

ORDINANCE NO. 893

AN ORDINANCE AMENDING THE SCAPPOOSE MUNICIPAL CODE TITLE 8, CHAPTER 8.20 NUISANCES AND TITLE 12, CHAPTER 12.12 PUBLIC RIGHTS-OF-WAY

WHEREAS, the City of Scappoose has identified issues with grass, vegetation, trees boulders, or new fences encroaching into the public right-of-way; and

WHEREAS, these issues can create safety hazards for pedestrians, motorists, and other users of public rights-of-way; and

WHEREAS, the City has recognized a need to include language in the Scappoose Municipal Code to authorize the City to abate such issues; and

WHEREAS, the City has identified inconsistencies in Chapters 8.20 and 12.12 as it pertains to the definition of "right-of-way;" now therefore,

NOW THEREFORE, THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. Chapters 8.20 and 12.12 of the Scappoose Municipal Code shall be amended as shown in Exhibits A and B (additional language underlined and deleted language ~~stricken~~).

Section 2. This ordinance shall take effect 30 days after passage.

Section 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

PASSED AND ADOPTED by the City Council this 7th day of December 2020, and signed by the Mayor and City Recorder in authentication of its passage.


CITY OF SCAPPOOSE, OREGON



Scott Burge, Mayor

First Reading: November 16, 2020

Second Reading: December 7, 2020

Attest: 

Susan M. Reeves, MMC, City Recorder

Chapter 8.20 - Nuisances

8.20.10 Definitions.

"Right-of-way" means and includes, but is not limited to, public land, either dedicated or deeded to the public for public use and either under the control of a public agency, either occupied or intended to be occupied by street, crosswalk, sidewalk, pedestrian and bike paths, railroad, road, municipal and franchise utilities, street trees or other special use, including other public ways or areas. The right-of-way includes subsurface and air space over these areas.

8.20.100 Trees.

A. No owner or person in charge of abutting property shall allow any brush, bushes, trees, limbs, shrubbery, flowers or other growth, whether grown for food, fuel, shade or ornamentation, to project over a sidewalk at an elevation of less than eight feet above the level of sidewalk, or over a street at an elevation of less than thirteen feet six inches above the level of street.

B. No owner or person in charge of property shall allow to stand a dead or decaying tree that may be a hazard to the public or to persons or property on or near the property.

C. The owner or person in charge occupant of property abutting a parking and/or planter strip shall be responsible to maintain in good order grass, brush, bushes, trees, limbs, shrubbery, flowers or other growth on such parking and/or planter strip.

D. The City Manager or designee shall have the authority to remove or trim any vegetation within the right-of-way that are in violation of any provision of this section.

8.20.160 Enforcement procedures.

A. If the chief of police or ~~his/her delegate~~ designee is satisfied that a nuisance exists, they may cause either a warning or a citation into the municipal court to be issued to the person responsible for the nuisance charging the person with violating this chapter.

8.20.170 Abatement by the city.

A. If a nuisance is found by the court and said nuisance is not abated within the time ordered by the court, the ~~city~~ municipal court may cause the nuisance to be abated.

B. The chief of police or designee shall have the right, by warrant or as otherwise allowed by law, to enter any premises where he they may have reason to believe such

nuisance exists, and shall give immediate notice to the occupant or owner of the premises where such may be found to abate the same.

C. The chief of police or other city official charged with the abatement shall keep an accurate record of all expenses incurred by the city in abating the nuisance, ~~and shall include therein a charge of fifteen percent of those expenses for administrative overhead.~~

8.20.190 Assessment of costs.

A. Upon abatement of a nuisance by the city, the city recorder, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:

1. The total cost of abatement, including ~~the administrative overhead; therein a charge of fifteen percent of those expenses for administrative overhead;~~

Chapter 12.12 – Public Rights-of-Way

Sections:

12.12.070 Grass, vegetation, and trees.

12.12.080 Fences.

12.12.090 Unauthorized items in the right-of-way.

12.12.100 Nuisances.

12.12.010 Definitions

~~“Public rights of way” means and includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.~~

“Public right-of-way” means and includes, but is not limited to, public land, either dedicated or deeded to the public for public use and under the control of a public agency, either occupied or intended to be occupied by a street, crosswalk, sidewalk, pedestrian and bike paths, railroad, road, municipal and franchise utilities, street trees or other special use, including other public ways or areas. The right-of-way includes subsurface and air space over these areas.

12.12.070 Grass, vegetation, and trees.

A. The owner(s) of land adjoining any public right-of-way in the city shall be responsible for maintaining the grass, vegetation, and trees in the public right-of-way at the cost and expense of the owner(s).

B. The owner(s) of land adjoining any public right-of-way in the city shall not allow any grass or vegetation within the right-of-way to exceed six inches in height. No grass, vegetation, or trees shall be allowed by the adjoining owner(s) of land to project over a sidewalk at an elevation of less than eight feet above the level of sidewalk, or over a street at an elevation of less than thirteen feet six inches above the level of street.

C. The City Manager or designee shall have the authority to remove or trim grass and/or vegetation within the right-of-way that are in violation of any provision of this section.

12.12.080 Fences.

A. The owner(s) of land adjoining any public right-of-way shall not construct or maintain a fence of any kind within the public right-of-way. Fences must meet the requirements as set forth in Section 17.100.110 of the Scappoose Development Code (SMC Title 17) and Chapter 12.10 of the Scappoose Municipal Code (SMC Title 12).

B. The City Manager or designee shall have the authority to remove fences within the right-of-way that are in violation of any provision of this section.

12.12.090 Unauthorized items in the right-of-way.

A. The City Manager or designee shall have the authority to remove from the public right-of-way any unauthorized items of any sort – including but not limited to boulders, landscaping, fencing, or other items/materials used as ornamentation or for any other private purpose.

12.12.100 Nuisances.

A. Violations of any section of this chapter are declared to be nuisances that are injurious and detrimental to public safety and are therefore subject to the abatement procedures and provisions, up to and including citation, contained in Chapter 8.20 of the Scappoose Municipal Code.

Chapter 8.20

NUISANCESSections:

8.20.010	Definitions.
8.20.020	Dangerous animals.
8.20.030	Animals at large.
8.20.040	Removal of carcasses.
8.20.050	Nuisances affecting public health.
8.20.060	Abandoned refrigerators.
8.20.070	Attractive nuisances.
8.20.080	Dangerous excavations.
8.20.090	Sidewalk defect or dangerous place.
8.20.100	Trees.
8.20.110	Fences.
8.20.120	Discarded motor vehicles.
8.20.130	Radio and television interference.
8.20.140	Unnecessary noise.
8.20.150	Unenumerated nuisances.
8.20.160	Enforcement procedures.
8.20.170	Abatement by the city.
8.20.180	Joint responsibility.
8.20.190	Assessment of costs.
8.20.200	Summary abatement.
8.20.210	Penalties.
8.20.220	Affirmative defense.
8.20.230	Separate violations.
8.20.240	Severability.

8.20.10 Definitions. As used in this chapter:

"Person" means a natural person, firm, partnership, association or corporation.

"Person in charge of property" means an agent, occupant, lessee, contract purchaser or other person having possession or control of property or the supervision of any construction project.

"Person responsible" means the person responsible for abating a nuisance shall include:

1. The owner;
2. The person in charge of property, as defined in subsection 3, below;
3. The person who caused to come into or continue in existence a nuisance, as defined in the ordinance codified in this chapter or another ordinance of this city;

"Public place" means a building, way, place or accommodation, whether publicly or privately owned, open and available to the general public. (Ord. 718 (part), 2002)

8.20.020 Dangerous animals. No owner or person in charge of an animal shall permit an animal, which is dangerous to the public health or safety, to be exposed in public. If the animal is exposed in public, it may be taken into custody by the city and disposed of in accordance with the procedures provided by ordinance for the impoundment of dogs; except that before the animal is released by the city, the municipal judge must find that proper precautions will be taken to ensure the public health and safety. (Ord. 718 (part), 2002)

8.20.030 Animals at large. No owner or person in charge of an animal shall permit the animal to be at large. Animals at large may be taken into custody by the city and disposed of in accordance with the procedures provided by ordinance for the impoundment of animals. (Ord. 718 (part), 2002)

8.20.040 Removal of carcasses. No person shall permit an animal carcass owned or controlled by him to remain upon public property, or to be exposed on private property, for a period of time longer than twenty-four hours. (Ord. 718 (part), 2002)

8.20.50 Nuisances affecting public health. No owner or person in charge of property shall cause or permit on such property any nuisance affecting public health; nor shall any person cause on any property, public or private, any nuisance affecting public health.

The following are nuisances affecting public health and may be abated as provided in this chapter.

A. An accumulation of decomposing animal or vegetable matter; garbage; rubbish; manure; offal; ashes; wood; discarded containers; waste paper; trash; hay, grass or straw; noxious weeds; litter; inoperable equipment; vehicles or appliances or parts thereof; old home or office furnishings; building materials not being used in a current construction project; or similar items or other refuse matter or substance which, by itself or in conjunction with other substances, is deleterious to public health or safety, or creates an offensive odor or condition;

B. An accumulation of stagnant or impure water, which affords or might afford a breeding place for mosquitoes or other insects;

C. A growth of Russian thistle, Canadian thistle, Chinese thistle, white mustard, cocklebur, silver saltbush, foxtail, or any other noxious weed; and all grass over ten inches in height;

D. The deposition of an animal carcass or part thereof; or any excrement or sewage; or industrial waste; or any putrid, nauseous, decaying, deleterious, offensive, or dangerous substance in a stream, well, spring, brook, ditch, pond, river or other inland waters within the city; or the placing of such substances in such position that high water or natural seepage will carry the same into such waters;

E. An open vault or privy, except those constructed or maintained in connection with construction projects in accordance with the Oregon State Board of Health regulations;

F. Drainage of liquid wastes from private premises;

G. Cesspools or septic tanks which are in an unsanitary condition or which cause an offensive odor;

H. Decayed or unwholesome food, which is offered for human consumption;

I. Premises which are in such a state or condition as to cause an offensive odor, or which are in an unsanitary condition;

J. A pigsty, slaughterhouse, or tannery;

K. A barn, stable, kennel, corral, pen, chicken coop, rabbit hutch or other place where animals are caged or housed which is in an unsanitary condition or creates a noxious or offensive odor;

L. The sufferance or allowance by the owner or person in charge of property that water from a roof, ditch, canal, flume, reservoir, pipeline or conduit above or below ground should leak, seep, flow, overflow, run back or through, or escape or run upon, over or under any premises, public street, alley, sidewalk or other public property;

M. The existence on property of vector or vermin or the conditions which contribute to the growth or sustenance of vector or vermin;

N. The burning, either indoors or outdoors, of any wet garbage, plastic, asbestos, diapers, wire insulation, automobile part, asphalt, petroleum product, petroleum treated material, rubber product, animal remains, or animal or vegetable matter resulting from the handling, preparation, cooking or service of food, or of any other material which emits dense smoke or noxious odors. (Ord. 792 §1, 2007; Ord. 730 §1, 2003; Ord. 718 (part), 2002)

8.20.060 Abandoned refrigerators. No person shall leave in any place accessible to children an abandoned or discarded icebox, refrigerator or similar container without first removing the door. (Ord. 718 (part), 2002)

8.20.70 Attractive nuisances. A. No owner or person in charge of property shall permit thereon:

1. Unguarded machinery, equipment or other devices which are attractive, dangerous and accessible to children;

2. Lumber, logs or pilings placed or stored in a manner so as to be attractive, dangerous and accessible to children;

3. An open pit, quarry, cistern or other excavation without safeguards or barriers to prevent such places from being used by children.

B. This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to children. (Ord. 718 (part), 2002)

8.20.080 Dangerous excavations. A. No owner or person in charge of property shall allow an excavation to remain unguarded by suitable barriers.

B. In addition to the barriers required by subsection A of this section, excavations shall be marked by warning lights during the hours of darkness.

C. An obstruction on a street, sidewalk, public way or pathway commonly used by the public shall be marked by warning lights during the hours of darkness. It shall be the responsibility of the person creating, maintaining, or in charge of such obstruction to ensure the installation and operation of the warning lights. (Ord. 718 (part), 2002)

8.20.090 Sidewalk defect or dangerous place. A. No owner of property, improved or unimproved, abutting on a public sidewalk, shall permit the sidewalk to deteriorate to such a condition that, because of cracks, chipping, weeds, settling, holes covered by dirt or similar occurrences, the sidewalk becomes a hazard to persons using it.

B. The city shall not be liable to any person for loss or injury to a person or property suffered or sustained by reason of any accident on sidewalks caused by ice, snow, encumbrances, obstructions, cracks, chipping, weeds, settling, holes covered by dirt or other similar conditions. Abutting property owners shall maintain sidewalks free from such conditions and are liable for any and all injuries to persons or property arising as a result of their failure to so maintain the sidewalks. (Ord. 718 (part), 2002)

8.20.100 Trees. A. No owner or person in charge of abutting property shall allow any brush, bushes, trees, limbs, shrubbery, flowers or other growth, whether grown for food, fuel, shade or ornamentation, to project over a sidewalk at an elevation of less than eight feet above the level of sidewalk, or over a street at an elevation of less than thirteen feet six inches above the level of street.

B. No owner or person in charge of property shall allow to stand a dead or decaying tree that may be a hazard to the public or to persons or property on or near the property.

C. The owner or occupant of property abutting a parking strip shall be responsible to maintain in good order brush, bushes, trees, limbs, shrubbery, flowers or other growth on such parking strip. (Ord. 718 (part), 2002)

8.20.110 Fences. A. No owner or person in charge of property shall construct or maintain a barbed wire fence along a sidewalk or public way below six feet above the level of the sidewalk or public way.

B. No owner or person in charge of property shall construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person. (Ord. 718 (part), 2002)

8.20.120 Discarded motor vehicles. A. No person shall store or permit the storing of a discarded vehicle upon any private property within the city unless the vehicle is completely enclosed within a building or unless it is in connection with a business enterprise dealing in junked vehicles lawfully conducted within the city.

B. The chief of police shall report to the city manager all cases of nuisances described in this section. He shall promptly examine every such case reported to him; and he shall have the right to enter any premises where he may have reason to believe such nuisance exists, and shall give immediate notice to the occupant or owner of the premises where such may be found to abate the same.

C. The city manager may, after receiving said report, direct that notice be given to the owner of the discarded motor vehicle and to the owner of the property upon which said vehicle is located, directing that said motor vehicle be placed in compliance with this section. If compliance is not effected within ten days from the date of the notice, the chief of police is authorized to remove said nuisance and dispose of said nuisance as allowed by law.

D. For purposes of this section, "discarded" means any vehicle which does not have lawfully affixed thereto an unexpired license plate or is in one or more of the following conditions:

1. Inoperative;
2. Wrecked;
3. Dismantled;
4. Partially dismantled;
5. Abandoned;
6. Junked. Discarded vehicles may be deemed to include

major parts thereof, including but not limited to bodies, engines, transmissions and rear ends. (Ord. 718 (part), 2002)

8.20.130 Radio and television interference. A. No person shall operate or use 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. B. This section does not apply to devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission (FCC). (Ord. 718 (part), 2002)

8.20.140 Unnecessary noise. A. No person shall make, assist in making, continue, or cause to be made any loud, disturbing or unnecessary noise, which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others, at a volume of 55 decibels or greater, between 10:00 pm and 6:00 am. The decibels must be read with a sound meter located at the property boundary line of the property in question. The decibel level will be taken with a sound meter operated by the Scappoose Police Department. This also applies to the operation of equipment requiring a Commercial Drivers License or Commercial Learning Permit, between 10:00 pm and 6:00 am, if the equipment is being operated in residential zones, unless the City has granted a temporary permit for the operation of the equipment, or the equipment is being operated by a unit of government responding to an emergency.

B. Any violation of Section 9.12.040 Offenses relating to noise, is a violation of this chapter. (Ord. 881, 2019; Ord. 718 (part), 2002)

8.20.150 Unenumerated nuisances. A. In addition to the acts and conditions specifically enumerated in this chapter, any condition, thing, substance, conduct or activity which is detrimental to, injurious to, or constitutes a danger to the public health, safety or welfare is declared to be a nuisance and is subject to the abatement procedures set forth in this chapter.

B. A condition, thing, substance, conduct or activity declared to be a nuisance by another ordinance of this city is subject to the abatement procedures of this chapter, if no abatement procedures are provided by such ordinance. (Ord. 718 (part), 2002)

8.20.160 Enforcement procedures. A. If the chief of police or his/her delegate is satisfied that a nuisance exists, he may cause either a warning or a citation into the municipal court to be issued to the person responsible for the nuisance charging the person with violating this chapter. (Ord. 718 (part), 2002)

8.20.170 Abatement by the city. A. If a nuisance is found by the court and said nuisance is not abated within the time ordered by the court, the city may cause the nuisance to be abated.

B. The chief of police shall have the right, by warrant or as otherwise allowed by law, to enter any premises where he may have reason to believe such nuisance exists, and shall give immediate notice to the occupant or owner of the premises where such may be found to abate the same.

C. The chief of police or other city official charged with the abatement shall keep an accurate record of all expenses incurred by the city in abating the nuisance and shall include therein a charge of fifteen percent of those expenses for administrative overhead.

(Ord. 730 §2, 2003; Ord. 718 (part), 2002)

8.20.180 Joint responsibility. If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance. (Ord. 718 (part), 2002)

8.20.190 Assessment of costs. A. Upon abatement of a nuisance by the city, the city recorder, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:

1. The total cost of abatement, including the administrative overhead;
2. That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty days from the date of the notice;
3. That if the person responsible objects to the cost of the abatement as indicated, he/she may file a notice of objection with

8.20.190--8.20.210

the city recorder not more than ten days from the date of the notice.

B. At the next regular meeting of the city council after the date of the notice of objection, the council, in the regular course of business, shall hear and determine the objections to the costs assessed.

C. If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.

D. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of nine percent per annum. The interest shall commence to run from date of the entry of the lien in the lien docket.

E. An error in the name of the person responsible shall not void the assessment, nor will failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property. (Ord. 792 §2, 2007; Ord. 718 (part), 2002)

8.20.200 Summary abatement. The abatement procedure provided by this chapter is not exclusive, but is in addition to any procedure provided by other ordinances; and the chief of police may proceed summarily to abate a health or other nuisance which is reasonably found to exist and which imminently endangers human life or property. (Ord. 718 (part), 2002)

8.20.210 Penalties. A. The acts and conditions described in Section 8.20.020 through Section 8.20.150 of this chapter are declared to be public nuisances subject to abatement and penalty pursuant to this chapter.

B. A person violating Sections 8.20.130 or 8.20.140 of this chapter shall be guilty of a Class B civil violation, as described in ORS Chapter 153. Such violation shall be punishable by a fine fixed by the court not less than fifty dollars nor more than two hundred fifty dollars, plus court assessments.

C. A person violating any provisions of this chapter other than Sections 8.20.130 or 8.20.140 shall be guilty of a Class A civil violation as described in ORS Chapter 153. Such violation shall be punishable by a fine fixed by the court not less than two hundred fifty dollars nor more than six hundred dollars, plus court assessments.

D. In addition to other penalties, the court may order the nuisance abated and establish time limits for compliance with an abatement order. Failure to timely comply with an abatement order of the court shall be a separate Class B violation subject to a fine of two hundred fifty dollars. Each day of such noncompliance shall be a separate violation.

E. Upon conviction of a civil violation under this chapter, the court shall assess, in addition to penalties, reimbursement to the city for the city's reasonable costs in investigating and processing the city's nuisance citation and abatement. (Ord. 730 §3, 2003; Ord. 718 (part), 2002)

8.20.220 Affirmative defense. It shall be an affirmative defense to any charge of violation of any section of this chapter, other than Sections 8.20.130 or 8.20.140, that the alleged nuisance was satisfactorily abated by the defendant not more than ten calendar days after the issuance of the citation to appear in court for the nuisance, except that such defense shall not excuse the defendant from reimbursement of costs as required by this chapter. (Ord. 730 §4, 2003; Ord. 718 (part), 2002)

8.20.230 Separate violations. A. Each day's violation of a section of this chapter is a separate offense.

B. The abatement of a nuisance by the city is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. (Ord. 718 (part), 2002)

8.20.240 Severability. The sections and subsections of this chapter are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections. (Ord. 718 (part), 2002)

Chapter 12.12

PUBLIC RIGHTS-OF-WAY

Sections:

- 12.12.010 Definitions.
- 12.12.020 Jurisdiction.
- 12.12.030 Scope of regulatory control.
- 12.12.040 City permission requirement.
- 12.12.050 Obligations of the city.
- 12.12.060 Authority to revoke permit and assess fine.

12.12.010 Definitions. For the purpose of this chapter, the following definitions apply:

"City" means the city of Scappoose, Oregon.

"Person" means individual, corporation, association, firm, partnership, joint stock company, and similar entities.

"Public rights-of-way" means and includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

"Within the city" means territory over which the city now has or acquires jurisdiction for the exercise of its powers. (Ord. 652 §1, 1997)

12.12.020 Jurisdiction. The city has jurisdiction and shall exercise regulatory control over all public rights-of-way within the city under the authority of the city Charter and state law. (Ord. 652 §2, 1997)

12.12.030 Scope of regulatory control. The city has jurisdiction and shall exercise regulatory control over all public rights-of-way whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means. (Ord. 652 §3, 1997)

EXHIBIT D

12.12.040--12.12.060

12.12.040 City permission requirement. Other than public vehicular and pedestrian traffic, no person may use, occupy or encroach on or in a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises, licenses and permits. (Ord. 652 §4, 1997)

12.12.050 Obligations of the city. The exercise of jurisdiction and regulatory control over a public right-of way by the city is not official acceptance of the right-of way, and does not obligate the city to maintain or repair any part of the right-of-way. (Ord. 652 §5, 1997)

12.12.060 Authority to revoke permit and assess fine. The City Manager or authorized designee may revoke or suspend the right-of-way permit for failure to comply with the approved conditions of the permit. The Police Chief may also assess a fine of up to \$1500 per violation of the permit conditions. (Ord. 884, 2019)