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March 26, 2019

Prineville City Council  
387 NW Third Street  
Prineville, OR 97754

**Re: Ordinance No. 1251  
Staff Report**

Dear Honorable Councilpersons:

The purpose of this Staff Report is to outline the substantive changes that are being proposed to Chapter 93.

**§93.11 - At Large Animals**

The updated statute includes the term “designated facility” within the first sentence because when the City takes at large animals into custody it delivers them to Ochoco Humane Society rather than holding the animal at city facilities. The Statute was also changed to provide for an additional three days for service by mail and eliminated the provisions that the City would sale an animal at public auction if an owner did not claim their animal. To my knowledge, no animal has been sold at public auction. Such a mechanism would not be economically viable for the City. Instead, the update to the Code provides that if a person does not claim their animal and pay the requisite fees, then the owner’s rights to the animal would be forfeited and the animal is then handled according to the place of impoundment’s policies, rules, and regulations.

**§93.40 - Noxious Vegetation**

From a formatting standpoint, the proposed change makes the actual nuisance at the beginning of the Statute as subsection A and moves definitions to subsection B. This format is more consistent with the Code. Substantively, the time period was changed to April 1 rather than May 1.

**§93.56 - Junk**

The definition of junk was amended to include the following items: old or scrap copper, brass, lead, or any other non-ferrous metal, old or discarded exercise equipment, machines, or parts thereof, old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood, iron, steel or other old or scrap ferrous materials, old or discarded glass, tinware, plastic or old or discarded household goods or hardware, old or discarded cardboard, wooden pallets or other shipping materials, and old or discarded apparel.

### §93.59 - Parking

The following sentence was added to 93.59(A): "Movement of a vehicle within a 500-foot radius shall not extend the time limits for parking violations pursuant to this section." Additionally, boats, trailers, motorhomes, and travel trailers were added to the definition of "vehicle."

### §93.70-93.99 - Abatement Procedure

The abatement procedure was amended to provide the City with appropriate remedies to abate nuisances when citizens fail to do so, while at the same time appropriately ensuring citizen's property and constitutional rights, protecting the City against liability, and allowing for the City to recover its costs in abating nuisances.

§93.70 - Subsection D was added to clarify that if the person responsible for the nuisance is not the owner, then notice will also be sent to the owner stating that if the cost of abatement is not paid by the person responsible, then such cost may be assessed to and become a lien on the property.

§93.73 - This provision was amended to allow the City to abate any nuisance that is not abated within the specified time period. For nuisances that involve the removal of personal property that is junk or rubbish, abatement will require a judicial warrant. This process better protects the City from liability and also ensures constitutional protections to its citizens. The cost of the abatement has been amended to include the actual expenses and a charge of \$50.00 or 15% of those expenses, whichever is greater, for administrative overhead. Additional penalties were added for citizens that have been the subject of multiple city abatements.

§93.74 - The interest rate was changed to 9% to reflect the current statutory interest rate.

§93.99 - The penalties were increased to a minimum of \$50.00 and maximum of \$250.00 for the first offense and a minimum of \$100.00 and maximum of \$1,000.00 for second and subsequent offenses.

I will be available for any questions the Council may have.

Very Truly Yours,

Jered Reid  
Attorney at Law

**ORDINANCE NO. 1251**

**AN ORDINANCE ADOPTING CHANGES TO PRINEVILLE CODE SECTIONS 93.11, 93.40, 93.56, 93.59, 93.70, 93.71, 93.72, 93.73, 93.74, 93.75 AND 93.99 (Nuisances)**

**WHEREAS**, Chapter II, Section 4 of the City of Prineville Charter provides:

Powers. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as this charter specifically enumerated each of those powers.

**WHEREAS**, State law codified as ORS 105.550 to 105.600, Abatement of Nuisance, provides the City of Prineville specific authority to abate certain public nuisance activities that affects the health, safety and welfare of its community; and

**WHEREAS**, the current City of Prineville Nuisance Code was adopted in 1987 and certain updates are required.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AS FOLLOWS:**

1. Sections 93.11, 93.40, 93.56, 93.59, 93.70, 93.71, 93.72, 93.73, 93.74, 93.75, and 93.99 of the Code of Prineville are amended to read as shown on Exhibit A attached hereto and by reference made a part hereof.
2. The Ordinance shall be effective 30 days following its passage by the City Council.

Presented for the first time at a regular meeting of the City Council held on March 26, 2019, and the City Council finally enacted the foregoing ordinance this \_\_\_\_ day of April, 2019

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Stephen P. Uffelman  
Mayor

ATTEST:

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Lisa Morgan, City Recorder

## Exhibit A

### § 93.11 AT LARGE ANIMALS

- A. No owner or person in charge of an animal shall permit the animal to be at large.
- B. Any animal found at large may be taken into custody by the city police and held by the city or a designated facility. If the owner or person in charge of the animal is known, that person shall be notified in writing of the impoundment and given notice that unless the fee for transfer of the animal to the place of impoundment, costs of care and feeding of the animal together with an administrative fee of not more than \$20.00 is paid to the city within no less than five days (or eight days in the event of notification by mail) from the date of notification, the owner's rights will be forfeited, and the animal may be handled according to the place of impoundment's policies, rules and regulations, including humane destruction of the animal. Notification of the owner or person in charge will be effective upon personal delivery of the notice or mailing a first-class letter to the last known address of the owner or person in charge of an impounded animal.

### § 93.40 NOXIOUS VEGETATION

A. Between April 1 and November 1 of any calendar year, no owner or person in charge of property may allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting on the property within the City limits. It shall be the duty of an owner or person in charge of property to cut down and haul away or to destroy grass, shrubbery, brush, bushes, weeds, or other noxious vegetation as often as needed to prevent them from becoming unsightly.

#### B. Definitions

1. The term **Noxious Vegetation** does not include vegetation that constitutes an agricultural crop, unless that vegetation is a health hazard or a fire or traffic hazard within the meaning of §93.40(B)(2)
2. The term **Noxious Vegetation** does include any of the following:
  - (a) Vegetation more than ten (10) inches high and not within the exception stated in subsection (B)(1) and does not create a fire or traffic hazard.
  - (b) Vegetation that is either: (1) a health hazard; (2) a fire hazard because it is near other combustibles, (3) a traffic hazard because it impairs the view of a public thoroughfare or right-of-way; (4) impairs the use of any public thoroughfare or right-of-way; or (5) from maturing or allowing to go to seed and/or spreading to abutting properties.

§ 93.56      **JUNK**

A. No person responsible shall keep any junk outdoors on any street, lot or premises, or in a building that is not while or entirely closed.

B. Definitions

1. **Junk** as used in this section includes all inoperative vehicles, abandoned vehicles, unlicensed vehicles, old vehicle parts, old machinery, old machinery parts, old appliances or parts thereof, appliances that are not being used for purpose they are manufactured for, discharged furniture, mattresses, carpeting, old or scrap copper, brass, lead, or any other non-ferrous metal, old or discarded exercise equipment, machines, or parts thereof, old or discarded rope, rags, batteries, paper, trash, rubber, debris, waste or used lumber, or salvaged wood, iron, steel or other old or scrap ferrous materials, old or discarded glass, tinware, plastic or old or discarded household goods or hardware, old or discarded cardboard, wooden pallets or other shipping materials, and old or discarded apparel. Neatly stacked firewood located on a side yard or a rear yard is not considered junk.

2. **Inoperative Vehicle** is a vehicle that cannot be immediately operated.

C. This section shall not apply to junk kept in a duly licensed junkyard or automobile wrecking house.

D. This section shall not apply to repair work being done on vehicles when the repairs last less than 30 days or when the repairs are done on a vehicle not located on private property.

§ 93.59      **PARKING**

A. No person shall park any car or pickup on any public street for a period in excess of ten days. No person shall park any other vehicle on any public street for a period in excess of three days. The intent of this section is to penalize people who use the street as a storage area for their vehicles but not to penalize people who use their cars or pickups on a day-to-day or other similar basis and park that vehicle on the street. Movement of a vehicle within a 500-foot radius shall not extend the time limits for parking violations pursuant to this section.

B. Definitions

1. **Street** means every public way, road, thoroughfare, alley, and place, including bridges and other structures within the boundaries of this city, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

2. **Vehicle** means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means, which includes, but is not limited to, boats, trailers, motorhomes, and travel trailers.

## **ABATEMENT PROCEDURE**

### **§ 93.70 NOTICE TO ABATE**

A. If the City Manager or his/her designee is satisfied that a nuisance exists, the City Manager or his/her designee shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.

B. At the time of posting, the City Manager or his/her designee shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the person responsible at the last known address of such person.

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 ten (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 will be charged to the person responsible.
5. A statement that failure to abate a nuisance may warrant imposition of a fine.
6. A statement that the person responsible may protest the order to abate by giving notice to the City Manager within ten days from the date of the notice, together with a statement from the person responsible as to why they feel no nuisance exists.

D. If the person responsible is not the owner, an additional notice shall be sent to the owner stating that if the cost of abatement is not paid by the person responsible, then such cost may be assessed to and become a lien on the property.

E. On completion of the posting and mailing, the person posting and mailing shall execute and file certificates stating the date and place of the mailing and posting, respectfully, with the City Recorder.

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

### **§ 93.71 ABATEMENT BY PERSONS RESPONSIBLE**

A. Within ten (10) days after the posting and mailing of the notice, as provided in section 93.70, the person responsible shall remove the nuisance or show that no nuisance exists.

B. A person responsible, protesting that no nuisance exists, shall file with the City Manager a written statement which shall specify the basis for so protesting.

C. The statement shall be referred to the City Council as part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council; and 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 has been filed as provided.

D. If the Council determines that a nuisance does in fact exist, the person reasonable shall, within ten (10) days after the Council determination, abate the nuisance.

### **§ 93.72 JOINT RESPONSIBILITY**

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

### **§ 93.73 ABATEMENT BY CITY**

A. Abatement. If, within the time limit set by the City in the notice, as provided in section 93.70, any nuisance described in the notice has not been removed and abated, or cause shown as shown in section 93.71 why such nuisance should not be removed or abated, or where summary abatement is authorized, the City Manager or his/her designee may cause the nuisance to be abated, including disposal in an approved manner.

B. The officer charged with the abatement of the nuisance shall have the right at reasonable times to enter into or upon property to investigate the nuisance. The officer charged with abatement of the nuisance and others as necessary shall have the right at reasonable times to enter into or upon the property to cause the removal of the nuisance with the exception of any nuisance involving Personal Property as defined in Section 96.01, which shall require a warrant pursuant to this section unless a judicially recognized exception to the warrant requirement of Article I, §9, of the Oregon Constitution or the Fourth Amendment of the United States Constitution exist.

C. Warrants. The City Manager or his/her designee may request any Circuit Court judge to issue an nuisance abatement warrant whenever entry onto private property is necessary to remove and abate any nuisance, or whenever the City Manager or his/her designee has reasonable cause to believe that there exists upon any property any violation described in this Title.

D. Grounds for issuance of nuisance abatement warrants; affidavit.

1. Affidavit. A nuisance abatement warrant will be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the removal and abatement of the

nuisance, the property to be entered, the basis upon which cause exists to remove or abate the nuisance, and a statement of the general types and estimated quantity of the items to be removed or conditions abated.

2. Cause. Cause will be deemed to exist if reasonable legislative or administrative standards for removing and abating nuisances are satisfied with respect to any property, or if there is cause to believe that a nuisance violation exists, as defined in this Title, with respect to the designated property.

E. Procedure for Issuance of a Nuisance Abatement Warrant.

1. Examination. Before issuing a nuisance abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existing of grounds for granting such application.

2. Issuance. If the judge is satisfied that cause for the removal and abatement of any nuisance exists and that the other requirements for granting the application are satisfied, the judge will issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general type and estimated quantity of the items to be removed or conditions abated. The warrant will contain a direction that it be executed during business hours, or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

3. Police Assistance. In issuing a nuisance abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the city in any way necessary to enter the property and remove and abate the nuisance.

4. Effect of Abatement. Upon the issuance of the nuisance abatement warrant, the owner's rights to any property authorized to be abated will be forfeited, and the property may be destroyed by the seizing agency or department.

5. Return. A nuisance abatement warrant shall be executed within ten (10) working days of its issue and returned to the judge by whom it was issued within ten (10) working days from its date of execution. After the expiration of the time prescribed this Subsection, the warrant unless executed is void.

F. Cost of Nuisance Abatement.

1. Whenever a nuisance is abated by the City, the City Manager, or his/her designee shall keep an accurate record of the expenses incurred by the city in physically abating the nuisances and shall include therein a charge of \$50.00 or 15% of those expenses, whichever is the greater for administrative overhead.



2. When the City has abated a nuisance maintained by any owner of real property, for each subsequent nuisance which is abated by the City within two (2) consecutive calendar years concerning real property, owned by the same person, an additional civil penalty of \$500.00 shall be added to the costs, charges, and civil penalties. The additional civil penalty shall be imposed without regard to whether the nuisance abated by the City involved the same real property or is of the same character as the previous nuisance.

3. Costs and penalties resulting from nuisance abatement shall be assessed as lien upon the real property as provided in section 93.74.

**§ 93.74 ASSESSMENT OF COSTS**

A. The City Manager, or his/her designee, by registered or certified mail, shall send to the person responsible a notice stating:

1. The total cost of abatement, including the administrative overhead and any civil penalties so authorized.

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 owner or person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the City Manager no more than ten (10) days from the date of the notice.

B. If an objection to the cost of abatement is filed as provided in subsection (A) of this section, the objection shall be referred to the City Council as part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person objecting may appear and be heard by the Council; and the Council shall hear and make a decision on the objection to the costs assessed. Council determination shall be required only in those cases where a written objection has been filed as provided.

C. If the costs of abatement are not paid within thirty (30) days from the date of the notice or the date of Council decision if an objection is filed, the costs of abatement shall be entered in the City lien docket and constitute a lien on 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 are enforced and shall bear interest at the rate of 9% per annum and interest shall begin to run from the date of entry of the lien in the lien docket.

E. An error in the name of the owner or 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.

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**§ 93.75            SUMMARY ABATEMENT**

The procedure provided in this chapter is not exclusive, but is in addition to the procedures provided by other section of the code. The Fire Chief, Fire Marshal, Chief of Police or the City Manager may proceed summarily to abate health or other nuisance which unmistakably exists and which imminently endangers health or property.

**§ 93.99            PENALTY**

- A. Any person or persons who shall be convicted of being the author or keeper of a nuisance, or otherwise guilty of a violation of any of the provisions of this chapter, shall be fined not less than \$50.00 nor more than \$250.00 for the first offense, and for the second and subsequent offenses, not less than \$100.00, nor more than \$1,000.00.
- B. All persons responsible shall be liable for any injuries resulting from a violation of any of the provisions of this chapter.
- C. Each day's violation of a provision of this chapter constitutes a separate offense.
- D. The abatement of a nuisance is not a penalty for violating this chapter, 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 ten (10) days of the date of the notice to abate, or if a written protest has been filed, then abatement within ten (10) days of Council determination that a nuisance exists, will relieve the person reasonable from the imposition of any fine under subsection (A) of this section.