

ORDINANCE NO. 436

AN ORDINANCE ESTABLISHING RULES AND PROCEDURES FOR THE ABATEMENT OF NUISANCES IN THE CITY OF FOSSIL, SAVINGS CLAUSE AND DECLARING AN EMERGENCY

WHEREAS, the Council for the City of Fossil has become aware that there are conditions constituting nuisances in the City Limits; and

WHEREAS, the Council for the City of Fossil believes that the best interest of the City of Fossil require a nuisance abatement ordinance that contains inexpensive, efficient defined procedures for abatement of nuisances that affords due process rights to all involved; and

WHEREAS, the Council for the City of Fossil believes existing conditions are such that the passage of this ordinance is necessary of the immediate preservation of the peace, health, general welfare and safety of the City of Fossil.

NOW THEREFORE, the Council for the City of Fossil hereby ordains as follows:

The City of Fossil Nuisance Control Ordinance

- 1.010 Title
- 1.020 Definitions
- 1.030 Purpose
- 1.040 Administration-Enforcement
- 1.050 Administration-Rules and regulations
- 1.060 Notice procedure
- 1.070 Specific nuisance prohibited
- 1.075 Vehicle Storage and repair
- 1.080 Routine and emergency inspections – Authority
- 1.090 Abatement – General procedures
- 1.120 Appeal and hearing procedures – Review of decision
- 1.130 Abatement by owner – Required
- 1.140 Abatement by City – Assessments
- 1.150 Waiver of assessments – Conditions
- 1.160 Waiver of assessments – Application procedures
- 1.170 Liens against property
- 1.190 Violation – Each day deemed separate offense
- 1.200 Violation – Penalty

1.010 Title

This chapter shall be known as “The City of Fossil Nuisance Control Ordinance,” and may be so pleaded and referred to and shall apply within the jurisdictional limits of the city.

1.020 Definitions

As used in this chapter, unless the context requires otherwise:

- A). “Abandoned vehicle” means any vehicle which is inoperative, wrecked, discarded, displays expired vehicle registration plates, has no vehicle registration plates displayed, or is totally or partially dismantled.
- B). “Council” means a common council of the City of Fossil.
- C). “Nuisance Abatement Officer” means the individual appointed for that purpose by City Council of the City of Fossil or that Officer’s authorized representative.
- D). “Explosive” means a chemical compound, mixture or device that is used or intended to be used for the purpose of producing a chemical reaction resulting in a substantially instantaneous

release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined by state law, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

E). “Garbage” means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

F). “Hearings officer” means that person appointed by the council to preside at hearings held pursuant to this chapter.

G). “Intersection” means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then of the lateral boundary lines of two or more streets or highways which join one another at an angle, whether or not one street or highway crosses the other.

H). “Liquid waste” means waste oil, septic tank pumping, liquid industrial wastes or other similar material.

I). “Nuisance” means any unsafe, annoying, unpleasant or obnoxious condition or practice causing or capable of causing an unreasonable threat to the public health, safety and welfare in the circumstances, but does not include noise; provided, however, that anything defined as a nuisance in Section 1.070 of this chapter shall be a nuisance.

J). “Owner” means any person having a legal interest in real or personal property or any person in possession or control of real or personal property, and excludes any person whose interest is for security only.

K). “Person” means any natural person, association, trust, partnership, firm or corporation.

L). “Personal property” means any tangible item including, but not limited to, vehicles, trailers, boats, recreational equipment, structures, carts, tables, racks, burn barrels, and similar items.

M). “Right-of-way” means a public or private area that allows for the passage of people or goods.

Right-of-way includes passageways such as freeways, streets, sidewalks, bike paths, alleys and walkways. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and under the control of a public agency.

N). “Radioactive substance” means a substance which emits radiation in the form of gamma rays, x-rays, alpha particles, beta particles, neutrons, protons, high-speed electrons or other nuclear particles, but radiation does not include sound waves, radio waves, visible light, infrared light or ultra-violet light.

O). “Rodent” means a mouse or rat.

P). “Rubbish” means glass, metal, paper, wood, plastics or other non-putrescible solid waste.

Q). “Sewage sludge” means residual waste of sewage treatment plants, consisting of digested organic waste and indigestible solids.

R). “Sidewalk” means that portion of a public right-of-way, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

S). “Solid waste” means all decay able and non decay able wastes, whether in solid or liquid form, except wastes produced by the human body, liquid-carried industrial waste or sewage, or sewage hauled as an incidental part of septic tank or cesspool cleaning service, and includes garbage, rubbish, ashes, fill dirt, sewage sludge, street refuse, industrial wastes, swill, demolition and used construction materials, abandoned vehicles or parts thereof, discarded home or industrial appliances, manure, vegetable or animal solids and semisolid waste, dead animals and other discarded solid materials.

T). “Vector” means any insect organism, including but not limited to flies, fleas, lice, ticks, fly maggots and mosquito larvae, capable of bearing or carrying a disease transmittable to human beings.

U). “Vehicle” means any device which is designed or used for transporting people, goods or property upon a public street or roadway, including but not limited to a body, engine, transmission, frame or other major parts, but does not include a device propelled by human power, such as a bicycle, or a device operated exclusively upon fixed rails or tracks.

1.030 Purpose

The Council has determined it necessary to establish and maintain a program for the effective control and abatement of nuisances which constitute a hazard or menace to the health, safety and welfare of the people of the city and this chapter shall be liberally construed to effectuate that purpose.

1.040 Administration – Enforcement

A). The City Council shall be responsible for the administration and enforcement of this chapter.

B). The City Council shall have authority to administer oaths, certify all official acts, issue citations, subpoena and require the attendance of witnesses and production of relevant documents at hearing before the hearing office, or justice court and take testimony of any person by deposition.

1.050 Administration – Rules and Regulations

The City Council may adopt rules and fines necessary for the administration and enforcement of this chapter.

1.060 Notice Procedure

A). Notices of violations shall be in writing in a letter, summons or citation.

B). Notice of violation provided in accordance with Section 1.090 of this chapter may be placed at the location of the violation, personally served or mailed to the property owner, property manager, and/or tenant. If mailed, the notice may be sent by regular postpaid mail, or certified or registered mail, return receipt requested or signature confirmation

C). Summons, citations, and notices of city abatement, liens and penalties shall be mailed certified or registered mail, return receipt requested, or signature confirmation, or personally delivered to the property owner.

1.070 Specific Nuisances Prohibited

A). It is unlawful for any person to maintain or allow to exist the following things, practices or conditions within public road rights-of-way adjacent to that property, which shall be nuisances:

1. A pond or pool of stagnant water which emits an obnoxious odor or is a source of vector breeding or otherwise presents a threat to the public health, safety and welfare;

2. A domestic animal carcass not buried or destroyed within twenty-four hours after death;

3. Accumulation, collection or storage of solid waste without prior approval of the Council, unless the person is licensed by lawful authority to operate a business specifically for those purposes;

4. An abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside;

5. An open pit, well, quarry, cistern, excavation or other hole of a depth of four feet or more and a top width of six inches or more without reasonable safeguards or barriers to prevent them from being accessible to children and domestic animals;

6. Any abandoned vehicle upon public property and right-of-ways;

7. Any vehicle or personal property parked or stored in such a way as to obstruct the flow of traffic on a public right-of-way or the movement of pedestrians on a public sidewalk;

8. Any vehicle or personal property located on a public right-of-way, a sidewalk or on public property for more than 30 days;

9. Excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks or other public property;

B). The enumeration of nuisances in subsection A of this section shall not limit the power of the City Council to investigate or declare any other condition a nuisance which is within the scope of Section 1.020 (I) of this chapter.

1.075 Vehicle Storage and Repair

Every person shall maintain the following things, practices or conditions on any property unless the practice or condition occurs as part of a lawfully established nonconforming use, or nonconforming development pursuant to the Fossil Zoning Ordinance.

A). All new driveways must be construed of suitable material otherwise adopted by the Fossil Zoning Ordinance. "Driveway" means the private vehicular drive that connects an off-street parking area, garage, carport or other building used for parking.

1.080 Routine and Emergency Inspections – Authority

A). The City Council shall obtain the consent of the owner or a warrant from the Justice Court or other court or competent jurisdiction before entering private property or a private building.

B). As used in this section and Section 1.090 of this chapter, an "emergency" exists when the City Council has reasonable cause to believe that a nuisance constitutes an immediate and active danger to the public health, safety and welfare.

1.090 Abatement – General Procedures

A). Upon determination by the City Council, or designee, that a nuisance exists, the Council, or designee, shall issue a warning citation to the owner or person in charge of the property. The warning citation shall be personally served or mailed to the property owner, property manager, and/or tenant. If mailed, the notice may be sent by regularly postpaid mail or certified or registered mail, return receipt requested or signature confirmation.

B). Such warning citation shall include the following information:

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

2. A description of the conditions comprising the nuisance.

3. A direction to abate the nuisance within 14 days from the date of the warning citation.

4. A statement that unless the conditions comprising the nuisance are removed or corrected, the owner or person in charge will be cited into Justice Court for the violation.

C). Fourteen days after the issuance of the warning citation the Council or designee shall inspect the premises to determine if the owner or person in charge of the property has abated the conditions comprising the nuisance, and if not abated, the Council or designee may issue a

citation to the owner or person in charge of the property to appear in the Justice Court at the next available date. The citation shall be personally served or mailed by certified mail with a return receipt requested.

D). In addition to the citation issued under this section the Council or designee shall cause a notice to be posted on the premises, or on the public right-of-way abutting the premises where the condition exists, stating the condition comprising the nuisance and the date and time that the owner or person in charge is to appear in Justice Court.

E) (SUMMARY ABATEMENT) The procedure provided by this chapter is not exclusive but is in addition to procedure provided by other ordinances; and the Health Officer and/or Fire Chief may proceed summarily to abate a health or other nuisance which unmistakably exists and from which there is imminent danger to human life or property.

F) (ABATEMENT ORDERED BY COURT) In addition to any fine imposed, the court may order the person to abate the nuisance within specified time, as determined reasonably by the court.

1. If, within the time specified by the court, the owner or person in charge of the property has not abated the nuisance, the court, upon application by the city, may order the city to abate the nuisance and charge the owner of the property for the cost of abatement and, if necessary, place a lien against the property as provided in division (G) (4) below.

G) Assessment of cost of city ordered abatement.

1. The City Council, or designee, shall keep an accurate record of the expense incurred by the city in abating the nuisance, and shall include therein a charge of 25% of the expense of administration overhead.

2. The City Recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

- a) The total cost of abatement, including the administrative overhead
- b) That the cost as indicated will be assessed to become a lien against the property unless paid within 30 days from the date of the notice.
- c) That if the owner or person in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the City Recorder not more than ten days from the date of the notice requesting a hearing.

3) Upon receipt of a request for hearing, the Council shall set a date to consider objections. The objector shall be notified of such date and at said hearing that Council shall hear the objection and determine the cost to be assessed. Hearing shall be held within 60 days of date notice of objections is received.

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

5). The lien shall be enforced and shall bear interest at the rate of 9% per annum. Such interest shall commence to run from the date of the entry of the lien in the lien docket.

6). An error in the name of the owner or person in charge of the property 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 docket.

7). The city may for purposes of giving notice under this section, rely upon the most current records of the County Recorder and County Assessor for the purposes of identifying the name and address of the property owner, unless the city has accrual notice that the property is owned by others.

1.120 Appeal and Hearing Procedures – Review of Decision

Review of any action of the hearings officer taken under this chapter and the rules adopted under them shall be taken solely and exclusively by writ of review in the manner set forth in Oregon Revised Statutes Sections 34.010 through 34.100.

1.130 Abatement by Owner – Required

A). Failure of the owner to abate the nuisance within fourteen days as provided by Section 1.090 (C) of this chapter, or within the time set by the hearings officer under Section 1.090 of this chapter, shall be a violation of this chapter.

B). If a nuisance is not abated within fourteen days of the initial written notice for abatement, as provided in Section 1.090 of this chapter, unless a request for a hearing is made under Section 1.090 of this chapter or if a nuisance is not abated within the time set by the hearings officer under Section 1.090 of this chapter, the City Council shall impose enforcement penalties for noncompliance in accordance with the adopted fee schedule. The City Council shall provide notice of the imposition of any enforcement penalty to the owner. Enforcement penalties are separate from any penalties imposed under Section 1.200 of this chapter.

1.140 Abatement by City – Assessments

If an owner fails to abate a nuisance as required under this chapter, the City Council may cause abatement of the nuisance and/or file charges against the owner in Justice Court. If the City abates the nuisance, an accurate record of the abatement costs shall be kept and shall include a surcharge of twenty-five percent of the cost of the abatement for administrative overhead. A billing for the amount of the costs, and notice that those costs may be imposed as a lien should payment not be timely received, shall be forwarded by certified or registered mail, return receipt requested, to the owner. Payment shall be due to the City of Fossil Recorder within fifteen days from the date of the billing.

1.150 Waiver of Assessments – Conditions

The cost of abating a nuisance or the cost of any enforcement penalty imposed by the City Council may be waived for low income, elderly or disabled persons, if upon timely application it appears to the City Council that the following conditions are met:

A) The owner is disabled or over sixty-five years of age, and, if single, had an income during the preceding calendar year from all sources of less than the US Department of Commerce Poverty Scale.

B). The owner is living on the property from which the nuisance is to be abated.

1.160 Waiver of Assessments – Application Procedures

Application for waiver of nuisance abatement costs or for waiver of enforcement penalties shall be filed with the City Council, in writing, within ten days from the date of notice of the amount of cost of abatement or within ten days of the date of the notice of the imposition of the enforcement penalty. The City Council shall require the owner to supply additional information as evidence that the applicant qualifies for a waiver under the provisions of Section 1.150. An application for waiver of nuisance assessment costs or enforcement penalties must be submitted for each cost of abatement notice or each enforcement penalty notice sent to the applicant.

1.170 Liens against property

A). The City Council shall file a lien against the property if payment is not made as provided in Section 1.140 of this chapter or waived under Section 1.150 of this chapter.

B). The lien provided for in subsection A of this section shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate accruing from the date billing is sent to the owner of the property.

C). The lien provided for in subsection A of this section shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments.

1.190 Violation – Each Day Deemed Separate Offense

Each day’s violation of a provision of this chapter constitutes a separate offense. The abatement of a nuisance is not a penalty for violation of this chapter, but is an additional remedy. The imposition of a penalty shall not relieve a person of the duty to abate a nuisance.

1.200 Violation – Penalty

A). Any owner or person who is convicted of a violation of this chapter shall be fined not more than one thousand dollars. The penalties set forth in this section are in addition to and not in lieu of civil remedies.

B). Any person convicted two times for the same violation of this chapter shall be considered on the third violation a “habitual offender” and shall be fined no less than one thousand dollars on the third and every subsequent conviction.

THEREFORE BE IT RESOLVED, that it is determined and declared that the existing conditions are such that the passage of this ordinance is necessary for the preservation of peace, health, general welfare and safety of the City of Fossil.

Ordinance No. 436 read by title only on this 13th day of October, 2009; given that this ordinance has been discussed at public hearing on the 8th day of September, 2009.

ADOPTED by the Common Council of the City of Fossil, Oregon on this 13th day of October, 2009.

Jack E Lorts, Mayor

ATTEST:

Teresa Hunt, City Recorder