

ORDINANCE NO. 2426

AN ORDINANCE RELATING TO PUBLIC NUISANCES; REPEALING ORDINANCES NO. 1262, 1366, AND 1831; PROVIDING A PENALTY AND DECLARING AN EMERGENCY.

Be it ordained by the city of Baker:

Section 1. Definitions.

(1) As used in this ordinance except where the context indicates otherwise, the following shall mean:

- (a) Agent in charge of property. Any lessee, contract purchaser, or person, other than the owner, having the possession or control of _____ property.
- (b) City. The city of Baker.
- (c) Council. The governing body of the city.
- (d) Person. Every natural person, firm, partnership, association or corporation.

(2) As used in this ordinance the singular includes the plural and the masculine includes the feminine.

NUISANCES AFFECTING THE PUBLIC HEALTH

Section 2. Nuisances Affecting the Public Health.

(1) The following are hereby declared to be nuisances affecting the public health and may be abated in the manner prescribed by Sections 11 to 14 of this ordinance:

- (a) Privies. Any open vault or privy maintained within the city, except those privies used in connection with construction projects and _____ constructed in accordance with the directions of the City Engineer.
- (b) Debris on private property. All accumulations of debris, rubbish, manure and other refuse located on private property and which has not been removed within a reasonable time and which affects the health, _____ safety or welfare of the city.
- (c) Stagnant water. Any pool of water which is without a proper inlet or outlet and which, if not controlled, will be a breeding place for mosquitoes and other similar insects.
- (d) Water pollution. The pollution of any body of water or stream or _____ river by sewage, industrial wastes or other substances placed in or near _____ such water in a manner that will cause harmful material to pollute the water.
- (e) Food. All decayed or unwholesome food which is offered for human

consumption.

(f) Green hides. The keeping or storing of any uncured, salted or green hide of any animal in any house, store, building or other place where the same shall cause or create any offensive odor in such manner as to disturb persons traveling along the streets or occupying any adjacent premises.

(g) Burning rubbish. The burning of any rubbish, rags, leaves, or refuse of any kind in any yard, street, alley or place within the city in such manner as to annoy any person by any offensive smell or smoke.

NUISANCES AFFECTING THE PUBLIC SAFETY

Section 3. Abandoned Ice Boxes. No person shall place, leave or discard any abandoned, unattended or discarded ice box, refrigerator or similar container which has an airtight snap lock in any place accessible to children without first removing such airtight snap lock or the door or doors from the ice box, refrigerator or similar container.

Section 4. Excavations.

(1) Every person owning, controlling or in possession of any premises abutting on a street, which said premises have an excavation therein, shall, within five days after notice by the City Engineer, at his own expense erect a suitable barricade upon the inner line of the sidewalk in front of such premises.

(2) The provisions of this section shall not apply to authorized construction projects provided that during the course of construction reasonable safeguards are maintained to prevent injury or death.

(3) Any nuisance as described in this section may be abated as provided in Sections 11 to 14 of this ordinance.

Section 5. Surface Waters, Drainage.

(1) No person owning or controlling any real property shall permit any water from any source whatsoever to flow from the premises across or upon any sidewalk abutting such property.

(2) It is hereby made the duty of each person owning or controlling real property abutting upon any sidewalk to provide a proper system of drainage so that any overflow water will not be carried across or upon any sidewalk.

(3) The improper drainage of any water from any source across or upon any sidewalk is hereby declared to be a nuisance and may be abated as provided in Sections 11 to 14 of this ordinance.

Section 6. Weeds. (This section repealed by Ordinance No. 2488, passed March 23, 1959.)

Section 7. Fences.

(1) No person shall construct or maintain any fence which contains barbed wire as a part thereof unless it meets the following conditions:

(a) It is located inside the area in which certain large animals are allowed according to Section 10 of Ordinance No. 2617 and it is actually used or intended for use for control of such animals, or

(b) It is actually used or intended for use for security of commercial property regardless of location.

In instances allowed under (b), any barbed wire must be placed above a fence at least otherwise six feet in height.

(2) No person shall install, maintain or operate any electric fence unless such fence be first approved by the City Manager of the City. (As amended by Ordinance No. 2960 9-8-87)

NUISANCES AFFECTING THE PUBLIC PEACE

Section 8. Unnecessary Noise.

(1) No person shall make, assist in making or permit any loud, disturbing or unnecessary noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, safety or peace of others.

(2) The following acts are declared to be loud, disturbing and unnecessary noises in violation of this section, but the enumeration shall not be considered exclusive:

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

(b) The attaching of any bell to any animal or allowing a bell to remain on any animal which is disturbing to any person in the immediate vicinity.

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

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

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

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

(g) The erection, including excavation, demolition, alteration or repair of any

building in residential districts, other than between the hours of 7:00 a.m. and 10:00 p.m. daily except on Sundays and holidays when the hours shall be 10:00 a.m. to 8:00 p.m., except in case of urgent necessity in the interest of the public welfare and safety, and then only with a permit granted by the City Manager for a period not to exceed 10 days. Such permit may be renewed for periods of 10 days while such emergency continues to exist. Provided further, that if the City Manager shall determine that the public health, safety and welfare will not be impaired by the erection, demolition, alteration or repair of any building between the hours of 10:00 p.m. and 7:00 a.m. and if he shall further determine that loss or inconvenience would result to any person unless such work were permitted within those hours, he may grant permission for such work to be done within the hours of 10:00 p.m. and 7:00 a.m. upon application therefor being made at the time the permit for the work is awarded or during the progress of the work.

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

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

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

(k) The use or operation of any automatic or electric piano, phonograph, gramophone, victrola, radio, television, loudspeaker or any instrument for sound producing or any sound-amplifying device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance; provided, however, that upon application to the City Manager permits may be granted for the broadcast or amplification of commercial or entertainment programs, or to any organization for the broadcast of programs of music, speeches, or general entertainment as a part of a national, state or city event, public festivals or outstanding events of a non-commercial nature, provided that such broadcast or amplification shall not be audible for a distance of more than 1,000 feet from the instrument, speaker or amplifier, and in no event shall a permit be granted where any obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result.

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

person to any business whatsoever; provided that newsboys may sell newspapers and magazines by public outcry.

(m) The conducting, operating or maintaining of any garage within 100 feet of any private residence, apartment, rooming house or hotel in such manner as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p.m. and 7:00 a.m.

Section 9. Fireworks - - Adoption of State Fireworks Law. The following enumerated sections of the Oregon Fireworks Law, together with all acts and amendments applicable to cities which are now or hereafter enacted, are hereby adopted by reference and made a part of this ordinance:

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| ORS 480.110 | ORS 480.140 |
| ORS 480.120 | ORS 480.150 |
| ORS 480.130 | ORS 480.170 |

Section 10. Notices and Advertisements.

(1) No person shall either as principal or agent, scatter, distribute or cause to be distributed on the streets, sidewalks or other public places any notices, placards or advertisements whatsoever.

(2) This section shall not be construed to prohibit the distribution of advertising material during any parade or approved public gathering.

ABATEMENT PROCEDURE

Section 11. Abatement Notice.

(1) Upon determination by the City Council that a nuisance as defined in this or any other ordinance of the City exists, the City Manager shall forthwith cause a notice to be posted on the premises liable for the abatement directing the removal of such nuisance.

(2) At the time of posting, the City Manager shall cause a copy of such notice to be forwarded by registered mail, postage prepaid, to the owner or agent in charge of the property at the last known address of such owner or agent.

(3) The notice to abate shall contain:

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

(b) A direction to remove the nuisance within 15 days from the date of the notice.

(c) A description of the nuisance.

(d) A statement that unless such nuisance is removed the city will remove the nuisance and the cost of removal shall be a lien against the property.

(e) A statement that the owner or agent in charge of the property may protest the action by giving notice to the City Manager within 15 days from the date of the notice.

(4) The person posting and mailing the notice as provided herein shall, upon completion of the posting and mailing, execute and file with the City Recorder a certificate stating the date and place of such mailing and posting.

(5) An error in the name or address of the owner or agent in charge of the property or the use of a name other than that of the owner or agent shall not make the notice void and in such a case the posted notice shall be deemed sufficient.

Section 12. Abatement by the Owner.

(1) Within 15 days after the posting and mailing of the notice as provided in Section 11, the owner or agent in charge of the property shall remove and abate the nuisance or show that no nuisance exists.

(2) The owner or agent in charge protesting that no nuisance in fact exists shall file with the city manager a written statement which shall specify the basis for contending that no nuisance exists.

(3) The statement shall be referred to the council as a part of the Council's regular agenda at its succeeding meeting. At the time set for the consideration of the abatement, the owner or agent may appear and be heard by the council and the Council shall thereupon determine whether a nuisance in fact exists and such determination shall be entered in the official minutes of the Council. Council determination shall be required only in those cases where a written statement has been filed as provided herein.

(4) Upon Council determination that a nuisance does in fact exist, the owner or agent shall within 15 days after such council determination remove or abate such nuisance.

Section 13. Abatement by the City.

(1) If within the time fixed, as provided in this ordinance, the nuisance has not been abated by the owner or agent in charge of the property, the City Council shall cause the nuisance to be abated.

(2) The City Manager shall maintain an accurate record of the expense incurred by the city in abating the nuisance and shall include therein an overhead charge of 10 per cent of the total cost for administration.

(3) The total cost, including the administrative overhead, shall thereupon be assessed to the property as hereinafter provided.

Section 14. Assessment of Cost.

(1) A notice of the assessment shall be forwarded by registered mail, postage prepaid, to the owner or agent in charge of the property by the City Recorder. The notice shall contain:

(a) The total cost, including the administrative overhead, of the abatement.

(b) A statement that the cost as indicated will become a lien against the property unless paid within 60 days.

(c) A statement that if the owner or agent in charge of the property objects to the cost of the abatement as indicated, he may file a notice of objection with the City Manager within 30 days from the date of the notice.

(2) Upon the expiration of 30 days after the date of the notice objections to the proposed assessment shall be heard and determined by the Council in its regular course of business.

(3) An assessment for the cost of the abatement as determined by the Council shall be made by resolution of the Council and shall thereupon be entered in the docket of city liens, and upon such entry being made, it shall constitute a lien against the property from which the nuisance was removed or abated.

(4) The lien shall be collected in the same manner as liens for street improvements are collected, and shall bear interest at the rate of 6 per cent per annum. Such interest shall commence to run 30 days after the entry of the lien in the lien docket.

(5) An error in the name of the owner or agent in charge of the property shall not void the assessment nor will a failure to receive the notice of the assessment render the assessment void, but it shall remain a valid lien against the property.

Section 15. In addition to those nuisances specifically enumerated within this ordinance, 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 hereby declared to be a nuisance and may be abated as provided in Sections 11 to 14 of this ordinance.

PENALTIES

Section 16. Penalties. As an alternative to the abatement procedure described above, any person violating any of the provisions of this ordinance shall, upon conviction thereof, be punished by a term of imprisonment for a period not to exceed thirty (30) days, or by a fine not to exceed \$100.00, or both such fine and imprisonment. (Amended by 2847; passed 9-8-81)

Section 17. Separate Violations.

(1) Each day's violation of a provision of this ordinance shall constitute a separate offense.

(2) The abatement of a nuisance as herein provided shall not constitute a penalty for the violation of this ordinance, but shall be in addition to any penalty imposed for the violation of the ordinance.

Section 18. Severability. The sections and subsections of this ordinance are hereby declared severable. The invalidity of any one section or subsection shall not affect the

validity of the remaining sections or subsections.

Section 19. Repeal. Ordinances No. 1262, 1366 and 1831 are hereby expressly repealed.

Section 20. Emergency. It is hereby determined and found that it is in the best interest and welfare of the people of the city of Baker that nuisances be regulated. By virtue of the foregoing reason, an emergency is hereby declared to exist and this ordinance shall be in full force and effect immediately upon and after its passage by the City Council and approval by the Mayor of the city of Baker, Oregon.

Passed by the council this 12th day of August, 1957.

Approved by the Mayor.