensive Plan; and***

Finding: The 19 statewide planning goals and the local comprehensive plan mirror one another and both instruments have guided the creation and modification of our development code. Neither of these documents address code enforcement directly, but improving the City’s ability to monitor and correct violations of the development code will inherently promote the implementation of both the statewide planning goals and the city development code.

3. ***The property and affected area is presently provided with adequate public facilities and services, including transportation, sewer and water systems, to support the use, or such facilities and services are provided for in adopted City plans and can be provided concurrently with the development of the property.***

Finding: This amendment affects the entire city of John Day, but does not interfere with the use or development of public facilities and services.

7. PLANNING COMMISSION MOTION

After hearing the staff presentation and any public testimony, including any rebuttal, the commission will close the hearing and deliberate. The following motion is suggested:

“I move to recommend City Council approve AMD-20-10 based on the findings contained in the staff report [with conditions or amendments to Ordinance No. 20-187-08, if any].”

The staff report may be amended during the course of the hearing.

RECOMMENDED TO THE CITY COUNCIL by the John Day Planning Commission this 18th day of November, 2020.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

ORDERED:

Ken Boethin, Chair

ATTEST:

Nicholas Green, City Manager

Enclosures:

- Exhibit A. Ordinance No. 20-187-08 (proposed)
- Exhibit B. John Day Nuisance Ordinance No. 15-165-03

EXHIBIT A

CITY OF JOHN DAY
ORDINANCE NO. 20-187-08

AN ORDINANCE AMENDING THE JOHN DAY DEVELOPMENT CODE TO STRENGTHEN AND
CLARIFY ENFORCEMENT PROVISIONS WITHIN THE CODE

Added language in double underline

Deleted language in ~~strikethrough~~

5-1.2.100 Enforcement

~~A. **Misdemeanor.** Any person violating or causing the violation of any of the provisions of this Code has committed a misdemeanor, and upon conviction thereof is punishable as prescribed in Section 1-4-1 of the City Code of John Day. Such person is guilty of a separate violation for each and every day during any portion of which any violation of this Code is committed or continued by such person.~~

~~B. **Abatement of Violation Required.** A finding of a violation of this Code shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the City.~~

~~C. **Responsible Party.** If a provision of this Code is violated by a business or other entity, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this section.~~

A. Compliance with the Development Code.

1. No structure (or part of a structure) may be used, erected, moved, or altered, no land may be used, altered, or divided, and no other action shall be undertaken unless such action conforms with the regulations and requirements of this Development Code.

2. Violations of conditions of approval set forth in permits and approvals issued pursuant to this Development Code are violations of this Development Code.

3. No permits or approval for the use, construction, or alteration of any land or structures may be issued unless applicable applications with all required plans, specifications, and other supporting materials are submitted and approved by the City in accordance with the provisions of this Development Code.

B. Violation of this Development Code as a Nuisance. Violation of this Development Code are hereby deemed a public nuisance and may be enjoined, abated, or removed pursuant to the procedures set forth in Title 8, Chapter 2 of the City Code of John Day.

C. Code Enforcement and Land Use.

1. If a property is in violation of this Development Code or any other City ordinance, the City shall not approve any permit or other land use approval including, without limitation, building permits, land divisions, and property line adjustments.

2. As part of the application process, the applicant must certify:

a. That to the best of the applicant's knowledge, the subject property, including any prior development phases of the property, is currently in compliance with both the Development Code and any applicable prior land use approvals for the property; or

b. That the application is for the purpose of bringing the property into compliance with the Development Code and/or prior land use approvals.

3. For purposes of this section, a violation means the property has been determined to not be in compliance with the Development Code or other applicable law either through a

prior notice or decision by the City or other tribunal, through the review process of the current application, or through an acknowledgement by the alleged violator.

4. Notwithstanding anything herein to the contrary, the City may issue a permit or other approval if:

a. Approval, and compliance with such approval, would result in the property coming into full compliance with all applicable provisions of federal, state, or local laws including, without limitation, the Development Code;

b. It is necessary to protect the public health or safety;

(1) For the purposes of this section, “public health and safety” means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger life, health, personal property, or safety of the residents of the property or the public.

(2) Examples of that situation include, but are not limited to, issuance of permits to replace faulty electrical wiring; repair or install heat sources; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failure.

c. It is for work related to and within a valid utility or right-of-way easement over, on, or under the affected property; or

d. It is for emergency repairs to make a structure habitable or a right-of-way passable.

D. Revocation.

1. The Planning Commission may revoke any permit or approval granted pursuant to the provisions of this Development Code if it is determined that the permit or approval was issued on account of false statements contained in the application form or false representations made at a public hearing.

2. The Planning Commission may revoke any permit or approval granted pursuant to the provisions of this Development Code for failure to comply with those conditions and limitations placed upon the exercise of the permit or approval.

3. Prior to revocation, a written stop work order shall be given to the owner of the property involved, to the owner’s agent, or to the person doing the work. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume, or shall state that a revocation hearing shall be held by the Planning Commission pursuant to the procedures for a Type III action.

E. Penalties of Violation.

1. A violation of any provision of this Development Code, with each violation constituting a separate offense, is punishable by:

a. A fine of not less than \$100 and not more than \$500 for each violation.

b. An additional fine of not more than \$250 for each day that the violation persists.

F. Administration; Remedies. The City Planning Official and any public safety officer may enforce the provisions of this Development Code. In pursuing enforcement, the City Planning Official may pursue any remedy provided by this Development Code or otherwise available at law or equity including, without limitation, injunctive relief without prejudice to any other remedy available to City. The City Planning Official may enter into voluntary compliance agreements with the violator. The remedies available to City are not exclusive and it is within the discretion of City to seek cumulative remedies for a violation of the Development Code.

I. Vicarious Liability. The owner of real property is vicariously liable, jointly and severally, for any violations of this Development Code related to the owner’s real property committed by the owner’s employees, agents, contractors, tenants, invitees, and any other occupant of the owner’s real property.

SECTION 2: AMENDMENT “5-6.1.030 Definitions” of the City of John Day Development Code is hereby *amended* as follows:

5-6.1.030 Definitions

The following definitions are organized alphabetically and some related terms are also grouped together and cross-referenced under group headings (*e.g.*, Transportation-Related, Environment-Related, etc.).

...

Pedestrian Amenity(ies). See Development-Related definitions.

Planning Official. The person appointed by the City Manager to administer the City’s Development Code and perform land use planning functions. The Planning Official may be a City employee or a contractor. This term includes any qualified designee of the Planning Official.

Planter Strip. A landscape area for street trees and other plantings within the public right-of-way, usually a continuous planter area between the street and a sidewalk. See also, Tree Well.

ORDINANCE NO. 15-165-03

AN ORDINANCE AMENDING AND RESTATING TITLE 8, CHAPTER 2 OF THE JOHN DAY CITY CODE, COMMONLY KNOWN AND REFERRED TO AS THE “JOHN DAY NUISANCE ORDINANCE,” WHICH TITLE 8, CHAPTER 2 ESTABLISHES DEFINITIONS OF NUISANCE, PENALTIES, AND PROCEDURES FOR ABATEMENT OF NUISANCE IN THE CITY OF JOHN DAY; SUPERSEDING AND REPEALING ANY AND ALL ORDINANCES, RESOLUTIONS, AND/OR POLICIES IN CONFLICT WITH THIS ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, Title 8, Chapter 2 of the John Day City Code (the “Code”), commonly known and referred to as the John Day Nuisance Ordinance, establishes certain definitions of nuisance, penalties, and procedures for the abatement of nuisance; and

WHEREAS, the John Day City Council (the “City Council”) has determined that Title 8, Chapter 2 of the Code is outdated, difficult to efficiently and effectively administer, and must be amended; and

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

WHEREAS, by the adoption of this Ordinance No. 15-165-03, the City Council (a) hereby amends and restates Title 8, Chapter 2 of the Code in its entirety, except as specifically provided in this Ordinance No. 15-165-03, and (b) establishes amended definitions of nuisance and provides for penalties and procedures for abatement of such nuisances.

NOW, THEREFORE, the City of John Day ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Short Title. This Ordinance No. 15-165-03 will be known as the “Nuisance Ordinance” and will be cited and referred to herein as this “Ordinance.”
3. Nuisance Definitions, Penalties, and Procedures for Abatement Established. City hereby establishes the nuisance definitions, penalties, and procedures for abatement of nuisances set forth in the attached Exhibit A, which Exhibit A will be deemed part of this Ordinance.
4. Amendment and Restatement. This Ordinance amends, restates, supersedes, replaces, and repeals Title 8, Chapter 2 of the Code in its entirety, and supersedes and repeals all ordinances, resolutions, and/or policies in conflict with this Ordinance; provided, however, (a) Section 8-2-5-2 of the Code concerning unnecessary noise will continue in full force and effect until replaced, superseded, and repealed by the City Council through passage and approval of separate ordinance, and (b) City may continue the prosecution, conviction, and/or punishment of any person who has or will violate Title 8, Chapter 2 of the Code prior to the effective date of this Ordinance.
5. Interpretation; Severability; Errors. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the

singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, rule, regulation, code, or ordinance includes the law, rule, regulation, code, or ordinance as now in force and which may hereafter be amended. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the City Council to cure editorial and/or clerical errors.

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

IN WITNESS WHEREOF, this Ordinance was PASSED by the City Council by a vote of 6 “for” and 0 “against” and APPROVED by the mayor on June 9, 2015.

[signed copy on file]
Ron Lundbom, Mayor

ATTEST:

[signed copy on file]
Peggy Gray, City Manager

Exhibit A

Nuisance Definitions, Penalties, and Procedures for Abatement of Nuisance

1. Definitions. As used in this Ordinance, the following capitalized terms have the meanings assigned to them below:

“Abandoned Structure(s)” means a vacant Building or Structure that is an Attractive Nuisance.

“Ash(es)” means the residue of the combustion of solid fuels.

“Attractive Nuisance(s)” means Buildings, Structures, and/or Premises that are in an Unsecured, derelict, and/or dangerous condition so as potentially to constitute an attraction to minors, vagrants, criminals, and/or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing an unlawful act.

“Boarded” means the securing of an Unoccupied Building or Structure against entry by the placement of material such as plywood, boards, or other similar material over openings that are designed or intended for windows or doors, where the materials are visible off the Premises and where the materials are not lawfully or customarily installed on a Building or Structure that would be occupied.

“Building(s)” means any Structure designed for habitation, shelter, storage, trade, manufacture, business, education, or other similar purposes.

“Building Code” means the specialty building, plumbing, electrical, structural, and other codes applicable in the City of John Day.

“Building Official” means the administrator of the Building Code or the administrator’s designee (e.g., Grant County).

“Bulk Solid Waste(s)” means discarded bedding, mattresses and furniture, Junk, Yard Debris, uprooted tree stumps, demolition or construction debris, or other non-putrefactive and nonhazardous materials not placed in a Container, or too large to be placed in a Container.

“City” means the City of John Day, an Oregon municipal corporation.

“City Council” means City’s elected legislative body.

“City Designee” means the City Manager or his or her designee.

“City Manager” means City’s city manager or his or her designee.

“Code” means City’s municipal code and ordinances, including, without limitation, the City of John Day Development Code.

“Container(s)” means any vessel approved by the City Manager for the storage of Solid Waste.

“Corrosive Substance(s)” means any salt substance or other substance which has a corrosive effect.

“Deterioration” means a lowering in the quality, condition, or appearance of a Building or Structure, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting, or any other evidence of physical decay, neglect, excessive use, or lack of maintenance.

“Derelict Structure(s)” means a Building or Structure that is Unfit for Human Habitation, or poses an Incipient Hazard, or is detrimental to public health, safety, or welfare, as a result of one or more of the following conditions: (a) is Unoccupied and Unsecured; (b) is Partially Constructed; (c) is an Abandoned Structure or Attractive Nuisance; (d) is in condition of Deterioration; and/or (e) has an Infestation of Pests.

“Dry Vegetation” means dry vegetation, including, without limitation, grass, weeds, and shrubs, that may be a fire hazard.

“Dwelling Unit(s)” or “Dwelling(s)” means a single unit within a Building providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. As used in this Ordinance, “Dwelling Unit” or “Dwelling” includes, without limitation, as the context requires, single family dwellings, duplexes, triplexes, condominiums, mobile homes, multi-family dwellings, and single units therein.

“Extermination” means the control, elimination, and removal of Pests by (a) eliminating harborage places, (b) removing or making inaccessible materials that serve as food, (c) poison spraying, fumigating, or trapping, or (d) any other Pest elimination method approved by the Health Officer or City Designee.

“Food Waste(s)” means all waste from meats, fish, shellfish, grains, fruits, and vegetables which attends or results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption. “Food Waste(s)” includes, without limitation, excess, spoiled, or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of edible oils, and organic waste from food processing. “Food Waste(s)” does not include (a) large amounts of oils and meats which are collected for rendering, fuel production, or other reuse applications, or (b) dead animals not intended for human consumption or animal excrement.

“Fowl” means a duck, goose, chicken, pigeon, parrot, or other like bird.

“Garbage” means all classes of putrefactive and easily decomposable animal and vegetable matter, including, without limitation, wastes produced from the handling and preparation of food, and containers originally used for foodstuffs.

“Hazardous Thicket(s)” means vines or other thickets that (a) conceal trash, debris, or Junk, (b) create a harborage for people involved in criminal activity or for products used for unlawful activity, or (c) encroach upon the public right-of-way, or private property of another, in a manner that may be hazardous.

“Health Officer” or “City Designee” means the City Manager.

“Hearings Officer” means the person or persons appointed by the City Council to serve as the Hearings Officer.

“Imminent Hazard(s)” means any condition of Deterioration that places public health, safety, and/or welfare in high risk of peril, when the peril is immediate, impending, and/or on the point of happening.

“Incipient Hazard(s)” means any condition that can become an Imminent Hazard if further Deterioration is allowed to occur.

“Indoor Fixture(s)” means any item that is designed for use indoors or otherwise protected from environmental elements, including, without limitation, heating, plumbing, and electrical fixtures.

“Indoor Furnishing(s)” means any item that is designed to be used indoors or otherwise protected from environmental elements, including, without limitation, upholstered furniture, indoor appliances, and indoor carpet.

“Infestation(s)” or “Infested” means the presence of Pests in large numbers that are harmful or bothersome within or adjacent to a Building or Structure or upon a Premises.

“Junk” means articles of personal property that have outlived their usefulness in their original form, or articles of personal property that have been discarded and are no longer used for their manufactured purpose, regardless of value. As used in this Ordinance, the term “Junk” includes, without limitation, the following: (a) derelict motor vehicle (i.e., any used motor vehicle without a vehicle license or with an expired license); (b) neglected motor vehicle (i.e., any motor vehicle that is missing critical parts required for the normal and legal operation of the vehicle, but has all of its body parts intact, including fenders, hood, trunk, glass, and tires); (c) wrecked motor vehicle, or part thereof (i.e., any motor vehicle that is dismantled or partially dismantled, or has a broken or missing window or windshield, or lacks a wheel or tire); (d) machinery or parts thereof that are inoperative, worn out, or in a state of disrepair; (e) appliances or parts thereof that are inoperative, worn out, or in a state of disrepair; (f) worn out or dilapidated Indoor Fixtures or Indoor Furnishings, or parts thereof; (g) Bulk Solid Waste; and/or (h) Solid Waste items that are of a type or quantity inconsistent with normal and usual use such as wood, metal, scrap, and other similar items.

“Keep” means to provide food or shelter of a permanent or semi-permanent nature.

“Legally Occupied” means the use and Occupancy of a Premise for a purpose authorized by law. A Premise will be considered Legally Occupied for the purposes of this Ordinance if the Premise is maintained in good order, is temporarily vacant, and the Owner is seeking, in good faith, to Let the Premises.

“Let for Occupancy” or “Let” means to permit, to provide, or to offer possession or Occupancy of a Dwelling Unit, Building, Structure, or Premises pursuant to a lease, permit, agreement, or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

“Livestock Animal(s)” means a horse, cow, mule, sheep, goat, hog, potbellied pig, or any variation of pigs, or other like animal, but not including a dog, cat, household pet, rabbit, or other like animal.

“Noxious Vegetation” means (a) weeds more than ten (10) inches in height, (b) grass more than ten (10) inches in height, (c) dead Dry Vegetation or Rank Vegetation, (d) poison oak, poison hemlock, or

poison ivy, (e) Hazardous Thickets, (f) all noxious weeds, regardless of height, as defined by the then current Grant County noxious weeds list, and/or (g) other rank, noxious, and/or dangerous vegetation that is a health hazard, fire hazard, or traffic hazard because it impairs the view of a public right-of-way (including, without limitation, all traffic signs and signals, street light and/or name signs), obstructs the access of the public right-of-way, or otherwise makes use of the public right-of-way hazardous and/or creates a fire hazard to the public right-of way and/or other property. This definition will not include agriculture crops, endangered riparian grasses that have not come to seed, and wet land grasses that are neither a fire nor a traffic hazard.

“Occupancy” means the purpose for which a Building, Structure, or Premises is used or intended to be used.

“Occupant(s)” means any person living or sleeping in a Building or Structure, or having possession of a space within a Building or Structure or possession of a Premise.

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

“Partially Constructed” means an occupied or vacant Building or Structure, or portion thereof, that has been left in a state of partial construction for more than six months, or that has not been completed prior to the expiration of any building permit.

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

“Pest(s)” means animals detrimental to humans or human concerns including, without limitation, insects, rodents, rats, or vermin.

“Premise(s)” means a lot, or parcel of land, including any Buildings or Structures thereon.

“Private Place” means any place other than a Public Place.

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

“Rank Vegetation” means any vegetation existing in a state of uncontrolled growth or without commonly recognized vegetation maintenance or management practices applied.

“Remediation” means the elimination or correction of a condition, including, without limitation, repair, replacement, restoration, or removal.

“Rubbish” means worthless, discarded material, including, without limitation, cardboard, plastic, glass, paper, rags, sweepings, wood, rubber, leather, and similar waste materials that ordinarily may accumulate on a Premises.

“Skilled Manner” means executed in a proper manner, consistent with generally accepted standards of construction and maintenance (e.g., generally plumb, level, square, in line, undamaged, without marring adjacent work).

“Solid Waste(s)” means all waste, in solid, semisolid, or liquid form, including, without limitation, the following: (a) Garbage, Rubbish, trash, Ashes, street refuse, waste paper, corrugated material, and cardboard; (b) commercial, industrial, demolition, and construction wastes; (c) Food Waste; (d) small dead animals; (e) infectious waste as defined in ORS 459.386(4); and (f) other wastes. As used in this Ordinance, “Solid Waste(s)” does not include sewage, sewage sludge, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service or materials that are used for fertilizer, for compost or composting, or for other productive agricultural or horticultural purposes.

“Structure(s)” means (a) that which is built or constructed, (b) an edifice or Building of any kind, including mobile or manufactured homes and mobile outbuildings, and/or (c) any work that is built up as an addition to or fixture on a Premises.

“Unfit for Human Habitation” means a Building or Structure the Health Officer or City Designee finds in disrepair or suffers from lack of maintenance, is unsanitary, is Pest Infested, contains filth and contamination, and/or lacks Ventilation, illumination, sanitary, or heating facilities, such that habitation would be injurious to the health, safety, or welfare of the Occupant(s).

“Unoccupied” means not Legally Occupied.

“Unsecured” means unlocked or otherwise open to entry.

“Ventilation” means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

“Waste Tire(s)” means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

“Wild or fur-bearing animal(s)” means all wild animals, and other animals raised for the fur, such as chinchillas, mink, snakes, wolves, and other similar animals, exotics, and hybrids.

“Yard Debris” means all vegetative waste generated from property maintenance and/or landscaping activities, including, without limitation, grass clippings, leaves, hedge trimmings and small tree branches, but excluding tree stumps and other similar bulky woody materials.

Where terms are not defined in this Ordinance and are defined in the state building, plumbing, and/or mechanical codes, such terms will have the meanings assigned to them as in those codes. Terms not otherwise defined in this Ordinance or in the state building, plumbing, and/or mechanical codes will have ordinarily accepted meanings. Whenever the words “Dwelling Unit,” “Dwelling,” “Premises,” “Building,” or “Structure” are used in this Ordinance, they will be construed as though they were followed by the words “or any part thereof.”

2. Scope. The provisions of this Ordinance are intended to protect the public health, safety, and general welfare by (a) regulating existing Buildings and Structures, residential and nonresidential, and existing Premises, (b) establishing minimum requirements and standards for

Buildings, Structures, and Premises for protection from the elements, life safety, other hazards, and for safe and sanitary maintenance, (c) fixing the responsibility of Owners and Occupants, and (d) administration, enforcement, and penalties.

3. Intent. The provisions of this Ordinance will be construed to secure and ensure public health, safety, and welfare insofar as they are affected by the continued Occupancy and maintenance of Buildings, Structures, and Premises. Existing Buildings, Structures, and Premises that do not comply with the provisions of this Ordinance will be altered or repaired to provide a minimum level of health, safety, and maintenance as required herein.

4. Application of Other Codes. Nothing in this Ordinance will be construed to relieve a Person from complying with any federal, state, or local laws, regulations, and/or ordinances, including any other provisions of the Code, or the requirement to obtain all necessary permits and approvals.

5. Responsibility.

5.1 Unless otherwise provided, the Health Officer or City Designee will be responsible for the enforcement all of the provisions of this Ordinance. The Health Officer or City Designee may appoint such officers, technical assistants, inspectors, and other employees as will be necessary for the administration of this Ordinance. The Health Officer or City Designee is authorized to designate an employee as deputy who will exercise all the powers of the Health Officer or City Designee during the temporary absence or disability of the Health Officer or City Designee.

5.2 Where conditions or prohibitions under this Ordinance are regulated by the Building Code, the Building Official will be responsible for making such determination and taking appropriate action as provided therein.

6. Modifications. Where there are extreme hardships involved in carrying out the provisions of this Ordinance, the Health Officer or City Designee will have the right to vary or modify such provisions upon application of an Owner or Occupant, provided that the intent of the law is observed and that the public health, safety, and welfare is assured.

7. Failure to Obey Order of Health Officer or City Designee.

7.1 It will be unlawful for any Person to refuse to obey an order by the Health Officer or City Designee acting in the discharge or apparent discharge of official duty.

7.2 It is no defense to a prosecution for a violation of this Section 7 that the Health Officer or City Designee lacked legal authority to issue the order, provided the Health Officer or City Designee was acting under color of official authority.

MAINTENANCE AND REPAIRS

8. Required Maintenance. All systems, devices, and safeguards required by this Ordinance or by a previous statute or code applicable to the Building, Structure, or Premises at the time the Building, Structure, or Premises were erected or altered will be maintained in good working order, thus insuring the health and safety of all inhabitants.

9. Skilled Work Required. All repairs, maintenance work, alterations, or installations which are caused directly or indirectly by the enforcement of this Ordinance will be executed and installed in a Skilled Manner.

JUNK

10. Outside Storage Prohibited.

10.1 Unless otherwise specifically allowed by law, it will be unlawful to store items of personal property out-of-doors or outside of a Building or Structure that is not wholly enclosed.

10.2 Notwithstanding Section 10.1, the following items of personal property may be stored outside of a Building or Structure:

(a) firewood that is stacked and useable. "Useable" means firewood that has more wood than rot and is cut to lengths that will fit a lawful fireplace or wood stove on the Premises;

(b) construction material, if the construction material is stored in a manner to protect its utility and to prevent its Deterioration and the construction material is reasonably expected to be used for construction on the Premises;

(c) open storage of materials directly associated with the primary activity of a business, provided the business is a permitted, special, or conditional use within any commercial or industrial zone, and the materials are safely stacked, bundled, or otherwise source-separated, and will remain in the stream of commerce with an articulable future use; and/or

(d) all other items of personal property which are of a type, condition, or quantity consistent with normal and intended use. By way of illustration, but not limitation, as used in this Section 10.2(d), items of personal property include barbeque grills, lawn furniture, and Solid Waste disposal Containers.

11. Keeping Junk Prohibited.

11.1 No Person will deposit or keep Junk within a public right-of-way or out-of-doors on any Premises within the City, or in a Structure that is not wholly enclosed.

11.2 Notwithstanding Section 11.1, the following Junk may be deposited or kept out-of-doors on Premises within the City:

(a) any wrecked, neglected, or derelict motor vehicle, or parts thereof, kept in a motor vehicle wrecking business licensed by City;

(b) any derelict or neglected motor vehicle displayed by a business offering new and used motor vehicles for sale in a commercial or industrial zone;

(c) any wrecked motor vehicle stored outside an approved enclosure at a business offering motor vehicle repair as defined in the Standard Industrial Classification Manual as

Industry Group No. 753, provided that no more than eight vehicles in an industrial zone or four vehicles in a commercial zone will be kept outside of an approved enclosure at any one time;

(d) any neglected or derelict vehicle stored at a business offering motor vehicle repair as defined in the Standard Industrial Classification Manual as Industry Group No. 753;

(e) recyclable Solid Waste that has been source separated and collected in conformance with this Ordinance;

(f) recyclable materials or source separated Solid Waste kept at a scrap and waste material establishment, as defined by the Standard Industrial Classification Manual as Industrial Group No. 5093, operating in compliance with all applicable laws and where the materials or Solid Waste are enclosed by a sight obscuring fence or otherwise stored in a manner conforming with applicable zoning ordinances or in a Container; and/or

(g) any Waste Tire kept for storage, collection, transportation, or disposal by a Person licensed for that purpose by the State of Oregon.

12. Abatement of Junk Motor Vehicles. The abatement of Junk motor vehicles from private or public property is subject to the abatement provisions of this Ordinance.

GENERAL EXTERIOR BUILDING AND STRUCTURE MAINTENANCE

13. General. The exterior of a Building or Structure will be maintained in good repair so as not to be in a state of Deterioration, and in a sanitary condition so as not to pose a threat to the public health, safety, or welfare.

14. Exterior Surfaces. All wood and metal surfaces, including, without limitation, window frames, doors, door frames, cornices, porches, siding, and trim on Buildings and Structures will be maintained in good condition so as not to be in a state of Deterioration.

15. Street Numbers. Each Building or Structure to which a street number has been assigned will have such number displayed in a position adjacent to or directly above any door entrance on the side of the Building or Structure closest to and easily observed and readable from the public right-of-way of the street, which is the Building or Structure's address of record. All numbers will be in Arabic numerals at least three inches high and one-half inch stroke.

16. Foundation Walls. All foundation walls will be maintained free from large open cracks and breaks and will be kept in such condition so as to prevent the entry of Pests.

17. Exterior Walls and Windows.

17.1 All exterior walls of Buildings or Structures will be free from holes, breaks, or loose or rotting materials and will be maintained in good condition so as not to be in a state of Deterioration. The use of tarps or similar material for emergency repair, or in place of a customary building component such as siding or a door, will not exceed three months in any two-year period.

17.2 Every window, door, and frame will be kept in sound condition, good repair, and

weather tight. Where windows and doors have been sealed by plastic or other materials for weather proofing, said materials will be maintained in a Skilled Manner. Window and door screens, while not required by this Ordinance, will be maintained in a Skilled Manner.

18. Roofs and Drainage. The roof and flashing will be sound, tight, and not have defects that admit rain into the Building or Structure. Roof drainage will be adequate to prevent dampness or Deterioration in the walls or interior portion of the Building or Structure. Roof drains, gutters, and down spouts will be free from obstructions and maintained in good repair so as not to be in a state of Deterioration. Any non-residential Building or Structure having originally been designed for and fitted with gutters and downspouts will continuously be maintained with such devices, in proper working condition and maintained so as not to be in a state of Deterioration. The use of tarps or similar material for emergency repair will not exceed three months in any two-year period.

19. Decorative Features. All cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features on a Building or Structure will be maintained in good repair with proper anchorage and in a safe condition so as not to be in a state of Deterioration. When any non-residential Building or Structure is found to be missing a decorative feature, the Health Officer or City Designee may require the missing decorative feature to be replaced with a similar material of similar size, shape, color, and texture.

20. Accessory Structures. All accessory sheds, fences, walls, and other similar structures will be erected in a Skilled Manner and maintained in a structurally sound condition and in good repair so as not to be in a state of Deterioration. Accessory structures covered by the Building Code will fall under the jurisdiction of the Building Official.

DERELICT STRUCTURES

21. Derelict Structures Prohibited. Derelict Structures on any Premises are hereby declared to be a public nuisance.

22. Order to Vacate Buildings or Structures.

22.1 If the Health Officer or City Designee finds a Building or Structure in violation of Section 21, the Health Officer or City Designee may order that a placard be posted on the Building or Structure, ordering the Building or Structure vacated, and to order the Owner to register the Building or Structure as provided in Section 26 to Section 28. A Person may appeal such orders of the Health Officer or City Designee as provided in Section 42 to Section 45.

22.2 The placard will contain the information required in Section 35.2.

23. Prohibited Habitation. No Person will inhabit a Derelict Structure, and no Owner will allow any Person to inhabit a Derelict Structure, or a Building or Structure ordered vacated by the Health Officer or City Designee.

24. Removal of Placard Prohibited.

24.1 The Health Officer or City Designee will remove a placard whenever the conditions that resulted in the order to vacate the Building or Structure have been eliminated.

24.2 No Person will deface or remove a placard without the approval of the Health Officer or City Designee.

25. Temporary Safeguards. Notwithstanding any other provisions of this Ordinance, whenever, as determined by the Health Officer or City Designee, a Building or Structure poses an Imminent Hazard or Incipient Hazard, the Health Officer or City Designee may order necessary work to be performed, including, without limitation, the boarding of openings, to render such Building or Structure temporarily safe and secure, whether or not proceedings to abate the hazard have been instituted. In addition to the temporary safeguards described in the immediately preceding sentence, the Owner will cause such other actions to be taken that the Health Officer or City Designee deems necessary to render the Building or Structure temporarily safe and secure.

26. Derelict Structure Registration. If the Health Officer or City Designee determines that a Building or Structure is a Derelict Structure, the Owner will be required to register the Building or Structure within ten (10) days after the Health Officer or City Designee's issuance of an order to register. Registration will be made on forms provided by the Health Officer or City Designee and will include information relating to the location and ownership of the Building or Structure, the expected period of its vacancy, a plan for regular maintenance during the period of vacancy, and a plan for its re-Occupancy and use, or its Remediation or demolition. Any change in the information required to be provided pursuant to this Section 26 will be given to the Health Officer or City Designee not more than thirty (30) days after the date of such change. When all conditions making the Building or Structure a Derelict Structure have been corrected, the Owner will contact the Health Officer or City Designee and request an inspection to determine compliance.

27. Derelict Structure Fees.

27.1 Every Owner who, after receipt of the order under Section 26, fails to register the Building or Structure within the required time set forth in the order, or registers the Building or Structure but allows the Building or Structure to remain in a derelict condition, will pay a monthly Derelict Structure fee, as established by resolution of the City Council. Payment of the fee is due on the fifteenth (15th) day of each month. Any payment of the fee that is more than thirty (30) days past due will be considered delinquent and subject to a penalty of \$100.00 for every delinquent monthly payment.

27.2 If the fees due under this Section 27 are delinquent for more than ninety (90) days, or in the event the Owner fails to register the Building or Structure as required by Section 26, the city attorney, on request of the Health Officer or City Designee, may file an action in the circuit court of the appropriate county for the recovery of any and all delinquent fees and penalties due under this Section 27, which will be the total yearly fees plus all delinquent penalties.

27.3 All fees imposed under this Section 27 are to be paid prior to the issuance of any permit required for the demolition, alteration, or repair of the derelict Building or Structure.

28. Refund of Derelict Structure Fees.

28.1 The Health Officer or City Designee will refund the Derelict Structure fees imposed under Section 27.1 if the following conditions are met:

(a) a timetable for the Remediation of the conditions or demolition of the Building or Structure has been submitted by the Owner and approved by the Health Officer or City Designee;

(b) all required permits have been obtained for the repair or demolition of the Building or Structure;

(c) the Remediation of the conditions or demolition of the Building or Structure is completed within the time set forth in the permits or any approved extension thereof; and

(d) the Owner has provided written authorization for City to enforce all applicable trespass and illegal camping ordinances, if any, and laws.

28.2 The refund made pursuant to Section 28.1 will be the Derelict Structure fees imposed during the previous twelve-month period.

28.3 Notwithstanding Section 27.3, the Health Officer or City Designee may, upon a showing by the Owner of undue economic hardship, defer payment of the fees imposed under Section 27 on an Owner-occupied residential Building or Structure deemed derelict under this Ordinance, and issue a permit for the demolition, alteration, or repair of the Building or Structure. If the Owner complies with Section 28.1, the fees imposed by Section 27 will be abated.

29. Abatement of Derelict Structure by Remediation.

29.1 In addition to, and not in lieu of, the abatement remedies provided for in Section 33 to Section 46 and receivership authority in Section 49, the Health Officer or City Designee may file a notice with the city recorder to set a public hearing before the Hearings Officer to seek an order for Remediation of the conditions creating a Derelict Structure.

29.2 Upon receipt of such notice, the city recorder will set the matter for prompt public hearing before the Hearings Officer and will, not less than fifteen (15) days prior to the hearing, cause notice thereof to be served via certified or registered mail, return receipt requested, or express mail, to the Owner at the Owner's address as reflected on the most recent tax rolls of the county assessor and on the Occupant(s), if any. Notice will also be posted on or near the Derelict Structure. Failure of the Owner(s) or Occupant(s) to receive such notice or an error in the name or address of an Owner(s) or Occupant(s) will not render the notice void and in such case, the notice will be sufficient. Refusal to accept the registered or certified mail will not be deemed to, and will not, render the notice invalid.

29.3 At the hearing, the Health Officer or City Designee will present whatever information, evidence, or testimony the Hearings Officer may deem relevant in support of the Health Officer or City Designee's determination, and the Owner(s) and Occupant(s) will be afforded a like opportunity to rebut the determination. Any information, opinion, testimony, or evidence may be received which the Hearings Officer deems material, relevant, and probative of the matters in issue. The Owner(s) and Occupant(s) may represent themselves or be represented by legal counsel provided that such legal counsel is admitted to the practice of law in the State of Oregon.

29.4 The Hearings Officer will order the conditions creating the Derelict Structure be

remediated if the Health Officer or City Designee demonstrates, by a preponderance of the evidence, that the Building or Structure is a Derelict Structure.

29.5 In determining whether the conditions are such that Remediation is required, the Hearings Officer will determine whether the Building or Structure is in a condition Unfit for Human Habitation, or in a condition that is an Incipient Hazard, based on the number and extent of the following factors: (a) dilapidation; (b) disrepair; (c) structural defects noted by the Building Official; (d) defects increasing the hazards of fire, accident, and/or other calamity such as parts standing or attached in such manner as to be likely to fall and cause damage or injury; (e) uncleanness or Infestations of Pests; (f) condition of sanitary facilities; (g) the presence of a public nuisance; and (h) the history of unlawful activity in or around the Building or Structure.

30. Failure to Follow Order for Remediation of Derelict Structure.

30.1 If Remediation is not commenced within thirty (30) days after an order for Remediation is entered, the Health Officer or City Designee may file a notice with the city recorder to set a public hearing before the Hearings Officer to authorize the Health Officer or City Designee to have the Remediation performed and the cost thereof assessed as a lien against the property upon which the Derelict Structure is located.

30.2 Upon filing of such a request, the city recorder will set the request for prompt public hearing before the Hearings Officer and will, not less than fifteen (15) days prior to the hearing, cause notice thereof to be served via certified or registered mail, return receipt requested, or express mail, to the Owner at the Owner's address as reflected on the most recent tax rolls of the county assessor, and on the Occupant(s), if any. Failure of the Owner(s) or Occupant(s) to receive such notice or an error in the name or address of an Owner(s) or Occupant(s) will not render the notice void and in such case, the notice will be sufficient. Refusal to accept the registered or certified mail will not be deemed to, and will not, render the notice invalid.

30.3 At the hearing, the Owner(s) and Occupant(s) will be afforded an opportunity to show cause why the Remediation should not be performed and the cost thereof assessed as a lien against the property. No issue heard and decided pursuant to Section 29 will be reintroduced or considered at the hearing provided pursuant to this Section 30 unless the Hearings Officer, for good cause shown, determines that the interest of justice and fundamental fairness would best be served thereby.

30.4 The cost of Remediation and a twenty percent (20%) charge for administrative overhead will be assessed in the manner provided in Section 40.

MISCELLANEOUS VIOLATIONS

31. Pest Infestation Prohibited. All Premises will be kept free from Pest Infestation. Pest Infestations will be promptly exterminated in a manner that will not be injurious to human health. After Extermination, proper precautions will be taken to prevent re-Infestation.

32. Noxious Vegetation; Dry Vegetation Prohibited; Trees.

32.1 No Owner will cause or permit Noxious or Rank Vegetation or Dry Vegetation

upon Premises or in the right-of-way of a street abutting any Premises. In addition to, or in lieu of, any other enforcement action authorized by law, the Health Officer or City Designee may cause a violation of this Section 32 to be corrected in the same manner as a public nuisance pursuant to Section 35 to Section 46.

32.2 No Owner of any Premises that abuts upon any street or sidewalk will permit trees or bushes on his or her Premises to interfere with street or sidewalk traffic. An Owner of Premises that abuts upon a street or sidewalk must keep all trees and bushes on his or her Premises and on the adjoining parking strip trimmed to a height of not less than eight feet (8') above the sidewalks and not less than ten feet (10') above the streets.

32.3 No Owner will allow to stand any dead or decaying tree that is a hazard to the public, persons, or property on or near the Owner's Premises.

PUBLIC NUISANCES

33. Public Nuisance Prohibited. A public nuisance is any thing, condition, or act which is or may become a detriment or menace to the public health, safety, or welfare. No Person will cause, permit, or maintain a public nuisance on public or private property.

34. Specific Public Nuisances. The following are specifically declared to be public nuisances, but this list will not be deemed to be exclusive:

34.1 the accumulation, exposure, or deposit of any Garbage, Rubbish, Bulk Solid Waste, or Solid Waste on any public way or any private street, alley, or lot, or into a stream, well, spring, brook, ditch, pond, river, or other inland waters within City, or the placing of such substances in such position that high water or natural seepage will carry the same into such waters;

34.2 any physical condition of a Premise considered an Attractive Nuisance, including, without limitation, abandoned wells, shafts, basements (i.e., that portion of a Building or Structure which is partly or completely below grade), and unguarded machinery;

34.3 an abandoned, unattended, or discarded icebox, refrigerator, or other container accessible to children which has an airtight door or lock which may not be released for opening from the inside;

34.4 dangerous pilings and unprotected excavations;

34.5 any Premises that has unsanitary plumbing fixtures, or plumbing fixtures that permit the spillage of effluent outside of an approved sanitary sewer system, or the escape of sewer odors and gases;

34.6 the maintenance of Premises which are in such a state or condition as to cause an offensive odor;

34.7 the accumulation of feces or manure (whether in piles, heaps, or otherwise) unless enclosed in Containers capable of excluding flies and maintained in such a manner or condition that offensive odor is not emitted therefrom;

34.8 the burning of any Garbage, Rubbish, rubber, cloth, or any other thing, the burning of which, or the smoke emitted from such burning, creates an offensive odor;

34.9 the accumulation of stagnant water in which mosquitoes may breed;

34.10 violation of Section 11 by keeping more than five cubic yards of Junk on any residentially zoned property or by keeping four or more neglected or wrecked motor vehicles on any residentially zoned property;

34.11 violation of Section 21, "Derelict Structures";

34.12 violation of Section 31, "Pest Infestation";

34.13 violation of Section 32, "Noxious Vegetation"; and/or

34.14 any Building or Structure that is in a condition that poses an Imminent Hazard to public health, safety, or welfare.

35. Notice of Public Nuisance and Order to Person Responsible.

35.1 Whenever the Health Officer or City Designee has reasonable grounds to believe that a violation of Section 33 has occurred, a notice of public nuisance and order will be served to the Owner(s) and Occupant(s), if any, in any manner provided by Section 36.1.

35.2 A notice of public nuisance and order will be in writing and include the following: (a) a description of the Premises sufficient for identification; (b) a short and plain statement of the reason(s) why the notice and order is being issued; (c) a correction order allowing a reasonable time for the repairs and improvements required to bring the Premises into compliance with the provisions of this Ordinance; (d) a statement that City may abate the nuisance pursuant to this Ordinance and that the Person responsible will be responsible for the costs of such abatement; (e) a statement of the right to appeal the notice of public nuisance and order to the Hearings Officer; (f) a short and plain statement of the appeal procedure; and (g) a statement that if a notice of appeal is not filed within the time allowed, the Person will have waived the right to review of the notice of public nuisance and order.

35.3 Any notice of public nuisance and order issued in substantial compliance with Section 35.2 will be effective from and after the date the notice and order is issued. All notices served pursuant to this Section 35 will be considered served on the date of personal service or as of the date of mailing if not personally served.

36. Method of Service.

36.1 The notice required by Section 35 will be (a) personally delivered to the Owner(s) and Occupant(s), if any, (b) sent to the Owner(s) and Occupant(s), if any, by first class mail to their last known residence or business address, or (c) posted at the Premises and also sent by first class mail to the Owner(s) and Occupant(s), if any, to their last known residence or business address if they cannot be located. Any notice served by mail will be deemed received three business days after the date mailed.

36.2 Failure of the Owner(s) or Occupant(s) to receive such notice or an error in the name or address of an Owner(s) or Occupant(s) will not render the notice void and in such case, the notice will be sufficient.

37. Recording a Violation. City may record a notice of violation with the county clerk. Failure to record a notice of violation will not affect the validity of the notice as to Persons who receive the notice. When the property is brought into compliance, a satisfaction of notice of violation will be recorded.

38. Abatement Procedures - Joint Responsibility. If more than one Person is responsible for a public nuisance, they will be jointly and severally liable for correcting the violation and for any costs incurred by City in abating the nuisance.

39. City Abatement Procedures.

39.1 If within time allowed, the violation has not been corrected, the Health Officer or City Designee may cause the violation to be corrected. The Health Officer or City Designee, or a person authorized by the Health Officer or City Designee, may enter upon the property to abate the nuisance.

39.2 The Health Officer or City Designee will keep an accurate record of the expense incurred correcting the violation and will include therein an administrative overhead fee in an amount of twenty percent (20%) of the actual cost of correction.

40. Abatement Procedures - Assessment of Costs.

40.1 After abatement by City, the City Manager will send to the Owner(s) and Occupant(s), if any, by first class mail to their last known residence or business address, a notice stating (a) the total cost of abatement, including the administrative overhead fee, and (b) that the costs and administrative overhead as indicated will be assessed to and become a lien against the property unless paid within thirty (30) days from the date of the notice.

40.2 If the costs and administrative overhead are not paid within thirty (30) days after the billing date, the Health Officer or City Designee will thereafter file with the Hearings Officer an itemized statement of costs and overhead, including an additional administrative fee in an amount of twenty percent (20%) of the actual cost of correction to cover the additional expenses involved in collecting the unpaid balance.

40.3 Upon receipt of such notice, the city recorder will set the matter for prompt public hearing before the Hearings Officer and will, not less than fifteen (15) days prior to the hearing, cause notice thereof to be served via certified or registered mail, return receipt requested, or express mail, to the Owner(s) at the Owner's address as reflected on the most recent tax rolls of the county assessor, and on the Occupant(s), if any. Failure of the Owner(s) or Occupant(s) to receive such notice or an error in the name or address of an Owner(s) or Occupant(s) will not render the notice void and in such case, the notice will be sufficient. Refusal to accept any notice provided under this Ordinance via registered or certified mail will not be deemed to, and will not, render the notice invalid.

40.4 After the hearing, the Hearings Officer will declare the correctness of such

statement and declare the same to be a lien upon the property.

40.5 An error in the contents or service of any notice will not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void but it will remain a valid lien against the property.

41. Abatement Procedures - Summary Abatement. The abatement procedure provided by this Ordinance is not exclusive, and City may use any other procedures for abatement authorized by law. The general procedures set forth herein may be used in conjunction with other abatement actions or procedures.

42. Appeals Generally. A Person may appeal a notice or order of the Health Officer or City Designee, other than an order pursuant to Section 29, issued pursuant to this Ordinance only as provided in Section 43 to Section 45.

43. Reconsideration by Health Officer or City Designee.

43.1 Any Person affected by a notice or order of the Health Officer or City Designee under this Ordinance may request reconsideration by filing a request with the Health Officer or City Designee. The request must be received by the Health Officer or City Designee within ten (10) days after the effective date of the notice or order.

43.2 The request for reconsideration must be in writing and include (a) the name, address, and telephone number of the Person requesting reconsideration, (b) a copy of the notice or order being requested for reconsideration, and (c) a statement that the Person wishes the Health Officer or City Designee to reconsider the notice or order.

43.3 The request for reconsideration may be granted or denied by summary order.

43.4 The Health Officer's or City Designee's response to the request for reconsideration will be personally delivered to the Person requesting reconsideration, or sent to the Person by first class mail at the address listed on the request for reconsideration. If the Health Officer or City Designee's response is served by mail it will be deemed received three business days after the date mailed.

44. Appeal to Hearings Officer.

44.1 Any Person affected by a notice or order of the Health Officer or City Designee may appeal the notice or order to the Hearings Officer by filing a notice of appeal with the city recorder, subject to the provisions of this Section 44.

44.2 A Person must first request that the Health Officer or City Designee reconsider the notice or order as provided in Section 43.

44.3 The notice of appeal must be filed within ten (10) days after the date the Health Officer's or City Designee's response to the request for reconsideration is delivered to the Person or the notice is deemed to have been received by the Person under Section 43. A copy of the notice of appeal must also be filed with the Health Officer or City Designee.

44.4 The notice of appeal must be in writing and include (a) the name, address, and telephone number of the appellant, (b) a copy of the notice or order being appealed, (c) a statement that the Person wishes to appeal the notice or order, and (d) the basis for the appeal, stating with specificity why the notice or order was issued in error, based on one or more of the following: (i) City failed to follow the procedures prescribed in this Ordinance and that failure has prejudiced the Person in respect to some substantial right; (ii) no violation exists on the Premises that are the subject of the notice or order; and/or (iii) the time for or method of compliance required in the notice or order is impossible to comply with or, because of circumstances peculiar to the Person or property, would work an unreasonable hardship.

44.5 The Hearings Officer's hearing upon the appeal will be limited to the reasons the notice or order is incorrect, as set forth in the notice of appeal. A notice of appeal that is filed after the period provided for filing an appeal will be dismissed by the Hearings Officer as untimely. Failure to appeal as provided in this Section 44 will be a waiver of all right to review of the notice of order.

44.6 The Person requesting the appeal will be afforded the opportunity to provide evidence or a statement in opposition to the notice or order, and the Person requesting review will be afforded the opportunity to cross-examine any witness presenting testimony.

44.7 The Health Officer or City Designee will be afforded the opportunity to present any evidence, argument, or statement in support of the notice or order, and City will be afforded the opportunity to cross-examine any witness presenting such testimony.

44.8 The Hearings Officer will adopt findings and conclusions supporting a decision which either (a) affirms the notice or order as given, (b) modifies the notice or order, or (c) rescinds the notice or order.

44.9 The filing of a notice of appeal will stay all proceedings for abatement until the final disposition of the appeal.

44.10 Upon a final disposition ordering abatement of a nuisance, and unless another period for compliance is provided in the decision, the Person responsible for abatement will have a period equal to that specified in the original notice, commencing from the date of the final disposition, in which to abate the nuisance prior to action by City.

44.11 The Hearings Officer will provide a written determination within twenty (20) days of receipt of the appeal.

45. Appeal of Hearings Officer's Decision or Order.

45.1 Appeal of a final decision or order of the Hearings Officer must be made to the City Council within thirty (30) days after notice of the final decision or order. The appeal must be submitted to the city recorder and contain (a) the name and address of the appellant, (b) the nature of the determination being appealed, (c) the reason the determination is incorrect, and (d) the determination the appellant believes is correct. An appellant who fails to file a statement within the aforementioned thirty-day appeal period waives all rights to object to the determination.

45.2 The City Council will hear and determine the appeal on the basis of the written

statement and any additional evidence the City Council considers appropriate or relevant, including any information provided by the Health Officer or City Designee. The city recorder will provide the appellant with written notice of the hearing on the appeal not less than ten (10) days prior to the hearing.

45.3 At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel, and any additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of the City Council is final and conclusive. The decision of the City Council will be recorded in the City Council's minutes.

46. Collections. Collection of abatement costs, fees, and penalties are in addition to any other remedies, civil or criminal, available to City under applicable law.

PENALTIES

47. Violations.

47.1 Violation of this Ordinance is an infraction and is punishable by a fine of not less than \$100.00 and not more than \$500.00. The second and subsequent violation of the same provision of this Ordinance in any one year period is punishable by a fine of not less than \$250.00. In addition to any other rights or remedies provided under this Ordinance, City may file a civil action to recover unpaid fees, fines, and costs, including, without limitation, City's reasonable attorney fees and other fees, costs, and expenses incurred by City to enforce this Ordinance.

47.2 Each violation of a provision of this Ordinance will constitute a separate offense and each day that a violation of this Ordinance is committed or permitted to continue will constitute a separate offense. The rights and remedies imposed by this Ordinance are in addition to, and not in lieu of, any other rights and remedies available to City. If any provision of this Ordinance is violated by a firm, corporation, limited liability company, or any other legal entity, the officers, members, managers, shareholders, and/or directors (as the case may be) will be personally subject to the penalties imposed by this Ordinance.

47.3 In addition to any other penalty provided by law, a Person adjudged responsible for violation of any of the provisions of this Ordinance may be ordered by the Hearings Officer or court to correct the violation.

48. Enforcement Fees.

48.1 In addition to, and not in lieu of, any cost, fee, fine, or penalty provided for in this Ordinance, the Health Officer or City Designee may order a penalty in the form of a monthly enforcement fee, as established by resolution of the City Council, for each property found in violation of this Ordinance that meets the following criteria: (a) the property has been the subject of a notice and order, a response period of thirty (30) days has passed since the effective date of the notice and order, and the property remains out of compliance with the notice and order or any subsequent notices; or (b) the property has not been brought into compliance with this Ordinance within thirty (30) days after being notified by the Health Officer or City Designee of a violation of this Ordinance.

48.2 A Person may appeal the Health Officer or City Designee's order to impose a monthly enforcement fee in the manner provided for in Section 42 to Section 46.

49. Receivership Authority. In addition to, and not in lieu of, any other provision in this Ordinance, when the Health Officer or City Designee finds residential property in violation of this Ordinance and believes that the violation is a threat to the public health, safety, or welfare, and the Owner has not acted in a timely manner to correct the violations, the Health Officer or City Designee may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement pursuant to the Oregon Housing Receivership Act (ORS 105.420 to 105.455).