

CITY OF WASCO

ORDINANCE NO. _____

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; REPEALING GENERAL ORDINANCE NOS. 143 AND 149; AND DECLARING AN EMERGENCY

THE CITY OF WASCO, SHERMAN COUNTY, OREGON ORDAINS AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, except where the context indicates otherwise, the following terms shall mean:

- A. City. The City of Wasco.
- B. City Council. The governing body of the City.
- C. City Staff. The City Clerk/Recorder, City Attorney, or other designated official responsible for administering and enforcing this ordinance.
- D. Person. A natural person, firm, partnership, association, or corporation.
- E. Person in charge of property. An agent, occupant, lessee, contract purchaser, or other person having possession or control of property or supervision of a construction project.
- F. Person responsible. The person responsible for abating a nuisance includes:
 - 1. The owner.
 - 2. The person in charge of property, as defined in this section.
 - 3. The person who caused a nuisance, as defined in this ordinance or another ordinance of the City, to come into or continue in existence.
- G. Public place: A building, way, place, or accommodation, publicly or privately owned, open and available to the general public.
- H. Enforcement officer: The duly appointed City official or authorized designee who is responsible for enforcing this ordinance.
- I. Justice Court. Sherman County Justice Court, particularly the Justice of the Peace, and the Circuit Court Judge

Nuisances Affecting Public Health

Section 2. Prohibited Health Hazards. No person shall cause or permit a nuisance affecting public health on property owned or controlled by the person. The following are nuisances affecting public health and may be abated as provided in this ordinance.

- A. Accumulations of debris, rubbish, manure, and other refuse that are not removed within a reasonable time and that affect the health, safety, or welfare of the City.

- B. Stagnant water that affords a breeding place for mosquitoes and other insect pests.
- C. Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes, or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.
- D. Decayed or unwholesome food offered for human consumption.
- E. Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.
- F. Drainage of chemicals or liquid wastes from private premises.
- G. Cesspools or septic tanks that are in unsanitary condition or that cause an offensive odor.
- H. Mastics, oil, grease, or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system.
- I. An animal carcass which is allowed to remain upon public or private property for a period of time longer than is reasonably necessary to remove or dispose of the carcass.
- J. Open vaults or privies constructed and maintained within the City, except those constructed or maintained in connection with construction projects or recreational sites in accordance with State Health Division regulations.

(Sections 3 through 9 are reserved for expansion)

Nuisances Affecting Public Safety

Section 10. Creating a Hazard. No owner or person in charge of property shall place, leave, or discard any abandoned, unattended, or discarded refrigerator, freezer, or similar container that has a door or lid that locks or fastens automatically, in any place accessible to children without first removing such door or lid from the refrigerator, freezer, or similar container. Abandoned refrigerators, freezers, or other similar containers are declared to be a public nuisance and may be abated in a summary manner in accordance with the provisions set forth herein.

Section 11. Attractive Nuisances.

- A. No owner or person in charge of property shall permit on the property:
 - 1. Unguarded machinery, equipment, or other devices on such premises that are attractive and dangerous to children and that are accessible to children.
 - 2. Woodpiles, wood, lumber, rocks, blocks, metal, logs and piling placed or stored in such a manner as to be attractive, dangerous and accessible to children.
 - 3. Cisterns, cesspools, excavation or other hole of a depth of four feet or more and a top width of 12 inches or more uncovered, not fenced, or without a suitable protective construction.

4. Any excavation to remain open without erecting proper safeguards or barriers.
- B. The provisions of this section shall not apply to authorized construction projects provided that during the course of construction, all necessary safeguards required by any applicable local, state, or federal law or regulation are maintained.

Section 12. Noxious Vegetation.

- A. The term “noxious vegetation” does not include vegetation that constitutes an agricultural crop, unless that vegetation is a health hazard or a fire or traffic hazard within the meaning of subsection (B) of this section.
- B. The term “noxious vegetation” does include, but is not limited to:
1. Weeds more than 10 inches high.
 2. Grass more than 10 inches high and not within the exception stated in subsection (A) of this section.
 3. Poison oak or ivy.
 4. Puncture vine.
 5. Blackberry bushes that extend into a public thoroughfare.
 6. Vegetation that is:
 - (a.) A health hazard
 - (b.) A fire hazard because it is near other combustibles; or
 - (c.) A traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous.
- C. No owner or person in charge of property may allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting on the property. It shall be the duty of an owner or person in charge of property to cut down or to destroy grass, shrubbery, brush, bushes, weeds, or other noxious vegetation as often as needed to prevent them from becoming unsightly, from becoming a fire hazard, or, in the case of weeds or other noxious vegetation, from maturing or from going to seed.
- D. Between March 1 and May 15 of each year, the City Recorder may cause to be published three times in the City newsletter or in a newspaper of general circulation in the City, a copy of subsection (C) of this section as a notice to all owners and persons in charge of property that it is their duty to keep their property free from noxious vegetation. The notice shall state that the City is willing to abate such a nuisance on any particular parcel of property at the request of the owner or person in charge of the property for a fee sufficient to cover the City’s cost of the abatement. The notice shall also state that, even in the absence of such request, the City intends to abate all such nuisances ten (10) or more days after the final publication of the notice and to charge the cost of doing so to the property owner thereof, the person in charge thereof, or the property itself.

- E. If the notice provided for in subsection (D) of this section is used it shall be in lieu of the abatement notice otherwise required by this ordinance.

Section 13. Trees

- A. No owner or person in charge of property shall permit trees, bushes or shrubs on property abutting a street, alley or sidewalk to interfere with vehicular or pedestrian traffic. IT shall be the duty of the owner or person in charge of property to keep all trees, bushes or shrubs on the premises, including the adjoining parking strip, trimmed so that any overhanging portions are at lease eight (8) feet above the sidewalk and at least fourteen (14) feet above the roadway.
- B. No owner or person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to persons or property on or near the property.

Section 14. Scattering Rubbish.

- A. No person shall deposit, on public or private property, rubbish, trash, debris, refuse, or any substance that would mar the appearance of the property, create a stench or fire hazard, detract from the cleanliness of safety of the property, or be likely to injure a person, animal, or vehicle traveling on a public way.
- B. No person shall deposit trash, rubbish, debris or refuse that was generated from a residence or business into public trash receptacles located in City Parks or on City Streets.

Section 15. Fences.

- A. No owner or person in charge of property shall construct or maintain a barbed-wire fence, or permit barbed wire to remain as part of a fence, along a sidewalk or public way; except such wire may be placed above the top of other fencing, which other fencing shall not be less than six (6) feet above the street curb elevation.
- 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, without written permission of the City Recorder's Office.

Section 16. Surface Waters, Drainage.

- A. No person owning or controlling any real property shall permit any type of surface water from any source whatsoever to flow from the premises across or upon any sidewalk abutting such property.

- B. It is hereby made the duty of each person owning or controlling real property abutting upon any sidewalk to provide a proper system of drainage so that any overflow water will not be carried across or upon any sidewalk, or in the right-of-way of a public thoroughfare.

Section 17. Snow and Ice Removal.

- A. No owner or person in charge of property, improved or unimproved, abutting upon any public sidewalk within the City, shall permit:
 - 1. Snow to remain on the sidewalk for a period longer than the first six hours of daylight after the snow has fallen.
 - 2. Ice to remain on the sidewalk for more than four hours of daylight after the ice has formed, unless the ice is covered with sand, ashes, or other suitable material to assure safe travel.
- B. Any person injured due to the failure of an owner or person in charge of property to clear snow or ice from the sidewalk as required by this section shall have a right of action against such owner or person in charge of property for damages. Such right of action is in lieu of any action against the City. In the event any action is filed against the City, the City shall have a right to indemnity from the owner or person in charge of property for failure to comply with this section. The indemnity shall include not only damages awarded to the person injured but also all fees, costs, and expenses in defending the action and the costs and fees for bringing an indemnity action.

Section 18. Sifting or Leaking Loads.

- A. No person shall drive or move a vehicle on any street unless it is constructed or loaded so as to prevent its contents from dropping, sifting, leaking or otherwise escaping.
- B. Any person driving a vehicle from which any contents have dropped, sifted, leaked or escaped must remove the substance or material from the street within eight (8) hours.

Section 19. Wheeled Vehicles on Sidewalks. No person shall ride or operate a wheeled vehicle, except those used for medical or emergency purposes, on the sidewalks in the business area of the City along Clark Street, and between Armsworthy Street and Fulton Street. The term, "wheeled vehicle", does include but is not limited to: skate boards, roller blades, roller skates, scooter, wagons, and bicycles.

(Sections 20 through 26 are reserved for expansion)

Nuisances Affecting Public Welfare

Section 27. Unreasonable Noise. No person shall allow, cause, create or permit the continuance of unreasonable noise. The following noises are not exclusive but illustrative of unreasonable noises:

- A. The keeping of an animal, which by loud and frequent or continued noise disturbs the comfort and repose of a person in the vicinity.
- B. The use of an engine, machine or device that is so loaded, out of repair or operated in such a manner as to create a loud or unreasonable grating, grinding, rattling or other noise.
- C. The use of a mechanical devise operated by compressed air, steam, or otherwise, unless the noise is muffled.
- D. The construction, including excavation, demolition, alteration or repair of a building, vehicle or equipment other than between the hours of 7:00a.m. and 9:00p.m., except with a permit issued by the City Council.
- E. The use or operation of an automatic or electric piano, phonograph, loudspeaker, stereo or sound amplifying device so loudly as to disturb persons at least five (5) feet beyond the property on which the sound originates. Sound produced in conjunction with officially organized sporting events, parades, festivals, fairs and other events issued a permit by the City Council is exempt from the noise limitations.

Section 28. Radio and Television Interference.

- A. No person shall operate or use an electrical, mechanical or other devise, apparatus, instrument or machine that causes reasonably preventable interference with radio, telephone or television reception by a radio, telephone, 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.

Section 29. Junk. No person shall keep junk outdoors on a street or lot, or on private or public property within the sight of the public, or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.

- A. The term “junk”, as used in this section, includes but is not limited to, all old motor vehicles, old motor vehicle parts, old machinery or machinery parts, discarded appliances or appliance parts, old iron or other metal, glass, paper, lumber, wood or other waste or discarded material.
 - 1. For purposes of this subsection, the term “old” shall include, but not be limited to, a description of items that are dilapidated, abandoned, inoperable, or otherwise in a state of disrepair.

- B. This section shall not apply to junk kept in a licensed junk yard, or vehicles or vehicle parts kept at legitimate automotive repair businesses, or stored behind a sight obscuring fence, or completely enclosed within a building.
- C. Abatement of vehicles located on private or public property that constitute a nuisance under this section shall be done in accordance with the provisions set forth in this ordinance.

Section 30. Abandoned Vehicles

- A. No person shall park, store, leave, or permit the parking, storing, or leaving of an abandoned vehicle, including a motor vehicle, upon private property, or upon public property, including a public right-of-way. For purposes of this section, the following definitions apply:
 - 1. “Motor vehicle” means a vehicle that is self-propelled or designed for self-propulsion.
 - 2. “Vehicle” means any device in, upon, or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.
- B. For purposes of this section, a vehicle is considered to be an abandoned vehicle if it satisfies one of the following criteria:
 - 1. The vehicle is being used to store rubbish, as defined in Section 14 of this ordinance, or junk, as defined in Section 29 of this ordinance.
 - 2. The vehicle has parts that have been discarded, dismantled, or partially dismantled, or stripped, or the vehicle is in a rusted, damaged, wrecked or other type of condition that render the vehicle inoperable.
 - 3. The vehicle has remained in place for three or more weeks with tires deflated, windows or doors open, the trunk or hood open, or weeds grown up around it.
- C. Upon determination by the City Council or the Enforcement officer that an abandoned vehicle qualifies as a nuisance under this section, the City staff person or Enforcement officer may solicit voluntary compliance by affixing a notice to the abandoned vehicle. In the case of an abandoned vehicle on private property, permission to enter the property to affix the notice to the vehicle shall be obtained from the property owner, or shall be authorized by an inspection warrant.

Section 31. Notices and Advertisements.

- A. No person shall affix or cause to be distributed any placard, bill, poster or advertisement upon any real or personal property, public or private, including but not limited to flyers attached to motor vehicles, without first securing permission from the owner or person in charge of the property.
- B. Any placard, bill, poster or advertisement found posted or otherwise

affixed upon any public property contrary to the provisions of this section may be removed by an employee of the City. The person responsible for such illegal posting shall be liable for the cost incurred in the removal.

- C. This section shall not be construed to prohibit the distribution of material during any parade or public gathering.
- D. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the City regulating the use of and location of signs and advertising.

(Sections 32 through 38 are reserved for expansion)

Animals

Section 39. Cruelty to Animals.

- A. No person shall torture, mutilate, abandon or needlessly kill any animal or bird; nor shall any person transport or permit to be transported, any animal in a cruel and inhumane manner.
- B. No person shall fail to provide any animal in his custody with food, drink, and protection from the elements.

Section 40. Animals at Large.

- A. No person shall permit any animal or bird owned or controlled by him/her to be at large within the city if the animal or bird is afflicted with a communicable disease.
- B. No dog shall be permitted to run or be upon the public streets of the city, whether licensed or not, unless securely muzzled, or led by a leash or chain by the owner or keeper thereof.

Section 41. Livestock.

- A. No livestock shall be maintained, kept or housed within the corporate limits of the City, except as approved by the City Council on a case-by-case basis.
For the purposes of this section, the following definitions apply:
 - 1. "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, hogs, goats, llamas, alpaca, rabbits (including hares), and fowl (including turkeys, chickens, geese, ducks, emus and ostriches).
 - 2. "Exceptions" include:
 - (a) A total of 6 (six) or fewer laying hens may be kept on any one City lot
 - (b) A limit of 1 (one) rabbit may be kept per household, for a period of six months or less, to be used for 4-H projects only

- (c) Other exceptions as approved by the City Council after proper application and hearing.

(Sections 42 through 48 are reserved for expansion.)

Un-enumerated Nuisances

Section 49. Un-enumerated Nuisances. The acts, conditions or objects specifically enumerated and defined in Sections 2 through 48 are declared public nuisances and may be abated by procedures set forth in Sections herein. In addition to the nuisances specifically enumerated in this ordinance, every other thing, substance or act that is determined by the Council to be injurious or detrimental to the public health, safety or welfare of the City is declared a nuisance and may be abated as provided in this ordinance.

Abatement Procedure

Section 50. Definitions for Abatement Procedures. For purposes of this section of the Nuisance Ordinance regarding abatement of and penalties for nuisances, the following definitions apply:

- A. **Costs of Abatement.** The costs of abatement include but are not limited to the expenses incurred by the City for any and all contractors, materials, disposal costs, and staff time to abate a violation; title search charges; court or hearing costs; lien recording and release fees; and administrative overhead charges related to the abatement..
- B. **Mail or Mailing.** The delivery of a notice or other communication called for or required by this Ordinance by First Class United States Mail, postage paid.
- C. **Post / Posting/ Posted.** The act of personally delivering a notice to a property, including affixing a notice to a property or personally delivering a notice to the owner, person in charge of the property, or occupier, at the property location.
- D. **Owner or Property Owner.** Any person, entity, firm or corporation having a legal or equitable interest in the property, including the owner as shown on the latest assessment records in the County Tax Assessor's office, a contract vendee, or a receiver or trustee in bankruptcy.
- E. **Occupier.** Any person who has possessory rights in, or control over, the subject property, premises, or business located at the property location, including a tenant.
- F. **Person in Charge.** Any agent, designated agent, property manager, or other person or entity with apparent authority to represent the property owner's interest in the subject property.

Section 51. Notice of Violation.

- A. Upon determination by the City Council, City Staff or Enforcement officer that a violation of City Code exists, with no imminent threat to public health and safety, the City Clerk may solicit voluntary compliance by issuing a Notice of Violation.
- B. Notice shall be mailed to the owner of the property where the violation exists, at the last known address as listed in the County Tax Assessor's Office, directing the owner or person who caused the violation to correct the violation by the date specified in the notice.
- C. At the time of the mailing of the Notice of Violation to the property owner, the City Clerk shall cause a copy of the Notice to be mailed to:
 - 1. The person in charge of the property, if known, and if different from the owner;
 - 2. The occupier, if different from the owner or person in charge of the property; and
 - 3. The person who caused the violation to come into or continue in existence, if known and if different from the above named parties.
- D. The written Notice shall contain, at a minimum, the following information:
 - 1. A description of the real property, by street address or otherwise, on which the violation exists;
 - 2. Citation of the specific ordinance and section giving rise to the alleged violation and a description of the violation that must be corrected;
 - 3. A direction to correct the violation within the time period provided by the appropriate ordinance, or within ten (10) days from the date of the Notice if no time period is provided in said ordinance;
 - 4. A statement that, unless the violation is corrected by the date specified in the Notice, in addition to any other enforcement action, the City may issue a civil penalty, issue a citation, abate the violation, and/or take other enforcement action allowed by law and ordinance;
 - 5. A statement that if enforcement results in costs or penalties, they shall become a lien on the real property if not paid; and
 - 6. A statement that the owner or person responsible may protest the order to abate by giving notice to the City Clerk within ten (10) days from the date of the Notice.
- E. In lieu of mailing a Notice of Violation, City Staff, or the Enforcement Officer may post Notice at the property, including affixing a Notice to the property, or by personal service of the Notice to the property owner, person in charge, or occupier, with such act deemed sufficient notice.
- F. An error in the name or address of the owner or person responsible shall not make the notice void.
- G. Upon completion of the posting and/or mailing, the City staff person shall execute and file a certificate stating the date and place of the posting and mailing.

Section 52. Abatement by the Owner or Person Responsible

- A. Within the required time period after the posting and mailing of the Notice as provided in Section 51, the owner or person responsible shall remove and abate the nuisance or show that no nuisance exists.
- B. The owner or person responsible protesting that no nuisance in fact exists shall file with the City Clerk within ten (10) days of receiving the notice a written statement that shall specify the basis for contending that no nuisance exists.
- C. The statement shall be referred to the Council as part of the Council's regular agenda at its next succeeding meeting. At the time set for consideration of the abatement appeal, the owner or person responsible may appear and be heard by the Council. The Council shall thereupon determine whether a nuisance in fact exists and such determination shall be entered in the official minutes of the Council. Council determination shall be required only in those cases where a written statement has been filed as provided herein, and its decision thereon shall be final and conclusive.
- D. Upon determination by the Council that a nuisance does in fact exist, the owner or person responsible shall within five (5) days after such Council determination remove or abate such nuisance.

Section 53. Abatement by the City. In order to perform any function or duty authorized or required under this section, City representatives and their agents and contractors who are responsible for abatement of code violations shall have the right, at reasonable times, to enter upon the property and to take all actions necessary to cause the removal of any violation. Consent forms as described herein shall be utilized when violations that occur on private property are abated by the City.

- A. If within the time allowed, as provided in this ordinance, the nuisance has not been abated by the owner or person responsible, the City Clerk may cause the nuisance to be abated.
- B. The City Clerk shall prepare a Notice of Abatement for City Staff or the Enforcement Officer to post on the property where the violation exists. The Notice of Abatement shall contain the following:
 - 1. The street address or other description of the real property on which the violations exist;
 - 2. The violations that have been identified by the City that have not been corrected as required;
 - 3. A request for consent to enter onto the property and abate the violation;
 - 4. Notice that if consent is refused, the City will obtain an administrative abatement warrant to enter the property and abate the violation(s)
 - 5. Notice that costs of abatement will be charged to the property owner;

6. Notice that the costs of abatement will be assessed to and become a lien on the property if they are not paid by the property owner within a specified time.
- C. At the time of posting, the City Clerk shall mail to the property owner at the last known address as listed with the Sherman County Tax Assessor's Office, and to the person responsible, if known and if different from the owner, the following:
 1. A copy of the Notice of Abatement that was posted on the property;
 2. A consent form to allow City Staff or the Enforcement officer to enter onto the property to abate the code violations. The consent form must include a statement that the property owner or person responsible must sign and return the consent form to the City Clerk within five (5) days of issue.
 - D. Upon receipt of a signed consent form, City staff and their agents and contractors who are responsible for the abatement of code violations shall have the right, at reasonable times, to enter into or on the property to investigate, and to take all actions necessary to cause the removal of any violation.
 - E. The City Clerk shall maintain an accurate record of the expense incurred by the City in abating the nuisance and shall include an administrative cost of \$250.00
 - F. If more than one person is responsible for the creation or continuation of a nuisance, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

Section 54. Administrative Abatement Warrant.

- A. If the violation for which a Notice of Abatement has been issued is not corrected, the City Clerk, or her designee, may cause the violation to be removed and abated upon issuance of an Abatement Warrant.
- B. An Abatement Warrant shall be issued only upon cause, supported by affidavit, particularly describing: the applicant's status in applying for the warrant; the ordinance or regulation requiring or authorizing the removal and abatement; the building or property to be entered; the basis upon which cause exists to remove or abate the violation; and a statement of the violation to be removed or abated. The affidavit shall also contain either a statement that consent to enter onto the property to abate the violation had been sought and refused; or a statement of the facts and circumstances that reasonably justify the failure to seek such consent.
- C. Cause shall be deemed to exist if there is reasonable belief that a code violation exists with respect to the designated property, and that the property owner has been given notice and an opportunity to abate the violation and has not responded in a timely fashion.

Section 55. Procedure for Issuance of an Abatement Warrant.

- A. Before issuing an Abatement Warrant, the Justice of the Peace (hereby known as *Justice*) or Circuit Court Judge (hereby known as *Judge*) may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
- B. If the Justice or Judge is satisfied that cause for the removal and abatement of the violate(s) exists and that the other requirements for granting the application are satisfied, the Justice or Judge shall issue the Abatement Warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The Warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the Justice or Judge has specially determined upon 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.
- C. In issuing an Abatement Warrant, the Justice or Judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist in any way necessary to enter the property and remove and abate the violation.
- D. In executing an 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 show the occupant or person in possession of the property the Warrant or a copy thereof upon request. A copy of the Warrant shall be left with the occupant or the person in possession. The Warrant is not required to be read aloud.
- E. In executing an Abatement Warrant on unoccupied property, the person authorized to execute the Warrant need not inform anyone of the person's authority and purpose, but may promptly enter the designated property if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition. In such case, a copy of the Abatement Warrant shall be conspicuously posted on the property.
- F. An Abatement Warrant must be executed within fourteen (14) working days of its issue and returned to the Justice or Judge who issued the Warrant within fourteen (14) working days from its date of execution. After the expiration of the time prescribed by this subsection, the Warrant, unless executed, is void.
- G. If an Abatement Warrant to secure entry onto the property subject to the notice of violation has been obtained, no property owner, occupier, or other person in charge of the property, shall refuse, fail, or neglect, after proper request, to promptly permit entry by authorized persons to abate the

violation(s). It shall be unlawful for any property owner, occupier, or other person in charge of the property to refuse to permit entry by authorized persons to abate the violations for which an Abatement Warrant has been obtained. Violation of this subsection is a Class B Violation.

Section 56. Assessment of Costs.

- A. The City Clerk shall keep an accurate record of the expenses incurred by the City for abatements. A notice of the assessment shall be forwarded by certified mail by the City Clerk to the owner or person responsible. The notice shall contain:
 - 1. The total cost, including the administrative overhead, of the abatement.
 - 2. A statement that the cost as indicated will become a lien against the property unless paid within thirty (30) days.
 - 3. A statement that if the owner or person responsible objects to the cost of the abatement as indicated, he/she may file a notice of objection with the Justice of the Peace or Circuit Court Judge within ten (10) days from the date of the notice.
- B. In the event a hearing is scheduled, the person(s) requesting the hearing and the City may submit testimony, cross-examine witnesses, submit rebuttal evidence on the pertinent issues, and make arguments. Failure of the person(s) requesting the hearing to appear at the hearing or to reschedule the hearing shall constitute a waiver of the right to a hearing. The standard of proof shall be upon the City by a preponderance of the evidence. After the hearing, the Justice of the Peace or Circuit Court Judge shall issue an order stating his decision.
- C. An assessment for the cost of abatement as determined to be valid by order of the Justice Court may eventually constitute a lien upon the property from which the nuisance was abated.
- D. The lien shall be collected and foreclosed in the manner prescribed by State law for enforcement of liens and collection of assessments.
- E. An error in the name of the owner or person responsible shall not void the assessment, nor will a failure to receive the notice of assessment render the assessment void, but it shall remain a valid lien against the property.

Section 57. Citations.

- A. In addition to and not in lieu of any other means of enforcement provided for in this ordinance, a person in violation of this ordinance may be cited into Sherman County Circuit Court by using a citation form that complies with the requirements of Oregon law.
- B. Citations may be issued by personal delivery to the person responsible for causing the violation, by posting the citation on the property where the violation occurred, or by mailing the citation by first class mail to the property owner where the violation occurred or to the person responsible

for causing the violation. Notwithstanding this provision, no person issued a citation shall be subject to a civil penalty provided for herein for the same violation.

- C. Unless otherwise provided, violations of the provisions of the City of Wasco City Code are classified for the purpose of sentence into the following categories: (1) Class A misdemeanor; (2) Class B misdemeanor; (3) Class A violation; (4) Class B violation

Section 58. Summary Abatement. Upon determination by the County Health Officer, the District Fire Chief, the Enforcement officer, or other City official that a nuisance as defined in this or any other City ordinance exists, and that, unless the nuisance be summarily abated, the public health, safety, or welfare will be endangered, such officer may act as follows:

- A. The officer shall at once serve a written notice upon the person responsible therefore, or in case personal service of such notice cannot be made, the officer shall post a copy thereof upon the premises affected thereby, said notice directing the person responsible to abate the public nuisance within a period of 24 hours or such additional time as the officer shall deem necessary for the abatement thereof. Such notice shall include the text of this section.
- B. If the nuisance is not removed or abated within 24 hours, or such additional time as the officer shall have established, the officer is authorized to remove or abate the nuisance. The cost of such removal or abatement shall be charged against the property and collected as provided in Sections 53 and 56 of this ordinance. If removal or abatement is accomplished by the City, then the officer shall keep an accurate account of the actual expenses incurred in such action, and shall provide such record to the City Clerk. If any person shall be aggrieved by the notice to remove or abate a nuisance given under this section, such person may take an appeal to the City Council within 24 hours from the receipt or posting of such notice by notifying the office of the City Clerk in writing of such intention to appeal. Upon 24 hours' notice to the aggrieved person, a hearing will be scheduled before the Council or a person appointed by the Council to take testimony, and a decision will be immediately rendered.

General Provisions

Section 59. Civil Penalty. Any person injured thereby may bring a civil action to abate a nuisance created or maintained in violation of this ordinance. In addition to any other penalty provided herein, any person creating or maintaining a nuisance shall be liable for damages to any person injured thereby. Damages shall include attorney fees and costs incurred by the plaintiff in maintaining an action to recover damages and any action to abate the nuisance. No action shall be maintained against the City for failure to abate a nuisance under this ordinance.

Section 60. Separate Violations.

- A. Each day's violation of a provision of this ordinance shall constitute a separate offense.
- B. The abatement of a nuisance as herein provided shall not constitute a penalty for a violation of this ordinance, but shall be in addition to any penalty imposed for a violation of the ordinance. The imposition of a penalty does not relieve a person of the duty to abate the nuisance.
- C. The Judge or Justice of the Peace may subject the property owner or person responsible to a civil penalty of up to \$100 per day for each day a nuisance remains unabated following the delivery or posting of an abatement notice as provided for herein, or the total cost to the City to abate the nuisance, whichever is greater.

Section 61. Severability. The sections and subsections of this ordinance are hereby declared severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 62. Administration of Provisions.

- A. For purposes of administering the provisions of this ordinance, the City staff person or Enforcement officer shall have full power and authority to do any and all things necessary, incidental, or proper in the enforcement of said ordinance, including legal prosecution of the person or persons responsible in Justice Court or Sherman County Circuit Court.
- B. No person shall hinder or attempt to prevent the City staff person or Enforcement officer from enforcing the provisions of this ordinance.
- C. Any City staff person or Enforcement officer who has been authorized to enforce the provisions of this ordinance shall have the authority to apply to the Justice Court or Circuit Court for any relief provided herein.

Section 63. Repeal. General Ordinance Nos. 143 and 149 are hereby repealed.

Section 64. Saving Clause. Notwithstanding Section 63, ordinances repealed thereby shall remain in force for the purpose of authorizing the arrest, prosecution, conviction, and punishment of a person who violated those ordinances prior to the effective date of this ordinance.

Section 65. Emergency. Whereas, the control of nuisances is necessary for the public health, safety, and welfare; now, therefore, an emergency is hereby declared to exist; and this ordinance shall go into full force and effect from and after its passage by the Council.

APPROVED THIS _____ DAY OF _____, 20 .

CITY OF WASCO, OREGON

Mayor

ATTEST:

City Clerk

Date _____