

TITLE XIII: GENERAL OFFENSES

Chapter

130. GENERAL OFFENSES

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CHAPTER 130: GENERAL OFFENSES

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GENERAL OFFENSES/NUISANCES**' 130.01 PURPOSE.**

The purpose of this chapter is to list and define actions by individuals which cause harm to the citizens of this city generally. This chapter is not intended to create private, civil causes of action between private parties. That is left to the state's tort law, whether statutory or common.
(Ord. 1253, passed 12-6-2010)

' 130.02 PUBLIC NUISANCE.

No person shall commit a public nuisance as defined by this chapter within or on any land owned or controlled by the city. Any offense under this chapter is classified as a violation punishable by a fine as set forth in ' 130.99.
(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.03 SEPARATE VIOLATIONS.

(A) Each day's violation of a provision of this chapter constitutes a separate offense.

(B) The abatement of a nuisance 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.

(C) A citation or other charging instrument filed in court shall include all violations from the date of any written warning (a.k.a. Abatement@) notice as cited in the charging instrument.

(D) There is no requirement for any violation of this chapter, that a written notice must first be delivered, to abate or cite the violation. For determining the number of day(s) the violation has occurred or has continued, it shall be from the day the violation is first identified by the city, not the date a warning, written or verbal, is provided or received.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' **130.04 SUMMARY ABATEMENT.**

The procedures and/or remedies provided by this chapter are not exclusive but are in addition to the procedures and/or remedies provided by other ordinances. The Chief of the Fire Department, the Chief of Police or any other city official may proceed summarily to abate a health or other nuisance which imminently endangers human life or property.

(Ord. 1253, passed 12-6-2010)

' **130.05 DEFINITIONS, INTERPRETATIONS AND CONFLICT OF LAWS.**

ABATEMENT is a judicial remedy in addition to any fine, fee or other available judicial remedy for any violation of this ordinance. Abatement means the destruction, extinguishment, removal, stoppage, suppression, or otherwise rendering harmless by any reasonable means of that which causes a nuisance. City may issue a citation and/or City may issue a written warning in advance of a possible citation to the person responsible to fix or abate the alleged nuisance within a certain time. Abatement also refers to this discretionary warning process by City to a person responsible for a violation of this ordinance that a citation is imminent if the nuisance is not abated. However, an Abatement Warrant shall issue only after a judge issues an order or judgment for an offense of a City ordinance or other law.

CITY means, as the context may require, the City of Tillamook, its City Mayor and Council, City Manager, Police Chief, Public Works Director or other City of Tillamook employee charged with noticing, reporting or enforcing any City ordinance violation.

DAY means a 24-hour calendar day.

DEBRIS means bits, pieces and/or whole units of rubbish and/or litter whether of animal, mineral, vegetable, or man-made material, or a combination thereof.

DISCARDED VEHICLE means any vehicle which is licensed or unlicensed and is in one or more of the following conditions; inoperative, wrecked, dismantled or partially dismantled, abandoned, junked or which cannot be moved without being repaired or dismantled or is no longer safely usable for the purpose for which it was manufactured. This term shall also include, but not be limited to, major vehicle parts such as vehicle bodies, engines or transmissions.

DRIVEWAY means the area that provides vehicular access to a site from the street. A driveway generally is the same width as the curb cut excluding any aprons or extensions of the curb cut.

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EMERGENCY MINOR VEHICLE REPAIR means, for purposes of this ordinance, the process of making repairs or minor installation of parts or equipment to a vehicle over a period of

GRAFFITI means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted or otherwise applied to property without the authorization of the owner of the property regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property.

INOPERABLE MOTOR VEHICLE is defined in section 28.

JUNK is defined as follows:

- (1) Trash that is kept outdoors and visible to any member of the public within Tillamook City; or
- (2) Rubbish or trash that is deposited on or remains on any public right of way, street, road, highway or alley within Tillamook City, or on any private property within view from any premises open to the public or public way.
- (3) Junk or trash that is kept outdoors on any street, lot, private property or premises or in any building that is not wholly or entirely enclosed, except for doors used for entry and exit. Junk includes all motor vehicles not functioning, licensed and insurable, motor vehicle parts, old machinery, old machinery parts, appliances or parts thereof, metal scrap, glass, paper, lumber or wood or other waste or discarded material. This section does not apply to a licensed business, which maintains or sells these described items.

NOISE is defined with the following parameters:

- (1) No person shall allow, cause to be made, make, or assist another person in making any noise which disturbs, injures or endangers the health, safety or welfare of others. Noise is sound which:
 - (a) Is capable of being heard at or beyond the boundary of property from which the noise originates;
 - (b) Results in a disturbance of the peace; and/or
 - (c) Exceeds sound in volume made by any make and model of engine or machine that is not consistent with its new or stock, manufactured condition;
 - (d) Can be heard inside a noise sensitive unit;
- (2) The following list of violations of this section is not exclusive, but illustrates some noise.
 - (a) The keeping of an animal, which by loud and frequent or continued noise disturbs the comfort of a person in the vicinity;

(b) The use of an engine, thing or device which is so loaded, out of repair or operated in such manner as to create a loud or unnecessary grating, grinding, rattling or other noise;

(c) The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise created thereby is effectively muffled;

(d) The construction, including excavation, demolition, alteration or repair of a building or other structure, or repair of a vehicle or other machinery other than between the hours of 7:00 a.m. and 6:00 p.m. except upon special permit granted by the City;

(e) The use or operation of an automatic or electric piano, phonograph, radio, television, loudspeaker or sound-amplifying device so loudly as to disturb persons in the vicinity thereof, or in such manner as renders the same a public nuisance, unless otherwise allowed by a permit granted by the City in advance.

NOISE SENSITIVE UNIT means any building or other structure, or portion thereof, used as a church, day care center, hospital, nursing care center, school or place used for overnight accommodations of persons, including, but not limited to, individual homes, individual apartments, trailers and nursing homes.

NOXIOUS VEGETATION means grass and/or weeds exceeding 8 inches in height, and/or blackberries, shrubbery or brush allowed to create a fire or safety hazard or to go to seed.

NUISANCE GENERALLY means an intentional, negligent or reckless act or failure to act by a person which interferes with the use and/or enjoyment of the life or property of another person or which interferes with the rights of the public and for which the law will presume resulting damage. Nuisance here more specifically means any of the enumerated offenses identified by this ordinance. However, the enumerated offenses in this ordinance shall not be considered an exhaustive list. Additional public nuisances may be identified by facts and circumstances meeting the elements of the general definition. Nuisance also means alleged nuisance as the context in this ordinance may require.

OWNER means the owner of the title of real property, or the contract purchaser of real property of record, as shown on the last available complete tax assessment roll. Owner shall also mean any agent of the owner.

PERSON means a natural person, firm, partnership, association, corporation or legal entity of any kind subject to the jurisdiction of the City of Tillamook.

PERSON IN CHARGE OF PROPERTY means an agent, manager, occupant, lessee, contract purchaser or other person having possession or control of property or the supervision of any construction project of any person.

PERSON RESPONSIBLE means the owner of real and/or personal property, and/or owner's agent, assignee, beneficiary or successor-in-interest, if any, or tenant of any kind. Person Responsible also means person in charge having care, custody or control of real and/or personal property.

POLLUTE means to corrupt, defile or contaminate the soil, air and/or water by the addition of any noxious substance and/or noise.

PUBLIC PLACE means a building, way, place or accommodation, whether publicly or privately owned, which is open and available to the general public.

PUBLIC WAY is defined in section 26.

RUBBISH WITHIN RIGHT OF WAYS means depositing without City's prior permission any material within public or private rights of ways, including but not limited to trash as defined in this section, compost piles, garbage cans, cages, dog houses, trailers and any other materials which will in any way create a safety or fire hazard or become unsightly or obnoxious.

STORED VEHICLE means, for purposes of this ordinance, a motor vehicle that is parked on private property for a period longer than 30 cumulative days in any 6 month period and the vehicle is not currently registered, insured and in immediate legal operating condition.

TRASH means unregistered or currently unlicensed motor vehicles as defined by the Oregon Motor Vehicle Code, vehicle parts, machinery, appliances, appliance parts, iron or other metals, broken pieces, plastic, glass, paper, lumber, wood or furniture.

VEHICLE UNDER REPAIR/REMODEL means any vehicle, which is in the process of being dismantled, discarded, repaired, other than emergency minor repair, discarded, remodeled or refurbished, or stored as defined in this ordinance.

Except where the context clearly indicates a different meaning, the definitions contained in the Oregon Revised Statutes, as now or hereafter constituted, are adopted by reference and made a part of this chapter. In any conflict of laws, the city's definitions and interpretation shall control. The City Council expressly retains the exclusive authority to define and interpret the meaning and application of the city's ordinances, orders, rules, resolutions and/or other city law, even those laws borrowed from any other jurisdiction and incorporated as city law, such as, the Oregon Revised Statutes. The City Council reaffirms and adopts current O.R.S. and O.A.R. in effect and referenced in this chapter. (Ord. 1253, passed 12-6-2010; Ord. 1262, passed 1-3-2012)

' 130.06 DRINKING IN PUBLIC PLACES.

No person shall drink or consume alcoholic liquor in or upon a street, alley, mall, parking lot or structure, motor vehicle, public grounds, city park or other public place without a license or permit from the city and/or the State Liquor Control Commission, if applicable.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.07 PUBLIC URINATION.

No person shall urinate or defecate while in, or in view from, a public place, except in toilets complying with all applicable local, state and federal health laws.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.08 NOISE.

(A) No person shall allow, cause to be made, make or assist another person in making any noise which disturbs, injures or endangers the health, safety or welfare of others. *NOISE* is sound which:

(1) Is capable of being heard at or beyond the boundary of property from which the noise originates;

(2) Results in a disturbance of the peace;

(3) Exceeds sound in volume made by any make and model of engine or machine that is not consistent with its new or stock, manufactured condition; and/or

(4) Can be heard inside a noise sensitive unit.

(B) The following list of violations of this section is not exclusive, but illustrates some noise:

(1) The keeping of an animal, which by loud and frequent or continued noise disturbs the comfort of a person in the vicinity;

(2) The use of an engine, thing or device which is so loaded, out of repair or operated in manner as to create a loud or unnecessary grating, grinding, rattling or other noise;

(3) The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise created thereby is effectively muffled;

(4) The construction, including excavation, demolition, alteration or repair of a building or other structure, or repair of a vehicle or other machinery other than between the hours of 7:00 a.m. and 6:00 p.m. except upon special permit granted by the city; and

(5) The use or operation of an automatic or electric piano, phonograph, radio, television, loudspeaker or sound-amplifying device so loudly as to disturb persons in the vicinity thereof, or in a manner as renders the same a public nuisance, unless otherwise allowed by a permit granted by the city in advance.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.09 RADIO AND TELEVISION INTERFERENCE.

(A) No person shall interfere by any means with radio or telephone reception or transmission, unless otherwise permitted by local, state or federal law. This section shall also specifically apply to interference with any police, fire and/or emergency communication systems.

(B) This section does not apply to devices licensed approved and operated under the rules and regulations of the Federal Communications Commission.
(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.10 DISCHARGE OF WEAPONS.

No person, other than a peace officer during the performance of his or her duties, shall fire or discharge a gun, including spring or air-actuated pellet guns, air guns or BB guns, or other weapon which propels a projectile by use of gunpowder or other explosive, jet or rocket propulsion, unless otherwise approved by the City Council or protected under the State Constitution or Constitution of the United States of America.
(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.11 FIREWORKS.

(A) No person shall discharge fireworks except in compliance with local, state, and federal law.

(B) No owner of property, as defined in section 5, (15), or person in charge of property, as defined in section 5, (17) shall allow unlawful fireworks to be possessed and or discharged on property owned, possessed, supervised or controlled by that person. (Ord. 1253, passed 12-6-2010; Ord. 1278, passed 8-19-2013) Penalty, see ' 130.99

' 130.12 THROWING ROCKS.

No person shall throw, cast or sling from his or her hand, or by a slingshot, bean shooter or other device, any stone, pebble, rock, shot or other solid substance within the city.
(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.13 NOXIOUS VEGETATION, TREES, HEDGES, BUSHES AND SHRUBS.

(A) No owner or person in charge of property that abuts upon a street or public sidewalk shall permit trees, hedges or bushes on his or her property to interfere with street or sidewalk traffic. It shall be the duty of an owner or person in charge of property that abuts upon a street or public sidewalk to keep all trees, hedges, shrubs and bushes on his or her premises, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than 14 feet above the roadway.

(B) No owner or person in charge of property shall allow standing a dead or decaying tree to become or remain a hazard to the public or to persons or nearby property.

(C) No owner, person responsible or person in charge of property shall allow noxious vegetation to exist on property within the city.

(Ord. 1253, passed 12-6-2010; Ord. 1256, passed 6-6-2011) Penalty, see ' 130.99

' **130.14 FENCES.**

(A) No owner or person in charge of property shall construct or maintain a barbed wire fence thereon, or permit barbed wire to remain as part of a fence along a sidewalk or public way; except this wire may be placed above the top of other fencing not less than six feet, six inches high.

(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, unless placed at least three feet behind an initial fence.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' **130.15 WATERS, DRAINAGE, SNOW AND ICE.**

(A) *Waters.* No owner or person in charge of a building or structure shall suffer or permit rainwater, ice or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk.

(B) *Drainage.* The owner or person in charge of property shall install and maintain in good repair adequate drainpipes and/or stormwater drainage system to prevent water flowing from owner's property to flow across or upon a sidewalk.

(C) *Snow and ice.* No owner or person responsible of property abutting on a public sidewalk shall permit snow or ice to remain on the sidewalk for a period longer than the first two hours after sunrise or after the snow has fallen or ice has formed unless the snow or ice is covered with sand, ashes or other suitable material to assure safe pedestrian travel.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' **130.16 MINORS IN PLACES OF AMUSEMENT.**

(A) No person responsible shall allow a person under 18 years of age to, and no person under age 18 years shall, enter, visit or loiter in or about a public card room, poolroom or billiard parlor, or to engage therein in any game of cards, pool, billiards, dice, darts, pinball, games of like character or games of chance, either for amusement or otherwise.

(B) This section shall not apply to the playing of billiards or pool in a recreational facility. As used in this section, a **RECREATIONAL FACILITY** means an area, enclosure or room in which facilities are offered to the public to play billiards or pool for amusement only, and:

- (1) Which is clean, adequately supervised, adequately lighted and adequately ventilated;

(2) In which no alcoholic liquor is sold or consumed; and

(3) Access to which does not require passing through a room where alcoholic liquor is sold or consumed.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

Cross-reference:

Minors, see Chapter 131

' 130.17 FALSE REPORTS.

No person shall knowingly or recklessly make or file with the city, its Police Department and/or City Attorney a false, misleading or unfounded statement or report concerning the violation or alleged violation of a city ordinance, or the commission or alleged commission of a crime, or any application for any city permit or approval.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.18 OPEN CELLAR DOORS OR GRATES.

No owner or person in charge of property shall permit a cellar door or grate located in or upon a sidewalk or public pathway to remain open except when the entrance is being used and, when being used, there are adequate safeguards to prevent harm to pedestrians using the sidewalk.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.19 OBSTRUCTION OF FIRE HYDRANTS.

No owner of property adjacent to a street upon which is located a fire hydrant shall place or maintain within four feet of the fire hydrant any bush, shrub or tree, or other obstruction.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.20 PAINTING OR MARKING SIDEWALKS AND CURBS.

No person shall paint, paste, print, mark or color anything upon any sidewalk, curbing or other public right-of-way within the city, without first having obtained permission from the city.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.21 OBSTRUCTION OF STREETS AND SIDEWALKS; PERMITS.

(A) No person shall use any of the streets or sidewalks for the purpose of selling, offering for sale, exhibiting or advertising merchandise or other thing which shall cause individual(s) to gather and/or to set up, maintain and operate a stand, table, bench or a parked vehicle for the purpose of conducting the

same, on any portion of the streets, sidewalks or other public ways or thoroughfares without first obtaining from the city permission so to do, and any person intending to use any street or sidewalk for the purposes herein enumerated shall first make application to the city for a permit to do so. If the city after consideration of the application, shall consider that the permit shall be granted, the same shall forthwith be issued by the city designating the place, hours and time during which the permit shall be effective. However, the city may charge a fee to be set by resolution for a permit for the activity.

(B) No person shall place or deposit upon any street or sidewalk any article which obstructs the travel or free passage of pedestrian and vehicular traffic.

(Ord. 1253, passed 12-6-2010)

' 130.22 POSTED NOTICES.

No person shall affix a placard, sign, bill or poster upon personal or real property, private or public, without first obtaining permission from the owner thereof and the city and from any other proper public authority, if applicable.

(Ord. 1253, passed 12-6-2010)

' 130.23 HAULING.

No person shall haul sand, gravel, rock, wood or other substance in any vehicle or conveyance that is so constructed or in a condition as to allow the sand, gravel, rock, wood or other substance to fall on and litter the public streets of the city.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

NUISANCES AFFECTING PUBLIC HEALTH AND SAFETY

' 130.35 NUISANCES AFFECTING PUBLIC HEALTH.

(A) No person responsible shall cause or permit on property owned or controlled by him or her a nuisance affecting public health.

(B) The following are nuisances affecting public health and may be abated as provided in this chapter:

(1) *Cesspools.* Cesspools or septic tanks, which are in an unsanitary condition or which cause an offensive odor;

(2) *Debris.* No person responsible shall allow the accumulation of debris, rubbish, manure and other refuse that are not removed within a reasonable time. An accumulation is any amount greater than one pound in weight or one cubic foot in volume;

(3) *Food.* No person responsible shall offer for human consumption any decayed or unwholesome food;

(4) *Odor.* No person responsible for premises shall cause an offensive odor or allow the premises to be in an unsanitary condition;

(5) *Privies.* No person responsible shall allow open vaults or privies within the city, except those allowed or maintained in connection with formally permitted construction projects and in accordance with local, state and federal law, specifically including the State Health Division regulations;

(6) *Stagnant water.* No person responsible shall allow or maintain stagnant water or other condition affording a breeding place for mosquitoes and/or other insect pests. This section shall not apply to commercial animal husbandry or insectarium operations which are in compliance with all applicable local, state and federal laws;

(7) *Surface drainage.* Drainage of liquid wastes from private premises; and

(8) *Water pollution.* No person responsible shall pollute any surface or subsurface water, well, spring, stream or drainage ditch.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.36 CREATING A HAZARD.

No person responsible shall create a hazard by:

(A) Maintaining or leaving in a place accessible to children a container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically;

(B) Maintaining or leaving access to a well, cistern, cesspool, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more unsecured by failing to cover, fence or install other suitable protective measures to prevent harm; or

(C) Failing to adequately secure against access by, or injury or death to, minors to:

(1) Equipment or other devices dangerous to minors;

(2) Lumber, logs or pilings placed or stored in a manner dangerous to minors; or

(3) Any excavation dangerous to minors.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.37 OFFENSIVE LITTERING.

(A) No person responsible shall:

(1) Discard, drain or in any manner deposit any rubbish, trash, garbage, debris, sewage from any source or other refuse or pollutant of any kind upon the land of another or upon any public way without permission of the owner and without complying with all applicable local, state and/or federal laws; or

(2) Permit any rubbish, trash, garbage, debris, tobacco product or paraphernalia (whether or not lit or burning) or other refuse to be thrown, or fall or be blown from a vehicle which he or she is operating; except that this division (A)(2) shall not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Public Utility Commissioner of the state, or a person operating a school bus.

(B) As used in this section, *PUBLIC WAY* includes but is not limited to roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the city, state or county for use by the general public.

(C) No person shall drop, spill, deposit or place in any manner whatsoever any sawdust, log fuel or other small wooden matter, grass or lawn clippings or any other solid matter which may be blown or scattered by the wind or which may be carried or washed by the rain or surface waters into the storm sewers, upon any paved street or upon any sidewalk, without immediately disposing of and taking care of the same in such a manner as to wholly prohibit the same from being scattered or blown by the wind or washed or carried by the rain or surface waters into the storm sewers.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.38 TRASH, RUBBISH.

No person responsible shall allow:

(A) Trash to be kept outdoors and visible to any member of the public within the city;

(B) Rubbish or trash to be deposited on or remain on any public right-of-way, street, road, highway or alley within the city, or on any private property within view from any premises open to the public or public way; or

(C) Junk or trash to be kept outdoors on any street, lot, private property or premises or in any building that is not wholly or entirely enclosed, except for doors used for entry and exit. **JUNK** includes all motor vehicles not functioning, licensed and insurable, motor vehicle parts, old machinery, old machinery parts, appliances or parts thereof, metal scrap, glass, paper, lumber or wood or other waste or discarded material. This section does not apply to a licensed business which maintains or sells these described items.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' **130.39 INOPERABLE MOTOR VEHICLES.**

(A) No person shall place, or allow to remain, an inoperable motor vehicle on public or private property within view for a period greater than 24 hours.

(B) An inoperable motor vehicle (IMV) is not within view where it is:

(1) Placed within a legally permitted structure; or

(2) Covered by a commercially available vehicle cover specific to the make and model of the motor vehicle being covered. However, tarps and/or plastic sheeting are not commercially available vehicle cover specific to the make and model of the motor vehicle being covered.

(C) **INOPERABLE MOTOR VEHICLE (IMV)** means any motor vehicle which is not currently lawfully registered, insured as required by state law or in immediate legal operating condition.

(D) No person shall place more than two inoperable motor vehicles on public or private property even when the IMVs are not within view as defined in division (B) above.

(E) Any inoperable motor vehicle placed outside a structure shall be located entirely on real property owned and/or controlled by the vehicle owner, as proven by a recorded deed or mortgage, a written lease or rental agreement and/or the written consent of the real property owner.

(F) This section does not apply to the following, non-exclusive list of city-registered businesses:

(1) Licensed auto repair or dismantling businesses;

(2) Licensed motor vehicle dealers;

(3) Licensed motor vehicle dismantling businesses;

(4) Junk dealers; or

(5) Any lawful business requiring for a business purpose the placement of inoperable motor vehicles.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

Cross-reference:

Abandoned vehicles, see Chapter 73

Discarded vehicles, see Chapter 94

' 130.40 GRAFFITI.

Graffiti not only damages property but creates a visual blight. When graffiti is allowed to remain on property and is not promptly removed, it invites additional graffiti and criminal activity. No person may cause graffiti to exist on private property or the public right-of-way directly abutting the property. Graffiti which has been applied to property and is visible from any public right-of-way, from any other public or private property, or from any premises open to the public must be removed or covered by the person owning, leasing, occupying or having charge or possession of the property within 14 days of the graffiti's initial existence at the site. Failure to remove or cover the graffiti within the specified time period is a violation of this chapter.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.41 OFFENSES OUTSIDE CITY LIMITS.

Where permitted by state law, an act made unlawful by this chapter shall constitute an offense when committed on any property owned or leased by the city, even though outside the corporate limits of the city.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.42 SOLICITING OR CONFEDERATING TO VIOLATE ORDINANCES.

No person shall conspire with another to violate a provision of this chapter or any other ordinance of the city.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.43 ATTEMPT TO COMMIT OFFENSES.

A person who shall attempt to commit any of the offenses mentioned in this chapter or any ordinance of the city, but who for any reason is prevented from completing the act, shall be deemed guilty of attempt of that specific ordinance. *ATTEMPT* means any overt act constituting a substantial step toward completing an offense.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

ABATEMENT

' 130.55 ABATEMENT GENERALLY.

Abatement is a judicial remedy in addition to any fine, fee or other available judicial remedy for any violation of this chapter. *ABATEMENT* means the destruction, extinguishment, removal, stoppage, suppression or otherwise rendering harmless by any reasonable means of that which causes a nuisance. The city may issue a citation and/or the city may issue a written warning in advance of a possible citation to the person responsible to fix or abate the alleged nuisance within a certain time. Abatement also refers to this discretionary warning process by the city to a person responsible for a violation of this chapter that a citation is imminent if the nuisance is not abated. However, an Abatement warrant as described in ' 130.58 shall issue only after a judge issues an order or judgment for an offense of a city ordinance or other law.
(Ord. 1253, passed 12-6-2010)

' 130.56 CITATION OR WARNING; PROCEDURE.

(A) When the city learns that a nuisance exists, the city shall cause to be delivered to the person responsible for the location of the nuisance:

(1) A citation; or

(2) A written warning notice directing the person responsible to abate the nuisance by a certain time.

(B) The written warning notice to abate a nuisance shall contain:

(1) A description of the real property by street address, common description or legal description, on which the nuisance exists;

(2) A description of the nuisance;

(3) A direction to abate the nuisance within 14 days from the date of receiving the notice;

(4) A statement that failure to abate a nuisance may cause the person responsible be cited into Municipal Court with possible imposition of a fine, as well as abatement costs;

(5) A statement that the person responsible may protest the order to abate by giving notice to the city within 14 days from the date of actual or constructive receipt of the notice; and

(6) A statement that the person responsible may make request to the city for an extension of time to abate the nuisance, not to exceed 30 days from date of receipt of the original notice.

(C) The city upon sending out notice under division (B) above shall also cause a report to be filed in the Police Department documenting all action occurring with this nuisance.

(D) An error in the name or address of the person responsible shall not make the notice void where the person responsible receives actual or constructive notice here.

(Ord. 1253, passed 12-6-2010) Penalty, see ' 130.99

' 130.57 ABATEMENT BY THE PERSON RESPONSIBLE.

(A) Within 14 days after receipt of mailing of a warning notice, as provided in ' 130.56, the person responsible shall abate the nuisance or prove to the city no nuisance exists.

(B) A person responsible may contest that no nuisance exists by filing with the city within 14 days a written statement describing in detail the basis, reasons and facts for denying the nuisance exists. This statement shall be received within 14 days from the date of receipt of the notice. The person responsible may request an extension from the city at any time within the original 14 days provided for nuisance abatement.

(C) The city shall have 14 days to respond in writing. The response shall indicate either:

- (1) The nuisance no longer exists and no further action is required;
- (2) The city may allow an extension to abate, not to exceed 30 days; and/or

(3) The nuisance still exists. If the nuisance still exists, then the city shall notify the person responsible to abate the nuisance immediately and shall issue a citation as soon as practicable.

(D) Once the final date allowed to abate has passed and the city determines the nuisance has not been abated, the city shall then cite the person responsible into Municipal Court.
(Ord. 1253, passed 12-6-2010)

' 130.58 NUISANCE ABATEMENT; WARRANT.

(A) *Abatement.* If following the time limit set by the Court any nuisance has not been abated, the city may apply to the Court for an abatement warrant to cause the nuisance to be Aseized,@ removed and abated, including disposal in an approved manner.

(B) *Warrants.* When the city is unable within a reasonable time to secure permission to enter private property to seize and abate the nuisance, a Municipal, Justice or Circuit Court Judge shall issue a nuisance abatement warrant, unless not otherwise allowed by law.

(C) *Procedure for issuance of a nuisance abatement warrant.*

(1) *Examination.* Before issuing a nuisance abatement warrant, the Judge may examine the available evidence and/or receive additional evidence, including without limitation witnesses' testimony, e.g., applicant, a citizen complainant, city's officer and/or any other witness, under oath for the purpose of determining whether or not a responsible person has complied with a judicial order or judgment.

(2) *Issuance.* If the Judge determines a prior order or judgment to abate remains unsatisfied

in whole or part, the Judge shall issue the abatement warrant particularly describing the person or persons authorized to execute the warrant, the property to be entered, a statement of the general types and estimated quantity of the items to be removed or conditions abated, and the scope, time, place and manner of the abatement. The warrant shall contain a direction that it be executed either on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the Judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

(3) *Police assistance.* In issuing a nuisance abatement warrant, the Judge may authorize any peace officer, as defined in state statutes, to enter the described property to remove any person or obstacle and to assist and/or protect the representative of the city in any way necessary to enter the property and remove and abate the nuisance.

(D) *Execution of nuisance abatement warrants.*

(1) *Occupied property.* Except as provided in division (B) of this section, in executing a nuisance abatement warrant, the person authorized to execute the warrant shall, before entry into the occupied premises, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the property designated in the warrant; and give the occupant or person in possession of the property a copy of the warrant.

(2) *Unoccupied property.* In executing a nuisance abatement warrant on unoccupied property, the person authorized to execute the warrant need not inform anyone of the person's authority and purpose, as prescribed in division (D)(1), but may promptly enter the designated property if at the time it is reasonably believed to be in that condition. In this case, a copy of the nuisance abatement warrant shall be conspicuously posted on the property, e.g., without limitation the main entrance, and subsequently mailed by first-class United States mail, postage prepaid to the owner of record of the property.

(3) *Return.* A nuisance abatement warrant must be executed within five working days of its issue and returned to the Judge by whom it was issued within ten working days from its date of execution. After the expiration of the time prescribed by this division (D), the warrant unless executed is void.

(Ord. 1253, passed 12-6-2010)

130.59 PROTECTION OF THINGS SEIZED; LIABILITY OF AGENCY; DISPOSAL OF NUISANCE PROPERTY REMOVED.

(A) Where the city seizes property, the city shall take reasonable steps to safeguard and protect the things seized against loss, damage and deterioration.

(B) Notwithstanding division (A) of this section, the city is not liable for loss, damage or deterioration resulting from any reasonable actions taken to secure or develop evidence of an ordinance violation, crime or offense.

(C) The city may cause the nuisance items removed pursuant to the nuisance abatement warrant to be disposed of in an approved manner whenever the city finds that the fair and reasonable value of the items at resale would be less than the cost of storing and selling the items. In making the above determination, the City Manager may include in the costs of sale the reasonable cost of removing the items to a place of storage, of storing the items for resale, of holding the resale including reasonable staff allowances, and all other reasonable and necessary expenses of holding the sale.

(Ord. 1253, passed 12-6-2010)

Statutory reference:

Similar provisions, see O.R.S. 133.537

130.60 ORDER OF ABATEMENT; CANCELLATION.

(A) Except as provided in division (B) of this section, if the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the general judgment in the case.

(B) The Court, if satisfied of an owner's good faith, shall enter no order of abatement as to that owner if the Court finds that the owner:

(1) Had no knowledge of the existence of the nuisance or has been making reasonable efforts to abate the nuisance;

(2) Has not been guilty of any contempt of court in the proceedings; and

(3) Will make best efforts to immediately abate any nuisance that may exist and prevent it from being a nuisance for a period of one year thereafter.

(C) If an order of abatement has been entered and an owner subsequently meets the requirements of this section, the order of abatement shall be canceled as to that owner.

(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 9% per annum. The interest shall commence to run from the date of the entry of the lien in the lien docket. In addition, the lien may be foreclosed by a suit in Circuit Court in the same manner as for the foreclosure of liens under O.R.S. 88.010 et seq. Where necessary, a Alien@ here shall be substituted for Amortgage@ or Apurchase money mortgage@ under those statutes to allow the foreclosure.

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

(F) Further, the Amunicipal general judgment with money award@ lien may be recorded in the records of the County Clerk and/or the County Circuit Court to attach to real property of any responsible person or persons.

(Ord. 1253, passed 12-6-2010)

Statutory reference:

Similar provisions, see O.R.S. 105.580

' 130.61 COSTS OF SECURING OR ABATING PROPERTY AS LIEN; PRIORITY OF LIEN; FILING NOTICE OF PENDENCY.

(A) Any costs associated with securing the property under ' ' 130.55 through 130.62, inclusive, shall constitute a lien against the property declared to be a nuisance from the time a notice specifying the costs is filed of record.

(B) Any costs incurred by the city to secure a property that is a nuisance shall constitute a lien against the property declared to be a nuisance from the time a notice specifying the costs is filed of record.

(C) A notice of pendency of an action may be filed pursuant to O.R.S. 93.740 with respect to any action filed under ' ' 130.55 through 130.62, inclusive.

(Ord. 1253, passed 12-6-2010)

Statutory reference:

Similar provisions, see O.R.S. 105.585

' 130.62 COLLECTION.

Nothing in this chapter shall preclude or prevent the city from referring its judgments under this or any other city ordinance to a public or private, commercial or otherwise, collection agency or process.

(Ord. 1253, passed 12-6-2010)

' 130.63 SAVING CLAUSE.

Ordinances repealed thereby shall remain in force for the purpose of authorizing the prosecution, conviction and punishment of a person who violated those ordinances prior to the effective date of this chapter.

(Ord. 1253, passed 12-6-2010)

' 130.99 PENALTY.

Unless otherwise indicated, any offense under this chapter is classified as a violation punishable by a fine up to \$250 per offense.
(Ord. 1253, passed 12-6-2010)

CHAPTER 131: MINORS

Section

Parental Responsibility; Offenses

131.01 Failure to supervise minor

131.02 Affirmative defense

131.03 Restitution to victims

131.99 Penalty

PARENTAL RESPONSIBILITY; OFFENSES

' 131.01 FAILURE TO SUPERVISE MINOR.

A parent, guardian or other person having the responsibility for the care, safety or welfare of a child under 18 years of age commits the offense of failing to supervise a minor when the child is found on private property or premises open to the public and the child has committed any infraction, offense or crime in violation of any provision of the ordinances of the city or the laws of the state.

(Ord. 1146, passed 7-1-1996) Penalty, see ' 131.99

' 131.02 AFFIRMATIVE DEFENSE.

It shall be an affirmative defense of a parent, guardian or other person having the responsibility for the care, safety or welfare of a child under 18 years of age who commits an infraction, offense or crime as set forth in ' 131.01, if the parent, guardian or other person took reasonable steps to control the conduct of the child at the time the alleged act of failing to supervise the child occurred.

(Ord. 1146, passed 7-1-1996)

' 131.03 RESTITUTION TO VICTIMS.

In addition to any fine or penalty imposed pursuant to this subchapter, the Court may order the parent, guardian or any other person as herein defined to pay restitution to a victim of the minor's conduct. The amount of restitution ordered pursuant to this subchapter shall not exceed \$2,500. (Ord. 1146, passed 7-1-1996) Penalty, see ' 131.99

' 131.99 PENALTY.

(A) The first time a parent, guardian or any other person as herein defined is convicted of an offense described in ' 131.01, the person shall not be required to pay a fine exceeding \$100 if the person successfully participates in and completes a parent effectiveness program to the satisfaction of the Court.

(B) Subject to the terms of division (A) above, the offense described in ' ' 131.01 through 131.03 of failure to supervise a minor is punishable by a fine not to exceed \$1,000. (Ord. 637, passed 2-7-1949; Ord. 1146, passed 7-1-1996)

CHAPTER 132: DRUGS

Section

Marijuana

- 132.01 Adoption of certain laws of the state as related to controlled substances
- 132.02 Frequenting places of drug use
- 132.03 Amendments
- 132.04 Saving clause

- 132.99 Penalty

MARIJUANA

' 132.01 ADOPTION OF CERTAIN LAWS OF THE STATE AS RELATED TO CONTROLLED SUBSTANCES.

The following sections of the state statutes are hereby adopted and incorporated by reference into this subchapter as though fully set forth herein, and any violation or failure to comply with the sections adopted shall be a violation of this subchapter; O.R.S. 475.005(15) and (16), definitions; O.R.S. 475.864(3) and (4), possession of less than one avoirdupois ounce of marijuana; providing for a diversion program.

(1977 Code, ' 4-20) (Ord. 1099, passed 12-18-1989)

' 132.02 FREQUENTING PLACES OF DRUG USE.

No person shall knowingly maintain, frequent or remain at a place:

(A) Resorted to by drug users for the purpose of unlawfully using narcotics or dangerous drugs; or

(B) Which is used for the unlawful keeping or sales of narcotics or dangerous drugs; and at which is found less than one avoirdupois ounce of marijuana at the time of arrest under this section.

(1977 Code, ' 4-20) (Ord. 1099, passed 12-18-1989) Penalty, see ' 132.99

' 132.03 AMENDMENTS.

In addition to the sections of state statutes adopted in ' 132.01, there are adopted all amendments that are now or may hereafter be enacted by the legislature of the state to any of the adopted sections.
(1977 Code, ' 4-20) (Ord. 1099, passed 12-18-1989)

' 132.04 SAVING CLAUSE.

The repeal of any ordinance by this subchapter shall not preclude any action against any person who violated that ordinance prior to the effective date of this subchapter.
(1977 Code, ' 4-20) (Ord. 1099, passed 12-18-1989)

' 132.99 PENALTY.

Any person violating any of the provisions of ' ' 132.01 through 132.04 shall upon conviction be punished as provided in the sections of state statutes as adopted in ' 132.01.
(1977 Code, ' 4-20)
(Ord. 1099, passed 12-18-1989)