

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

An Ordinance relating to the abatement of)
nuisances created by the accumulation on)
private property of solid waste or)
constituting unauthorized dumping of solid waste)
on private or public property and declaring)
an emergency.)

ORDINANCE NO. 1323

THE MARION COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Short Title.

This Ordinance shall be known as the Nuisance Abatement Ordinance and shall be so cited and plead.

Section 2. Repeals.

This Ordinance repeals all prior nuisance abatement ordinances and specifically Ordinance No. 663, together with any and all amendments thereto.

Section 3. Purposes, Policy and Scope.

It is the declared policy of Marion County, in furtherance of the protection of the public health, safety and welfare of the community, to enact an ordinance deeming the excessive and/or prolonged accumulation of solid waste on public and private property as a public nuisance and to provide means for the investigation, identification and abatement of such nuisances.

Section 4. Solid Waste and Inoperable Vehicle Accumulation Prohibited.

No person shall store, collect, maintain or display on private property within Marion County solid waste or inoperable vehicles that are (a) offensive or hazardous to the health and safety of the public, (b) create offensive odors, or (c) create a condition of unsightliness. Such accumulation of solid waste or inoperable vehicles in violation of this subsection shall be considered to be a public nuisance that may be investigated and abated pursuant to Sections 9 through 14 of this Ordinance.

Section 5. Exemptions.

Unless specifically provided otherwise, this Ordinance does not apply to:
(1) Disposal sites operated in compliance with regulations promulgated by the Environmental Quality Commission, Department of Environmental Quality or other ordinances or regulations of the County;

(2) Commercial farm and forestland operations and practices, including the growing and harvesting of crops, nursery stock and timber, the raising of fowl and livestock, and the storage or use of agricultural waste, sprays and fertilizer. This exception does not apply in those Marion County land use zones that do not permit such activities;

(3) The lawful operation of a dismantling business on the property by a person who holds a valid and current motor vehicle dismantler certificate under state law;

(4) Compost piles used exclusively for the decomposition of garden and yard trimmings;

(5) Antique vehicles as defined by the Oregon Vehicle Code; and

(6) Areas within the city limits of incorporated cities within Marion County.

Section 6. Definitions.

(1) "Abatement of a nuisance" means the affirmative acts of removing, repairing, or taking other steps as may be necessary to remove a nuisance.

(2) "Accumulation" and "accumulate" mean to store, collect, maintain or display.

(3) "Board" means the Marion County Board of Commissioners.

(4) "Director" means the individual designated by the Board to administer this Ordinance and/or the Director's designee(s).

(5) "Disposal site" means land used for the disposal or handling of waste or solid waste, including, but not limited to, dumps, landfills, or incinerators for solid waste delivered by the public, by a franchised collector, or franchised transporter of solid waste. The term does not include a hazardous waste facility subject to the permit requirements of ORS Chapter 459, or a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete, or other similar nondecomposable materials, unless the site is used by the public, either directly or indirectly.

(6) "Hazardous material" means any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise mismanaged.

(7) "Inoperable vehicle" means a vehicle which does not have a lawfully affixed unexpired license plate or is disabled, wrecked, dismantled or partially dismantled, abandoned or junked. A showing that the vehicle in question is unlicensed or, if operated on a public highway, would be in violation of one or more of the provisions of the Oregon Vehicle Code, constitutes a rebuttable presumption that the vehicle is inoperable.

(8) "Offensive" means sights, sounds, odors, or any other condition that is potentially harmful to the environment or detrimental to quality of life in the community.

(9) "Occupant" means any person, including an owner, using a parcel of private property, a building or any part of a parcel of private property or building for a lawful, intended use.

(10) "Owner" means any person whose name and address is listed as the owner of the property on the County Assessment and Taxation records and that person's agent; any person who has purchased or otherwise acquired a property but whose ownership is not yet reflected in the official records of the County; a trustee, executor, administrator, guardian or mortgagee in possession and having control of the property; a person who has care and control of a property in the case of the absence or disability of the person holding title thereto; and a lessee or tenant in possession.

(11) "Person" includes individuals, companies, corporations, associations, firms, partnerships, trusts and any other like entity.

(12) "Property" means a lot, or parcel of land; including any buildings or structures thereon.

(13) "Public Nuisance" means an accumulation upon private property within Marion County solid waste or inoperable vehicles that (a) are offensive or hazardous to the health and safety of the public, (b) create offensive odors, or (c) create a condition of unsightliness.

(14) "Putrescible material" means solid waste or compostable materials containing organic material that can be rapidly decomposed by microorganisms, and that may give rise to foul smelling, offensive products during decomposition or which is capable of attracting or providing food for birds and potential disease vectors such as rodents and flies, including but not limited to bones; meat; meat scraps; fat; grease; fish; fish scraps; vegetables; fruit; and food containers or products contaminated with food wastes, particles or residues.

(15) "Solid waste" means all putrescible and nonputrescible wastes including, but not limited to, rubbish; refuse; ashes; waste paper and cardboard; commercial, industrial, demolition, and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure; vegetable or animal solid and semisolid wastes; dead animals; or other wastes. The term does not include:

1. Hazardous wastes as defined by ORS Chapter 466 or regulations adopted by the Department of Environmental Quality or the Environmental Quality Commission.

2. Materials used for fertilizer or for other productive purposes, or which are salvageable, when these materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowl or animals.

3. Radioactive waste as defined in ORS 469.300.

4. Explosives.

5. Reusable beverage containers as defined in ORS Chapter 459A.

6. Sewage sludge and septic tank and cesspool pumping or chemical toilet waste.

(16) "Summary abatement" means the abatement of a nuisance by the County, or by a contractor hired by the County, without obligation to give prior notice of the abatement action to the owner or occupant of the property.

(17) "Unightly" means an accumulation of debris, solid waste or other features that detract from the appearance of the property and/or are not allowed in the zone.

(18) "Vehicle" means any device in, upon or by which a person or property may be transported upon a street or public highway.

(19) "Waste" means currently useless or discarded materials. The fact that currently useless or discarded materials may have value or may be resource recovered, recycled, reconditioned or resold does not exempt such materials from the definition of "waste."

Section 7. Enforcement Responsibility and Authority.

This Ordinance shall be enforced by the Director. Enforcement shall be accomplished through procedures outlined herein and in the Marion County Enforcement Ordinance. The Director shall have the authority to implement appropriate administrative policies and procedures to enforce the provisions of this Ordinance.

Section 8. Unauthorized Dumping.

Except as provided in Section 4 of this Ordinance, it is unlawful to dispose of solid waste at any place other than a disposal site as defined in this Ordinance. No person shall use or permit to be used any land within Marion County as a public or private disposal site without prior written approval of the Board or the designee of the Board.

Section 9. Investigation and Notice of Violation.

(1) The Director is authorized to investigate and determine whether the accumulation, storage, collection, maintenance or display of solid waste on any real property is in violation of this Ordinance.

(2) The Director may enter onto real property during normal Public Works business hours (8:00 a.m. to 5:00 p.m. Monday-Friday, except holidays), or at other times by appointment, to meet with the owner or occupant when the Director has reason to believe a violation of this Ordinance exists on the property, and an inspection is necessary to determine if a violation exists. The Director is not authorized to trespass or go beyond the apparent main entrance to the property without the owner or occupant's permission, except as noted in paragraph (3) of this Section.

(3) If the property owner or occupant has refused entry or the County cannot secure entry, and the Director has reason to believe a violation of this Ordinance exists on the property and an inspection is necessary to confirm the violation, the Director is authorized to seek an administrative inspection warrant from a court of competent jurisdiction, in consultation with Legal Counsel. If the warrant is issued, the inspection shall be executed according to the terms of the warrant.

(4) If, after investigation, it is found that there is a violation of the Ordinance, the Director shall cause written notice to be given to the owner and the occupant of the property by hand delivery or certified mail, return receipt requested. Alternatively, the notice may be posted on the property and also sent by first class mail to the owner(s) and occupant(s) at their respective last-known addresses. Posting on the property

means to physically leave the notice on the property in a secure manner and conspicuous location. An error in the name of the property owner or address listed in the county assessment and taxation records for the property shall not render the notice void, but in such case the posted notice, if a notice was posted on the property, shall be deemed sufficient.

(5) The notice shall be in the form of a cease and desist order and shall contain all of the following information:

- (a) A description of the location by tax lot number and by street address. If the description by tax lot number and street address is not sufficiently descriptive, the description of the property shall be by metes and bounds.
- (b) A description of the nuisance.
- (c) A demand that the nuisance shall be abated within a specified period of time, not to exceed 30 days.
- (d) A statement that unless the nuisance is abated by the owner or the occupant within the time prescribed, penalties may be assessed and legal action may be taken to abate the nuisance.

Section 10. Owner's Responsibility.

The owner or titleholder of land upon which the nuisance exists is equally responsible for the abatement of the nuisance as is the possessor, occupant or user of the land.

Section 11. Penalties.

(1) Violation of this Ordinance shall be punishable by a civil fine of not more than \$500.00 per violation. Each day of an ongoing violation shall be considered a separate violation of the Ordinance.

(2) Additionally, the Director may seek any other legal or equitable remedy provided by law to enforce the provisions of this Ordinance.

Section 12. Summary Abatement.

(1) In cases where the Director determines that it is necessary to take immediate action in order to protect the public's health, safety or welfare, summary abatement of nuisances by the Director is authorized. Summary abatement shall be sought and performed in conformance with procedures adopted by the Director.

(2) All abatement costs incurred by the County shall be paid by the person found by the court to be responsible for the creation or maintenance of the nuisance. If not paid within 60 days of the provision of the amount of costs to the responsible person, the debt will be sent to collection or be recorded as a lien upon the real property of the responsible person.

Section 13. Notification Following Summary Abatement.

In the case of summary abatement, notice to the owner or occupant of the property prior to abatement is not required. However, following summary abatement, the Director shall post upon the property liable for the abatement a notice describing the action taken to abate the nuisance violation. In addition, a Notice of Summary Abatement shall be mailed to the property owner. The Notice of Summary Abatement shall include:

1. The date the nuisance on the property was abated.
2. The street address or description sufficient for identification of the property;
3. A statement of the violations of this Ordinance that existed at the property and were summarily abated;
4. Disclosure regarding the penalties, charges and liens resulting from the summary abatement.

Section 14. Receivership Authority.

In addition to, and not in lieu of any other provision in this Ordinance, when the Director finds a residential property to be in violation of this Ordinance, and believes that the violation is a threat to the public's health, safety, or welfare and the owner or possessor has not acted in a timely manner to correct the violation, the County, through Legal Counsel, may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement pursuant to the Oregon Housing Receivership Act.

Section 15. Savings Clause.

Should any section or portion of this Ordinance be held unlawful or unenforceable by any court of competent jurisdiction, such decision shall apply only to the section, or portion thereof, directly specified in the decision. All other sections or portions of this Ordinance shall remain in full force and effect.

Section 16. Emergency Clause.

This Ordinance, being necessary for the immediate preservation of the health, safety and welfare of the community, an emergency is declared to exist and this Ordinance shall take effect upon its passage.

SIGNED and FINALIZED at Salem, Oregon this 8th day of
February, 2012.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording Secretary

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