

**BEFORE THE BAKER COUNTY BOARD OF COMMISSIONERS ACTING AS
CITY COUNCIL OF THE CITY OF UNITY, OREGON**

AN ORDINANCE PROHIBITING) **ORDINANCE 2022-01**
CREATING OR MAINTAINING A)
PUBLIC NUISANCE)

WHEREAS, the Baker County Board of Commissioners, acting as the City Council of the City of Unity, finds that prohibition of public nuisances is necessary for the protection of the health, safety and general welfare of the people of the City of Unity; and

WHEREAS, because of repeated disruptive behavior on them, properties within the City can create unreasonable disruptions to the community; and

WHEREAS, the properties become nuisances to surrounding property owners and degrade the community; and

WHEREAS, properties that accumulate solid waste and/or allow noxious vegetation, are properties which may pose a danger to the community because of the risk of fire or public health exposures; and

WHEREAS, existing state criminal statutes and City ordinances are inadequate to address, control or remedy the denigration that results from the chronic unlawful activity occurring at the properties;

WHEREAS, civil regulation of these properties will provide a remedy to the problems caused by these chronic behaviors and promote and protect the public health, safety and welfare; and

WHEREAS, the Baker County Board of Commissioners reviewed this ordinance and accepted public testimony during a public hearing on April 6, 2022.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF UNITY, OREGON:

SECTION 1. Findings. The above-stated findings are hereby adopted.

SECTION 2. Prohibition of Nuisance. The City of Unity hereby adopts Attachment A, entitled *City of Unity Nuisance Ordinance*.

SECTION 3. Severability; Corrections. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural

includes the singular. The word “or” is not exclusive. The words, “include,” “includes,” and “including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law; and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this ordinance. This ordinance may be corrected by order of the City Council to cure editorial and/or clerical errors. Nothing in this ordinance affects the validity of any criminal or civil enforcement actions commenced prior to the adoption of this ordinance; all City ordinances existing at the time such actions were filed will remain valid and in full force and effect for purposes of those actions.

SECTION 4. Emergency. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effective immediately and without delay.

READ for the first time this 6th day of April, 2022.

READ for the second time by title only this 6th day of April, 2022.

Adopted by the Baker County Board of Commissioners the _____ day of April, 2022.

BAKER COUNTY BOARD OF COMMISSIONERS:

William Harvey, Commission Chair

Mark E. Bennett, Commissioner

Bruce A. Nichols, Commissioner

Attest

Heidi Martin, Executive Assistant
Baker County Board of Commissioners

CITY OF UNITY NUISANCE ORDINANCE

ARTICLE ONE: CREATION OF NUISANCE PROHIBITED

Except as otherwise authorized in this ordinance, no person shall create or maintain a nuisance on private property. Such nuisances are declared to be public nuisances which may be abated as provided herein, or by instituting court proceedings as provided by law.

ARTICLE TWO: DEFINITIONS

For the purposes of this ordinance the following definitions apply, unless specifically excepted in this ordinance:

Authorized Enforcement Officer means any person or organization specifically authorized by Order of the Unity City Council.

Dangerous Buildings or Structures means a building, structure, mobile or manufactured home, when the conditions or defects of the building, structure, mobile or manufactured home, are to the extent that the life, health, property or safety of the public or its occupants are endangered.

Inoperable Vehicle means any car, truck, van, recreational vehicle, motorcycle, snowmobile, or other vehicle typically powered by an engine, excepting watercraft, that has been in a stationary position for more than 14 calendar days, is apparently inoperable or requires repairs in order to be operable, or is unable to move a distance of 20 feet under its own power on a flat surface

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 this definition. *Noxious vegetation* does mean the following when located within 300 feet of any structure, residence or commercial building within the City of Unity:

1. Vegetation, grass, shrubbery, and round wood that is less than ¼ inch in diameter and more than four inches (4”) high, and,
2. Vegetation that is a:
 - i. Health hazard; or
 - ii. Fire hazard due to the quantity and/or location (flammable, dead and dying vegetation); or

- iii. Traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous.

Nuisance includes:

1. An accumulation of solid waste, as defined herein, such that it injures or endangers the health, safety and general welfare of others;
2. Dangerous buildings or structures, as defined herein;
3. An accumulation of inoperable vehicles, vehicle bodies or parts equating to three (3) or more total vehicles on one property; or
4. Noxious Vegetation, as defined herein.

Solid Waste means all putrescible and non-putrescible waste, which includes but is not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; rubber products, petroleum products, plastics and other man made products; grass clippings, compost; sewer sludge; hazardous solid waste; hazardous appliances and containers; residential, commercial, industrial, construction and demolition waste; equipment and furniture; metal, vehicle parts and waste motor oil, vehicle tires; manure; vegetable or animal solid and semi-solid waste and dead animals.

ARTICLE THREE: EXCEPTIONS

The following do not constitute a nuisance under this ordinance:

- A. Generally accepted, reasonable and prudent residential or commercial practices on real property zoned for such uses in the City of Unity.
- B. Generally accepted, reasonable and prudent farming and forest practices as described in ORS 30.930 to ORS 30.937.
- C. Materials located in an authorized landfill or transfer station, licensed and maintained in accordance with local and state law.

ARTICLE FOUR: ENFORCEMENT PROVISION

SECTION 4.1 PROCEDURE FOLLOWING COMPLAINT

When a complaint is made to the City alleging a violation of this ordinance, the process to be followed by the City for investigating and addressing the complaint is as follows:

- A. A site visit will be conducted by an Authorized Enforcement Officer and a determination made as to whether a violation of this ordinance exists. In making this determination, the Enforcement Officer may consider reports and other evidence from agencies and individuals, including but not limited to neighbors, the Baker County Sanitarian, Building Code Officials, Oregon Department of Environmental Quality and/or the State Fire Marshal or representatives thereof.
- B. At the discretion of the Enforcement Officer, an informal letter may be sent to the property owner informing the property owner of the complaint, with the intent to resolve issues surrounding the complaint prior to the issuance of a Notice of Violation.
- C. If an Authorized Enforcement Officer determines a violation of this ordinance exists, a Notice of Violation will be issued in accordance with Sections 4.3-4.4 of this ordinance.
- D. The Authorized Enforcement Officer may enter into a removal or abatement agreement with the property owner at any time, before or after a Notice of Violation is issued. Such a plan must be in writing, signed by the Enforcement Officer and the property owner, and must include a date by which the removal or abatement will be completed. Any extension or amendment to the agreed upon removal or abatement plan must also be in writing and signed by the property owner and Enforcement Officer.
- E. If notice is given as provided in Sections 4.3-4.4 and the property owner either rejects the Notice of Violation or receives the notice and fails to remedy or cure the violation within the time specified in the notice, or fails to remedy the violation pursuant to the removal or abatement agreement, the Authorized Enforcement Officer may cause a citation to be issued. Once a citation has been issued to the property owner, the matter will be heard by the Baker County Justice Court. Alternatively, if it is determined by the Authorized Enforcement Officer that abatement of the nuisance could require entry by the City onto property where the property owner has a reasonable expectation of privacy, the matter will be heard by Baker County Circuit Court.
- F. The Authorized Enforcement Officer will make reasonable efforts to update the reporting party of the progress and outcome of the complaint.

SECTION 4.2 TIME TO REMEDY VIOLATIONS

Any situation or occurrence deemed to be a violation of this ordinance shall be abated by cessation, repair, rehabilitation or removal as specified in the Notice of Violation within 14 days of the Notice, unless the respondent has formulated a removal or abatement plan that is acceptable to the City, as described above.

SECTION 4.3 NOTICE OF VIOLATION

An Authorized Enforcement Officer, after making a determination that a violation of this ordinance exists, shall cause notice of the violation to be posted on the premises where the nuisance exists, unless a removal or abatement agreement signed by the property owner and the City of Unity is in effect. The property owner shall also be given written notice of the violation. If the property in question is posted with signs that prohibit trespassing, or something similar, the requirement to post the notice of violation on the premises shall be waived. Service of written notice may be made in one of the following ways:

- A. In person by the Baker County Sheriff or any deputy authorized by the Baker County Sheriff's Office.
- B. By mailing via certified mail to the respondent's last known address as it appears on the last property assessment roll with the Baker County Assessor's Office.
- C. Through publication for two successive weeks once per week in a newspaper of general circulation in the county, to be designated by the City Council.

An error in the name or address of the property owner shall not make the notice void, and in such a case, the posted notice shall be sufficient.

SECTION 4.4 NOTICE OF VIOLATION CONTENTS

The following information shall be included in the notice of violation:

- A. A description of the real property, by street address or otherwise, on which the condition, substance, act or nuisance exists;
- B. A description or identification of the activity or condition constituting the alleged infraction, and the identification of the property owner as the respondent or responsible party;
- C. A statement that the Authorized Enforcement Officer has determined the activity or condition to be a violation of City ordinance;
- D. A statement of the action required to remedy, cure or abate the alleged infraction and the time and date by which the remedy must be completed;
- E. A statement that the respondent has the right to meet with the Authorized Enforcement Officer within 14 days of service, to formulate a removal or abatement plan that is acceptable to the City.

- F. A statement advising the respondent that if the required remedy is not completed within the time specified and the respondent has not entered into a removal or abatement plan with the City, a citation may be issued, an abatement hearing may be set with the Baker County Justice Court and a fine may be imposed.

SECTION 4.5 VIOLATION PROCEEDING

- A. Any hearing or trial on the citation will be conducted in accordance with ORS 153.076, and will not be scheduled fewer than seven (7) days after a citation is issued.
- B. The City of Unity shall have the burden of proving the violation by a preponderance of the evidence.
- C. At any hearing or trial on the citation, the Authorized Enforcement Officer will represent the interests of the City of Unity, by presenting evidence, offering relevant documents, calling witnesses and offering exhibits in support of the citation, unless defense counsel appears representing the respondent.
- D. At any hearing or trial on the citation, and in every hearing or trial where defense counsel appears, the City of Unity, will be assisted and/or represented by either the District Attorney or City Legal Counsel.

SECTION 4.6 IMMEDIATE REMEDIAL ACTION REQUIRED.

Notwithstanding the remedial time period above, if the Authorized Enforcement Officer determines that the alleged violation presents an immediate danger to the public health, safety or welfare, or that any continuance of the violation would allow the respondent to profit from the violation or would otherwise be offensive to the public at large, the Authorized Enforcement Officer may require immediate remedial action. If, in such cases, the Authorized Enforcement Officer is unable to serve a notice of violation on the respondent or, if after such service the respondent refuses or is unable to remedy the violation, the City of Unity, may proceed to abate the violation once a court order has been granted by the Baker County Justice Court or Baker County Circuit Court.

ARTICLE FIVE: ABATEMENT PROCEDURE

A. Owner Abatement

If the property owner is found guilty by the Court of the alleged violation, the court may impose a fine, as set forth in Article Six, or at the discretion of the Court, reduce the fine called for in this ordinance. In addition to or in lieu of a fine, the Court may order the

property owner to undertake such remedial action as may be necessary to abate the nuisance. A reasonable time shall be allowed for such action. A copy of the order shall be sent to the owner of the property. Appeal from such order shall be allowed in accordance with State law.

B. City Abatement

If, after an opportunity for the property owner to be heard, the Court finds that the remedial period has passed and the nuisance has not been fully abated, the Court may permit the City to, at its discretion, go onto the property, if necessary, and abate the nuisance either in whole or in part.

C. Fees associated with abatement

The property owner shall be responsible for all costs incurred by the City, including collection costs, together with any additional amount to cover the expense of inspection, overhead, and enforcement of this ordinance.

D. Billing

1. Upon the completion of the work, the City of Unity shall cause a billing of all amounts due to be sent to the owner of the property.
2. After notifying the owner and giving him or her an opportunity to be heard, the City of Unity may, by resolution, on a case by case basis, declare the correctness of the statement of costs and declare the same to be a lien upon the property involved, to be recorded and bear interest at the rate of 9% per annum commencing as of the date of recording. The lien shall continue until the assessment and all accrued interest has been fully paid.
3. 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 the proposed assessment render the assessment void but it shall remain a valid lien against the property.
4. The City of Unity may, at its discretion, bring an action for recovery of cost of abatement in any court of competent jurisdiction.

ARTICLE SIX: CLASSIFICATION OF VIOLATION AND FINE

- A. Violation of this City of Unity ordinance is a Class A violation, subject to a maximum fine of \$500 for each day the nuisance is found to be in existence. Accrual of the fine begins 14 days after property owner is given notice of the violation, as provided in Article Four, Section 4.3-4.4. If a removal or abatement agreement exists, accrual of the fine begins the day after the expiration of the date specified in the agreement.

- B. Assessments recovered and assessed amounts forfeited shall be paid to the clerk of the court. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the Recorder for the General Fund of the City of Unity.