

ORDINANCE NO. 229

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PRESCRIBING PENALTIES; AND REPEALING CONFLICTING ORDINANCES.

The City of Gates ordains as follows:

Section 1. Definitions. Except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine and the following mean:

Abatement. The ending, reduction, or lessening of a defined nuisance.

Animal. Any one of the lower animals as distinguished from and not including man, belonging to the animal kingdom of the living beings, typically differing from plant, and including mammals, fowl, reptiles, insects and fish.

City. The city of Gates, state of Oregon.

Council. The governing body of the city.

Dog. The word "dog" shall include both the male and female sex of the species.

Domestic Animal. An animal conditioned so as to live and breed in a tame environment and normally amenable to human habitats.

Dwelling Unit. A group of one or more rooms designed or intended for use as a residence, including a single-family home, a townhouse, a duplex, a condominium, a tiny home, or apartment.

Infraction Complaint. The document which when properly served upon the alleged ordinance violator brings the matter before the appropriate court for resolution. The elements of an infraction complaint are set forth in Section 15 of this ordinance.

Inoperable Vehicle. A unit designed and built to transport people or objects from one place to another which:

- (A) Has been left on private property for more than 30 days; and
- (B) Has broken or missing window(s), or an engine that will not run, or lacks a transmission, or is missing tire(s) or wheel(s); or
- (C) Is unlicensed for the current year; constitutes a presumption that the vehicle is inoperable.

Livestock. Horses, mules, jackasses, burros, cattle, sheep, goats, donkeys, swine, or any animal of similar size or larger maintained, commercially or otherwise.

Nuisance. A person, thing, or circumstance causing inconvenience or annoyance.

Owner. Any person who has legal or equitable interest in real property or a vehicle or an animal, or possessory interest therein.

Person. Includes:

- (A) The owner, title holder, contract seller, or contract buyer of the land upon which the violation is occurring, is equally responsible for the nuisance violation, as is the possessor, user of the land, or the person who is taking the action, conduct or omission which constitutes a nuisance. The United States or agencies thereof, any state, public or private corporation, local governmental unit, public agency, individual, partnership, association, firm,

trust, estate or any other legal entity, contractor, subcontractor or combination thereof.

Person in Charge of Property. An agent, occupant, lessee, contract purchaser, or person other than the owner, having possession or control of the property.

Person Responsible. The person responsible includes:

- (A) The owner.
- (B) The person in charge of property, as defined in this section.
- (C) The person who caused a nuisance to come into or continue in existence.

Public Place. A building, place, or accommodation, whether publicly or privately owned, open and available to the general public.

Poultry. Domestic fowl, such as chickens, turkeys, ducks, geese or other fowl typically raised for meat or eggs.

Structure. Anything constructed or built, an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

Section 2. Animals. Raising chicken and other fowl and rabbits on property containing at least one quarter of an acre (10,890 square feet) provided the number of chickens, other fowl, and rabbits do not exceed ten (10), no sales or retail business is conducted and said animals are maintained in pens or cages at all times. Roosters are not permitted at any time.

No person shall keep or allow a stand or hive of bees on property within 20 feet of the boundary line of the premises.

(1) Prohibited Animals

- (a) The keeping, raising or breeding of any swine, horses, geese, or other typical farm animals.
- (b) Exotic, wild or dangerous animals. "Exotic, wild, or dangerous animals" means and includes any animal which, because of its size, vicious nature, poisonous bite or sting, or other characteristics, would constitute a danger to human life or property if not kept or maintained under the immediate control of the owner. Exotic animals include but are not limited to lions, tigers, leopards, cheetahs, ocelots or other cats not indigenous to Oregon as well as mountain lions (also known as cougars, pumas, panther, *Felis concolor*); monkeys, apes, gorillas, or other non-human primate; wolves, or any other canine except the domestic dog; fowl of the ratite group such as ostrich, peacock, emus; and bears (Subfamily Ursinae).

NUISANCES AFFECTING PUBLIC HEALTH

Section 3. Nuisances Affecting Public Health and Welfare. No person shall cause or permit a nuisance affecting public health on property owned or controlled by him. The following are nuisances affecting public health:

- (1) Accumulations of debris, rubbish, manure or other refuse that are not removed within a reasonable time and that affect the health or welfare of the city.
- (2) Stagnant water that affords a breeding place for mosquitoes and other insect pests.
- (3) Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial waste, or other substances placed in or near the water in a manner that will cause harmful materials to pollute the water.
- (4) Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition. Drainage of liquid wastes from private premises.
- (5) Plastics, oil, grease or petroleum products allowed to be introduced into the storm or sewer system.

Section 3A. Unreasonable Noise.

- (1) No person shall allow, cause, create or permit the continuance of unreasonable noise. The following enumerated noises are not exclusive but illustrative of unreasonable noises.
 - (a) The keeping of any bird or animal which by causing frequent or long-continued noise shall disturb the comfort and repose of any person in the vicinity.
 - (b) The use of a vehicle or engine, either stationary or moving, so out of repair, loaded, or operated as to create any loud or unnecessary noise.
 - (c) The use of a mechanical device operated by compressed air, steam, or otherwise, unless the noise thereby created is effectively muffled. Using a dynamic braking device, primarily on trucks and buses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes, except to avoid imminent danger to persons or property.
 - (d) Construction, excavation, demolition, alteration, or repair of a building, vehicle or machinery, including the starting of an engine, other than between the hours of 7:00 a.m. and 7:00 p.m. weekdays and between 9:00 a.m. and 8:00 p.m. on weekends, or in residential, commercial or industrial garages or in a building between the hours of 7:00 a.m. and 9:00 p.m.
 - (e) The use of a gong or siren upon a vehicle, other than law enforcement, fire, or other emergency vehicle.
 - (f) The creation of excessive noise on a street adjacent to a school, institution of learning, church, or court of justice, while the same are in use, or on a street adjacent to a hospital, nursing home, or other institution for the care of the sick or infirm, which unreasonably interferes with the operation of such institution or disturbs or unduly annoys patients.
 - (g) The discharge in the open air of the exhaust of a steam engine, internal combustion engine, motorboat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises.

- (h) The use or operation of an automatic or electric piano, television, phonograph, loud speaker, stereo or sound amplifying device so loudly that the sound, when measured at or within the boundary of property which is not the source of the sound is located, exceeds the maximum permitted sound level of 70 dBA sound level decibels; or is plainly audible at any time at a distance of 100 feet from the source of the sound.
- (2) Sound produced in conjunction with officially organized sporting events, parades, festivals, fairs and other events are exempt from these noise limitations.
- (3) Nothing in this section shall be construed to prohibit the Gates Rural Fire Department from using or cause to be used the siren located at the fire department for emergency reasons when necessary for the health, safety or welfare of the city.

NUISANCES AFFECTING PUBLIC SAFETY

Section 4. Nuisances Affecting Public Safety. No person shall create a safety hazard by:

- (1) Maintaining or leaving in a place accessible to children, a container with a compartment of more than one and one-half cubic feet in capacity and a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside.
- (2) Being the owner or otherwise having possession of property on which there is a well, cistern, cesspool, excavation, or other holes of a depth of 4 feet or more, and a top width of 12 inches or more and failing to cover or fence it with a suitable protective construction.
- (3) Leaving a structure or materials in the public right of way.

Section 5. Attractive Nuisances.

- (1) No owner or person in charge of property shall permit on the property:
 - (a) Unprotected machinery, equipment or other devices that are attractive, dangerous and accessible to children.
 - (b) Lumber, logs or piling placed or stored in a manner so as to be attractive, dangerous and accessible to children.
- (2) This section does not apply to authorized construction projects with reasonable safeguard to prevent injury or death to children.

Section 6. Defective Sidewalks.

- (1) No owner of property, improved or unimproved, abutting on a public sidewalk or right of way, shall permit the sidewalk to deteriorate to such a condition that, because of cracks, chipping, weeds, settling, covering by dirt, or other similar occurrences, the sidewalk becomes a hazard to persons using it.
- (2) The city shall not be liable to any person for loss or injury to a person or property suffered or sustained by reason of any accident on sidewalks caused by ice, snow, encumbrances, obstructions, cracks, chipping, weeds, settling, holes covered by dirt or other similar conditions. Abutting property

owners shall maintain sidewalks free from such conditions and are liable for any and all injuries to persons or property arising as a result of their failure to so maintain the sidewalks.

Section 7. Noxious Vegetation.

- (1) The term noxious vegetation does not include vegetation that constitutes an agricultural crop, unless that vegetation is a health hazard or a fire hazard or traffic hazard within the meaning of subsection (2).
- (2) The term noxious vegetation does include at any time of the year:
 - (a) Weeds more than 10 inches high;
 - (b) Grass more than 10 inches high and not within the exception stated in subsection (1) of this section;
 - (c) Poison ivy / poison oak;
 - (d) Blackberry bushes, or any other berry, wild or planted and maintained, that extend into a public thoroughfare or across a property line;
 - (e) Scotch broom and other various vegetation;
 - (f) Vegetation that is:
 - (i) A health hazard;
 - (ii) A fire hazard;
 - (iii) A traffic hazard.
- (3) No owner or person in charge of property shall allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting the property. An owner or person in charge of property shall cut down and remove or destroy grass, shrubbery, brush, 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 going to seed.
- (4) The city recorder may cause to be published in a newspaper in February each year, and on the city website, the text in subsection (3); as a notice to all owners or persons in charge of property of the duty to keep their property free from noxious vegetation. The notice shall state the city is willing to remove the nuisance of a 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 abatement costs. The notice shall also state that even in the absence of such requests the city may abate all such nuisances 20 or more days after the final publication of the notice and charge the cost of doing so on a particular parcel of property to the owner or person in charge of the property itself. Prior to the city abating the nuisance, a certified-return-receipt letter shall be sent to the owner or person in charge of the property. This letter shall be deemed sufficient notice for this violation and any reoccurring violations in each calendar year.

Section 8. Unauthorized Dumping.

- (1) No person shall deposit, on public or private property, rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or

- fire hazard, detract from the cleanliness or safety of the property, or that would be likely to injure a person, animal or vehicle traveling on a public way.
- (2) No person shall deposit trash, rubbish, debris, or refuse which was generated from a residence or business into public trash receptacles in city parks.
 - (3) No person shall put, place, sweep, throw, brush, blow, or in any other manner deposit any yard waste or other vegetative and non-vegetative matter (i.e. grass, leaves, bark dust, mulch, dirt, sand, gravel) upon any sidewalk, street, alley or gutter.

Section 9. Trees, Bushes and Shrubs.

- (1) No owner or person in charge of property that abuts a street or public sidewalk shall allow or permit trees or bushes or shrubs on property to interfere with vehicular or pedestrian traffic. The person responsible shall keep all trees, bushes or shrubs on the premises, which includes the adjoining parking strip, and trimmed so that any overhanging portions are at least eight feet above the sidewalk and at least fourteen (14) feet above the roadway.
- (2) 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 10. Fences.

- (1) 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.
- (2) No owner or person in charge of property shall construct, maintain or operate an electric fence along a sidewalk or public way. A five (5) foot setback is required along any adjoining property line of another person. The fence must be identified/marked as electric.
- (3) No owner or person in charge of property shall construct or maintain a fence that will do bodily harm such as broken glass, spikes, razor wire or other hazardous or dangerous materials.

Section 11. Surface Water, Drainage.

- (1) No owner or person in charge of a building or structure shall permit rainwater, ice or snow to fall from the building or structure on a street or public sidewalk.
- (2) The owner or person in charge of property shall install and maintain in a proper state of repair, adequate drain pipes or a drainage system, so that overflow water accumulating on the roof or about the building is not carried across or on the street or sidewalk.

Section 12. Radio and Television Interference.

- (1) No person shall operate or use an electrical mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

- (2) This section does not apply to devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

Section 13. Junk.

- (1) No person shall keep junk outdoors on a street lot, or premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.
- (2) The term junk, as used in this section, includes all inoperable vehicles, motor vehicle parts, abandoned automobiles, machinery, machinery parts, appliances or appliance parts, iron or other metal, glass, paper, lumber, wood or other waste or discarded material. This list is not exhaustive, but illustrative of junk
- (3) Inoperable vehicle and machinery exceptions:
 - (a) Vehicle or machinery which are being or are in the process of being repaired or restored. Being repaired or restored means the person is actively seeking parts or is reshaping, welding or fixing the body or other parts of the vehicle and/or machinery. If the vehicle or machinery is not repaired or restored within 180 days after the person is given a notice of abatement the vehicle or machinery will be presumed not being repaired or restored.
 - (b) The exception of inoperable vehicle does not apply to parts meaning: body, frame, door, motor, glass, electrical, upholstery, mechanical components or a vehicle which has lost or had removed 15 percent of its original equipment.
- (4) This section does not apply to junk kept in a licensed junk yard or automobile wrecking house.

Section 14. Public Nuisance – Unlawful Activities.

- (1) It is a public nuisance for any person in charge of property to permit or any person to cause to exist any place or business where patrons, employees, residents, or occupants engage in a pattern of behavior in the neighborhood involving commission of the following offenses:
 - (a) Loitering to solicit prostitution;
 - (b) Unlawful prostitution procurement activities;
 - (c) Unreasonable noise;
 - (d) Assault, ORS 163.160, 163.165, 163.175 or 163.185;
 - (e) Sexual abuse, ORS 163.415, 163.425 or 163.427;
 - (f) Public indecency, ORS 163.465;
 - (g) Criminal trespass, ORS 164.245 or 164.255;
 - (h) Criminal mischief, ORS 164.345, 164.354 or 164.365;
 - (i) Disorderly conduct, ORS 166.025;
 - (j) Harassment, ORS 166.065;
 - (k) Minor in possession of alcohol, ORS 471.430;
 - (l) Unlawful manufacture, delivery, or possession of a controlled substance, ORS 475.992;
 - (m) Public urination/defecation; or

- (n) No person shall lodge in a car, outbuilding, or other place not intended for that purpose without permission of the owner or person entitled to the possession thereof. In addition, there will be no overnight camping or tenting on public property without prior approval of the city council.
- (2) For purposes of this section, pattern of behavior in the neighborhood means one or more patrons, employees, residents, or occupants of the place or business having been arrested or issued a citation for violation of three or more of any of the offenses specified in subsection (1) that occur over any six-month period at the place or business or within 300 feet thereof.
- (3) It is unlawful for any place or business to be a public nuisance or to be used as a public nuisance. If any place or business is found to be a public nuisance or to be used as such, it shall be subject to closure for a period of up to one year. Public nuisance closure will be subject to the enforcement procedures in Section 15 through Section 23.
- (4) The acts, conditions or objects specifically enumerated and defined in Section 2 to Section 14 are declared public nuisances and will be subject to the enforcement procedures in Section 15 through Section 23.
- (5) In addition to the nuisances specifically enumerated in this ordinance, every other thing, substance or act that is determined to be injurious or detrimental to the public health, safety or welfare of the city is declared a nuisance and will be subject to the enforcement procedures in Section 15 through Section 23.

ABATEMENT PROCEDURE

Section 15. Inspection, Infraction Complaint, Abatement and Other Remedies.

One or more of the following procedures may be used to enforce this ordinance:

- (1) Inspection:
 - (a) Inspections not requiring entry upon private land do not require the responsible property owner's authorization.
 - (b) In non-emergency situations attempted personal, telephone or written contact will be made to contact the person responsible for fifteen days prior to entering onto private land for inspection. After such attempt (s), the city recorder, or designee, or any law enforcement officer shall have the power to enter onto private land for the purpose of investigating or abating any nuisance during regular working hours, but they shall not enter into any building or dwelling without legal authorization or permission of the owner or occupant of the premises.
 - (c) In emergency situations, where there is a possibility of eminent danger to human life or property; the city recorder, or designee, or any law enforcement officer shall have the power to enter onto private land for the purpose of investigating. The investigation may proceed at any time.
- (2) Infraction Complaint:
 - (a) An infraction complaint may be used for violation of this ordinance.

- (b) Infraction complaints may be filed against the same person for repeated or continued violations of this ordinance.
 - (c) Each 24-hour period constitutes a separate occurrence.
 - (d) The infraction complaint shall consist of the following four parts: the complaint, the abstract of record, the officer's record and the summons.
- (3) Abatement:
- (a) On determination by the city recorder, Enforcement Officer, or designee that a nuisance exists, they shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.
 - (b) At the time of posting, the staff member shall cause a copy of the notice to be forwarded by certified mail to the person responsible at the person's last known address.
 - (c) The notice to abate shall contain:
 - (i) A description of the real property, by street address or otherwise on which the nuisance exists;
 - (ii) A direction to abate the nuisance within 10 days or other timeframe contained within this ordinance from the date of the notice;
 - (iii) A description of the nuisance;
 - (iv) A statement that, unless the nuisance is removed, the city may abate the nuisance and the cost of abatement will be charged to the person responsible.
 - (v) A statement that the person responsible may protest the order to abate by giving notice to the city recorder within 10 days from the date of the notice.
 - (d) If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.
 - (e) Upon completion of the posting and mailing, the person posting and mailing shall execute and file certificates stating the date of mailing and place of the posting.
 - (f) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.
- (4) Other Remedies. The city may institute a complaint in the circuit court for any other remedy provided by law, including injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin or abate the violation.

Section 16. Abatement by the Person Responsible.

- (1) Within 20 days after the posting and mailing of notice as provided in Section 15, a person responsible shall either:
 - (a) remove the nuisance or show that no nuisance exists; or
 - (b) file a written notice of protest that no nuisance exists, that specifies the basis for the protest with the city recorder.

- (i) The notice of protest shall be referred to the council as a part of its regular meeting agenda; and it will be at it's next regular scheduled meeting, when it's filed a minimum of 48-hours in advance;
- (ii) When a written notice is filed, a minimum 48-hours in advance of the scheduled meeting, the Council will hear the persons protest of the abatement requirement.
- (c) The council shall determine whether a nuisance in fact exists, and the determination shall be entered in the official minutes of the council.
- (d) Council determination shall be required only in cases where a written notice of protest has been filed, as provided.
- (e) If the council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within 20 days after the council determination.

Section 17. Joint Responsibility.

- (1) If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

Section 18. Abatement by the City.

- (1) If the nuisance has not been abated by the person responsible within the time allowed, the city recorder, Enforcement Officer, or designee may cause the nuisance to be abated.
- (2) The Enforcement Officer charged with abatement of the nuisance shall have the right to enter into or upon property at reasonable times to investigate or cause the removal of a nuisance.
- (3) The city shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include a charge of 20 percent of those expenses for administrative costs.

Section 19. Assessment of Costs.

- (1) The city recorder or designee shall forward to the owner and the person responsible, by registered or certified mail, a notice stating:
 - (a) The total cost of abatement, including the administrative costs;
 - (b) That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice;
 - (c) That if the owner or person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the city recorder not more than 10 days from the date of the notice.
- (2) No sooner than 30 days after the date of the notice, the council, in the regular course of business, shall hear and make a decision on the objection to the costs assessed.
- (3) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs as stated or as decided by the council, shall be made by resolution and shall be entered in the city liens records.

When the entry is made, it shall constitute a lien on the property from which the nuisance was removed or abated.

- (4) The lien shall be enforced and shall bear interest at the rate of up to nine percent per annum. The interest shall begin to accrue from the date of entry in the lien records.
- (5) An error in the name of the owner or person responsible or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property.

GENERAL

Section 20. Summary Abatement. The procedure provided by this ordinance is not exclusive, but is in addition to procedure provided by other ordinances. The chief of the fire department, a law enforcement office, or any other city official may proceed summarily to abate a health or other nuisance which unmistakably exists and which eminently endangers human life or property.

Section 21. Penalties. A violation of a provision of this ordinance is punishable by a fine of \$500.00 per day, as determined by a court of competent jurisdiction. The abatement of a nuisance is not a penalty for violating this ordinance, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. However, abatement of a nuisance within 20 days of the date of a notice to abate, or if a written protest has been filed, then abatement within 20 days of council determination that a nuisance exists, will relieve the person responsible from the imposition of a penalty under this section. The city recorder, Enforcement Officer, or the council, if referred to them, may at any time, whether before or after the issuance of one or more infraction complaints or notices to abate, extend the abatement of a nuisance to more than 20 days.

Section 22. Special Costs. The City may recover all special costs including but not limited to, legal services. The special costs shall be allowed to the city in the same manner as the judgment of fines.

Section 23. Separate Violation. Each day's violation of a provision of this ordinance constitutes a separate offense.

Section 24. Severability. The sections and subsections of this ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

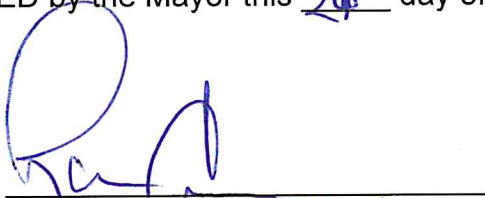
Section 25. Repeal. Nuisance Ordinance No. 102 and its conflicting ordinances, and Ordinance No. 102-A, enacted in 1991 and 1992 are hereby repealed.

Section 26. Repeal. Enforcement Ordinance No, 126, enacted on the 15th day of June 1995; and Ordinance No. 94 and all other conflicting ordinance of enforcement are hereby repealed.

Section 27. Effective Date. This ordinance shall take effect on the thirtieth day after its enactment.

PRESENTED on the 20th day of January 2022. **PASSED** the first reading on the 7th day of July, 2022. **PASSED** its second reading on the 21st day of July, 2022. **ADOPTED** by the Gates City Council on the 21st day of July, 2022.

SIGNED by the Mayor this 24 day of July, 2022



Ron Carmickle, Mayor

Attest: 

Traci Archer, City Recorder