

**ORDINANCE NO. 696**

**AN ORDINANCE RESCINDING DRAFT ORDINANCE ERRONEOUSLY NO. 695 DEFINING NUISANCES, VIOLATIONS AND ABATEMENT PROCEDURES; AND CREATING THIS ORDINANCE AS THE APPROVED ORDINANCE ESTABLISHING SECTION 8.32 TITLED NUISANCES OF THE ODESSA MUNICIPAL CODE TO DEFINE NUISANCES AND ESTABLISH THE NOTICE OF VIOLATION AND ABATEMENT PROCEDURES**

WHEREAS, The Town Council of the Town of Odessa, Washington deems it necessary to rescind Draft Ordinance erroneously No. 695 in order to make multiple corrections; and

WHEREAS, The Town Council of the Town of Odessa, Washington determined that the purpose of this ordinance is to preserve the character and safety of the town's neighborhoods by eliminating accumulated junk stored on property which may be characterized as nuisances; and

WHEREAS, The Town Council of the Town of Odessa, Washington established the procedure for the notice of violation to owners that are in violation of the defined nuisances; and

AND WHEREAS, The Town Council of the Town of Odessa, Washington established the abatement procedures if such removal or destruction is not made by the owner.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF ODESSA, LINCOLN COUNTY, WASHINGTON, AS FOLLOWS, TO WIT:

**Section 1: Definitions.**

The words and phrases used in this chapter, unless the context otherwise indicates, shall have the following meanings:

"Boarded Up Building" means any building, with at least twenty-five percent (25%) of exterior openings closed by extrinsic devices or some other manner designed or calculated to be permanent, giving the building the appearance of non-occupancy or non-use for an indefinite period of time.

"Correct" means to abate, repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such extent as the enforcement team, in their judgment, determines is necessary in the interest of the general health, safety and welfare of the community.

"Code Enforcement Team" team consisting of the Mayor, one Council Member, the Odessa Police Department, and one designee by the Mayor.

"Responsible Person" means any agent, lessee, or other person occupying or having charge or control of any premises.

"Building materials" means and includes lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing materials, cans of paint and similar materials.

"Premises" means any building, lot, parcel, real estate, or land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking lanes.

“Membrane” means a tarpaulin, banner, fabric, or other sheeting, made of cloth, plastic, vinyl, paper or other similar material.

“Criminal Street Gang” is defined in RCW 9.94A.030(12).

“Pattern of Criminal Street Gang Activity” is defined in RCW 9.94A.030(37).

“Junk” means all abandoned and disabled motor vehicles, all old discarded appliances, or parts thereof, all old iron or other metal, glass, paper, cardboard, old lumber, old wood, old mattresses, discarded furniture, and all other waste or discarded material.

**Section 2: Public Nuisance Defined.**

A public nuisance is anything, act, failure to act, occupation or use of property which:

- A. Annoys, injures, or endangers the safety, health, comfort, or repose of one or more persons.
- B. Offends public decency.
- C. Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage, a public park, street, sidewalk, alley, highway, or other public area.
- D. In any way renders one or more persons insecure in life or the use of property.
- E. In addition to being a violation of this chapter, the accumulation, keeping, or storage of junk on any privately-owned property within the town is declared to be a public nuisance.

**Section 3: Nuisance Defined.**

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance, and whenever the Code Enforcement Team determines that any of these conditions exist upon any premises or in any stream, drainage way or wetlands, the team may require or provide for the abatement thereof pursuant to this chapter.

- A. The existence of any trash, dirt, filth, and carcass of any animal, waste shrubs, accumulation of lawn or yard trimmings or other offensive matter.
- B. Defective or overflowing septic or sewage systems, and the existence of any noxious, foul, or putrid liquid or substance which poses a health hazard or creates a noxious odor.
- C. Any man-caused pool of standing or stagnant water, except storm drainage systems, which serves as a breeding area for insects.
- D. Accumulation of garbage, decaying vegetation, manure, dead animals, or other noxious things in a street or alley, or on public or private property to an extent injurious to the public health as determined by the Lincoln County Health Department.
- E. All other acts, failure to act, occupations, or use of property which is determined by the Lincoln County Health Department to be a menace to the health of the public.

- F. All limbs of trees which are less than seven (7) feet above the surface of any public sidewalk, or twelve (12) feet above the surface of any street.
- G. All buildings, other structures, or portions thereof which have been damaged by fire, decay, neglect, or have otherwise deteriorated or become dilapidated so as to endanger the safety of the public.
- H. All explosives, flammable liquids, and other dangerous substances stored or used in any manner in violation of the State Fire Code.
- I. The frequent, repetitive, or continuous sound made by any secured, unsecured, or deteriorated membrane or sheet metal, being moved by the wind or other source, which unreasonably interferes with the peace, comfort and repose of adjacent property owners or possessors.
- J. Dumping, throwing, placing, leaving or causing or permitting to be dumped, thrown, placed or left, any filth, paper, cans, glass, rubbish, trash garbage, grass trimmings, shrub trimming, and shrubbery of any kind, in or upon any street, alley, sidewalk, ditch, or public or private property of another in the town.
- K. The erecting, maintaining, using, placing, depositing, leaving or permitting to be or remain in or upon any private lot, building, structure or premises, or in or upon any street, alley, sidewalk, park, parkway or other public or private place in the town, any one or more of the following disorderly, disturbing, unsanitary, fly-producing, rat-harboring, disease-causing places, conditions or things:
  - 1. Any putrid, unhealthy or unwholesome bones, meat, hides, skins, or whole or any part of any dead animal, fish or fowl, or waste parts of fish, vegetable or animal matter in any quantity; but nothing herein shall prevent the temporary retention of waste in approved covered receptacles.
  - 2. Any privies, vaults, cesspools, sumps, pits or like places which are not securely protected from flies and rats, or which are foul or malodorous.
  - 3. Any filthy, littered or trash-covered dwellings, cellars, house yards, barnyards, stable yards, factory yards, vacant areas in the rear of stores, vacant lots, houses, buildings or premises.
  - 4. Any animal manure in any quantity which is not securely protected from flies or weather conditions, or which is kept or handled in violation of any ordinance of the town.
  - 5. Any noxious weeds, as defined by Chapter 8.04 of the Odessa Municipal Code entitled "Weeds and Debris" whether growing or otherwise; but nothing herein shall prevent the temporary retention of such weeds in approved covered receptacles.
  - 6. Any bottles, cans, glass, ashes, small pieces of scrap iron, wire, metal articles, bric-a-brac, broken crockery, broken glass, broken plaster and all such trash, or abandoned material, unless it is kept in approved covered bins or galvanized iron receptacles.

7. Any trash, litter, rags, accumulations or empty barrels, boxes, crates, packing cases, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, or anything whatsoever in which flies or rats may breed or multiply or which may be a fire hazard.
- L. The permitting to remain outside any dwelling, building, or other structure, or within any unoccupied or abandoned building, dwelling, or other structure, any abandoned, unattended, or discarded ice chest, refrigerator or other airtight container, which does not have the door, lid or other locking device removed.
- M. Any pit, hole, basin or excavation which is unguarded or dangerous to life or has been abandoned, or is no longer used for the purpose constructed, or is maintained contrary to statutes, ordinances, or regulations.
- N. Any well or storage tank permitted to remain on any public or private property without being securely closed or barring any entrance or trap door thereto, or without filling or capping any well.
- O. The existence of any fence, other structure, or thing on private or public property abutting or fronting upon any public street, sidewalk, or place, which is sagging, leaning, fallen, decayed or is otherwise dilapidated and creating an unsafe condition.
- P. The existence of any vine, shrub, or plant growing on, around, or in front of any fire hydrant, utility pole, utility box, or any other appliance or facility provided for fire protection, public or private utility purposes in such a way as to obscure from view or impair access thereto.
- Q. The existence of any dead, diseased, infected, or dying tree, shrub, or other vegetation which may pose a danger to vegetation, crops, property, or persons.
- R. The existence of any accumulation of materials or objects in a location when the same endangers property, safety or constitutes a fire hazard.
- S. The depositing or burning or causing to be deposited or burned in any street, alley, sidewalk, parkway or other public place which is open to travel, of any hay, straw, paper, wood, boards, boxes, leaves, manure or other rubbish or material.
- T. The keeping or maintenance in any area on private property which is clearly visible from a public street, sidewalk, park or other public area any accumulation, collection or untidy storage of any of the following: old appliances or parts thereof; old iron, steel, aluminum or other metal; inoperable vehicles, vehicle parts, machinery or equipment; mattresses, bedding, clothing, rags or cloth; straw, packing materials, cardboard or paper, tin cans, wire, bottles, glass, cans, barrels, bins, boxes, containers, ashes, plaster or cement; or wood. This determination shall not apply to conditions completely enclosed within a building or fencing so as not to be visible from public property.

- U. The depositing of any debris, vegetation, lawn clippings, lumber piles, wood piles, auto parts or bodies, garbage and the like, or storing of any material of any kind, provided that in residential zones that shall include garbage cans or refuse containers in the alleys of the town, except on garbage pickup day.
- V. The existence of graffiti, which is defined as a defacing, damaging, or destructive inscription, figure or design painted, drawn or the like, on the exterior of any building, fence, gate, or other structures or on rocks, bridges, trees, or other real or personal property.
- W. The locating of automobiles, trucks, recreational vehicles, trailers, boats, or any other vehicles, vessels, or the like for the purpose of advertising its sale on property located in any commercial or industrial zone not owned by the seller, unless permission is given by the owner.
- X. The permitting of any condition or situation where the soil has been disrupted, disturbed, or destabilized so as to allow blowing dust to exist.
- Y. For any building the existence of any broken glass in windows or doors for more than (30) thirty days.
- Z. Buildings or portions thereof that have faulty weather protection, such as openings in walls and roofs. Faulty weather protection shall include temporary weather barriers, such as tarps, plastic or similar material, left in place for more than thirty (30) days.
- AA. Any building which has a window, door, or other exterior opening closed by extrinsic devices or some other manner, with material that has not been painted to match or compliment the building's exterior or remains boarded up for more than sixty (60) days.
- BB. Any boarded-up building that remains boarded up for more than ninety (90) days
- CC. Permitting any violation of RCW 59.18.510 in any rental dwelling unit.
- DD. Criminal street gangs and any pattern of criminal street gang activity are each declared to be a public nuisance in violation of this chapter and other applicable code provisions, including but not limited to the Uniform Code for the Abatement of Dangerous Buildings and State Housing Code, subject to abatement through all available means. In addition, thereto and without limitation, any pattern of criminal street gang activity upon, and the presence and use of property by, a criminal street gang, with the owner's knowledge or consent, constitutes a public nuisance and grounds for revocation of any permit or license regulating or authorizing the use of such property.

#### **Section 4: Prohibited Conduct.**

- A. It is unlawful for any responsible person or owner to permit, maintain, suffer, carry on, or allow, upon any premises or in any lake, river, stream, drainage way or wetlands, any of the acts or things declared by this chapter to be a public nuisance.
- B. It is unlawful for any person to create, maintain, carry on or do any other acts or things declared by this chapter to be a public nuisance.

- C. It is unlawful for any person to accumulate, keep, or store, or permit any other person to accumulate, keep, or store any junk on any privately-owned property within the town or to accumulate, keep, or store any junk in a building that is not wholly enclosed, except for doors for ingress and egress.

**Section 5: Not Applicable or Properly Zoned.**

This chapter shall not apply to any business who in a proper zone has complied with all applicable zoning requirements as described in the OMC Chapter 17.36, Schedule of Uses Table 17.36, nor to material stored on premises of any manufacturing enterprise for use in connection with such enterprise so long as the enterprise is conducted in accordance with zoning and other ordinances.

**Section 6: Notice of Violation and Order to Correct.**

The Code Enforcement Team, to be designated by the Mayor, having determined that a public nuisance exists, shall proceed by written Notice of Violation to Correct sent by return receipt mail to the owner, as such appears on the rolls of the county assessor, which shall describe the property involved in the nuisance violation and require the owner to make the removal or destruction of such condition. The owner shall have 10-days of the mailing of the notice to correct the nuisance or to schedule with the town clerk to attend a Town Council meeting in person to present and discuss an abatement plan. The Notice of Violation and Order to Correct shall state that if such removal or destruction or a scheduled appearance at a Town Council meeting is not made by the owner at the end of the 10-day notice period, a notice of infraction shall be issued, which is a civil infraction, in the amount of \$300. This penalty is for violation within the same 12-month period.

**Section 7: Correction by Owner or Other Responsible Person.**

If and when an owner or other responsible person shall undertake action to correct any condition described in this chapter whether by order of the Code Enforcement Team, or otherwise, all necessary and legal conditions pertinent to the correction may be imposed by the Code Enforcement Team. It is unlawful for the owner or other responsible person to fail to comply with such conditions. Nothing in this chapter shall relieve any owner or other responsible person of the obligation of obtaining any required permits or approvals to do any work incidental to the correction.

**Section 8: Abatement by the Town.**

A violation of this chapter shall be subject to abatement by the following means:

**Notice to Owner:** In all cases where the Code Enforcement Team has identified a nuisance, the Notice of Violation and Order to Correct by certified return receipt mail seeking voluntary compliance from the owner and given ten (10) days from the date of mailing to comply and correct the nuisance or request a hearing before the town council.

**Opportunity for Hearing:** If a hearing is requested and held, at said hearing the owner shall present, for town council approval, an abatement plan showing the work to be done in a progressive manner measurable by the week. Council will make it clear at this hearing that if at any time the owner does not maintain the planned progress, the violation shall be subject to the civil infraction, in the amount of \$300.

Resolution Required: If after 10-days of the mailing of the Notice of Violation and Order to Correct, the nuisance has not been corrected, and no hearing has been requested, a notice of infraction shall be issued, which is a civil infraction, in the amount of \$300. The Town Council may then, by resolution, direct the Code Enforcement Team to petition the court for an Abatement Warrant allowing the Town to proceed with the removal or destruction of the condition in violation of this chapter, to be accomplished by town forces or contractors. Alternatively, if the property has been vacated and with written permission from the owner, council may forego the warrant abatement process and allow the Town, by resolution, to proceed with the removal or destruction of the condition in violation of this chapter, to be accomplished by town forces or contractors. RCW 7.48.260

Fees and Costs to become Lien: All costs, direct and indirect, of such work shall be charged to the owner. The costs to the town including removal fees, labor, recording fees and attorney fees shall become a charge against the owner of the property and lien against the property.

Notice of Lien: Notice of lien authorized in this section shall be as nearly as practicable in substantially the same form, filed with the same office, within the same time and manner enforced and foreclosed as provided by law for liens for labor and material.

**Section 9: Immediate Danger - Summary Correction.**

Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or significant portion thereof, the Code Enforcement Team shall have the authority to summarily and without first giving notice to correct the same. The expense of such correction shall become a civil debt against the owner or other responsible party and be collectible in the same manner as any civil debt owing to the town.

**Section 10: Amend and Adopt changes by resolution.**

The Odessa Town Council is hereby allowed to amend and adopt changes to Ordinance No. 696 by resolution.

**Section 11: Severability.**

If any provision of the ordinance or its application to any person or circumstances is held invalid, the remainder of this ordinance, or the application of the provisions to other person or circumstances, shall not be affected.

**Section 12: Effective Date.**

This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED AND ADOPTED BY THE ODESSA TOWN COUNCIL, THIS 24th DAY OF SEPTEMBER 2018

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William F. Crossley, Mayor

ATTEST:

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Denise Snead, Clerk-Treasurer