

ORDINANCE NO. 1998-06-035

AN ORDINANCE RELATING TO NUISANCE ABATEMENT DECLARING NUISANCES, PROVIDING FOR APPEALS AND RIGHT OF ENTRY, READOPTING SECTION 11.69.100 AND AMENDING BELLINGHAM MUNICIPAL CODE CHAPTERS 1.04, 10.28, and 10.60.

WHEREAS, the failure of private property owners to maintain those properties so as to avoid odors, noxious gases, graffiti, accumulations of garbage, refuse, junk vehicles and other waste materials and the creation of conditions which attract trespassers, is a public nuisance causing health and safety problems for the neighborhood and community, and creating unsightly conditions which lower property values and damage the aesthetic environment of the community; and

WHEREAS, the City's nuisance laws should be updated to reflect contemporary community values and to provide an effective enforcement mechanism to handle public nuisances;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Section 10.28.020 of the Bellingham Municipal Code is amended to read as follows:

10.28.020 Nuisances Declared

Each of the following, unless otherwise permitted by law, is declared to be a nuisance.

- A.** The existence of any dead, diseased, infested, or dying tree that may constitute a danger to street trees, streets, or portions thereof;
- B.** The existence of any tree, shrub, or foliage, unless by consent of the city, which is apt to destroy, impair, interfere or restrict the following:
 - (1) Streets, sidewalks, sewers, utilities, or other public improvements,
 - (2) Visibility on, or free use of, or access to such improvements;
- C.** The existence of any vines or climbing plants growing into or over any street tree or any utility pole, or the existence of any shrub, vine, or plant growing on, around, or in front of any hydrant, standpipe, sprinkler system connection, or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof or impair the access thereto;
- D.** Exterior storage, or the permitting or allowing of such storage, of any partially dismantled, wrecked, junked, discharged, or otherwise nonoperating motor vehicle, unless the same is stored so as not to be readily visible from any public place or from any surrounding private property, or

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

incidental to a lawful business;

E. The existence of any fence or other structure or thing on private property abutting or fronting upon any public street, sidewalk, or place which is in a sagging, leaning, falling, decayed, or other dilapidated or unsafe condition;

F. All barbed-wire fences which are located within two feet of any highway, alley, or way regularly used by the public for pedestrian, bicycle, or vehicular travel; and all electrified fences;

G. All trees which are growing on property adjacent to public sidewalks whose limbs are less than eight feet above the surface of the sidewalk and create a hazard to pedestrians; or trees, regardless of their location, whose limbs are less than fifteen feet above the surface of any street;

H. All wires which are strung less than 15' above the surface of a street, roadway, or alley, or 8' above a sidewalk; except electric power wires, which must be not less than 10' above any sidewalk;

I. The existence of any drainage onto or over any sidewalk, public pedestrian way, or street or any act which causes drainage onto or over private real property of another other than through an approved drainage channel or recognized natural watercourse;

J. All trees, hedges, billboards, or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring a motor vehicle driven at a reasonable speed to a full stop before the intersection is reached;

K. All vacant, unused, or unoccupied buildings and structures within the City, which are allowed to become or remain open to entrance by unauthorized persons or the general public, because of broken, missing, or open doors, windows, or other openings, so that the same may be used by vagrants or other persons in a manner detrimental to the health and welfare of the inhabitants of the City;

L. Graffito or graffiti visible from any public place.

M. The existence on any premises, in a place accessible to children, of any unattended and/or discarded icebox, freezer, refrigerator, or other large container which has an airtight door or lid, snap lock, or other automatic locking device which may not be released from the inside, without first removing said door or lid, snap lock, or other locking device;

N. The closing of any street or alley or the partial obstruction thereof;

O. The repairing of automobiles or vehicles of any kind upon the public streets or in the alleys of the city;

P. Leaving open any unguarded or abandoned excavation, pit, well, or hole which is dangerous to life and limb unless there are adequate barriers and devices to warn the public day or night;

Q. The existence of any obstruction to a street, alley, or sidewalk; and any excavation in or under any street, alley, crossing, or sidewalk which is prohibited by ordinance or which is made without lawful permission, or which, having been made by lawful permission, is kept and maintained after the purpose thereof has been accomplished, or for an unreasonable length of time, which time shall not in any event be longer than the period specified in any permit issued therefor;

R. The maintenance of property in such a manner that silt, earth, or waste materials are allowed to run off of said property in such volume as to cause drainage ditches or drainage systems in the proximity of said property to become wholly or partially obstructed;

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

S. The use of property abutting on a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the streets or sidewalks;

T. Riding or leading horses upon the sidewalks or parking strips anywhere in the city.

U. The release of offensive odors, noises, or substances, except those which are permitted by law, which unreasonably disturb, or which are detrimental to the health or safety of, the persons residing or working nearby, or the public.

V. The existence of any cellar, vault, sewer or septic tank which has become, from any cause, noxious, foul, offensive or injurious to public health;

Section 2. Section 10.28.030 of the Bellingham Municipal Code shall be amended to read as follows:

10.28.030 -- Enforcement -- Notice to Abate -- Violations

A. Before any person is charged with a violation of subsection A through L of Section 10.28.020 an attempt shall be made to give such person a written notice either by personal service or by certified mail, return receipt requested, stating the existence of a nuisance and that a criminal complaint is contemplated and that such person shall have 7 days to remove or abate the nuisance from the date of notice or attempted notification. A true and correct copy of such notice, together with proof of service or attempted service thereof, shall be kept and filed in court with any complaint filed. If after the notice or attempted notice provided for in this subsection, the nuisance has not been abated or removed, the city may remove or abate the same at the person's expense. Upon abatement or removal of the condition or any portion thereof by the city, all expenses thereof shall constitute a civil debt owing to the city jointly and severally by each of the persons who have been given notice or upon whom service of notice was attempted. The debt shall be collectible in the same manner as any other civil debt owing to the City.

B. Before a person is cited for a violation of subsections M through W of Section 10.28.020, the enforcement officer shall give such responsible person a notice to remove or abate such nuisance within 24 hours in substantially the same form as provided in subsection A of this section for other nuisances. If within 24 hours the nuisance is not removed or abated, such officer shall take such a course of action as will cause the person to be summoned into the Municipal Court of the city. The enforcement officer may also cause the nuisance to be abated or removed by the city as provided in subsection A of this section in the case of other nuisances. Any expense incurred shall be chargeable to the responsible person or persons and shall be collectible in the same manner as provided in subsection A of this section for other nuisances.

Section 3. A new section is added to Chapter 10.28 of the Bellingham Municipal Code to read as follows:

10.28.035 -- Civil Abatement Appeal

Any person who has been notified by the City to remove or abate a nuisance under this Chapter may, within the time period for abatement stated on the notice, appeal the abatement order to the City Council by filing with the clerk of the Council a written notice stating the grounds for appeal and attaching thereto a copy of the abatement order. Civil abatement proceedings by the City shall be held in abeyance until the Council has heard and determined the appeal. The decision of the Council shall be final. If no timely appeal is filed the decision of the administrative officer issuing the notice to abate shall be final. An appeal filed pursuant to this section shall not affect or delay any

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

criminal proceedings.

An action seeking to modify, reverse, set aside or enjoin an action of the City under this chapter shall be filed in a court of competent jurisdiction within 14 days of the date of the final decision of the City.

Section 4. A new section is added to the Bellingham Municipal Code to read as follows:

10.60.225 -- Appeal

Any person who has been provided with a notice to remove litter pursuant to Section 10.60.220 may, within ten days of the date of the notice, appeal the order to abate to the City Council by filing with the clerk of the Council a written notice stating the grounds for the appeal and attaching thereto a copy of the order. Further abatement proceedings by the City shall be held in abeyance until the Council has heard the appeal and rendered its decision, which shall be final. If no appeal is filed in a timely manner, the decision of the administrative officer issuing the notice to abate shall be final.

An action seeking to modify, reverse, set aside or enjoin an action of the City under this chapter shall be filed in a court of competent jurisdiction within 14 days of the date of the final decision of the City.

Section 5. A new section shall be added to Chapter 1.04 of the Bellingham Municipal Code to read as follows:

1.04.060 -- Right of Entry

Whenever necessary to make an inspection to enforce any provision of this Code, or whenever there is reasonable cause to believe that there exists a violation of this Code in any building or upon any premises within the City, any authorized official of the City may, upon presentation of proper credentials, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon such official by this Code; in accordance with applicable laws. In the event the owner and/or occupant refuses entry, the official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. The City may apply for a warrant authorizing entry, upon an affidavit or testimony stating the purpose and authority for the entry. Nothing in this section shall be construed to limit, restrict or otherwise affect the right of officers or agents of the City or any other governmental entity to enter upon private or public property for any lawful purpose.

Section 6. Section 11.69.100 of the Bellingham Municipal Code is hereby readopted to read as follows:

11.69.100 - Abatement And Removal Of Automobile Hulks On Private Property - Contents

(1) The storage or retention of an automobile hulk on private property is declared to constitute a public nuisance subject to removal and impoundment. The Chief of Police shall inspect and investigate complaints relative to automobile hulks, or parts thereof on private property. Upon discovery of such nuisance, the Police Department shall give notice in writing to the last registered owner of record of the automobile hulk and also to the property owner of record that a public hearing may be requested before the governing body of the local authority, and that if no hearing is requested within 10 days, the automobile hulk will be removed. Costs of removal may be assessed against the last registered owner of the automobile hulk if the identity of such owner can be determined, or the costs may be assessed against the owner of the property on which the automobile hulk is stored.

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

(2) If a request for a hearing is received, a notice giving the time, location and date of such hearing on the question of removal and impoundment of the automobile hulk or part thereof as a public nuisance shall be mailed, by certified or registered mail with a 5 day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record of the automobile hulk unless the automobile hulk is in such condition that identification numbers are not available to determine ownership.

(3) This section shall not apply to:

(a) An automobile hulk, or part thereof, which is completely enclosed within a building in a lawful manner where it is not visible from the highway or other public or private property; or

(b) An automobile hulk, or part thereof, which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer, fenced according to the provisions of Section 11.57.020 (RCW 46.80.130).

(4) The owner of the land on which the automobile hulk is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the hulk on the land, with his reasons for such denial. If it is determined at the hearing that the hulk was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then the governing body shall not assess costs of administration or removal of the hulk against the property upon which the hulk is located or otherwise attempt to collect such cost from the property owner.

(5) After notice has been given of the intent of the local authority to dispose of the automobile hulk and after a hearing, if requested, has been held, the automobile hulk or part thereof, shall be removed, at the request of a police officer, and disposed of to a licensed motor vehicle wrecker or hulk hauler with notice to the Washington State Patrol and the department that the automobile hulk has been wrecked.

(6) The local authority shall within 30 days after removal of an automobile hulk from private property, file for record with the county auditor to claim a lien for the cost of removal, which shall be in substance in accordance with the provision covering mechanics' liens in chapter 60.04 RCW, and said lien shall be foreclosed in the same manner as such liens.

PASSED by Council this 1st day of June, 1998.

Bob Ryan
Council President

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

APPROVED by me this 10th day of June, 1998.

Mark Anderson
Mayor

ATTEST:

Lynn Carpenter
Finance Director

APPROVED AS TO FORM:

[Signature]
Office of the City Attorney

Published:

6-13-98

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 676-6903

CITY OF BELLINGHAM, WASHINGTON

ORDINANCE NUMBER: 1998-06-035
COUNCIL BILL NUMBER: 12385
AGENDA BILL NUMBER: 13570

AGENDA BILL INTRODUCED: 5/26/98

FIRST & SECOND READINGS: 5/26/98

THIRD & FINAL READING: 6/1/98

PUBLISHED: 6.13.98

cc: leg coord
leg sec
fish
herald
leg log
mrsc
J. Storck