

## ORDINANCE NO. 655

### AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT AND PROVIDING PENALTIES AND REPEALING ALL ORDINANCES PREVIOUSLY ADOPTED DEALING WITH THESE SPECIFIC ISSUES

The City of Winston ordains as follows:

#### ARTICLE 1 NUISANCES

##### SECTION 1.001. Definitions.

1. Person. A natural person, firm, partnership, association or corporation.
2. Person in Charge of Property. An agent, occupant, lessee, renter, contract purchaser or other person having possession or control of property.
3. Person Responsible. Each of the following, jointly and severally:
  - a. The owner.
  - b. The person in charge of property, as defined in Subsection 2.
  - c. The person who caused to come into or continue in existence a nuisance, as defined in this Ordinance or another ordinance of this City.
4. Public Place. A building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.
5. Code Enforcement Official. The City Manager or his/her designee authorized to enforce this Ordinance. This shall include Police Officers.
6. Noxious vegetation. This includes: poison oak, poison ivy, or blackberry vines; weeds, grass, or legumes above a height of twelve (12) inches; or, any vegetation extending into a public way or onto adjacent properties.
  - a. Weeds, grass, or legumes above a height of twelve (12) inches;
  - b. Poison oak or poison ivy;
  - c. Vegetation or blackberry vines that:
    - (i) are a fire hazard because they are near other combustibles;
    - (ii) extend into a public way; or,

- (iii) are used for habitation by trespassers.

Noxious vegetation does not include agricultural crops that are not a fire hazard or a vision obstruction nor natural vegetation in areas designated to remain in their natural vegetative state and do not constitute a fire hazard as determined by the Fire Chief.

- 7. Rodent habitat. Any condition which attracts or is likely to attract, feed or harbor rats or part, thereof, which is not rodent-proof and is used to store or keep any substance on which rats or mice feed, or rubbish or other loose material that might serve as a harbor for rats or mice.
- 8. Rodent-proof. Any building, structure or part there of is “rodent-proof” when it is constructed of concrete, metal or some equally impermeable material and in a manner that excludes rats and mice.
- 9. Vegetation. Plant life, including, but not limited to, trees, shrubs, flowers, weeds and grass.
- 10. Boarded. Secured by means other than those intended in the original design.
- 11. Unoccupied. Not being used for lawful occupancy.
- 12. Unsecured. Lacking secure means of ingress and egress, thus allowing for occupancy or use by unauthorized persons.

## **ANIMALS**

**SECTION 1.002. Removal of Carcasses.** No person shall permit an animal carcass owned or controlled by him to remain upon public property, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass.

**SECTION 1.003. Scope.** Where, in any specific case, there is a conflict between this Ordinance 202 and Oregon Revised Statutes, the state statutes shall govern.

## **SECTION 1.004. Nuisances Affecting Public Health.**

No person shall cause or permit, on property owned or controlled said person, a nuisance affecting public health. The following are nuisances affecting public health and may be abated as provided in this ordinance:

- 1. Privies. An open vault or privy constructed and maintained within the City, except those constructed or maintained in connection with construction projects in accordance with the Health Division regulations.

2. Debris. Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the City.
3. Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests.
4. Water Pollution. 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.
5. Food. Decayed or unwholesome food which is offered for human consumption.
6. Odor. Premises which are in such a state or condition as to cause an offensive odor, or which are in an unsanitary condition.
7. Surface Drainage. Drainage of liquid wastes from private premises.
8. Cesspools. Cesspools, septic tanks and/or drain fields which are in an unsanitary condition or which cause an offensive odor.
9. Slaughterhouse, etc. A slaughterhouse, tannery or pigsty.
10. Rodent Habitat. Any condition which attracts or is likely to attract, feed or harbor rats or mice; this applies to, but is not limited in application to, any building or other structure or part thereof, which is not rodent-proof and is used to store or keep any substance on which rats or mice feed, or rubbish or other loose material that might serve as a harbor for rats or mice.

## **NUISANCES AFFECTING PUBLIC SAFETY**

### **SECTION 1.005. Attractive Nuisances.**

1. No owner or person in charge of property shall permit thereon:
  - a. Unguarded machinery, equipment or other devices which 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.
  - c. An open pit, quarry, pond, cistern, swimming pool, hot tub, spa or other excavation without providing appropriate safeguards to prevent such places from being used by unsupervised children. Such safeguards shall be in accordance with the Uniform Building Code, as adopted by the City of Winston.

- d. An open, vacant, unoccupied or unsecured building or structure which is attractive, dangerous and accessible to children or which is used for habitation by trespassers.
2. This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.

**SECTION 1.006. Obstruction of a Public Way.**

1. Discharges and Deposits. No person shall cause any intentional or unintentional discharge, deposit or obstruction which renders the use of the public way or public property hazardous or unreasonably prevents its free and unobstructed use unless the discharge, deposit or obstruction is first authorized by the City Manager. Tracking or depositing earth, soil, mud or dirt onto an asphalt or concrete public way is deemed to unreasonably prevent the free and unobstructed use of the public way.
2. Noxious Vegetation. No person responsible shall allow any vegetation on public or private property to be a hazard to pedestrian or vehicular use of a sidewalk or street by obstructing passage or vision. The hazards include, but are not limited to:
  - a. Vegetation that encroaches upon or overhangs a pedestrian way or adjacent strip lower than eight feet or encroaches upon or overhangs a street lower than ten feet.
  - b. Vegetation which obstructs motorist or pedestrian view of traffic, traffic signs and signals, street lights and street signs or any other safety fixtures or markings placed in the public way.
  - c. Vegetation which is an obstruction of access to and use of, any public facilities placed within the public way.
  - d. Vegetation which is an obstruction of drainage facilities in the public way, including but not limited to roadside ditches, street curbs and gutters, catch basins and culverts.
  - e. Vegetation roots which have entered a sewer, lateral sewer or house connection and are stopping, restricting or retarding the flow of sewage therein.
  - f. Any vegetation, structure, mounding of earth or other physical obstruction which is in violation of the clear vision requirements as set forth in the City's Section 5.030 of the Zoning Ordinance.

- g. Noxious vegetation does not include agricultural crops that are not a fire hazard or a vision obstruction. Nor does it include natural vegetation in areas designated to remain in their natural vegetative state, including, but not limited to, wetland or riparian areas.
- 3. Interfering with Pedestrian or Vehicular Travel. No person responsible shall place, cause to be placed, or permit to remain on a street or sidewalk anything that interferes with the normal flow of pedestrian or vehicular traffic on a street or sidewalk. The provisions of this Section do not apply to:
  - a. Merchandise in the course of receipt of delivery, provided the merchandise does not remain upon a street or sidewalk for a period longer than one hour.
  - b. Activities conducted pursuant to a permit obtained from the City Manager.
- 4. Sidewalk Accumulation. No person responsible shall cause or allow an accumulation of leaves, snow, ice, rubbish and other litter or any obstruction upon a sidewalk.

#### **SECTION 1.007 Noxious Vegetation.**

No owner or person in charge of real property shall cause or allow to remain standing weeds, grass, legumes or other noxious vegetation above the height of twelve inches at any time; except for a person who grows and uses said grasses and legumes for food or agricultural purposes.

#### **SECTION 1.008. Scattering Rubbish.**

No person shall deposit upon public or private property any kind of 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 would be likely to injure a person, animal or vehicle traveling upon a public way.

#### **SECTION 1.009. Trees.**

No owner or person in charge of property shall allow to stand any dead or decaying tree that is a hazard to the public or to persons or property on or near the property. If it is taken down, it must be removed or otherwise handled to prevent it becoming an attractive nuisance by allowing noxious vegetation to grow around it, allow it to become a rodent habitat or allow any other nuisance to develop around the fallen trees.

#### **SECTION 1.010. Surface Waters, Drainage.**

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

#### **SECTION 1.011. Odors and Burning.**

1. No person responsible shall cause or allow any condition which causes an offensive odor or is unsanitary. No person responsible shall burn in wood stoves or fireplaces any household waste, garbage, plastic, Styrofoam or other noxious material.
  - a. Upon official notification, the person responsible shall remove the nuisance or a fine subject to Section 1.052 may be immediately imposed.
2. Outdoor Burning Restricted. No person shall start or maintain any outdoor fire (except for outdoor cooking) for the purpose of burning any combustible material, except as allowed by this Section. Nor shall any person responsible cause or knowingly allow any such fire to be started or maintained, including but not limited to barrel burning, burning of household waste, burning of garbage, plastic, Styrofoam or other noxious materials.
  - a. Period When Outdoor Burning is Restricted. The restriction on outdoor burning shall be in effect for the entire year. The burning of residential yard waste during the months of May and November is permitted.
  - b. Exempt Outdoor Burning. The following types of outdoor burning may be allowed on any day of the year:
    - (i) Burning of a structure or other use of the fire for training purposes by the Winston-Dillard Fire District.
    - (ii) Any burning which has written approval of the Department of Environmental Quality.
    - (iii) Field burning in agricultural areas and certain other burning when, because of topography, there is no other feasible way to remove debris. Any field burning must be completed in conjunction with a coordinated review and approval by Douglas Forest Protective Association.

- (iv) Outdoor burns to control agricultural diseases, such as blight, that must be destroyed immediately by fire to prevent the spread of disease. Any field burning must be completed in conjunction with a coordinated review and approval by Douglas Forest Protective Association.
- (v) Burning bee hives and bee-keeping paraphernalia to prevent the spread of disease.
- (vi) Fires incidental to a special event.

**SECTION 1.012. Posting of Signs.**

No person shall paint, post, place, plant or attach in any way a sign on a parking strip, sidewalk or curb, utility pole, sign post, wall, hydrant, bridge or tree in the public right-of-way or on any building structure or property owned by the City without first obtaining permission from the City Administrator Manager.

**SECTION 1.013. Inoperative, Wrecked, Dismantled or Abandoned Vehicles.**

1. Storage. No person shall cause or allow a neglected or discarded vehicle to remain upon public or private property outside of a permitted, enclosed building for more than fourteen (14) days unless the vehicle owner has applied for a storage permit from the City to store the vehicle, or unless it is stored by a licensed business enterprise dealing in junked vehicles lawfully conducted within the City. "Neglected or discarded vehicle" means a vehicle that is, or appears to be, inoperative, wrecked, dismantled or partially dismantled. "Inoperative" means a vehicle that cannot be driven on a public right-of-way. It also means unassembled or partially assembled vehicle parts, including, but not limited to, tires, batteries, engines, transmissions, vehicle bodies and frames. "Dismantled" means inoperative without the addition or application of vital parts or mechanisms and the application of a substantial amount of labor to effect repairs. A vehicle that remains upon public or private property in violation of this subsection may be abated by the Enforcement Official using the procedures provided in this Ordinance as amended or at the option of the Enforcement Official may be abated or dealt with using the same procedures as are provided in State law applicable to abandoned vehicles.
2. The above mentioned storage permit for the specifically identified vehicle may be issued by the City to the vehicle owner for a period of one year beginning January 1 to December 31 of each year. The fee for said storage permit will be set by resolution and may be prorated. Upon removal of the inoperative vehicle from the subject property prior to the end of the storage permit term, the applicant may request a reimbursement of a portion of said storage permit fee. Upon expiration of an approved storage permit, the permit holder may reapply for an additional two year period with no limit to the number of times the permit holder may

- reapply for the same permit. No more than one (1) vehicle will be allowed under a single storage permit. Only one (1) storage permit will be issued to a single physical address in the City. The following criteria must exist in order for a storage permit to be approved:
- a. The vehicle must be stored in the side or rear yard of the subject property.
  - b. The property upon which the vehicle is stored shall be kept in a neat and orderly manner, complying with this Ordinance as amended.
  - c. Site-obscuring fencing of no less than six (6) feet in height must buffer the storage area from adjacent properties as well as the street right-of-way.
  - d. During the storage permit period, the subject property must also comply with all City ordinances. Inspection of the subject property will be required prior to the issuance of a storage permit to verify compliance with this Ordinance.
3. **Abandoned Vehicles.** No person shall cause or allow any vehicle to be abandoned upon public or private property within the City. This subsection shall not apply to a vehicle that has been abandoned as defined by State law nor to a vehicle that constitutes a hazard as defined by State law. A vehicle that is abandoned or that constitutes a hazard shall be dealt with pursuant to the provisions of State law.
4. **Abatement of Neglected or Discarded Vehicles on Private Property.** In addition to the notice to the person responsible provided in Section 15.046, if it is determined that the person responsible and owner of the vehicle constituting the nuisance are not the same person and if any indication of vehicle ownership is reasonably available, the notice described in Section 15.046 shall also be sent to the owner of the vehicle.

#### **SECTION 1.014. Dangerous Buildings.**

No person responsible shall cause or allow a dangerous building to exist on property. Any building or structure, which is structurally unsafe or not provided with adequate egress, or which constitutes a fire hazard or is otherwise dangerous to human life, is hereby declared to constitute a dangerous building. Any use of a building or structure constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment constitutes an unsafe use and shall render the building a dangerous building for purposes of this Ordinance. Any appendages or structural members which are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified by the building official are dangerous building appendages. Examples of the foregoing dangerous buildings,



structures or appendages include, but are in no way intended to be limited to the following conditions:

1. Any door which is unsecured or any door, aisle, passageway, stairway or other means of exit not so arranged as to provide safe and adequate means of exit in case of fire or panic.
2. Any walking surface of any aisle, passageway, stairway or other means of exit which is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
3. Any stress in any materials, member or portion thereof, due to all dead and live loads, which is more than one and one half (1 1/2) times the working stress or stresses allowed in the state building code for new buildings of similar structure, purpose or location.
4. Any damage by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability is materially less than it was before such catastrophe and is less than the minimum requirements of the state building code for new buildings of similar structure, purpose or location.
5. Any portion, member or appurtenance which is likely to fail, become detached or dislodged, or collapse and thereby injure persons or cause damage to property.
6. Any portion, member, appurtenance or ornamentation on the exterior which is not of sufficient strength or stability, or which is not anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the state building code for new buildings of similar structure, purpose or location without exceeding the work stresses permitted in the state building code for such buildings.
7. Any portion which has wrecked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
  - a. Dilapidation, deterioration or decay;
  - b. Faulty construction;
  - c. The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
  - d. The deterioration, decay or inadequacy of its foundation; or
  - e. Any other cause.

8. Any portion which is likely to partially or completely collapse because of any of the following conditions:
9. Anything that is manifestly unsafe for the purpose for which it is being used.
10. Any exterior walls or other vertical structural members which list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle or third of the structure or portion thereof.
11. Any portion, exclusive of the foundation, which shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent or more damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
12. Any damage by fire, wind, earthquake or flood, or such dilapidation or deterioration, which causes the structure to become an attractive nuisance to children, a harbor for trespassers or criminals, or available for use by persons for the purpose of committing unlawful acts.
13. Anything which has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure set forth by the building regulations of the City, as specified in the state building code or housing code, or of any law or ordinance of this state or the City relating to the condition, location or structure of buildings.
14. Anything which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than fifty percent, or in any supporting part, member or portion less than sixty-six percent of the strength or fire-resisting and weather-resisting qualities and characteristics which are required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
15. Inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or any other condition, which has been determined by a health officer to be unsanitary, to cause the subject building to be unfit for human habitation or in such a condition as is likely to cause sickness or disease.
16. Any obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electrical wiring, gas connections or heating apparatus, or other cause, which is determined by the Fire Marshall to be a fire hazard.
17. Any combustible or explosive material, wood, paper, trash, rubbish, rags, waste, oils, gasoline or flammable substance of any kind especially liable to cause fire or

damage to the premises or human life, and which is not maintained in accordance with law.

18. Any condition which constitutes a public nuisance known to the common law or in equity jurisprudence.
19. Any portion of a building or structure which remains after demolition or destruction of the building or structure or any building or structure which is abandoned for a period in excess of six months and constitutes an attractive nuisance or hazard to the public.

#### **SECTION 1.015. Derelict Buildings.**

No person responsible shall cause or allow a derelict building to exist. For purposes of this Ordinance, a derelict building shall be defined as any building which is unoccupied and boarded or which is unoccupied and unsecured. For purposes of this code, a derelict building shall also be defined as any building or structure which has faulty weather protection, which shall include but not be limited to the following: Deteriorating, crumbling or loose plaster; deteriorating or ineffective water-proofing or exterior walls, roof, foundations or floors, and including broken windows or doors; defective or lack of weather protection for exterior wall coverings, including lack of paint or weathering due to lack of paint or other approved protective covering; or broken, rotten, split or buckled exterior wall-covering or roof-covering. If the person(s) responsible fail to correct the conditions which cause a building to be a derelict building within the time frames set forth in this Ordinance, the derelict building shall be declared a nuisance.

#### **NUISANCES AFFECTING PUBLIC PEACE**

##### **SECTION 1.016. 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 or 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 1.017. Junk.**

1. No person shall keep any junk outdoors on any street, lot or premises, or in a building that is not wholly or entirely enclosed, except doors used for ingress and egress.

2. The term "junk," as used in this section, includes old machinery, old machinery parts, old appliances or parts thereof, old iron or other metal, glass, paper, lumber, wood or other waste or discarded material.
3. This section shall not apply to junk kept in a duly licensed junkyard or automobile wrecking house.

**SECTION 1.018. Unenumerated Nuisances.**

1. The acts, conditions or objects specifically enumerated and defined in Sections 1.005 to 1.017 are declared public nuisances; and such acts, conditions or objects may be abated by any of the procedures set forth in Sections 1.019 to 1.027 of this ordinance.
2. In addition to the nuisances specifically enumerated within this ordinance, every other thing, substance or act which 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 1.019. Notice.**

1. Upon determination by the Enforcement Official that a nuisance exists, the Enforcement Official 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.
2. At the time of posting, the Enforcement Official shall cause a copy of the notice to be mailed by certified mail, postage prepaid or hand-delivered to the person responsible at his last known address with the following information.
  - a. A description of the real property, by street addresses or otherwise, on which the nuisance exists.
  - b. A direction to abate the nuisance within 10 days from the date of the notice.
  - c. A description of the nuisance.
  - d. 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.
  - e. A statement that failure to abate a nuisance may warrant imposition of a fine or jail sentence.

- f. A statement that the person responsible may appeal the order to abate by filing a written statement to the City Recorder and paying the applicable appeal fee.
3. Upon completion of the posting and mailing or hand-delivery, the persons posting and mailing shall complete and file certificates stating document the date and place of the mailing and posting, respectively.
4. 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.
5. In the case of noxious vegetation constituting a nuisance, the following notice shall be given in lieu of the notice above set out:
  - a. Upon determination by the City Manager or his/her designee that a nuisance exists, the City Recorder shall cause a notice to be mailed to the owner of record of the property on which the nuisance exists. The notice shall contain the information prescribed in Section 1.019.2 above.

**SECTION 1.020. Abatement Appeal by the Person Responsible.**

1. Within 10 days after the posting and/or mailing of such notice, as provided in Section 1.019, the person responsible shall remove the nuisance or show that no nuisance exists.
2. A person responsible, protesting that no nuisance exists, shall file with the City Recorder a written statement which shall specify the basis for so protesting and a \$100 appeal fee.
3. The statement shall be referred to the City Council as a part of its agenda at its next regular meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council; the Council shall determine whether or not a nuisance in fact exists; and the determination shall be entered in the official minutes of the Council. Council determination shall be required only in those cases where a written statement along with a \$100 appeal fee has been filed as required.
4. If the Council determines that a nuisance does in fact exist, the person responsible shall, within 10 days after the Council determination, abate the nuisance.

**SECTION 1.021. Joint Responsibility.** If more than one person is person 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 1.022. Abatement by the City.**

1. If, within the time allowed, the nuisance has not been abated by the person responsible, the Enforcement Official may cause the nuisance to be abated.
2. The Enforcement Official, or contractors acting under the direction of the official, shall have the right at reasonable times to enter into or upon property in accordance with law to abate the nuisance and remove and dispose of all items creating the nuisance. If the person in lawful control of the property or the subject part thereof refuses to give the City permission to enter upon the property to abate the nuisance, the Enforcement Official shall comply with legal requirements prior to entering the property.

A warrant shall be obtained by bringing before the Municipal Court Judge, following the noticed allowable time for abatement by the responsible party, a list of properties with nuisances requiring abatement and having the Municipal Court Judge approve warrants for entry onto each property for the purpose of abating the nuisances as stated. If other nuisances are discovered on the property as the nuisance is being abated, a notice will be provided to the property owner concerning any additional nuisances and the process will be repeated.

3. The City Recorder shall keep an accurate record of the expenses incurred by the City in physically abating the nuisance, and shall include therein a charge of 5% of the total cost of the abatement or \$150, whichever is greater, for administrative overhead.

### **SECTION 1.023. Assessment of Costs.**

1. The City Recorder, by registered or certified mail, postage prepaid, shall forward to the person responsible a notice stating:
  - a. The total cost of abatement, including the administrative overhead.
  - b. That the cost 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 person responsible objects to the cost of the abatement must file a notice of objection with the City Recorder not more than 10 days from the date of the notice.
2. Upon the expiration of 10 days after the date of the notice, the Council, in the regular course of business, shall hear and determine the objections 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 determined by the Council, shall be made by resolution and shall thereupon be entered in the Docket of City Liens;

and upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.

4. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of 7 percent per annum. The interest shall commence to run from the date of the entry of the lien in the Lien Docket.
5. An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property.

**SECTION 1.024 Abatement of Dangerous Buildings and Registration of Derelict Buildings.**

1. Whenever the Building Official or Enforcement Official believes that a building or structure is a dangerous or derelict building, the Building Official or Enforcement Official shall cause an inspection to be done to determine if it complies with this Ordinance and all other applicable health, housing, building and safety codes.
2. In the event the Building Official or Enforcement Official determines from the inspection that a building or structure is either a dangerous or a derelict building, notice of that determination shall be given by the Building Official or Enforcement Official posting a notice at the site and by personal service or by registered or certified mail on the person(s) responsible. Upon completion of the posting and serving or mailing, the Enforcement Official shall execute and file certificates stating the date and place of the posting and serving or mailing respectively. An error in the name or address of the person(s) responsible shall not make the notice void, and in such case, the notice shall be sufficient.
  - a. If the Building Official or Enforcement Official has determined that a building is a dangerous building, the Building Official's or Enforcement Official's notice shall include:
    - (i) The building's address and tax lot number or legal description of the property.
    - (ii) A description of the dangerous condition;
    - (iii) A direction to abate the nuisance within ten days from the date of the notice;
    - (iv) A statement that if the person(s) responsible decide to repair an unoccupied dangerous building by boarding the building it shall constitute a derelict building and shall be subject to registration

and all other derelict building procedures and requirements as prescribed in this Ordinance;

- (v) A statement that unless the nuisance is removed, the City may abate the nuisance and the cost of such abatement plus a penalty of five percent (5%) of the cost of abatement or one hundred fifty dollars (\$150.00), whichever is greater, for administrative overhead, shall be charged to the person(s) responsible and assessed against the property;
  - (vi) A statement that failure to abate the nuisance may result in a court prosecution; and
  - (vii) A statement that the person(s) responsible may appeal the order to abate by giving notice of the person's desire to appeal to the City Administrator Manager within ten (10) days from the date of the notice.
- b. If the Building Official or Enforcement Official has determined that a building is a derelict building, the Building Official's or Enforcement Official's notice shall include:
- (i) The building's address and tax lot number or legal description of the property;
  - (ii) A description of the derelict condition;
  - (iii) A direction to correct the conditions causing the building to be a derelict building within the time frame prescribed by this Section;
  - (iv) A statement that a derelict building must be registered with the City and fees paid as provided in this Section;
  - (v) A statement that failure to correct the conditions causing the building to be a derelict building or to comply with the registration requirements may result in late payment penalties and assessments against the property and the building being declared a nuisance; and
  - (vi) A statement that failure to correct the conditions causing the building to be a derelict building may result in a court prosecution, or the abatement of the nuisance with the costs thereof becoming a lien against the property, or both.
- c. The Building Official shall cause a derelict building notice to be recorded and made a permanent part of the deed records.



3. Within ten (10) days after the posting and serving or mailing of the notice required by this Section, person(s) responsible shall remove the nuisance or show that no nuisance exists.
4. The person(s) responsible, if protesting that no nuisance exists, shall file with the City Manager a written statement specifying the basis for protesting and shall pay an appeal fee set by Council resolution. No protest shall be heard unless the appeal fee is paid. If the Council or its designee determines that no nuisance exists, the appeal fee shall be refunded to the person who paid it.
5. The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the City Manager deems appropriate. If the City Council decides to take oral argument or evidence at the hearing, the appellant may present testimony and oral argument personally or by counsel. The rules of evidence as used by courts of law do not apply. The appellant shall have the burden of proving error in the Building Official's or Enforcement Official's determination.
6. The City Council shall issue a written decision. The decision of the Council shall be final.
7. If the Council determines that a nuisance exists, the person(s) responsible shall, within ten (10) days after such determination, or within a time set by Council, abate the nuisance.
8. If within the time allowed the nuisance has not been abated, the City Manager may cause the nuisance to be abated and the costs thereof imposed as a lien as provided in this Ordinance.
9. Except when allowed by this Section, no person(s) responsible shall maintain a derelict building or allow such building to exist.
10. Registration of a derelict building under the terms of this Section shall be completed on an application form to be provided by the Building Official or Enforcement Official and shall be accompanied by a non-refundable derelict building registration application fee as set by Council resolution. The application shall include information relating to the location and ownership of the building, the expected period of its vacancy or until its repair, a plan for regular maintenance and securing of the building during the period of vacancy or until repair, and a plan for re-occupancy and use, marketing or demolition. All of the information required under this Subsection shall be reviewed and approved by the Building Official or Enforcement Official. The Building Official or Enforcement Official shall maintain a list of all registered derelict buildings within the City and shall provide a copy of said list to the City Administrator Manager for monthly fee billing purposes.

11. The following standards shall be followed by the Building Official or Enforcement Official with respect to the repair, marketing or demolition of any derelict building.
  - a. Any building declared to be a derelict building under this Ordinance shall, within one (1) year from the date of notice provided by the Building Official or Enforcement Official under this Section, be made to comply with one of the following:
    - (i) The building shall be repaired in accordance with the current building code or other current code applicable to the type of substandard conditions requiring repair; or
    - (ii) The building shall be demolished.
  - b. If within the initial one-year time period and extension period, if any, the derelict building is not repaired or demolished by the person(s) responsible, the City Manager may declare the ongoing derelict building to be a nuisance which must be abated in accordance with the provisions of this Section. Notwithstanding any other provision of this Section, if the person(s) responsible has not properly registered the derelict building, the City Manager may declare a derelict building to be a nuisance upon the expiration of ninety (90) days from the notification date.
  - c. The Building Official or Enforcement Official may extend the derelict building repair, marketing or demolition period of one year for an additional period of time required by, and consistent with, approved plans of the person(s) responsible to repair, market or demolish the building. The following criteria shall be evaluated by the Building Official or Enforcement Official when considering the granting of such an extension.
    - (i) Whether all delinquent fees and penalties have been paid in full;
    - (ii) Whether a timetable for the repair, marketing or demolition of the structure has been submitted by the person(s) responsible and approved by the Building Official or Enforcement Official;
    - (iii) The value of the building;
    - (iv) Whether all appropriate permits have been obtained for the repair or demolition of the structure;
    - (v) Whether the person(s) responsible will complete, or is the process of completing, the repairs or demolition of the structure in a timely fashion.

12. Upon approval of the application for derelict building registration, the person(s) responsible shall immediately submit payment of the first monthly derelict building registration as set by Council resolution and thereafter be responsible for the following payment terms:
  - a. The person(s) responsible of a registered derelict building shall be responsible for paying the monthly derelict building registration fee as set by Council resolution in advance by the 10<sup>th</sup> day of each month for each month, or portion thereof, during which the building remains registered as a derelict building. Any payment of the fee that is more than thirty days past due may be considered delinquent and subject to a penalty in an amount set by Council resolution for every delinquent monthly payment.
  - b. In the event that the fees due under the terms of this Section become delinquent for more than ninety days, the Building Official or Enforcement Official shall file a statement of the amount due with the City Manager. The City Manager shall thereafter mail a notice of the City's intent to assess the subject property for the delinquent amount plus applicable penalty and an additional ten percent (10%). In the event the amount set forth in the notice is not paid in full within thirty days of the date of the notice, it shall become a lien against the property and thereupon be entered in the City's lien docket. The lien shall be enforced as outlined in Section 1.023.
  - c. In addition to the lien described above, the person(s) responsible for the derelict building receiving notice under this Ordinance shall be personally liable for the amount of the lien including all interest, civil penalties and other charges.
  - d. All fees imposed under the terms of this Section are to be paid prior to any purported or actual transfer of an ownership interest in a derelict building as well as prior to the issuance of any permit required for the demolition, alteration or repair of a derelict building subject to the terms of this Section.
  - e. The Building Official or Enforcement Official may waive fees imposed under this Section. The following criteria shall be evaluated by the Building Official or Enforcement Official when considering waiver of such fees:
    - (i) Whether all delinquent fees and penalties have been paid in full;
    - (ii) Whether a timetable for the repair, marketing or demolition of the structure has been submitted by the person(s) responsible and approved by the Building Official or Enforcement Official;

- (iii) The value of the building;
  - (iv) Whether all appropriate permits have been obtained for the repair or demolition of the structure;
  - (v) Whether the person(s) responsible will complete, or is in the process of completing, the repairs or demolition of the structure in a timely fashion.
13. Any change in the information provided pursuant to this subsection shall be given to the Building Official or Enforcement Official within thirty days, except where changes in an approval plan are contemplated; in which case, approval of the Building Official is required prior to their effectiveness.
14. When all violations have been corrected the person(s) responsible shall contact the Building Official or Enforcement Official and request an inspection to determine compliance and removal of the dangerous or derelict building designation.

## **GENERAL**

### **SECTION 1.025. Summary Abatement.**

The procedure provided by this ordinance is not exclusive, but is in addition to procedures provided by other ordinances. The Chief of Police or any other City official may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property.

### **SECTION 1.026. Penalties and Remedies.**

1. A person responsible for violating a provision of this ordinance or an order issued under authority of this ordinance shall, upon conviction, be punished by a fine not to exceed \$250 for each offense. In addition to a fine, the Municipal Court Judge may direct the City to immediately abate the nuisance with no further notification to person responsible.
- a. A violation of this ordinance shall be considered a separate offense for each day the violation continues.
  - b. 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 10 days of the date of notice to abate, or if a written protest has been filed, the abatement within 10 days of Council determination that a

nuisance exists, will relieve the person responsible from the imposition of any fine or imprisonment under Section 1.026 of this ordinance.

2. **Alternative Remedy.** In case a structure or building is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or land is, or is proposed to be, used in violation of this ordinance, the structure or land thus in violation shall constitute a nuisance. The City may as an alternative to other remedies that are legally available for enforcing this ordinance, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, join, temporarily or permanently, abate, or remove the unlawful location, construction, maintenance repair, alteration or use.
23. Conviction of a violation does not give rise to any disability or legal disadvantages based on conviction of a crime.

**SECTION 1.027. Separate Violations.**

1. Each day's violation of a provision of this ordinance constitutes a separate offense.
2. 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 10 days of the date of notice to abate, or if a written protest has been filed, the abatement within 10 days of Council determination that a nuisance exists, will relieve the person responsible from the imposition of any fine or imprisonment under Section 26 of this ordinance.

**SECTION 1.028. Severability.** The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections and subsections.

**SECTION 1.029. Repeal.** Repeals all ordinances previously adopted dealing with these specific issues.

**SECTION 1.030. Saving Clause.** Ordinance 590 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. This ordinance takes effect 30 days after the second reading and adoption and coincides with the removal of this section from the Winston Zoning Ordinance No.590.

First Reading by Winston City Council May 21, 2012.

Second Reading and adoption by Winston City Council June 4, 2012.

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Sharon K. Harrison, Mayor

Attest:

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David M. Van Dermark  
City Manager/Recorder