

ORDINANCE NO. NS-2141

AN ORDINANCE CREATING TITLE XIII – NUISANCES SUBJECT TO ABATEMENT TO THE BEND CODE AND DECLARING AN EMERGENCY

Findings:

- A. Separating Nuisances Subject to Abatement into a new Title XIII will provide a more efficient and logical organization of the Bend Code
- B. The new title is recommended by staff, which evaluated the current language and made modifications to reflect current statutory requirements, court decisions, and relevance to current conditions.
- C. The new title is formatted to allow greater flexibility for future changes to the Code by establishing a Title / Chapter / Section / Subsection structure.
- D. Creating Title XIII – Nuisances Subject to Abatement is in the best interests of the citizens of Bend.

The City of Bend ordains as follows:

Section 1. The Bend Code is amended by adding a new Title XIII to read as shown in the attached Exhibit A.

Section 2. The code amendments made by this ordinance supersede any inconsistent material in any previous ordinance or other enactment of the City.

Section 3. The code amendments adopted by this ordinance protect the public health, safety and welfare and it is therefore necessary and desirable that they take effect as soon as possible. Therefore an emergency is declared and this ordinance shall take effect immediately upon passage.

Read for the first time the 5th day of May, 2010.

Read for the second time the 19th day of May , 2010.

Placed upon its passage the 19th day of May, 2010.


YES: 6 NO: 0

Authenticated by the Mayor the 19th day of May, 2010.

Approved as to form:



Gary Firestone, Assistant City Attorney



Kathie Eckman, Mayor

ATTEST:



Patricia Stell, City of Bend Recorder

Appendix A

TITLE XIII NUISANCES SUBJECT TO ABATEMENT

Chapter 13.10 NUISANCES

13.10.005 Definitions For the purposes of Chapter, the following mean:

- (1) Person in charge of property An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or supervision of any construction project.
- (2) Person responsible The person responsible for abating a nuisance shall include:
 - (A) The owner.
 - (B) The person in charge of property.
 - (C) The person who caused a nuisance to come into or continue in existence.

13.10.010 Continuing Violation. Each day that a nuisance continues to exist constitutes a separate violation, and a separate penalty may be assessed for each day the violation continues.

13.10.015 Attractive Nuisances

- (1) No owner or person in charge of property shall permit on the property:
 - (A) Machinery, equipment, or other devices that are dangerous, accessible and pose a reasonable risk of injury to children.
 - (B) Lumber, logs or pilings placed or stored in a manner so as to be dangerous, accessible and pose a reasonable risk of injury to children.
 - (C) An excavation that remains open for an unreasonable length of time without proper barriers.
 - (D) A cistern, well, or any other similar type of hole that is dangerous, accessible, and poses a reasonable risk of injury to children.
- (2) This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to children.
- (3) A violation of this section is a Class A Civil Infraction.

CHAPTER 13.20 DERELICT STRUCTURES

13.20.005 Derelict Structures

- (1) Definitions for Chapter 13.20. Definitions in the state structural, plumbing, electrical and mechanical codes apply to terms not defined in this section. The words "dwelling unit," "dwelling," "premises," "structure", or "building" shall be construed as though they were followed by the words "or any part thereof."
 - (A) Abandoned A structure is abandoned when it is an attractive nuisance or is used for unlawful activity.
 - (B) Boarded building An unoccupied building that has been secured against entry by material such as plywood, boards, or other similar material placed over openings that are designed for and/or are required for windows and doors, and which is visible off the premises and is not both lawful and customary to install on an occupied structure.

- (C) Occupancy The purpose for which a building or portion thereof is used or intended to be used.
- (D) Occupant Any person living or sleeping in a building; or having possession of a space within a building or premises.
- (E) Owner Any legal owner or any person having charge, care or control of a premises.
- (F) Partially Constructed A structure that has been left in a state of partial construction for more than six months or after the expiration of any building permit or that has not had a required permit inspection within any six month period.
- (G) Person Any individual or entity.
- (H) Pests Animals detrimental to humans or human concerns including but not limited to insects, rodents, rats or vermin.
- (I) Premises An area of land including any structures on the land.
- (J) Skilled Manner Executed in a manner that is generally plumb, level, square, in line, undamaged, without marring adjacent work and completed in conformance with generally accepted construction and maintenance practices.
- (K) Unfit for Human Habitation A structure is unfit for human habitation whenever the City Manager finds that such structure is in disrepair, lacks maintenance, is unsanitary, is pest infested, contains filth and contamination, or lacks ventilation, illumination, sanitation or heating facilities to the extent that habitation would be injurious to the health and safety of the occupants.
- (L) Unoccupied Not being used for a lawful occupancy.

13.20.010 Derelict Structures Prohibited No structure shall be occupied if it is:

- (1) A boarded building,
- (2) Partially constructed and abandoned,
- (3) Unfit for human habitation, or
- (4) An imminent hazard.

13.20.015 Closing of Structures The City Manager may order that a structure be vacated for violation of this chapter. The order shall be posted on the structure and shall contain the information required in this chapter.

13.20.020 Prohibited Habitation No person shall occupy or allow another to occupy, a structure if the City Manager has ordered vacation of the structure.

13.20.025 Removal of Order

- (1) The City Manager shall authorize removal of the order when the violation has been eliminated.
- (2) No person shall deface or remove a posted order authorized in this chapter without the approval of the City Manager.

13.20.030 Temporary Safeguards In case of an immediate danger to life or health, the City Manager may order boarding up of openings or other work to make a structure temporarily safe without following the procedures of this chapter.

13.20.035 Derelict Structure Registration The owner of a structure ordered vacated shall register the structure within 10 calendar days of the posting of the order by submitting a completed city registration form. The registration form shall include information relating to the location and ownership of the 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 demolition. Any change in the information provided pursuant to this subsection shall be given to the City Manager within 30 days. When all violations have been corrected, the owner shall contact the City Manager or designee and request an inspection to determine compliance.

13.20.040 Derelict Structure Fees

- (1) Every owner of a registered derelict structure shall pay a non-refundable quarterly fee for each derelict structure. The fee is for each calendar quarter or portion of a quarter. The fee for the current quarter shall be paid with the submission of the registration form. Any payment of the fee that is more than 30 days past due is subject to a penalty of \$100. The fee per quarter shall be \$250 or other higher amount set by Council resolution.
- (2) Derelict structure fees shall be paid prior to the issuance of any permit for the demolition, alteration, or repair of a structure.
- (3) The City may initiate a proceeding in Municipal Court to recover derelict structure registration fees that remain unpaid 90 days after they are due and to compel registration of derelict structures. The registration fee for a derelict structure that was not registered when registration was required shall be a year's worth of registration fees. A municipal court order requiring payment of the derelict structure fee shall be filed as a lien against the property in the City lien docket. This remedy is in addition to any other legal remedy available to the City.

13.20.045 Waiver of Derelict Structure Fees The City Manager may waive all or a portion of the fees imposed under this chapter, if the following conditions are met:

- (1) All delinquent fees and penalties have been paid in full;
- (2) A timetable for the repair or demolition of the structure has been submitted by the legal owner and approved by the manager;
- (3) All appropriate permits have been obtained for the repair or demolition of the structure;
- (4) The manager is satisfied that the repairs or demolition of the structure are being undertaken and will be prosecuted to completion in a timely fashion; and;
- (5) The legal owner provides written authorization for the City to enforce all applicable trespass and illegal camping ordinances and laws.

13.20.050 Abatement by Demolition

- (1) In addition to the abatement remedies provided for in this title, the City Manager may request a hearing before the Municipal Court for the purpose of seeking authority to order the demolition of a derelict structure.
- (2) Upon receipt of a demolition request from the City Manager, the Municipal Court Clerk shall set the matter for prompt hearing before the Municipal Court and give the owner(s) and occupant(s) notice by personal delivery or certified mail of the date and time set for hearing. Notice shall 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) shall not render the notice void.

- (3) The Municipal Court may authorize the demolition of the structure if the City shows by a preponderance of the evidence that demolition would be in the public interest. The burden of proof shall be upon the City.
- (4) In determining whether a structure is so derelict as to require its owner to demolish the structure, the Municipal Court may consider the number and extent of the following factors: 1. Dilapidation; 2. Disrepair; 3. Structural defects noted by the Building Official; 4. Defects increasing the hazards of fire, accident or other calamity, such as parts standing or attached in such manner as to be likely to fall and cause damage or injury; 5. Uncleanliness; 6. Sanitary Facilities; 7. The presence of a public nuisance; and 8. The history of unlawful activity in or around the derelict structure.

13.20.055 Failure to Follow Order to Demolish

- (1) Whenever a demolition is not commenced by the owner within 30 days after an order to demolish, the City Manager may file with the Municipal Court a request to authorize the City Manager to have the demolition performed and the cost of demolition assessed as a lien against the property where the structure is located.
- (2) The Municipal Court Clerk shall set the request for prompt hearing, and cause notice of the hearing to be served via certified mail to the owner(s) and occupant(s). Failure of the owner(s) or occupant(s) to receive the notice or an error in the name or address of a owner(s) or occupant(s) shall not render the notice void.
- (3) At the hearing, the owner(s) and occupant(s) shall have an opportunity to show cause why the demolition should not be performed and the cost assessed as a lien against the property.
- (4) The cost of demolition and 20 percent charge for administrative overhead will be assessed in the manner provided in Chapter 13.20.050

CHAPTER 13.25 DISCARDED VEHICLES

13.25.005 Definitions For the purposes of this Chapter, "discarded" means any vehicle that is in one or more of the following conditions:

- (1) Inoperable
- (2) Wrecked
- (3) Dismantled
- (4) Partially dismantled
- (5) Abandoned
- (6) Junked
- (7) Unlicensed

13.25.010 Discarded Vehicles

- (1) Discarded vehicles may be considered to include major vehicle parts, including, but not limited to, bodies, engines, transmissions and rear ends.
- (2) No person shall store or permit the storing of a discarded vehicle on private property for more than 72 hours unless it is completely enclosed within a building or in a space entirely enclosed and hidden by a fence or screen.
- (3) A violation of this section is a Class B Civil Infraction.

13.30

VEGETATION

13.30.005

Flammable Vegetation

- (1) It shall be the responsibility of every property owner and/or the person in charge of property within the city of Bend to reduce flammable or potentially flammable weeds, grass, vines, brush and other vegetation on the property by complying with the requirements of this ordinance. The purpose of the flammable vegetation reduction shall be to protect property by confining fire and preventing its spread to other properties.
- (2) Every property owner and/or the person in charge of property shall reduce and maintain the reduction of flammable or potentially flammable vegetation on the property in the following manner:
 - (A) A reduction can be completed with a combination of trimming, cutting or removing flammable or potentially flammable weeds, grass, vines, brush and other combustible vegetation as close to the ground as is reasonably practicable given the nature of the terrain and the property, or by the application of an EPA approved herbicide.
 - (B) Any tax lot half acre (21780 sq. ft.) or less shall remove all flammable or potentially flammable weeds, grass, vines, brush, and other vegetation by trimming, cutting, removing, or by the application of an EPA approved herbicide.
 - (C) Any tax lot greater than half acre (21780 sq. ft.) shall establish and maintain a 20 ft. fuel break along the entire perimeter of the property, including all rights of way or easements. The fuel breaks shall be located along the boundaries of the property; and also around any structures, power poles, vehicles, trees or other improvements on the property that would be vulnerable to a fire hazard created by flammable weeds, grass, vines, brush and other combustible vegetation.
 - (D) The City may direct additional abatement for any situations not adequately covered by the fuel breaks described above.
 - (E) Flammable vegetation located in the right of way or easement shall be the responsibility of the adjacent property owner and/or the person in charge of the property.
 - (F) Accumulated waste vegetation shall be disposed of in a manner so as not to create a fire hazard or spread vegetation to other properties.
- (3) A City approved vegetation management plan may be allowed as an alternative to section Chapter 13.20.005(2) A through C of this chapter.
- (4) A violation of this ordinance shall be a Class A Civil Infraction. In addition noncompliance with the provisions of this ordinance shall be subject to the abatement procedures provided in Bend Code Title XIII

13.35.005

Invasive Noxious Weeds

- (1) No person shall allow the growth of invasive noxious vegetable growth on the property they own within the Bend city limits.
- (2) Invasive noxious weeds include, African rue, Buffaloburr, Common houndstongue, Dyers woad, False Brome, Hydrilla, Leafy spurge, Meadow Knapweed , Mediterranean sage, Medusahead rye, Musk thistle, Orange Hawkweed, Perrennial pepperweed , Purple loosestrife, Rush skeltonweed, Russian Knapweed, Saltcedar Tamarix, Scotch Thistle, Squarrose knapweed, Sulfur cinquefoil, Tansy ragwort, Whitetop hoary cress, and Wild carrot or any other weed identified in the Deschutes County Weed List.
- (3) Property owners are responsible for removal of noxious vegetable growth

on public right of way adjacent to their property, excluding medians and roundabouts.

- (4) Violation: A violation of this section is a Class C civil infraction.

CHAPTER 13.40 GRAFFITI

13.40.005 Graffiti Nuisance Property For the purposes of this code section, the following definitions apply:

- (1) Abate To remove Graffiti from public view.
- (2) Graffiti Any unauthorized markings of paint, ink, chalk, dye or other similar substance which is visible from premises open to the public and that have been placed upon any real or personal property such as buildings, fences, structures or the unauthorized etching or scratching of such described surfaces where the markings are visible from premises open to the public, such as public rights of way or other publicly owned property.
- (3) Graffiti Nuisance Property Property to which graffiti has been applied, if the graffiti is visible from any public right of way, from any other public or private property, or from any premises open to the public, and if the graffiti has not been abated within 14 days of written notification of its existence.
- (4) Property Any real property including land and that which is affixed, incidental or appurtenant to land, including, but not limited, to any premises, house, building, fence, or items of machinery, drop boxes, waste containers, utility poles and vaults, and post office collection boxes.
- (5) Unauthorized Without consent of the owner, occupant or responsible party.

13.40.010 Procedure

- (1) The City shall maintain a system for members of the public to report incidence of graffiti they observe on public and private property.
- (2) The owner or occupant of any property in the city shall remove any graffiti from such property within 14 days of the graffiti's appearance.
- (3) When the Chief of Police determines that property has become graffiti nuisance property, the chief shall:
- (A) Notify the owner(s) of record and/or occupant in writing, via first class mail service, that the property has been determined to be graffiti nuisance property.
- (B) The notice shall contain the following information:
- (1) The street address and description sufficient for identification of the property.
- (2) A statement that the property is graffiti nuisance property with a concise description of the conditions leading to those findings.
- (3) An information sheet identifying any graffiti removal assistance programs available through the City or private contractors.
- (4) A statement that the owner and/or occupant shall either remove the graffiti within 15 days from the date of the notice or describe in writing what steps have been, or will be taken to remedy the graffiti nuisance on the property.

- (4) If the graffiti cannot be removed due to inclement weather, a waiver of the time restrictions may be authorized by the Chief of Police.
- (5) Violation of this ordinance is a class "B" civil infraction. Each day after the initial citation is issued may be considered a separate violation. In addition, any person, firm, corporation or other entity not complying with this section shall be subject to the abatement procedures provided in this chapter.

13.45.005 Nuisances Affecting the Public Health No person shall cause or permit, on property owned or controlled by him or her, a nuisance affecting the public health. Nuisances affecting the public health include but are not limited to:

- (1) An accumulation of debris, rubbish, manure and other refuse that is not removed within a reasonable time and that affects the health or livability of adjacent residents. All household or solid waste shall be managed in accordance with the following:
 - (A) All household waste shall be stored in leakproof containers with close-fitting covers.
 - (B) Every person who generates or produces wastes shall remove or have removed all putrescent wastes at least every seven day. More frequent removal may be required to protect the public health.
 - (C) Subsection (b) does not apply to waste removed through a City approve waste removal program that is less frequent than seven days.
- (2) Stagnant water that affords a breeding place for mosquitoes and other insect pests.
- (3) 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.
- (4) Maintaining premises or keeping animals in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.
- (5) Drainage of liquid wastes from private premises.
- (6) Septic tanks that are in an unsanitary condition or that cause an offensive odor.
- (7) An abandoned refrigerator or other appliance with an air-tight door that has a space large enough that a child or infant may be enclosed. The City may remove any such appliance immediately.
- (8) A violation of this section is a Class A Civil Infraction. Any person found by a judge to be in violation of subsection 1 of this section shall be required to utilize weekly trash service provided by an approved garbage service franchisee for at least one year.

13.50.005 Offensive Debris and Un-cleaned and Un-graded Property in the Central Business and Commercial Zoning Districts

- (1) No person may place offensive debris or allow offensive debris to remain on public or private property in the Downtown CB zone or other commercial zoning districts more than 36 hours after the City Council makes a finding that the debris is substantially detrimental to commerce in that zoning district.

- (2) No person may allow public or private property in the CB or other commercial zoning districts to remain in a state of disrepair for more than 36 hours after the City Council determines that the property is in a state of disrepair. Property is in a "state of disrepair" when it is un-cleaned or un-graded in such a manner that the City Council determines is substantially detrimental to commerce in that zoning district.
- (3) Following any finding by the City Council as provided in Subsections 1 or 2 of this Section, the City will provide notice to the property owner to repair the offensive condition and may thereafter abate the offensive condition as a nuisance.

13.55.005 Surface Waters, Drainage

- (1) No owner or person in charge of property shall permit water, ice or snow to fall from a building or structure or otherwise accumulate on a street or public sidewalk except as authorized by the City.
- (2) The owner or person in charge of property shall install and maintain, in a proper state of repair adequate drainpipes or a drainage system so that overflow water accumulating on the roof or about the building is not carried across or onto the sidewalk.
- (3) A violation of this section is a Class B Civil Infraction.

13.60.005 Unenumerated Nuisances

- (1) The acts, conditions or objects specifically enumerated and defined in Title XIII are declared public nuisances and such acts, conditions or objects may be abated by any of the procedures set forth in Chapter 13.50.
- (2) In addition to the nuisances specifically enumerated in this code, every other thing, substance or act which is determined by the City Council 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 code.

CHAPTER 13.65 PROCEDURE FOR ABATEMENT

13.65.005 Notice

- (1) If the City Manager is satisfied that a nuisance exists, the City Manager shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.
- (2) At the time of posting, the City Manager shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the person responsible at the last known address of such person.
- (3) 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 to abate the nuisance within 10 days from the date of the notice.
 - (C) A description of the nuisance.
 - (D) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of abatement will be charged to the person responsible.
 - (E) A statement that failure to abate a nuisance may warrant imposition of a fine.

- (F) A statement that the person responsible may protest the order to abate by giving notice to the City of Bend Municipal Court within 10 days from the date of the notice.
- (4) If the person responsible is not the owner, an additional notice shall be sent to the owner stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.
- (5) On completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the mailing and posting.
- (6) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

13.65.010 Abatement by the Person Responsible

- (1) Within 10 days after posting and mailing the notice, as provided in this chapter, the person responsible shall remove the nuisance or file a written request for a hearing with the Municipal Court.
- (2) The hearing on the question of whether a nuisance exists shall be heard by the Municipal Court at the first available time following the person's request for a hearing before the Municipal Court.
- (3) If the Municipal Court determines that a nuisance, in fact, exists, the person responsible shall abate the nuisance within 10 days after the Municipal Court decision.

13.65.015 Joint Responsibility If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

13.65.020 Abatement by the City

- (1) If the nuisance has not been abated by the person responsible within 10 days of the date of posting the notice of the nuisance if no hearing is requested or within 10 days of the Municipal Court decision, the City Manager may cause the nuisance to be abated.
- (2) The City may enter property to inspect and abate only with the permission of the owner or other person in charge of the property or pursuant to a judicially issued warrant. The Municipal Court Judge has the authority to issue warrants to enter and abate.
- (3) The City Manager shall keep an accurate record of the expense incurred by the City in physically abating the nuisance and shall include in the record a charge of \$150 or 20 percent of those expenses (whichever is greater) for administrative overhead.

13.65.025 Assessment of Costs

- (1) The City Manager, by registered or certified mail, shall send to the person responsible a notice stating:
 - (A) The total cost of abatement, including the administrative overhead.
 - (B) 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.
 - (C) That if the owner or person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the administrator no more than 10 days from the date of the notice.

- (2) If an objection to the cost of abatement is filed as provided in subsection (1), the Municipal Court shall hear and make a decision on the objections to the costs assessed.
- (3) If the costs of the abatement are not paid within 30 days from the date of the notice or the date of the Municipal Court decision if an objection is filed, the costs of abatement shall be entered in the city lien docket and shall constitute a lien on the property from which the nuisance was removed or abated.
- (4) The lien shall be enforced in the same manner as liens for street improvements are enforced and interest shall begin to run from the date of entry of the lien in the lien docket.
- (5) An error in the name of the owner or person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void but it shall remain a valid lien against the property.

13.65.030 Summary Abatement The procedure provided in this chapter is not exclusive, but is in addition to procedures provided by other sections of the code. The Fire Chief, Fire Marshall, Chief of Police or the City Manager may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers health or property.

13.65.035 Administrative Warrants Authorized The Bend Municipal Court shall have the authority to issue warrants authorizing any Bend Police Officer or City official authorized by the City Manager to enforce provisions of the Bend Code to make searches and seizures reasonably necessary to enforce any provision of the Bend Code pertaining to nuisances. Every warrant authorized by this section shall be supported by affidavit or sworn testimony establishing probable cause to believe that a nuisance violation has occurred. Searches and seizures authorized by this section may be executed by any City official authorized to apply for a warrant under this section. All searches and seizures authorized by this section shall be conducted according to requirements of Oregon Law relating to search warrants.