

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1095

Amending Nuisance Control Law (MCC §§ 15.225-15.236) Relating to Public Health Threats

(Language ~~stricken~~ is deleted; double underlined language is new.)

The Multnomah County Board of Commissioners Finds:

- a. Certain nuisances, if unabated, can comprise a risk to the health and well-being of County residents and visitors.
- b. Investigation of certain nuisances enumerated in MCC 15.229 that impact public health, evaluation of their risk to the health and well-being of County residents and visitors, and determination of appropriate means to address such risks is the primary responsibility of the County Health Department and County Health Officer.
- c. In certain nuisance cases, there is potential for significant disagreement between the owner or resident on whose property a nuisance exists and the Health Officer or other Health Department staff regarding the existence and appropriate abatement of a nuisance.
- d. In such cases and other circumstances, the Health Department and Health Officer might require the assistance of the County Sheriff in investigating and assuring abatement of a nuisance or taking a person or property into custody under ORS 433.022.

Multnomah County Ordains as follows:

Section 1. § 15.226 is amended as follows

15.226 Definitions.

For the purpose of this subchapter, the following definitions shall apply unless the context requires a different meaning.

ABANDONED VEHICLE. Any vehicle which reasonably appears to be inoperative, wrecked, discarded, abandoned or totally or partially dismantled.

DESIGNEE. Person or persons authorized by the Health Officer or Sheriff to fulfill their respective functions.

EXPLOSIVE. 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.

GARBAGE. All animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

HEALTH OFFICER. That person in the county Department of Health, or an agent with the authority of the local Health Officer under state law.

HEARINGS OFFICER. That person appointed by the Board to preside at hearings held under § 15.231.

INTERSECTION. The area embraced within the prolongation or connection of the lateral curblines 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.

LIQUID WASTE. Waste oil, septic tank pumping, liquid industrial wastes or other similar material.

NUISANCE. Any 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~~ not including noise, provided, however, that anything defined as a nuisance in § 15.229 shall be a nuisance.

OWNER. 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.

RADIOACTIVE SUBSTANCE. A substance which emits radiation in the form of gamma rays, X-rays, alpha particles, beta particles, neutrons, protons, high-speed electrons and other nuclear particles, but radiation does not include sound waves, radio waves, visible light, infrared light or ultraviolet light.

RODENT. A mouse or rat.

RUBBISH. Glass, metal, paper, wood, plastics or other nonputrescible solid waste.

SEWAGE SLUDGE. Residual waste of sewage treatment plants, consisting of digested organic waste and indigestible solids.

SIDEWALK. That portion of a public right-of-way, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

SOLID WASTE. All putrescible and nonputrescible 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.

VECTOR. ~~Any insect organism~~ Any non-human animal, including but not limited to insects (flies, fleas, ticks, and mosquitoes, etc.), birds and rodents capable of bearing or carrying a disease transmittable to human beings.

VEHICLE. 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.

Section 2. § 15.230 is amended as follows

15.230 Inspection And Abatement.

(A) ~~The health officer~~Health Officer, or designee, or Sheriff or designee may enter any property or building at any reasonable time for the purpose of inspection or enforcing this subchapter. Except when an emergency exists, ~~the health officer or~~Health Officer, Sheriff or designee, shall obtain the consent of the owner or a court warrant before entering private property or a private building.

(B) As used in this section, an emergency exists when the ~~h~~Health officer or Sheriff has reasonable cause to believe that a nuisance ~~constitutes an~~requires prompt remediation to avoid a clear and immediate and active danger to individuals or to the public health, safety and welfare.

(C) An investigation may be conducted whenever the ~~h~~Health officer or Sheriff ~~receives a complaint~~becomes aware that a nuisance exists.

(D) Whenever it appears there is reasonable cause to believe that a nuisance exists, ~~or upon receipt of declaration from the h~~Health officer, ~~the~~or Sheriff shall provide written notice to the owner of the existence of the nuisance and shall demand abatement within 30 days from the date of the written notice, or such lesser time as may be set by the Health Officer or Sheriff to protect the public health, safety and welfare. The notice shall describe with reasonable certainty the property, the nature of the nuisance and the action necessary to abate the nuisance, and shall inform the owner of the owner's rights under §§ 15.231 and 15.232, and the procedure by which the owner may contact the ~~Sheriff~~Health Officer~~notice provider~~ for more information.

(E) In an emergency, the ~~h~~Health officer or Sheriff may order immediate abatement of a nuisance. The Health Officer or Sheriff shall give notice of the requirement for immediate abatement to the owner.

(F) In an emergency, and in lieu of action under division (E) of this section, the ~~h~~Health officer or Sheriff may proceed with immediate abatement of the nuisance. The ~~h~~Health officer or Sheriff shall then immediately send written notice of abatement to the owner of the property.

~~(G) In a situation in which the property owner has refused to abate a nuisance, or has taken or threatened action that gives the Health Officer probable cause to believe such action will comprise a danger to Health Department staff, any involved contractors, other individuals or the public generally, the Health Officer may request the assistance of the Sheriff in carrying out necessary investigation, abatement or enforcement actions as ordered by the Health Officer under Section 8. 15.230 § 15.230 or a Hearings Officer under Section 15.230 § 15.231 of this Chapter.~~

~~(H) Unless the Sheriff has probable cause to believe that the Health Officer's assessment of danger is in error, or unless there are conflicting legal requirements, the Sheriff will immediately provide assistance as requested by the Health Officer,~~

Section 3. § 15.231 is amended as follows

15.231 Appeals And Hearings.

(A) Any person receiving a notice under § 15.230(D), (E) or (F) may request a hearing by writing the Health Officer or Sheriff ~~person who sent the notice~~ within seven days of the date of the notice.

(B) The ~~h~~Health eOfficer or Sheriff shall, upon receipt of request for a hearing, promptly notify the hearings officer who shall set a time and place for the hearing at the earliest possible time and shall promptly notify the person requesting the hearing as to the time and place for the hearing. Notice may be by any means of giving actual notice. Notice may also be given to such persons as the hearings officer may determine to be interested persons.

(C) The person requesting the hearing and the ~~h~~Health eOfficer or Sheriff may make argument, submit testimony, cross examine witnesses and submit rebuttal evidence on the pertinent issues. Any party may be represented by counsel.

(D) All hearings shall be recorded in a manner which will allow for written transcription to be made and all materials submitted at the hearing shall be retained by the hearings officer for a period of two years.

(E) Failure of the person requesting the hearing to appear at the hearing shall constitute a waiver of the right to a hearing.

(F) After the hearing, the hearings officer shall issue and mail a copy of the order determining the question within 15 days from the date of the hearing, or any continuance thereof not to exceed 15 days, to the person requesting hearing and the ~~h~~Health eOfficer or Sheriff.

(G) If the hearings officer finds the nuisance to exist, the order shall set a date for abatement to be accomplished by the owner.

(H) If the hearings officer determines that anything removed under § 15.230(F) no longer constitutes a nuisance or can be released upon such condition as the hearings officer may prescribe that will eliminate the nuisance, the person requesting the hearing may claim it upon paying the expense incurred in its removal and storage.

(I) If the hearings officer determines there was a wrongful abatement under § 15.230(F), the hearings officer may order the ~~h~~Health eOfficer or Sheriff to make reasonable restitution.

~~(J) All hHearings under this subsection involving the Health Officer shall be conducted in accordance with applicable portions of ORS 183.413 to ORS 183.470.~~

Section 4. § 15.233 is amended as follows:

15.233 Abatement By Owner Required.

Failure of the owner to abate the nuisance within 30 days as provided by § 15.229230(D) or within the time set by the hearings officer under § 15.231 shall be a violation under this subchapter, and a county offense under ORS 203.810.

Penalty, see § 15.999

Section 5. § 15.234 is amended as follows:

15.234 Abatement By County; Costs; Waiver; Lien.

(A) If an owner fails to abate a nuisance as required under this subchapter, the hHealth eOfficer or Sheriff may cause abatement of the nuisance. Accurate record of the abatement costs shall be kept and shall include a surcharge of 25% of the cost of the abatement for administrative overhead. A billing for the amount of the costs shall be forwarded by certified or registered mail, return receipt requested, to the owner. Payment shall be due to the hHealth eOfficer or Sheriff within 30 days from the date of the billing.

(B) The cost of abating a nuisance may be waived ~~for low income, elderly or disabled persons, if or reduced based upon timely application it appears to the Sheriff that the following conditions are met:~~ rules adopted by the Health Department or Sheriff.

~~(1) The owner is disabled or over 65 years of age, and, if single, had an income during the preceding calendar year from all sources of less than \$3,600, or, if the head of a family, had an income during the preceding calendar year from all sources of less than \$5,400; and~~

~~(2) The owner is living on the property from which the nuisance is to be abated.~~

(C) Applications for waiver of nuisance abatement costs shall be filed with the hHealth eOfficer or Sheriff on forms supplied by the county within ten days from the date of notice of the amount of cost of abatement. All information required to be given on the forms shall be supplied by and verified by the applicant. An application for waiver of nuisance assessment costs must be submitted for each cost of abatement notice sent to the applicant.

(D) The Board shall file a lien against the property if payment is not made as provided in divisionsubsection (A) of this section or waived under divisionsubsection (B) of this section.

(E) The lien provided for in divisionsubsection (D) 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 property.

(F) The lien provided for in divisionsubsection (D) of this section shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments.

Section 6. § 15.236 is amended as follows:

15.236 Administration And Enforcement.

(A) The hHealth eOfficer and Sheriff shall be responsible for the administration and enforcement of this subchapter.

(B) The hHealth eOfficer and Sheriff 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 hearings before the hearings officer and take testimony of any person by deposition.

(C) The hHealth eOfficer and Sheriff may adopt rules necessary for the administration and enforcement of this subchapter.

FIRST READING:

June 28, 2007

SECOND READING AND ADOPTION:

July 12, 2007

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON



Ted Wheeler
Ted Wheeler, Chair

REVIEWED:

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