

CITY OF COVE
ORDINANCE NUMBER 1-2021

AN ORDINANCE DEFINING AND PROHIBITING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; REPEALING ORDINANCE NUMBER 1 SERIES 1971; REPEALING ORDINANCE NUMBER 1999-1; and THE COUNCIL DECLARES THERE TO BE AN EMERGENCY NECESSITATING THIS ORDINANCE TAKING EFFECT IMMEDIATELY.

The City of Cove ordains as follows:

Section 1. Short Title.

This ordinance may be referred to as the “Nuisance Ordinance of the City of Cove”

Section 2. Definitions.

As used in this Ordinance, the following terms and phrases shall have the meaning set forth herein:

- A. CODE ENFORCEMENT OFFICER. Means: any person, staff or authorized by the City Council who is assigned the task of enforcement of a City Ordinance or Codes including any law enforcement officer assisting in the investigation, issuance of notices, citations, or abatement of a nuisance.
- B. CHRONIC NUISANCE PROPERTY. Means any property which has been issued:
 - 1) Three (3) or more notices that the property is in violation of this Ordinance, or three (3) other notices of different city ordinances being violated, or any combination of the two that exist on the property or have occurred on the property during any fourteen (14) day period in the preceding twelve months; or
 - 2) After execution of a search warrant, has been the subject of a determination by a court that probable cause exists that possession, manufacture, or delivery of a controlled substance or related offenses as defined in Oregon Revised Code, or any rules adopted pursuant to said code, has occurred on the property within the previous sixty (60) days.
- C. ENFORCEMENT AUTHORITY. Means: The City Council or any person or entity who has been delegated to act on behalf of the City Council, including a Code Enforcement Officer, Law Enforcement Officer or Municipal Judge. Nothing herein shall limit the responsibility, authority, or powers of enforcement given under other city ordinances or other state law.
- D. HOUSEHOLD WASTE. Means: Any refuse that is generated by a household or is normally considered to be household waste including recyclable waste.

- E. NOXIOUS VEGITATION. Means:
 - 1) Vegetation that is, or is likely to become:
 - a) A health hazard;
 - b) A fire hazard, including dry vegetation that could be a fire hazard;
 - c) A traffic hazard, because it impairs the view of a public thoroughfare, or otherwise makes use of a thoroughfare hazardous;
 - d) An impairment to travel upon a sidewalk; or
 - e) An impairment to the site triangle at corners of thoroughfares.
- F. SIDEWALK. Means any improved surface adjacent to a roadway for use by the public.
- G. ROADWAY. Means any city street or alley that is used for motorized travel by the public.
- H. RUBISH. Means: Brush, limbs, woody debris from construction or demolition, yard waste or any other fibrous material.
- I. PENALTIES. Means: Fines, liens, assessments, and reimbursements as prescribed in the City of Cove Fines Resolution or other Ordinances.
- J. PERSON. Means: A natural person, firm, partnership, association, limited liability company, nonprofit organization, or corporation.
- K. PERSON IN CHARGE OF PROPERTY. Means: An owner, agent, occupant, lessee, contract purchaser, or other person having possession or control of, occupancy at, or title to, the subject property or the supervision of any construction project on the property.
- L. RESPONSIBLE PARTY. Means: Any person whose actions or inactions create or created a nuisance.
- M. PUBLIC PLACE. Means: A building, way, place, or accommodation, whether publicly or privately owned, open and available to the general public.
- N. YARD WASTE. Means: Grass clippings, leaves, small limbs or woody debris, weeds, flowers, garden refuse.

Section 3. Nuisances Prohibited.

- A. Nuisances Generally. No person shall cause or permit a nuisance on public property.
 - 1) Liability. The persons responsible for causing or permitting a nuisance shall be liable for injury, damage or loss to any person or property caused by the negligent failure to abate any nuisance described in this Ordinance.

- 2) City Not Liable. The City shall not be liable for injury, damage or loss to any person or property caused in whole or in part by the failure of the person responsible to comply with this Ordinance, or by the failure of the City as a person responsible to abate a nuisance.
 - 3) Dependency of Notice. Neither the duty of the person responsible to keep property free of nuisances nor their failure to do so is dependent upon notice from the City of the notice and/or a requirement that the nuisance be abated.
 - 4) Hold Harmless. The person responsible shall defend and hold harmless the City from all claims for loss or damage arising from the failure to comply with this Ordinance.
- B. Nuisances affecting public safety. No person in charge of property shall cause or permit on such property any nuisance affecting public safety. The following are nuisances affecting public safety and may be abated as provided in this ordinance.
- 1) Abandoned Iceboxes (Refrigerators/Freezers) or other Appliances. No person shall deposit or leave in any place accessible to person, an abandoned, unattended, or discarded icebox, refrigerator, freezer, appliances, or similar container which has an airtight door with a lock, snap lock, or other mechanism which may not be released for opening from the inside, without first removing the door. If such container is in use as a storage for food or as a smoker for fish or meat or other use outside a building, it shall be rendered harmless as above stated or locked with a padlock or other device, which will prohibit admittance of person.
 - 2) Rubbish and garbage. No person shall throw, dump, or otherwise deposit upon public or private property any rubbish, trash, tires, grass clippings (not including proper composting practice), debris, household waste, refuse or any other injurious or offensive material that would detract from the appearance of the property or general appearance of the city, create an offensive stench or fire hazard.
 - 3) Cars, Car bodies. No person shall abandon or allow to accumulate on any public property within the City of Cove any abandoned or unusable cars, car bodies, farm equipment, rolls of wire or other metals that are accessible to the public and likely to injure any person.
- C. Nuisance affecting public health. No person in charge of property shall cause or permit on such property any nuisance affecting public health.

D. Attractive nuisances. No person in charge of property shall permit thereon:

- 1) Lumber, logs, or pilings placed or stored within the public right of way in a manner to be dangerous to motorists or pedestrians. If in close proximity to the travel lane after dark appropriate lighted or reflective barricades will be provided.
- 2) Open pits, or other excavation within the public right of way in close proximity to the travel lane or sidewalks shall have appropriate barricades during the times when no work is being conducted, if after dark appropriate lighted or reflective barricades will be provided.
- 3) No person in charge of property shall allow demolition of a structure immediately adjacent to a right of way or sidewalks to remain unguarded by suitable barriers by day and lighted or reflective barricades after darkness. If demolition involves materials that are made of asbestos or similarly dangerous materials, appropriate authorities must be contacted for demolition procedures. The City is to be notified of such demolition before work is commenced along with copies of any correspondence with appropriate authority.

E. Public Nuisance. The following are declared to be public nuisances:

- 1) Allowing a stagnant pool of water to accumulate that might reasonably become a breeding place for mosquitoes or other insects.
- 2) Allowing the accumulation of debris, rubbish, tires, manure, or other refuse on any property.
- 3) Allowing the disposition of any excrement or sewage, or industrial waste, or any putrid, nauseous, decaying material, offensive, or dangerous substance in a stream, well, spring, brook, ditch, pond, river, or other inland waters within the City of Cove, or placing of such substances that high water or natural seepage will carry the same into such waters.
- 4) Allowing sewage or drainage of liquid or semi-liquid wastes to surface on or flow across public or private property or drain directly into a ditch or other water source.
- 5) No person shall create or maintain any unsanitary or offensive objects on lands within their control, which shall pose a hazard to the public health, welfare and safety of the general public.

Section 4. Animals.

- A. No person shall allow the following:
 - 1) Any animal or bird owned or controlled by them and suffering with a communicable disease to be at large within the City.
 - 2) Any wild or domesticated dangerous animal to run at large.
 - 3) Any livestock, poultry, or other domesticated animal in their charge to run at large.
 - 4) Any animal in their charge to run at large within the City in violation of State Law or Union County regulations regarding animals at large.
- B. No person in charge shall allow a stable, stall, shed, apartment or any yard or appurtenance thereof in which any horse, cow, fowl, or other animal is kept to accumulate unreasonable amounts of manure or other animal waste or otherwise maintained in a manner which is unsanitary, unhealthy or which throws off an offensive odor or is a source of insect infestation, such as bees or flies. All animals that are maintained within the city must meet the Zoning Ordinance for the number and type of animals allowed within the city.

Section 5. Carcasses.

No person shall permit the carcass of any fowl or animal owned by them or under their control to remain upon the public streets or other places, or exposed on private property, for a period of time longer than 72 (seventy-two) hours to remove or dispose of such carcass. This section includes and is applicable to game animals, game birds, hides and parts of the same.

Section 6. Trees.

No person in charge of property shall allow the following:

- A. Trees, bushes, limbs, shrubbery, flowers, or other vegetation on the property to interfere with street or sidewalk traffic or impair visibility of traffic control signs.
- B. Dead or decaying trees to stand, if it is a hazard to the public or to persons.
- C. Fences, structures, or vegetation to violate the Clear Vision Area or Site Triangle provisions of the Land Development Code.

Section 7. Unremunerated Nuisances.

- A. In addition to the acts and conditions specifically enumerated in this Ordinance, any condition, thing, substance, or activity which is determined to be, injurious to, or constitutes a danger to the public health, safety or welfare is declared to be a nuisance and is subject to abatement as set forth in this ordinance.

B. A condition, thing, substance, or activity which violates another ordinance of this city or Union County, or any law or administrative rule or order of the State of Oregon is declared a nuisance and is subject to the abatement outline in this ordinance.

Section 8. Enforcement Procedures.

A. Any resident of the City may register a complaint of a potential nuisance on property within the City by submitting a written and signed complaint. The complaint document must state the location of the nuisance, what the individual believes constitutes the nuisance, the date the nuisance was identified, and request that the city investigate their claim. The city will investigate and determine if a nuisance does exist; if the city determines a nuisance exists, it will take appropriate action.

B. If the Code Enforcement Officer determines that there is a violation of this Ordinance, that person shall issue a notice of violation to the person in charge of property. The notice of violation shall be in writing and shall be served on the person in charge of property in one or more of the following manners: delivery in person; by first class mail; and/or by placement in a conspicuous place on the property where a violation occurs. The notice of violation shall state:

- 1) The location of the violation;
- 2) The nature of the violation;
- 3) The period of time the person has to correct the violation (if any);
- 4) The fine assessed for the violation;
- 5) Additional remedies the City may seek for the violation (including abatement of the violation by the City or a private contractor hired by the City);
- 6) That the fine is to be paid at City Hall;
- 7) That the Notice of Violation, or any fine associated therewith, may be appealed to the City Council, provided the appeal is in writing and filed with the City Recorder no later than seven business days from the date of the Notice of Violation.

C. If the person in charge of property fails to remedy the violation in accordance with the timeframe identified in the Notice of Violation, the Code Enforcement Officer may file a request with the City Council for the abatement of the property. The person in charge of property who is the subject of an abatement request by the Code Enforcement Officer shall be notified of the abatement request; said notice shall state the following:

- 1) The location of the violation;
- 2) The nature of the violation;
- 3) A statement that abatement of the violation is being sought;
- 4) A statement that the abatement may be provided by the City or by a private third-party contractor hired by the City to perform the abatement;
- 5) A statement that that the person in charge of property will be liable for any and all costs associated with the City, and/or the City's contractor, abating the property;
- 6) A statement that if the person in charge of property fails to reimburse the city for any and all costs associated with the property abatement, said costs shall be filed with the County as a lien;
- 7) The date, time and location of the City Council hearing wherein the abatement request will be considered; and
- 8) A statement that the person in charge of property is entitled to appear at the City Council hearing and is entitled to present arguments and evidence in their behalf at said hearing.

The abatement notice described above shall be in writing and shall be served on the person in charge of property via certified mail, return receipt requested. If the abatement notice is returned as undeliverable the notice shall be given by personally delivering a copy of the abatement notice to the person in charge of property; leaving a copy of the abatement notice at the usual place of abode of the person in charge of property; sending by first class mail a copy of the abatement notice to the last known address of the person in charge of property; or by serving the agent of the person in charge of property.

D. Declaration of Nuisance by City Council. If the City Council on their own motion identifies a nuisance as defined in this Ordinance, the city council may declare any act or condition detrimental to the public health, safety, and welfare of the City to be a public nuisance and ask the Code Enforcement Officer to initiate abatement procedures as defined in this ordinance.

E. Any property which has been the subject of a notice under Section 10 of this Ordinance, and after the City issued said notice the property was brought into compliance and maintained in a manner that complies with this Ordinance for 12 calendar months, shall be deemed compliant. Once a property has been deemed compliant, any new violations of this Ordinance on the property shall be treated as first time violations.

Section 9. Joint Responsibility.

If more than one person is a person responsible, they shall be jointly and severally liable for any fines, abating the nuisance, or for the cost incurred by the City in abating the nuisance. They could also be jointly cited into court.

Section 10. Penalties.

Any person or person in charge of property that the City finds has caused, contributed to, or allowed to exist a nuisance as defined in this ordinance or any other City ordinance may be subject to additional costs levied by the Municipal Court as fines, penalties and or assessments set by resolution. They may also be subject to Court costs, city administrative cost as well as any cost for city officials required to attend the court proceedings. The maximum penalty for a nuisance violation will be \$500 dollars. Other fines, penalties, or assessments will be administered in compliance with the Fines Resolution as amended from time to time.

Section 11. Failure to Comply.

Upon receipt of a notification of a noncompliance of a city regulation any failure to comply may result in a fine being assessed, citation into Municipal Court as well as penalties and assessment for cost incurred by the city to abate the noncompliance.

Section 12. Severability.

If any court of competent jurisdiction declares any Section of this Ordinance invalid, such decision shall be deemed to apply to that Section only and shall not affect the validity of the Ordinance, other than the part declared invalid.

Section 13. Effective Date.

Whereas the City of Cove has the authority to establish a Municipal Court and there is a need to define and resolve violations that affect the peace, health and safety of the people of the City of Cove through the Municipal Court System, this ordinance shall

Proposed City of Cove Nuisance Ordinance Number 1-2021 for May 4 2021 Council Meeting

become effective immediately, now therefore an emergency is hereby declared to exist, and this ordinance shall be in full force and effect immediately upon its passage by the City Council of the City of Cove, Oregon.

Section 14. Conflicts.

1999-1 Nuisance Ordinance is hereby repealed.

Passed and Adopted by a vote of _____ City Councilors present, by a majority vote of _____ ayes, _____ nays, _____ abstention, this _____ day of _____.

Attested to:

, City Recorder

Approved this _____ () day of _____

, Mayor