Ordinance 756

An Ordinance defining Nuisances; Providing for their Abatement; Providing Penalties; Repealing Ordinance 601; and Declaring an Emergency

The City Council of the City of Vernonia, Oregon does ordain:

Section 1. [Repeal]. Ordinance 601, enacted May 21, 1984, is hereby repealed and replaced as follows:

Section 2. [Contents of Sections]

Section 3. Purpose
Section 4. Declaration of Nuisance
Section 5. Definitions
Section 6. Voluntary Correction
Section 7. Notice of Civil Violation
Section 8. Hearing before the court
Section 9. Abatement by the City.
Section 10. Additional enforcement procedures.
Section 11. Conflicts.
Section 12 Severability.
Section 13. Saving Clause.
Section 14. Emergency Clause.

Section 3. [Purpose.]

The purpose of this chapter is to establish an efficient system to enforce the development, land use, and public health regulations of the city, to provide an opportunity for a prompt hearing and decision on alleged violations of these regulations, and to establish penalties for violations, including abatement of any affected properties.

Section 4. [Declaration of Nuisance.]

1. All violations of development, land use, and public health ordinances are found and declared to be nuisances. Nuisances create public harm. Prevention and correction of nuisances are necessary to prevent harm.

2. In addition to the enforcement provisions of this chapter, failure to comply with the provisions of this chapter creates a public harm, and may subject the person responsible to liability. The person responsible shall hold the City of Vernonia harmless and indemnify the City if any claim results from failure to fulfill the duties of this Chapter.

Section 5. [Definitions.]

As used in this chapter, unless a different meaning is plainly required:

1. "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner, and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.

2. "Act" means doing or performing something.

3. "Applicable department director" means the city administrator or his designee, including any department director or other designee, empowered by ordinance or by the city administrator to enforce a city ordinance or regulation.

4. "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation.

5. "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a city regulation.

6. "Emergency" means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

7. "Nuisance" (also referred to herein as "violation" or "nuisance violation") means:

   a. A violation of any City of Vernonia development, land use, or public health ordinance;

   b. Committing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which injures, endangers, or interferes with the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or which obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant; or

   c. The existence, without limitation, of any of the following conditions:

      1. **Trash Covered Premises.** Any premises containing trash or abandoned materials, including, but not limited to boxes, animal matter or waste, glass, scrap metal, plastic, rags, wire, or packing materials, or any other matter that would mar the appearance, create a stench, or detract from the cleanliness or safety of the property, except that kept in garbage cans or containers maintained for regular collection;

      2. **Dangerous Structures.** Any dangerous, decaying, unkempt, falling or damaged dwelling, fence or other structure;

ORDINANCE 756

3. **Potential Vermin Habitat or Fire Hazard.** Any accumulation of material or debris on a property including, but not limited to building materials which are not properly stored or neatly piled, crates, empty barrels, mattresses or bedding, old appliances or equipment or any parts thereof, furniture, or other objects which endanger property or public safety, or constitute a fire hazard or vermin habitat; provided, that nothing herein shall prevent the temporary retention of waste in approved, covered receptacles;

4. **Stagnant Water.** An accumulation of stagnant or dirty water in an open container, barrel, pool or other man-made vessel that affords a breeding place for mosquitoes and other insect pests. This section does not apply to wetlands, ponds, streams, springs, creeks, rivers or natural drainage.

5. **Junk Vehicles.** Any wrecked, inoperable, abandoned, immobile or disassembled trailer, recreational vehicle, boat, tractor, automobile or other vehicle, or any parts thereof. Evidence of inoperability and damage includes, but is not limited to, a buildup of debris that obstructs use, a broken window or windshield, a missing wheel, a flat tire, a nonfunctional motor or transmission, missing bumpers, or missing or expired license plates; provided nothing herein shall prevent the keeping or storage of any vehicle on private property which is screened from view, nor prevent the storage on private property of up to two well-maintained, unlicensed collector or antique vehicles, as defined by ORS 801.605 (Vehicle of special interest) or ORS 801.125 (antique vehicles);

6. **Attractive Nuisances.** Any attractive nuisance which may prove detrimental to children whether in or on a building, on the premises of a building, or upon an unoccupied lot, which is left in any place exposed or accessible to children. This includes unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; and any lumber, trash, debris or vegetation which may prove a hazard for minors;

7. **Obstructions to the Public Right-of-Way.** Use of property abutting a public street, alley, or sidewalk or use of a public street, alley, or sidewalk which causes any physical or visual obstruction or safety hazard to traffic or to open access to the streets, alleys or sidewalks; provided, that this subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the city. This section includes the existence of drainage onto or over any sidewalk, public path or alley;

8. **Noxious Vegetation.** Any noxious, or toxic weed or uncultivated plant, weeds or tall grass which may be a health, safety, fire or traffic hazard, including but not limited to:

   A. Grass or weeds more than 12 inches high;

B. Poison Ivy;

C. Poison Oak;

D. Blackberry bushes that extend into a public thoroughfare or right-of-way or across a property line;

E. Plant growth on sidewalks adjacent to any property.

This section does not apply to vegetation that constitutes an agricultural crop, unless that vegetation is a health, safety, fire or traffic hazard. An owner or person in charge of property shall cut down or destroy grass, shrubbery, brush, bushes, weeds or other noxious vegetation as often as needed to prevent them from becoming unsightly, from becoming a health, safety, fire, or traffic hazard or in the case of weeds or other noxious vegetation, from maturing or going to seed.

9. **Trees.** On any property, including the abutting parking strip, public street, alley, or sidewalk:

A. Any tree which is in danger of falling and creates a substantial risk of damage or injury. Before removing any tree located in a parking strip, public right-of-way, or alley, the applicable department director shall be notified, unless it is impractical to do so because of imminent threat of harm to persons or property.

B. Any trees not maintained or trimmed to a height of not less than 8 feet above the sidewalk and not less than 13 feet, 6 inches above any roadway or alley which has been opened for access.

10. **Illegal Dumping.** Dumping of any type by any person on public or private property not registered as a legal dump site; and

11. **Dumping in Waterways.** Dumping, depositing, placing or leaving of any garbage, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any navigable water, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any navigable watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any navigable watercourse.

12. **Ditches.** Drainage and irrigation ditches adjacent to or crossing private property, that are not maintained by the adjacent property owner in a condition free from debris, brush, or vegetation that would impede the flow of storm water and/or reduce the capacity of the ditch or drainage. Drainage or irrigation ditch, as used

in this section, does not include any perennial or intermittent stream, channelized stream or any other channel that contains fish.

13. **Culverts.** Any pipes and culverts used for driveway or walkway purposes adjacent to or crossing private property, that are not maintained by the adjacent property owner; except that any such pipe or culvert installed in the public right-of-way to City standards shall be maintained by the City.

14. **Nuisance Animals.** The following are nuisance animals, and may be taken into custody by the City and dealt with in accordance with the procedures provided by ordinance for the impoundment of dogs:

    A. Animals at large, except for a domestic cat of species felis catus.

    B. Dangerous Animals. Any animal exposed in public that has, due to the lack of proper and adequate supervision and control by its owner, demonstrated a propensity to do an act harmful in its character to human beings or animals, regardless of whether done in a playful or hostile manner.

15. **Radio Interference.** The use or operation of an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

16. **Barbed Wire or Electric Fences.** Any barbed wire or electric fence along a sidewalk, public way or along the adjoining property line of another person. Nothing herein prohibits barbed wire being placed above the top of other fencing not less than 6 feet, 6 inches high, where such fence height is permitted.

17. **Commercial Zone.** The following are nuisances in the General Commercial zone, except on property used solely for residential purposes:

    A. Recreational vehicles and trailers, unless parked for less than 12 hours or kept in a business licensed for the sale of such goods.

    B. Temporary storage structures for which a building permit was not obtained.

    C. Portable storage bins or containers, except for trash receptacles, unless screened from view.

    D. Windows covered with plywood, particleboard, plastic, tape or other temporary covering, except while the window is being repaired, provided such time period for repairing the window does not exceed 30 days past the date of damage. If the owner does not want to replace window with window material that conforms with the Uniform Building Code, owner shall fill in window

with permanent exterior structural building materials consistent with the rest of the structure.

For this subsection, a person may request temporary permission from Vernonia City Council, not to exceed three months at a time, to deviate from the standards of this subsection.

8. "Omission" means a failure to act.

9. "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

10. "Person responsible for the violation" means any person who has an interest in or resides on the property, whether as owner, tenant, occupant, or otherwise.

11. "Repeat violation" means a violation of a provision of this ordinance in any location by the same person, for which voluntary compliance previously has been sought or a notice of civil violation has been issued, within the immediately preceding 12 consecutive month period.

Section 6. [Voluntary correction.]

1. **Applicability.** This section applies whenever the applicable department director determines that a nuisance has occurred or is occurring.

2. **General.** The applicable department director shall attempt to secure voluntary correction by contacting the person responsible for the nuisance and, where possible, explaining the violation and requesting correction.

3. **Issuance of Voluntary Correction Agreement.** A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.

   a. **Content.** The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

      1. The name and address of the person responsible for the violation; and

      2. The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

      3. A description of the violation and a reference to the regulation which has been violated; and

4. The necessary corrective action to be taken, and a date or time by which correction must be completed; and

5. An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and

6. An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and

7. An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.

b. **Right to a Hearing Waived.** Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.

c. **Extension and Modification.** An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.

d. **Abatement by the City.** The city may abate the violation in accordance with Section 9 if the terms of the voluntary correction agreement are not met.

e. **Collection of Costs.** If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with Section 7 (5), plus all costs and expenses of abatement, as set forth in Section 9 (4).

Section 7. [Notice of Civil Violation.]

1. **Issuance.**

a. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to Section 6 the applicable department director may issue a notice of civil violation to the person responsible for the violation.

ORDINANCE 756

b. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 6 under the following circumstances:

1. When an emergency exists; or

2. When a repeat violation occurs; or

3. When the violation creates a situation or condition which cannot be corrected; or

4. When the person knows or reasonably should have known that the action is in violation of a city regulation; or

5. The person cannot be contacted or refuses to communicate or cooperate with the city in correcting the violation.

2. **Content.** The notice of civil violation shall include the following:

a. The name and address of the person responsible for that violation; and

b. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

c. A description of the violation and a reference to the provision(s) of the city regulation(s) which has been violated; and

d. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with Section 9; and

e. The date, time and location of a hearing before a judge or judge pro tem; and

f. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the applicable department director approves the completed, required corrective action prior to the hearing; and

g. A statement that the costs and expenses of abatement incurred by the city pursuant to Section 9 (4), and a monetary penalty in an amount per day for each violation as specified in Section 7 (5), may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the court.

3. **Service of Notice.** The applicable department director shall serve the notice of civil violation upon the person responsible for the violation, either personally or by mailing a copy of the notice of civil violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within Columbia County and if an address for mailed service cannot be

ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written statement, signed by the person effecting the service, declaring the time and date of service, the manner by which the service was made and, if by posting, the facts showing the attempts to serve the person personally or by mail.

4. **Extension.** Extensions of the time specified in the notice of civil violation for correction of the violation may be granted at the discretion of the applicable department director or by order of the court.`

5. **Monetary Penalty.** The monetary penalty for each violation per day or portion thereof shall be $500.00. A mandatory City administrative fee of $25 shall be added to the total penalty amount.

6. **Continued Duty to Correct.** Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

7. **Collection of Monetary Penalty.**

   a. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city within 10 calendar days from the date of mailing of the court's decision or a notice from the city that penalties are due. Any such monetary penalty shall further constitute a lien against the affected real property, in the manner as set forth in Section 9 (6).

   b. The city attorney is authorized to take appropriate action to collect the monetary penalty.

Section 8. [Hearing before the court.]

1. **Notice.** A person to whom a notice of civil violation is issued will be scheduled to appear before the court. Continuances may be granted at the discretion of the applicable department director, or by the court for good cause shown.

2. **Prior Correction of Violation.** The hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the applicable department director approves the completed required corrective action prior to the scheduled hearing.

3. **Procedure.** The court shall conduct a hearing on the civil violation pursuant to the then-current applicable rules of civil procedure for courts of limited jurisdiction. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable under the circumstances. The determination of the applicable department director as to the need for the required corrective

action shall be accorded substantial weight by the court in determining the reasonableness of the required corrective action.

4. **Decision of the Court.**

   a. The court shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable under the circumstances, and shall affirm, vacate, or modify the city's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

   b. The court shall issue an order to the person responsible for the violation which contains the following information:

      1. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

      2. The required corrective action;

      3. The date and time by which the correction must be completed;

      4. The monetary penalties assessed based on the criteria in Section 8 (4)(c); and

      5. The date and time after which the city may proceed with abatement of the unlawful condition if the required correction is not completed.

   c. **Assessment of Monetary Penalty.** Monetary penalties assessed by the court shall be in accordance with the monetary penalty in Section 7 (5).

      1. The court shall have the following options in assessing monetary penalties.

         A. Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or

         B. Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the court and thereafter; or

         C. Assess less than the established monetary penalty set forth in Section 7 (5), based on the criteria of Section 8 (4)(c)(2); or

         D. Assess no monetary penalties.

      2. In determining the monetary penalty assessment, the court may consider the following factors:

A. Whether the person responded to staff attempts to contact the person, and cooperated to correct the violation;

B. Whether the person failed to appear at the hearing;

C. Whether the violation was a repeat violation;

D. Whether the person showed due diligence and/or substantial progress in correcting the violation;

E. Whether a genuine, "close call" code interpretation issue exists; and

F. Any other relevant factors.

3. The court may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations the court may consider the factors set forth in Section 8 (4)(c)(2).

5. **Failure to Appear**. If the person to whom the notice of civil violation was issued fails to appear without lawful excuse at the scheduled hearing, the court will enter an order with findings pursuant to Section 8 (4)(b) and assess the appropriate monetary penalty pursuant to Section 8 (4)(c). The city may enforce the court's order and recover all related expenses, including attorney fees, plus the costs of the hearing and any monetary penalty from that person.

Section 9. [Abatement by the City.]

1. The city may abate a condition which was caused by or continues to be a civil violation when:

   a. The terms of voluntary correction agreement pursuant to Section 6 have not been met; or

   b. A notice of civil violation has been issued pursuant to Section 7 and a hearing has been held pursuant to Section 8 and the required correction has not been completed by the date specified in the court's order; or

   c. The condition is subject to summary abatement as provided for in Section 9 (2).

2. **Summary Abatement**. Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the city be entitled to recover any costs

incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation.

3. **Authorized Action by the City**. Using any lawful means, the city may enter upon the subject property and may remove or correct the condition that is subject to abatement. The city may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

4. **Recovery of Costs and Expenses**. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or control of the property and shall become due and payable to the city within 10 calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing. All such costs and expenses shall constitute a lien against the affected property, as set forth in Section 9 (6).

5. **Lien - Authorized**. The City of Vernonia shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings under this chapter, and all other related costs including attorney and expert witness fees, against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall be on a parity.

   a. The applicable department director shall cause a claim for lien to be filed for record within 90 days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated.

   b. The claim of lien shall contain sufficient information regarding the notice of civil violation, as determined by the applicable department director, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.

   c. Any such claim of lien shall be verified by the applicable department director, and may be amended from time to time to reflect changed conditions.

Section 10. [Additional Enforcement Procedures.]

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by Vernonia Ordinances, except as precluded by law.

Section 11. [Conflicts.]

In the event of a conflict between this chapter and any other provision of Vernonia Ordinances or other city ordinance providing for a civil penalty, this chapter shall control.

Section 12. [Severability.] The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

Section 13. [Saving Clause.] Notwithstanding Section 1, Ordinance 601 shall remain in force for the purpose of pursuing measures for abatement, enforcement, costs, and penalties against any person responsible for violating that Ordinance prior to the effective date of this Ordinance.

Section 14. [Emergency Clause.] Under the provisions of the City of Vernonia Charter of 1998, Chapter VIII, Section 32, the council finds it necessary for the peace, health, and safety of the City and its citizens that this ordinance take effect immediately upon its passage and approval by the Mayor and an emergency is therefore declared to exist.

Adopted as read in full this 20th day of February, 2001 by the following vote:

Ayes: 5 Nays: - Abstain: - Absent: -

Adopted as read by title only this 20th day of February, 2001 by the following vote:

Ayes: 5 Nays: - Abstain: - Absent: -

Approved this 20th day of February, 2001.

ORDINANCE 756