

ORDINANCE BILL NO. 17 FOR 1986

ORDINANCE NO. 955

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; REPEALING ORDINANCE NO. 370; PRESCRIBING PENALTIES; AND DECLARING AN EMERGENCY.

The City of Sweet Home does ordain as follows:

Definitions

Section 1. Definitions.

(1) As used in this ordinance, except where the context indicates otherwise, the following shall mean:

(a) Person in charge of property. Any owner, agent, lessee, contract purchaser, or other person having the possession or control of property, both real and personal.

(b) City. The city of Sweet Home.

(c) Council. The governing body of the city.

(d) Person. Every natural person, firm, partnership, association or corporation.

(e) Public place. Any building, place or accommodations, whether publicly or privately owned, open and available to the public.

(2) As used in this ordinance, the singular includes the plural, and the masculine includes the feminine.

Animals

Section 2. Communicable Disease. No person shall permit any animal or bird owned or controlled by him to be at large within the city if such animal or bird is afflicted with a communicable disease.

Section 3. Animals and Fowl.

(1) No person shall keep any animal or fowl, wild or domesticated, in the city, except as permitted by city ordinance and state law.

(2) Common domesticated animals, such as dogs, cats, birds and other animals that can be claimed as household pets, may be kept in the city of Sweet Home. Household pets must be those animals or birds that can be kept safely in residential quarters without causing a health problem, even though the owner may not intend to keep the animal in his residential quarters. Household pets may not be allowed to cause a nuisance to other residents. The keeping of common domesticated animals does not include the operation of kennels, breeding pens, and commercial training schools, except where authorized under the provisions of the zoning ordinance. Nuisance, for this subsection, is

defined to include, but not limited to, a pet, excluding a dog, that defecates on the property of a person other than the owner and/or damages the property of a person other than the owner. Any owner, which includes any keeper of a pet or person who provides care and/or food for the pet, whose pet violates this subsection, shall be in violation of this ordinance.

(3) Where residents of the city wish to keep animals, other than household pets, i.e., farm animals, horses, cows, sheep, goats, chickens, rabbits, pigs, etc., on five contiguous acres or more, they may do so, providing that the city is notified in writing.

(4) Where residents of the city wish to keep horses on less than five contiguous acres, they may do so, providing that:

(a) They have one acre that is exclusively set aside for each animal.

(b) That the overall location at which the animal(s) are residing have a contiguous minimum dimension of one and one-half acres.

(c) That there be an enclosed shelter/feeding area for such animal(s) and there be adequate fencing to contain such animal(s).

(5) Where residents of the city wish to keep cows and/or pigs on less than five contiguous acres, they may do so, providing that:

(a) They have one-half acre that is exclusively set aside for each such animal.

(b) That the overall location at which the animal(s) are residing have a contiguous minimum dimension of one acre.

(c) That there be an enclosed shelter-feeding area for such animal(s) and there be adequate fencing to contain such animal(s).

(6) Where residents of the city wish to keep goats, and/or sheep, and/or animals comparable to goats and sheep on less than five contiguous acres, then they may do so providing that:

(a) They have one-quarter of an acre that is exclusively set aside for each such animal,

(b) That the overall location at which the animal(s) are residing have a contiguous minimum dimension of three-quarters of an acre.

(c) That there be an enclosed shelter/feeding area for such animal(s), and there be adequate fencing or controls to contain such animal(s).

(7) Where residents of the city wish to keep rabbits and/or fowl, and/or animals comparable in size to rabbits and fowl on less than five contiguous acres, then they may do so, providing that:

(a) That there be a maximum of not more than 24 rabbits or fowl, or a combination thereof, residing on a minimum overall location of one-half acre.

(b) That there be an enclosed shelter/feeding area for such animal(s), and that there be adequate fencing to contain such animal(s).

(8) Each case where animals other than household pets are kept must be determined appropriate by the city manager. The city manager will not consider any request valid for deliberation unless the appropriate minimum standards specified under Subsections 3 through 7 have been met. Animals being kept in the city on or before December 27, 1960, that do not conform with the requirements of this ordinance, may continue to be kept on the same premises until they die, subject to the provisions of Subsection (9); and provided that animals that die may be replaced by animals of the same kind and number and the nonconforming use continued only upon authorization of the city manager.

(9) The avenue of appeal of the city manager's decision is the city council, who may, by majority decision, reverse the decision of said city manager.

(10) If, after allowing said special animal use, it proves to become a nuisance and inconvenience to the city and/or neighbors, or a public health problem, the council reserves the right to revoke the allowed animal use.

Section 4. Removal of Animal Carcasses. No person shall permit any animal carcass owned by him or under his control to remain upon the public streets or places for a period of time longer than is reasonably necessary to remove such carcass, and no person who is the owner of or has control over any animal carcass shall permit the carcass to remain on any private property for a period of time longer than is reasonably necessary to dispose of such carcass, but in no case longer than 24 hours.

Nuisances Affecting the Public Health

Section 5. Nuisances Affecting the Public Health.

(1) The following are hereby declared to be nuisances affecting the public health and may be abated in the manner prescribed by this ordinance.

(a) Privies. Any open vault or privy maintained within the city except those privies used in connection with construction projects and constructed in accordance with the Oregon State Board of Health regulations.

(b) Debris on private property. All accumulations of debris, rubbish, manure and other refuse located on private property or sidewalks abutting thereon, and which has not been removed within a reasonable time and which affect the health, safety or welfare of the city.

(c) Stagnant water. Any pool of water which is without a proper inlet or outlet and which, if not controlled will be a breeding place for mosquitoes and other similar insects.

(d) Water pollution. The pollution of any body of water or stream or river by sewage, industrial wastes or other substances placed in or near such water in a manner that will cause harmful material to pollute the water.

(e) Food. All decayed or unwholesome food which is offered for human consumption.

(f) Odor. Any premises which are in such state or condition as to cause a noisome or offensive odor or which are in an unsanitary condition.

Nuisances Affecting the Public Safety

Section 6. Abandoned Iceboxes. No person shall leave in any place accessible to children any abandoned, unattended or discarded icebox, refrigerator or similar container which has an airtight door and/or a lock, snap lock, or other similar mechanism which may not be released for opening from the inside, without first removing such lock, snap lock or other mechanism or door from such icebox, refrigerator or similar container.

Section 7. Attractive Nuisances.

(1) No person in charge of any property shall permit:

(a) Any machinery, equipment or other devices on such property which are attractive and dangerous to children and which are accessible to children.

(b) The piling of any lumber, logs or piling in such a manner as to be attractive and dangerous to children and which is accessible to children.

(c) Any excavation to remain open for an unreasonable length of time without erecting proper safeguards or barriers to prevent such excavation from being used by children.

(2) The provisions of this section shall not apply to authorized construction projects provided that during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children.

(3) Any nuisance as described in this section may be abated as provided in this ordinance.

Section 8. Metal Tower, Structure, Antenna. No person shall erect or place any metal structure, tower or antenna in such a manner that may allow hazardous contact with any electrical transmission line.

Section 9. Glass Openings. No person shall allow a glass window or door in a structure to be left broken for more than 48 hours, if the broken glass is within six feet of the bottom of the structure.

Section 10. Sifting or Leaking Loads.

(1) No person shall drive or move a vehicle on any street unless it is so constructed or loaded as to prevent its content from dropping, sifting, leaking or otherwise escaping therefrom.

(2) It shall be the duty of any person driving a vehicle from which the contents have escaped to remove an escaped substance or material from the street.

(3) Any escaped substance or material as set forth in this section is hereby declared to be a nuisance and may be abated as provided in this ordinance.

Section 11. Fences.

(1) No person shall construct or maintain any barbed-wire fence or allow barbed-wire to remain a part of any fence, unless such wire is used for agricultural purposes, or placed not less than six inches above the top of a board, picket, or chain link fence which is not less than six feet high.

(2) Persons may install, maintain and operate electric fences only for agricultural purposes within the city.

Section 12. Surface Water, Drainage.

No person in charge of any building or structure shall suffer or permit rain water to fall from any such building or structure onto any street or sidewalk or to flow across such sidewalk; and every such person in charge of property shall at all times keep and maintain in a proper state of repair adequate drainpipes or a drainage system so that any overflow water accumulating on the roof or about such building will not be carried across or upon any sidewalk, or the property of another person.

Nuisances Affecting the Public Peace

Section 13. Unnecessary Noise.

(1) No person shall make, assist in making, or permit any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others. However, this section does not include noises that are made by a human voice, except as specifically listed hereafter.

(2) The following acts are declared to be loud, disturbing and unnecessary noises in violation of this section, but the enumeration shall not be construed to be exclusive:

(a) The keeping of any bird or animal, except a dog, which, by causing frequent or long-continued noise, shall disturb the comfort and repose of any person in the vicinity.

(b) The use of "Jake Brakes" inside the city limits of Sweet Home.

(c) The attaching of any bell to any animal or allowing a bell to remain on any animal which is disturbing to any person in the immediate vicinity.

(d) The use of any vehicle or engine, either stationary or moving, so operated as to create any loud or unnecessary grating, grinding, rattling or other noise.

(e) The sounding of any horn or signaling device on any vehicle on any street, public or private place, except as a necessary warning of danger.

(f) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, or as a warning of danger, or upon request of proper city authorities.

(g) The use of any mechanical device operated by compressed air, steam, or otherwise, unless the noise thereby created is effectively muffled.

(h) The erection, including excavation, demolition, alteration, or repair of any building in residential districts, other than between the hours of 7:00 a. m. and 6:00 p. m. except in case of urgent necessity in the interest of the public welfare and safety, and then only with a permit granted by the building officials.

(i) The use of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle.

(j) The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court of justice while the same are in use, or adjacent to any hospital or institution for the care of the sick or infirm, which unreasonably interferes with the operation of such institution, or which disturbs or unduly annoys patients.

(k) The discharge in the open air of the exhaust of any steam engine, internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke.

(l) The use or operation of any automatic or electric piano, phonograph, radio, television, loudspeaker or any instrument for sound producing or any sound-amplifying device so loudly, as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance provided, however, that upon application to the chief of police, permits may be granted for the broadcast or amplification of entertainment programs, or to any organization for the broadcast of programs of music, speeches, or general entertainment as a part of a national, state or city event, public festivals or outstanding events of a noncommercial nature, provided that such broadcast or amplification shall not be audible for a distance of more than 1,000 feet from the instrument, speaker or amplifier, and in no event shall a permit be granted where any obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result. This subsection does not apply to Church chimes or bells that are in proper working order and approved by the City Council.

(m) The making of any noise by crying, calling or shouting, or by any means of any whistle, rattle, bell, gong, clapper, horn, hammer, drum, musical instrument or other device for the purpose of advertising goods, wares or merchandise or of attracting attention or of inviting patronage of any person to any business whatsoever; provided that newsboys may sell newspapers and magazines by public outcry.

(n) The conducting, operating or maintaining of any garage within 100 feet of any private residence, apartment, rooming house or hotel in such manner as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p. m. and 7:00 a. m.

Section 14. Notices and Advertisements.

No person shall affix any placard, bill, advertisement or poster upon any real or personal property, public or private, without first securing permission from the owner or person in control of the property. 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 the location of signs and advertising.

Section 15. Radio and Television Interference. Operation or use by any person of any electrical, mechanical or other device, apparatus, instrument or machine that causes interference with radio or television reception is prohibited; provided, that the radio or television receiver interfered with is of good engineering design, and operating condition. This section shall not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission; nor shall this section be construed to prohibit the use or operation of any such device when necessary for the protection of life or property, for the care or treatment of sick or injured persons, or for the operation of a public utility.

NUISANCES AFFECTING PUBLIC WELFARE

Section 16. Appliances and Fixtures: No person shall leave, store or place any inoperative washer, dryer, ice box, freezer, refrigerator, dishwasher, stove, water heater or other household appliance or any plumbing fixture on public or private property outside of a building unless it is completely enclosed by a solid fence, other solid structure, and/or vegetation and is not visible from a public street, other public area or other private property, except private property zoned industrial by the City Zoning Ordinance. Notwithstanding, no person shall leave, store or place more than four of the above inoperative appliances or fixtures outside of a building. This section does not apply to the transfer station.

Section 17. Business Property.

(1) No person operating a business in a C-1, C-2 or C-3 zone as established by the City Zoning Ordinance, shall allow his inventory, stock in trade, or by-products from the business to be stored, left or placed on the business property longer than 24 hours outside of a building unless it is completely enclosed by a solid fence, or other solid structure or container and/or by vegetation and is not visible from a public street, or other public area or other private property, except private property zoned industrial by the City Zoning Ordinance.

(2) Notwithstanding paragraph (1) of this section, this section does not apply to vehicles/boats for sale at a dealership licensed by the State of Oregon, inventory or stock in trade displayed for sale or rent by a business for less than 24 hours at a time, provided that said articles are placed behind one of the above referred to enclosures after each 24 hour period, or vehicles (not parts thereof)/boats (not parts thereof) for rent, live potted plants, nursery seedlings, plants in a greenhouse, or items that are packaged in original wrappings from a supplier.

(3) If the inventory, stock in trade, or by-products in issue from the business are vehicles or vehicle parts, including tires, they shall be abated as set out in Ordinance No. 952.

(4) The 24 hour periods referred to above in this section are not intended to allow any activity otherwise prohibited by City Ordinances or state law.

(5) This section does not apply to the transfer station.

(6) Inventory under this section does not include vehicles (not parts thereof) that comply with Ordinance No. 952.

Section 18. Household Goods. No person shall leave, store, or place any discarded couch, chair, mattress, carpet, or other piece of household furniture or furnishings on public or private property outside of a building, unless it is completely enclosed by a solid fence, other solid structure, and/or vegetation and is not visible from a public street, other public area or other private property, except private property zoned industrial by the City Zoning Ordinance. Notwithstanding, no person shall leave, store or place more than four pieces of the above discarded furniture or furnishings outside of a building. This section does not apply to the transfer station.

GENERAL NUISANCES

Section 19. General Nuisances. In addition to those nuisances specifically enumerated within this ordinance, every other thing, substance or act which is determined by the common council to be injurious or detrimental to the public health, safety or welfare of the city is hereby declared to be a nuisance and may be abated as provided in this ordinance.

ENFORCEMENT

Section 20 . Duty. Conditions that exist that violate the provisions of this ordinance are hereby declared to be nuisances, and no person shall cause, permit or allow a nuisance on public or private property, or take any action or allow any condition to exist contradictory to the provisions of this ordinance. It shall be the duty of the person in charge of the property to abate the nuisance.

Section 21 . Penalties. Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance No. 876, and any amendments thereto.

Section 22. Separate Violations. Each day's violation of a provision of this ordinance shall constitute a separate offense.

Section 23 . Prima Facie Evidence. It shall be prima facie evidence in any trial or abatement procedure concerning Sections 16 , 17 , and 18 , that the offending property is inoperative, is discarded, or is inventory, stock in trade or by-products from the business, if it has been left, stored or placed upon public or private property contrary to the location provisions of Sections 16, 17 and 18, for a period in excess of seven days.

Section 24. Remedies. The remedies, which include penalties herein, provided for in this ordinance or sections thereof shall be cumulative and not exclusive and shall be in addition to any and all other remedies available to the City.

ABATEMENT PROCEDURE

Section 25. Notice.

(1) The City Building and Zoning Official, a police officer, City Attorney, Assistant City Attorney, or a person designated by the City Council of Sweet Home, shall investigate and determine if and when a nuisance as defined in this ordinance exists, then the property where the nuisance exists shall be posted with a notice directing the person in charge of the property to abate such nuisance. Exists is defined to include lives or originates from.

(2) At the time of posting, the City Building and Zoning Official, police officer, City Attorney, Assistant City Attorney or a person designated by the City Council shall cause a copy of such notice to be forwarded by certified mail, postage prepaid, to the person in charge of the property at the last known address of such person, or cause said person to be personally served with said notice.

(3) The notice to abate shall contain:

(a) A description of the real property, by the street address or otherwise, where such nuisance exists;

(b) A direction to abate the nuisance with a fixed number of days from the date of the notice;

(c) A description of the nuisance;

(d) A statement that unless such nuisance is abated, the City will abate the nuisance and the cost of abatement will be charged against the person in charge of the property, and/or the property itself and becomes a lien on said property;

(e) A statement that the person in charge of the property may protest the abatement by giving notice to the City Building and Zoning Official within five (5) days from the date of the notice. The five-day period under this sub-paragraph does not include holidays, Saturdays or Sundays.

(4) If the person in charge of the property protests the abatement, in conformance with sub-paragraph (3)(e) herein, a hearing shall be held before a Hearings Officer, who shall decide if a nuisance exists by substantial evidence on the record. Said determination shall be final, and is not subject to appeal. If it is affirmative, the person in charge of the property shall cause the nuisance to be abated as directed by the hearings officer. If the nuisance is not so abated, said person in charge of the property is in violation of this ordinance.

(5) Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases under ORS 183.450.

(6) The Hearings Officer at a hearing under this section may be an officer, official or employe of the City of Sweet Home, but shall not have participated in any determination or investigation related to the alleged nuisance.

(7) The person personally serving, posting, and/or mailing the notices provided herein shall, upon completion of the serving, posting, and/or mailing, execute and file a certificate stating the date and place of such service, mailing and/or posting.

(8) Substantial compliance with the notice and posting requirements of this section shall be sufficient to comply with the requirements thereof. An error in the name or address of the person in charge of the property shall not make the notice invalid and in such a case the posting notice shall be sufficient.

Section 26. City Abatement. If, after the City has complied with Section 25 of this ordinance, the nuisance has not been privately abated, the City Manager or his designate shall cause it to be abated. The person authorized to cause, or retained to do the abating may enter upon the property at reasonable times for purposes of abating the nuisance. Any person interfering with the abatement shall be prosecuted under applicable criminal laws as they apply to the situation.

Section 27. Billing and Liability. After the City Manager or his designate has caused the nuisance to be abated, the City Manager shall cause the person in charge of the property to be billed for the abatement. The abatement cost shall include at least the sum of \$50.00, as administrative costs for each abatement. The person in charge of the property is personally liable for the cost of abatement.

Section 28. Assessment of Lien. If the bill is not paid within thirty (30) days the City Manager shall cause a written notice to be given to the person in charge of the property, stating the amount of administrative costs and the cost of the abatement, describing the land with reasonable certainty, giving notice that such amount will be considered by the City Council of Sweet Home at a meeting at the time and place specified in the notice as the amount to be assessed against said lot or parcel of land as a lien and that any person having an interest in the land may appear and be heard at said meeting with respect thereto.

Section 29. Objection to Assessment. At the time and place specified in the notice mentioned in the last preceding section, the City Council shall meet and shall consider any protests or objections to the levying of the cost herein referred to as a lien upon such lot or parcel of land and after considering such protests and objections, if any, shall determine what amount shall be made a lien on such lot or parcel of land and shall direct the City Recorder to enter such charges in the City Lien Docket as a lien upon the lot or parcel of land so affected.

Section 30. Lien and Interest. Each such lien shall be a lien upon the lot or parcel of land against which it is charged in the City Lien Docket and shall be subject to collection and foreclosure in the same manner as is now or hereafter provided for the foreclosure of liens for special improvements to property within the City, and shall bear interest at the rate of nine percent (9%) per annum. Interest shall accrue from the date of the entry of the lien in the Lien Docket.

Section 31. Error in Name. An error in the name of the person in charge of the property in a letter, billing or notice shall not void the assessment, nor will a failure to receive notice of the proposed assessment render the assessment void. The assessment shall be a valid lien against the property after action by the City Council, as set forth herein.

MISCELLANEOUS

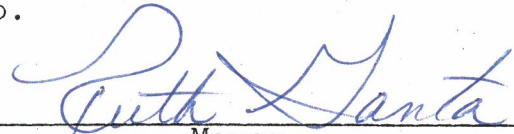
Section 32. Mailing Notice. Any notice or copy thereof in this ordinance sent by mail shall be deemed to have been given by the deposit in the mails of a letter, by certified, postage prepaid containing the notice or copy thereof and addressed to the person in charge of the property at his last known address. Notice by personal service can be made by anyone over the age of eighteen (18) years, including City of Sweet Home employees who are involved in or are investigating the nuisance in issue.

Section 33. 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 section or subsections.

Section 34. Repeal of Ordinance. Ordinance No. 370 is hereby repealed.

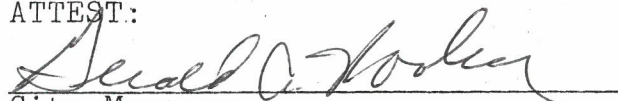
Section 35. Emergency. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist and this ordinance shall take effect and be in full force from and after the passage and approval of the mayor.

PASSED by the Council and approved by the Mayor this
25th day of November, 1986.



Mayor

ATTEST:



City Manager