



ORDINANCE No. 2015-2781

AN ORDINANCE AMENDING THE UNIFORM NUISANCE ABATEMENT PROCEDURE IN NMC § 8.15.170 ET SEQ. BY PROVIDING AN APPEAL PROCESS IN THE MUNICIPAL COURT, REPLACING THE APPEAL PROCESS TO THE CITY COUNCIL

RECITALS:

1. Newberg Municipal Code, Chapter 8, Article IV (NMC 8.15.170 et. seq.) is the city's uniform nuisance abatement procedure.
2. The current code provides that persons appealing or protesting a nuisance abatement notice are provided an appeal to the city council. The code requires the appeal to be heard at the next scheduled council meeting.
3. City council meetings are not the appropriate forum for consideration of nuisance appeals.
4. Newberg Municipal Code, Chapter 8, Article V (NMC 8.15.260) provides that acts defined as nuisances by the NMC constitute Class 2 civil infractions that may be cited under the uniform civil infractions procedures ordinance, Chapter 2.30 NMC. Those infractions are cited into the Newberg Municipal Court.
5. The ordinance changes will uniformly designate municipal court as the forum of nuisance enforcement and bring clarity to the process.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1. The Code of Newberg, Chapter 8, Article IV is repealed, and the new language is adopted to read as follows:

Article IV. Uniform Nuisance Abatement Procedure

8.15.170 Establishment, purpose and title.

A. A uniform nuisance abatement procedure is established and continued to simplify the abatement of nuisances existing in the city.

B. This article shall be known and referred to as the uniform nuisance abatement procedure ordinance and may also be referred to herein as "this article." [Ord. 2164, 4-1-85. Code 2001 § 95.55.]

8.15.180 Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Enforcement officer” means the Code Enforcement Officer or any other person designated by the City Manager to enforce the provisions of the Newberg Municipal Code.

“Nuisance” means any act, status, condition, thing, substance or activity which is detrimental to, injurious to, or constitutes a danger to the public health, safety or welfare or which is declared, defined, designated or denominated to be a nuisance by any ordinance of the city.

“Person” means any natural person or persons, firm, partnership, association or corporation.

“Responsible party” means the person responsible for curing or remedying a nuisance and includes:

1. The owner of the property, the owner’s manager or agent, or other person in control of the property on behalf of the owner;
2. The person occupying the property, including by not limited to, a bailee, lessee, tenant or other person having possession;
3. The person who is alleged to have established, allowed, or continues the nuisance. [Ord. 2164, 4-1-85. Code 2001 § 95.56.]

8.15.190 Abatement notice.

A. If the enforcement officer is satisfied that a nuisance as defined in this chapter or any other ordinance of the city exists, the enforcement officer shall cause a notice to be posted on the premises or at the site of the nuisance directing the responsible party to abate the nuisance.

B. At the time of posting, the enforcement officer shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the responsible party at their last known address. The billing address contained in the city’s utility billing system for the property shall be prima facie evidence of the address of the responsible party.

C. The notice to abate shall contain:

1. A description of the real property by street address or otherwise on which the nuisance exists.
2. A direction to abate the nuisance within 10 days from the date of the notice.
3. A description of the nuisance.
4. A statement that, unless the nuisance is removed, the city may abate the nuisance, and the cost of abatement shall be charged to the responsible party or assessed against the property, or both.

5. A statement that the responsible party may protest the order to abate by giving notice to the enforcement officer within 10 days from the date of the notice.

6. A statement that failure to abate a nuisance may result in a court action.

D. Upon completion of the posting and mailing, the enforcement officer posting and mailing shall execute and file certificates stating the date and place of the mailing and posting respectively.

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

F. Personal service, proved by certificate of the enforcement officer, may be used in lieu of the above process for posting and mailing.

G. The date of posting or personal service shall be the date of the notice as that term is used in this article. [Ord. 2164, 4-1-85. Code 2001 § 95.57.]

8.15.200 Abatement by responsible party; Appeal and hearing procedures.

A. Within 10 days after the date of the notice as provided in NMC 8.15.190, a responsible party shall remove the nuisance or show that no nuisance exists.

B. A responsible party, protesting that no nuisance exists, shall file with the enforcement officer a written statement specifying the basis of protest and specifying a mailing address for receipt of notification of the hearing of the protest.

C. The statement shall be referred to the municipal court, which shall schedule the protest for a hearing and notify the protesting party by first class mail of the date and time of the hearing. At the time set for consideration of the protest, the person protesting may appear and be heard. Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases as provided by ORS 183.450. The municipal court shall determine whether or not a nuisance exists. The standard of proof shall be a preponderance of the evidence.

D. If the municipal court determines that a nuisance exists, a responsible party shall, within 10 days, or such other reasonable time ordered by the municipal court, abate the nuisance.

E. Review of decision. Judicial review of the municipal court determination shall exclusively be taken by way of writ of review (ORS 34.010 et seq.).

F. Alternate dispute resolution. If, in the judgment of the municipal court, the protest appears reasonably capable of resolution through an alternate dispute resolution process, the municipal court may abate the protest hearing for a time period, not to exceed 60 days, to allow the parties to pursue settlement. The municipal court retains jurisdiction of the matter and any proposed settlement shall be submitted to the municipal court for review and approval.

[Ord. 2164, 4-1-85. Code 2001 § 95.58.]

8.15.210 Abatement by city.

A. If, within the time allowed, the nuisance has not been abated by a responsible party, the municipal court may authorize the city to abate the nuisance.

B. The enforcement officer and city employees assisting the enforcement officer charged with abatement of the nuisance shall have the right at reasonable times to enter into and upon the property in accordance with law to investigate or cause the removal of a nuisance.

C. The enforcement officer shall keep an accurate record of the expense incurred by the city in physically abating the nuisance, and shall include therein a charge of 25 percent of the expense for administration overhead. [Ord. 2164, 4-1-85. Code 2001 § 95.59.]

8.15.220 Assessment of costs.

A. The enforcement officer, by registered or certified mail, postage prepaid, or by personal service, shall forward to a responsible party a notice stating:

1. The total cost of abatement and inspections, including the administrative overhead.
2. 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.
3. That if the responsible party objects to the cost of the abatement as indicated, they may file a written statement with the enforcement officer not more than 10 days from the date of the notice. The statement shall be referred to the municipal court which will schedule a hearing to consider the objection.

B. The municipal court shall hear and determine any objections to the costs to be assessed. If the municipal court determines the costs of abatement to be correct, or if no objection is received, the municipal court may enter a judgment for the reasonable costs to be assessed.

C. If the costs of the abatement are not paid within 30 days from the date of the notice, or such other reasonable time ordered by the municipal court, an assessment of the costs as stated or as determined by the municipal court 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.

D. The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the rate of 12 percent per annum. The interest shall commence from the date of the entry in the lien docket.

E. An error in the name of the responsible party 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. [Ord. 2164, 4-1-85. Code 2001 § 95.60.]

8.15.230 Abatement – Joint responsibility.

If there is more than one responsible party, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance. [Ord. 2164, 4-1-85. Code 2001 § 95.61.]

8.15.240 Summary abatement.

The procedure provided by this article is not exclusive, but is in addition to procedures provided by other ordinances, and an enforcement officer may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property. [Ord. 2164, 4-1-85. Code 2001 § 95.62.]

8.15.250 Nonexclusive remedy.

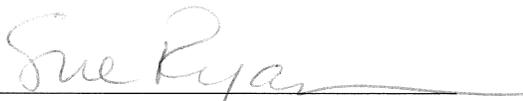
The procedures and remedies contained in this article shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes or state law which are intended to alleviate ordinance violations or abate nuisances, and the procedures set forth in this article shall not be prerequisites for utilizing any of said alternative remedies. [Ord. 2164, 4-1-85. Code 2001 § 95.63.]

Cross-reference: See ORS 105.555 and 105.550 – 105.600 for nuisance abatement.

Section 2. Unless amended above, all remaining provisions of the NMC remain in full force and affect.

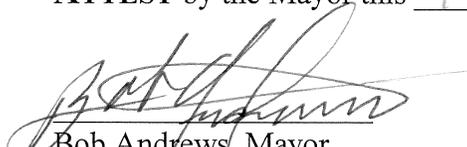
Section 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs or clauses.

➤ **EFFECTIVE DATE OF THIS ORDINANCE IS 30 DAYS AFTER THE ADOPTION DATE, WHICH IS: JUNE 3, 2015**
ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of May, 2015, by the following votes: **AYE: 7 NAY: 0 ABSENT: 0 ABSTAIN: 0**



Sue Ryan, City Recorder

ATTEST by the Mayor this 7th day of May, 2015.



Bob Andrews, Mayor