

**TITLE 5**

**HEALTH AND SANITATION**

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CHAPTER 1

NUISANCES

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5--1--1:                   **DEFINITIONS:** Except where the context indicates otherwise, the singular number includes the plural and the masculine gender includes the feminine, and the following mean:

CITY	The City of Echo.
COUNCIL	The governing body of the City.
DOMESTIC ANIMAL	A horse, cow, sheep, goat, hog or other like animal, but not including a dog, cat, or other household pet, or a rabbit or other like animal.
FOWL	A duck, goose, chicken, pigeon or other like animal.
PERSON	A natural person, firm, partnership, association or corporation
PERSON IN CHARGE OF PROPERTY	An agent, occupant, lessee, contract purchaser or person, other than the owners, having possession or control of the property.

**WILD OR FUR-BEARING ANIMAL**

All wild animals, and other animals raised for their fur, such as rabbits, chinchillas, mink and similar animals.

5--1--2: **ANIMALS AND FOWL****A. Keeping Animals Restricted:**

1. **Domestic Animals:** No person may keep a domestic animal in a stable, building, corral or enclosure located within one hundred feet (100') of a dwelling, school, church, hospital, public park, public playground or public building.

2. **Fowl or Wild or Fur-Bearing Animals:** No person may keep fowl or wild or fur-bearing animals within or about a building, structure, pen, or enclosure located within fifty feet (50') of a dwelling, school, church, hospital, public park, public playground or public building.

**B. Animal Premises, Enclosures:** No person may keep a domestic animal except within an enclosure having a minimum area of two thousand five hundred (2,500) square feet for one animal and an additional one thousand (1,000) square feet for each additional animal kept therein. No person may keep fowl, wild or fur-bearing animals except within an enclosure having a minimum area of fifteen (15) square feet of space for each such animal. A domestic animal, fowl, wild or fur-bearing animal shall be properly caged, fenced or housed and maintained in a sanitary condition. Accumulations of manure, droppings and other materials soiled by animal or fowl waste shall be collected at least once a week and immediately deposited in fly proof containers and disposed of in such a manner as to prevent and eliminate fly breeding and nuisance conditions. The presence of live larvae of flies on or about such places or premises is prima facie evidence of the reproduction or propagation of flies and the keeping of or maintaining of such places or property in violation of the subsection B.

**C. Animals at Large:** No person owning or having custody, possession or control of any domestic animal, fowl or wild or fur-bearing animal shall:

1. Permit the animal to run at large on any of the public streets, highways or other public places within the City; or

2. Permit the animal to be herded, to be pastured or to go upon the land of another without permission of the owner.

This subsection C shall not prohibit a person from riding, leading or driving domestic animals along a public street or highway.

**D. Diseased Animals:**

1. No person may permit an animal or bird owned or controlled by him, that is infected with a communicable disease, to run at large.
2. An animal or bird infected with a communicable disease that is dangerous to the public may be summarily seized by the police. After certification by a licensed veterinarian that the animal or bird is incurable and dangerous, the police shall dispose of the animal or bird in a humane manner.
3. Expense, including veterinarian fees, food, medicines, and housing, incurred by the City in keeping a diseased animal or bird, shall be charged to the owner or person controlling the animal or bird and shall be collected before the release of the animal or bird.

**E. KEEPING OF DANGEROUS, WILD, VICIOUS OR EXOTIC ANIMALS:**

1. **DEFINITIONS:** As used in 5-1-2, the following definitions apply

ALLOW To neglect to restrain, or permit.

ANIMAL Any bull, steer, cow, heifer, calf, horse, mare, gelding, colt, mule, donkey, swine, sheep, goat, or other similar animal, and any domesticated fowl. For purposes of this ordinance, "animal" does not include a cat, hamster, guinea pig, small non-poisonous or venomous reptile (unless keeping or ownership of such is prohibited by federal or state statute), rabbit, ferret, parrot, tropical fish or other similar animal kept as a household pet. Animal shall include any dog, which meets the criteria for a vicious animal.

DANGEROUS ANIMAL Any non-human animal that is of a wild or predatory nature, and constitutes an unreasonable danger to human life or property. A Dangerous Animal includes, but is not limited to, snakes of the family *Pythonidae* or *Boinae*, unless incapable of growing to five feet or more in length; any alligator, crocodile or caiman; and any poisonous or venomous reptile.

EXOTIC ANIMAL Lion, tiger, leopard, cheetah, ocelot, or any other cat not indigenous to Oregon, except the species *Felis Catus* (domestic cat); any

monkey, ape, gorilla or other non-human primate, any wolf or other canine not indigenous to Oregon, except the species *Canis Familiaris* (domestic dog).

KEEP OR KEEPING To have physical custody of or otherwise to exercise dominion and control over an object or animal.

KEEPER Any person who has physical custody or harbors an animal or who has it in his/her care, or acts as its custodian, or who knowingly permits an animal to remain on or about the premises occupied by that person.

PERSON A human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or governmental instrumentality.

RUNNING AT LARGE An animal shall be considered running at large when it is off or outside of the premises belonging to the owner or keeper of such animal, or not under the control of its owner or keeper by means of a leash, or contained in or on any vehicle or in the cage or enclosure required by the City of Echo.

PHYSICALLY IMPAIRED PERSON A person who is permanently physically impaired, whose physical impairment limits one or more of daily life activities, and who has a record of impairment and is regarded by health care practitioners as having such an impairment requiring the use of an assistance animal, including but not limited to blindness, deafness, and complete or partial paralysis.

VICIOUS ANIMAL. Any animal, which bites any human being or other domestic animals or which chronically demonstrates menacing behavior toward human beings or other domestic animals. For purposes of this chapter, "menacing behavior" shall include, but not be limited to, baring of teeth, charging at a victim, growling in a threatening manner or approaching a victim within 10 feet while barking or showing a propensity, tendency or disposition to attack, without provocation, and cause injury to or otherwise endanger the safety of humans or other domestic animals; or

Any animal, which attacks a human being or other domestic animal one or more times without provocation.

WILD ANIMAL A species of animal not usually domesticated, regardless of comparative docility or familiarity of the individual animal with man, including species which are feral naturae. Wild animals include, but are not limited to antelope, bighorn sheep, black bear, cougar, deer, elk, moose,

mountain goat, silver gray squirrel, beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, fox, skunk, civet, bat, wolf or coyote.

**2. POSSESSION OR KEEPING OF ANIMALS.** Except as otherwise provided in 5-1-2 E (3), no person shall keep a wild, vicious, exotic or dangerous animal within the City of Echo.

**3. EXCEPTION.**

A. 5-1-2 E(2) shall not apply to the keeping of a wild, exotic or dangerous animal by:

1. An educational or medical institution, if the animal is kept for the primary purpose of instruction, study or research;
2. A circus, carnival or other similar itinerant show business, if the animal is kept for the primary purpose of public entertainment;
3. A veterinarian employed by the federal government or currently licensed by the Oregon State Veterinary Examining Board, if the animal is kept for the primary purpose of diagnosis or treatment;
4. A physically impaired person, if the animal is kept for the primary purpose of assisting the physically impaired person in one or more daily life activities by performing such tasks as seeing, hearing, fetching dropped items, pulling a wheel chair, helping maintain balance, or rendering similar forms of assistance.
5. A public agency, zoo, aviary or similar public facility operated for educational and entertainment purposes or if the animal is kept primarily for a public purpose and is kept in compliance with local, federal and state statutes.

B. 5-1-2 E(2) shall not apply to a person transporting a wild, exotic or dangerous animal directly to any of the institutions, businesses or individuals listed in subsection A.

**4. DANGEROUS ANIMALS.** No keeper or person in charge of an animal shall permit an animal that is dangerous to the public health or safety to be exposed in public. If the animal is exposed in public, it may be taken into custody by the City and disposed of in accordance with the procedures provided by the Code for the disposition of personal property or for the impoundment of dogs, except that before the animal is released

by the City, the municipal judge must find the proper precautions shall be taken to insure the public health and safety.

**5. ANIMALS AT LARGE.** Except for animals of the species *Felis Catus* (domestic cat), no owner or person in charge of an animal shall permit the animal to be at large. Animals at large may be taken into custody by the City and disposed of in accordance with the procedures provided by the Code or other City ordinance for disposition of personal property or for the impoundment of dogs. (ord. 345-05 5-19-05)

**6. ANIMAL CARCASSES.** No person may permit an animal carcass owned or controlled by him to remain exposed upon public or private property for a period of time in excess of forty eight (48) hours following the animal's death. (Ord. 167, 7-7-71)

F: **REMOVAL OF ANIMAL WASTES:** Any person in physical possession and control of a domestic animal or pet shall remove excrement or other solid waste deposited by the animal in any area not designed to receive such wastes, including but not limited to public areas, such as streets, sidewalks, parking strips, public parks and any private party owned by a person or persons other than the person in physical possession and control of the animal within the corporate limits of the city. (ord. 335-03)

5--1--3: **HEALTH NUISANCES:** The following are nuisances affecting the public health and their existence within the City is a violation of the Chapter:

- A. Privies: A privy vault, privy, or cesspool.
- B. Stagnant Water: Stagnant water which provides a breeding place for mosquitoes or other insects.
- C. Discharges into Waters: Discharges into a body of water, stream, river, irrigation ditch or drainage ditch, of sewage, industrial wastes or other harmful substances placed in or near the water causing harmful material to pollute the water, except where suitable treatment is provided.
- D. Liquid Waste Drainage: Drainage of liquid waste from private property.
- E. Unwholesome Food: Decayed or unwholesome food which is offered for sale or for free for human consumption.
- F. Burning Refuse: Burning of rubbish, rags, leaves or any type of refuse on public or private property so as to disturb peaceful possession of property by offensive odors or smoke. (Ord. 167, 7-7-71; and Ord. 221-76, 11-8-76)

G. Urinating in Public: No person shall urinate while in, or in view of, any public place, except in restrooms provided for that purpose. (1986 Code)

5--1--4: **EMISSIONS OF AIR POLLUTANTS:** No person may permit or cause unreasonable quantities of soot, cinders, noxious acids, fumes or gases to escape, causing harm to another person or to the public, or endangering the health, comfort, and safety of any person or the public, or permit or cause such materials to injure or damage property or business.

5--1--5: **EXCAVATIONS, CONSTRUCTION, & PUBLIC WAYS:**

A. Excavations, Openings:

1. No owner of property or person in charge of property which abuts or fronts on a street and which is below street grade, may refuse to erect, at his own expense, a suitable fence or other barrier on the inner line of the sidewalk in front of such property within five (5) days after written notice from the City Recorder requiring erection of such a barrier.

2. This subsection A does not apply to authorized construction projects if adequate safeguards and barriers are maintained to prevent injury or death.

3. No person may construct or maintain ventilators, trap doors, gratings or similar openings in a public sidewalk.

B. Construction Debris on Sidewalks: No unauthorized person may deposit earth or other debris on a street or public sidewalk. Within three (3) days after completing construction of a building or improvement adjacent to or within the street right of way, a person shall remove from public property any temporary structure, debris or waste or unused materials or substances placed thereon during the construction work.

C. Snow and Ice Removal:

1. No owner or person in charge of property, whether improved or unimproved, that abuts or fronts on a public sidewalk, may permit snow or ice to remain on the sidewalk after the first two (2) hours of daylight on the next day after the snow has fallen or ice has formed, except that ice may be covered with sand, ashes or suitable materials to assure safe travel.



2. Unless the owner or person in charge of property abates the nuisance as described in this subsection C within twenty four (24) hours after the date of written notice from the City to remove the snow or ice, a nuisance as described in this subsection may be abated as provided in this Chapter.

**5--1--6: TREES, SHRUBS AND WEEDS:**

- A. No owner or person in charge of property may permit unreasonable growth of weeds, grass or other noxious vegetation upon his property or upon the parking strip or sidewalk area abutting his property. An owner or person in charge of such property shall cut or otherwise destroy weeds, grass or other noxious vegetation as often as needed to prevent it from being unsightly or a fire hazard, or maturing or going to seed.
- B. This Section does not prohibit lawns, tree, bushes or other shrubbery grown for ornamental purposes nor does it prohibit vegetation grown for food or fuel.
- C. The owner or person in charge of property shall not permit the limbs of a tree or shrub on his property or on public property abutting his property to project into or extend over a street so that the limbs interfere of an intersection or of traffic upon streets approaching an intersection, or otherwise create a hazard to the public. Such owner or person in charge of property shall also trim the trees so that the minimum clearance of the overhanging part of the tree is eight feet (8') above the sidewalk and eleven feet (11') above the roadway.

**5--1--7: FENCES, OVERHEAD WIRES:**

- A. No person may use barbed wire to construct a fence, or for any other purpose string barbed wire along a sidewalk or public way, except that upon a fence six feet (6') high or higher, arms of metal or wood may be attached to such fence in such a way as to slant in toward the property and away from the sidewalk or public way. Barbed wire may be stretched along and across such arms so that the barbed wire is inside the property line and none of it is lower than six feet (6') above the surface of the ground.
- B. Except for wire fences, guide wires on authorized utility facilities and other similar uses, no person may lace or maintain a wire on public property less than fifteen feet (15') above the surface of the ground.

5--1--8: **RADIO AND TELEVISION INTERFERENCE:**

- A. No person may use or operate an electrical, mechanical or other device, apparatus, instrument or machine which causes reasonably preventable interference with radio or television reception on a radio or television receiver of good engineering design.
- B. This Section does not apply to electrical and radio devices licensed, approved and operated in conformity with the rules and regulations of the Federal Communications Commission.

5--1--9: **UNNECESSARY NOISE:**

**A. Definitions:**

**Plainly audible** means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

**Public right-of-way** means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

**Public space** means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

**Residential area** means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City's zoning ordinance.

**B. General Prohibition:**

- 1) No person may make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of other, within or over the limits of the City.
- 2) The following acts or conditions are loud, disturbing and unnecessary noises in violation of this Section, but the enumeration below is not exclusive:
  - a. The use, operation or the permission to play, use or operate a radio receiving set, musical instrument, phonograph or other device for

the production or reproduction of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or with louder volume than is needed for convenient hearing in the room, vehicle, chamber or place in which such machine or device is operated. The operation of such a set, instrument, phonograph, machine or device between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M., so that it is plainly audible at a distance of fifty feet (50') from the building, structure, vehicle or place in which it is located is prima facie evidence of a violation of this section.

b. The use, operation or the permission to play, use or operate a radio receiving set, musical instrument, phonograph, loud-speaker, sound amplifier or other device for the production or reproduction of sound which is cast upon the public streets or over the City for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

c. Yelling, shouting, hooting, whistling or singing on the public streets, particularly between ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M., so as to annoy or disturb the quiet, comfort or repose of persons in an office or in a dwelling, hotel or other type of residence, or other persons in the vicinity.

d. The keeping of an animal or bird, which causes frequent or long continued noise and disturbs the comfort or repose of persons in the vicinity.

e. The erection, including excavation, demolition, alteration or repair of a building, or the operation of a pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance the use of which is attended by loud or unusual noise, other than between seven o'clock (7:00) A.M. and six o'clock (6:00) P.M., except in case of urgent necessity in the interest of public health and safety, and then only with permission of the City Council.

f. The shouting of peddlers, hawkers and vendors that disturbs the peace and quiet of the neighborhood.

g. The use of a drum or other instrument or device to attract attention to a performance, show or sale.

h. The operation of a noise-creating internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless

such noise is muffled and the engine is equipped with a muffler device to deaden the noise. (Ord. 167, 7-7-71)

i. Operating a motor vehicle in such a manner as to cause or allow to be emitted squealing, screeching, or other noise from the tires in contact with the ground because of rapid acceleration or excessive speed around corners or other such reasons, except that noise resulting from emergency action to avoid imminent danger shall be exempt from this provision.

j.. Except at firing ranges approved by the Chief of Police and the council, no person other than an authorized peace officer shall fire or discharge a gun or other weapon, including spring or air or gas actuated pellet guns, air guns, BB guns, bow and arrow or any weapon which propels a projectile by use of gun powder or other explosive, jet or rocket propulsion.

k. Parking any motor vehicle of ten thousand (10,000) pounds GCWR, or more, with the motor or attached auxiliary equipment in operation:

i.. On a public right of way, except for reasons of an emergency nature,  
or

ii. On private property in such a manner as to be plainly audible within any dwelling unit between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.

3. Vehicle Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device, on any automobile, motorcycle, or other vehicle on any right-of-way or in any public space of the City, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.

This subsection shall not apply to commercial construction equipment, the normal operation of vehicles designed and used for commercial transportation of passengers, and vehicles being loaded or unloaded. (1986 Code).

**5—1—9C: Exemptions.**

Sounds caused by the following are exempt from the prohibitions set out in Section 6 and are in addition to the exemptions specifically set forth in Section 6:

a. Motor vehicles on traffic ways of the City, provided that the prohibition of Section 6.B continues to apply 5-1-9B3.

- b. Repairs of utility structures which pose a clear and immediate danger to life, health, or significant loss of property.
- c. Sirens, whistles, or bells lawfully used by emergency vehicles, or other alarm systems used in case of fire, collision, civil defense, police activity, or imminent danger.
- d. The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.
- e. Repairs or excavations of bridges, streets or highways by or on behalf of the City, the State, or the federal government, between the hours of 7:00 p.m. and 7:00 a.m., when public welfare and convenience renders it impractical to perform the work between 7:00 a.m. and 7:00 p.m.
- f. Outdoor School, Skatepark and Playground Activities. Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic and school entertainment events.
- g. Other Outdoor Events. Outdoor gatherings, public dances, shows and sporting events, and other similar outdoor events, provided that a permit has been obtained from the City of Echo.

#### **5—1—10 PERMITS**

A. Temporary Permits. A permit may be granted by the Echo City Council for temporary activities that may otherwise violate the noise code such as for a street dance or outside entertainment. An application providing a description of the proposed activity, dates and times shall be submitted one week before the city council meeting.

B. Seasonal Permits. A seasonal permit may be granted to Commercial Operations located in Commercial, Light Industrial or Tourist Commercial Zones for regular entertainment or special event activities such as weekly music, beer gardens, etc. The council shall can allow or deny the permit and set conditions upon it.

#### **5--1-11: NOTICES AND ADVERTISEMENTS:**

A. No person may affix or cause to be distributed a placard, notice, bill, advertisement or poster upon any real or personal, public or private property, without first securing permission from the owner or person in charge of the property.

B. No person may scatter, distribute or cause to be scattered or distributed on public or private property, any handbill, placard, advertisements or other similar thing.

**5--1-12: GENERAL NUISANCE ABATEMENT:**

A. Declared Nuisances: In addition to those nuisances specifically enumerated within this Chapter, every other thing, substance or act which is determined by the City Council to be injurious or detrimental to the public health, safety or welfare of the City is hereby declared to be a nuisance and may be abated as provided in this Chapter.

C. Abatement Procedures: All nuisances described in this Section may be abated as provided hereafter:

1. Upon written complaint by a citizen on an Official Municipal Court Complaint Form sworn before a city police officer or the court clerk.
2. Upon determination by the City Council that a nuisance as defined in this or any other ordinance of the City exists, the City Council shall forthwith cause a notice to be posted on the premises where the nuisance exist, directing the owner or person in charge of the property to abate the nuisance.
  - a. At the time of posting, the City Council shall cause a copy of such notice to be forwarded by registered or certified mail, postage prepaid, to the owner or person in charge of the property at the last known address of the owner or other person.
  - b. The notice to abate shall contain:
    - i. A description of the real property, by street address or otherwise, on which or adjacent to which such nuisance exists.
    - ii. A direction to abate the nuisance within five (5) days from date of the notice, unless otherwise provided in this Chapter.
    - iii. A description of the nuisance.
    - iii. A statement that, unless such nuisance is removed, the City will abate the nuisance and the cost of abatement shall be a lien against the property.

iv.. A statement that the owner or person in charge of the property may protest the abatement by giving notice to the City Recorder within three (3) days from the date of the notice.

c. Upon completion of the posting and mailing, the person posting and mailing the notice shall execute and file with the City Recorder a certificate stating the date and place of such mailing and posting.

d. An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or other person shall not make the notice void and such a case the posted notice shall be sufficient.

D. Abatement by Owner:

1. Within the time allowed by the notice as provided in subsection B, the owner or person in charge of the property shall remove the nuisance or show that no nuisance exists.

2. The owner or the person in charge of the property protesting that no nuisance in fact exists shall file with the City Recorder a written statement which shall specify the basis for so protesting.

3. The statement shall be referred to the City Council as a part of the Council's regular agenda at the next succeeding meeting. At the time set for the consideration of the abatement, the owner or other person may appear and be heard by the Council and the Council shall thereupon determine whether or not a nuisance in fact exists and such 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.

4. If the Council determines that a nuisance does in fact exist, the owner or other person shall within five (5) days after the Council determination abate the nuisance.

E. Abatement by City:

1. If within the time permitted by this Chapter the nuisance has not been abated by the owner or person in charge of the property, the City Council shall cause the nuisance to be abated.

2. The officer charged with abatement of such nuisance shall have the right at reasonable times to enter into or upon any property or investigate or cause the removal of such nuisance.

3. The City Recorder shall keep an accurate record of the expense incurred by the City in abating the nuisance and shall include a charge of ten percent (10%) of the expense for the administrative overhead.

4. The total amount of the costs of abatement shall then be assessed to the property.

F. Assessment of Cost:

1. The City Recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:

a. The total amount of the cost of abatement including the administrative overhead.

b. That the amount as indicated will be assessed to and become a lien against the property unless paid within thirty (30) days from the date of the notice.

2. The City Council, in the regular course of business, shall hear and determine the objections to the costs to be assessed.

3. If the costs of the abatement are not paid within thirty (30) days from the date of the notice, an assessment of the costs as stated or as determined by the City Council shall be made by resolution and shall be entered in the docket of City liens. Upon such entry being made, the total cost of abatement shall be a lien upon the property from which, of adjacent to which, the nuisance was removed or abated. (Ord.. 167, 7-7-71).

4. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the statutory rate. Interest shall begin upon the entry of the lien in the lien docket. (Ord. 167, 7-7-71; 1986 Code)

5. An error in the name of the owner or person in charge of the property 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. 167, 7-7-71)

F. Summary Abatement: The City peace officers may proceed summarily to abate a nuisance which unmistakably exists and from which there is imminent danger to human life or property.



**5--1-13: PENALTY:**

A. Penalty Provided: A person violating any section of this Chapter including their subsections may, upon conviction, be fined a maximum of two hundred fifty dollars (\$250.00). (Ord. 167, 7-7-71; 1986 Code)

B. Separate Violations:

1. A separate offense is committed each day that a violation of this Chapter is committed or permitted to continue.

The abatement of a nuisance is not a penalty for violating this Chapter, but it is an additional remedy to a penalty imposed for a violation of the Chapter. The imposition of a penalty does not relieve a person of the duty to abate a nuisance. (376-17, 10-19-17)

## CHAPTER 2

**GARBAGE, SOLID WASTE MANAGEMENT**

## SECTION:

- 5--2--1: General Provisions
- 5--2--2: Administration and Enforcement
- 5--2--3: Garbage Collection and Franchise or Exemption
- 5--2--4: Billing, Collection and Rate Regulation
- 5--2--5: Public Responsibility
- 5--2--6: Accumulation of Garbage, Rubbish and Filth

5--2--1: **GENERAL PROVISIONS:**

- A. Short Title: This Chapter shall be known as the "Solid Waste Management Ordinance" and may be so cited and pleaded and shall be cited herein as "this Chapter".
- B. Purposes, Policy and Scope: It is declared to be the public policy of the City of Echo to regulate solid waste management to:
  1. Insure safe, efficient, economical and comprehensive solid waste service.
  2. Insure fair and equitable consumer rates and to prohibit rate references or other practices that might be discriminatory.
  3. Conserve energy and material resources, reduce solid waste and promote material and energy recovery in all forms.
  4. Provide for technologically and economically feasible resource recovery by and through the franchisee on a first option basis.
  5. Eliminate overlapping service and thereby to increase efficiency and to decrease truck noise, street wear, energy waste, air pollution and public inconvenience.
  6. Protect public health and the environment.

7. Provide public service standards.
8. Protect against improper and dangerous handling of hazardous wastes.
9. Provide a basis and incentive for investment in solid waste equipment, facilities, sites and technology.

C. Definitions:

CITY	The City of Echo
COUNCIL	The City Council of the City.
FRANCHISEE	The person or corporation granted a franchise by subsection B of this Section or a subcontractor to such person.
HAZARDOUS WASTE	<p>Any Waste:</p> <ol style="list-style-type: none"> <li>1. Defined as hazardous waste by or pursuant to Oregon Revised Statutes, Chapter 459; or</li> <li>2. Defined as hazardous waste by another governmental unit having jurisdiction; or</li> <li>3. Found by Franchisee to be hazardous to service workers to service equipment or facilities or to the public.</li> </ol>
PERSON	Any individual, partnership, association, corporation, trust, firm, estate, joint venture or other private legal entity or any public agency.
RESOURCE RECOVERY	The process of obtaining useful material or energy resources from solid waste, including reuse, recycling and other materials' recovery or energy recovery of or from solid waste.
SERVICE	The collection, transportation or disposal of or resource recovery from solid waste.
SOLID WASTE	All solid or semi-solid waste including, without limitation: garbage, rubbish, refuse, trash, ashes or swill; waste-paper, corrugated or cardboard; grass clippings; compost;

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residential, commercial, industrial, governmental or institutional wastes; discarded home or industrial appliances, equipment or furniture; discarded or abandoned vehicles, vehicles parts or tires; manure; vegetable or animal wastes; dead animals; and other waste.

**SOLID WASTE  
MANAGEMENT**

The prevention of or reduction of solid waste; management of service; and facilities and equipment necessary and convenient to such activities.

**WASTE**

Material that is no longer directly usable by the source, generator or producer of the material, which material is to be disposed of or be resource recovered by another person.

1. The fact that all or any part of the materials may have value and thus be recovered does not remove from this definition.

2. The fact that the source, generator or producer of materials has separated or segregated such material from other "waste" does not remove the materials from this definition.

5--2--2:

**ADMINISTRATION AND ENFORCEMENT:**

**A. Appeals:**

1. Any action or determination by Franchisee under or pursuant to this Chapter may be appealed to the city Administrator.

2. Any action or determination of the City Administrator under this Chapter may be appealed to the Council.

**B. Construction:** Any finding by any court of competent jurisdiction that any portion of the Chapter is unconstitutional or invalid shall not invalidate any other provision of this Chapter.

**C. City Enforcement:** The City shall enforce the provisions of this Chapter by administrative, civil or criminal action or any combination as necessary to obtain compliance with this Chapter. The Council shall take such legislative

action as is necessary to support this Chapter and the franchise granted. The Franchisee may enforce payment or protect its rights by appropriate civil action.

(Ord. 236-80, 1-16-80)

- D. Penalties: Any person violating the provisions of subsection 5--2--2B and/or subsection 5--2--4A of this Chapter shall be deemed guilty of a violation and, upon conviction, shall be fined a maximum of two hundred fifty dollars (\$250.00). Every day such violation is committed or permitted to continue shall constitute a separate offense, provided, however, that two (2) or more such continuing offenses may be joined in the same action. (Ord. 236-80, 1-16-80; 1986 Code)

**5--2--3: GARBAGE COLLECTION AND FRANCHISE OR EXEMPTION:**

- A. Persons and Practices Exempt from Franchise: Nothing in this Chapter requires a Franchise from the following persons for the following businesses or practices:
1. The collection, transportation and reuse of repairable or cleanable discards by a private charitable organization regularly engaged in such business or activity including, without limitation, Salvation Army, St. Vincent De Paul; Goodwill and similar organizations.
  2. The collection, transportation and reuse or recycling of totally source separated materials or operation of a collection center for totally source separated materials by a religious, charitable, benevolent or fraternal organization, which organization as not organized for any solid waste management purpose and which organization is using the activity for fund raising or environmental protection purposes.
  3. The collection, transportation or redemption of returnable beverage containers under Oregon Revised Statutes, chapter 459 and that portion thereof commonly known as the "Bottle Bill".
  4. The generator or producer who transports and disposes of waste created as an incidental part of regularly carrying on the business or service of auto wrecking, to the extent licensed by the State of Oregon; demolition, land clearing or construction; janitorial service; gardening, park maintenance or landscaping service; street sweeping; auto body recovery; or septic tank

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pumping or sludge collection. "Janitorial service" does not include cleanup of accumulated or stored wastes.

5. The transportation by a person of his own solid waste generated or produced by such person to a disposal site, resource recovery site or market. In the case of non-owner occupied property, the waste is generated or produced and is owned by the occupant and not by the landlord, property owner, association of property owners or the agent of such landlord, property owners or association. Except that when such property is vacated, solid waste remaining on the property shall become the property of the landowner.

6. The purchase and transportation of scrap metals and business of rendering.

7. The providing of service for hazardous wastes.

B. Practices Prohibited Without a Franchise: Unless exempted by subsection 5-2-3A or franchised pursuant to subsection 5-2-3C of this Chapter, no person shall:

1. Solicit for service customers; or
2. Advertise the providing of service; or
3. Provide service in the City.

C. Grant of Exclusive Franchise: There is hereby granted to Sanitary Disposal, Inc., the exclusive right, privilege and franchise to provide service within the City limits as of the effective date of this Chapter and any area that may hereafter be annexed to the City and, for that purpose, to utilize the streets and facilities of the City.

D. Franchise Term: The rights, privileges and franchise herein granted shall begin on 2-1-80 and shall be considered as a continuing ten (10) year franchise. That is beginning January 1 of each year, the franchise will be considered renewed for an additional ten (10) year term, unless at least thirty (30) days prior to January 1 of any year the Council shall notify the Franchisee in writing of intent to terminate further renewals of the franchise. Upon the giving of such notice of termination the Franchisee shall have a franchise which will terminate nine (9) years from the date of the notice of

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termination of renewals. The Council may later extend the term or reinstate continuing renewal upon mutual agreement with the Franchisee. Nothing in this Section restricts the Council from suspending, modifying or revoking the franchise for cause pursuant to subsection G of this Section.

E. Franchise Responsibility:

1. The Franchisee shall:

- a. Dispose of the solid waste at a site approved by the Oregon Department of Environmental Quality or otherwise recycle or resource recover all or any part thereof.
- b. Provide and keep in force public liability insurance in the amount of not less than one hundred thousand dollars (\$100,000.00) for injury to a single person, three hundred thousand dollars (\$300,000.00) to a group of persons and fifty thousand dollars' (\$50,000.00) property damage, all relating to a single occurrence, which shall be evidenced by a certificate of insurance naming the City as additional insured.
- c. Within thirty (30) days after the effective date of this Chapter, file with the City Recorder a written acceptance of this franchise by endorsing acceptance on a copy of this Chapter.
- d. Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service or contract with others to provide such service.
- e. Respond to any written complaint on service and to respond to any complaint relayed by the City either by telephone or in writing.
- f. Option: Provide a performance bond in the amount of two thousand five hundred dollars (\$2,500.00) with a surety licensed to do business in the State of Oregon conditioned upon the full and faithful performance of this agreement and franchise and this Chapter. In the event that the Council finds that the Franchisee has adequate experience and otherwise meets the requirements to guarantee service, it may waive, by resolution, all or part of the bond requirement.

- g. Provide a landfill disposal site for solid waste collected by Franchisee and not resource recovered. The City shall have free disposal privileges at the landfill provided by Franchisee for all solid waste collected from the City owned properties. During one month per year designated by agreement between the City and Franchisee, any City residential customer whose billing has been paid may take his or her own solid waste to said landfill and place it where designated by the site attendant free of charge.
- h. Be an independent contractor. Franchisee's employees are solely the employees of Franchisee and in no sense either the direct or borrowed employees of the City. The City is not, and shall not be subject to any obligation or duty to furnish or pay for workmen's compensation or other insurance for Franchisee or Franchisee's employees. Franchisee retains the right of directing and controlling both Franchisee's employees and equipment.
- i. Pick up solid waste from all residence once a week.
- j. Pick up solid waste from all businesses, industrial and commercial enterprises and institutional activities a minimum of one time per week and shall offer additional service to those requesting it when the City grows to the point where the extra service is economically feasible.
- k. Use modern type compactor trucks and drop box trucks in providing service and may also use satellite or open vehicles. If a solid waste collection vehicle becomes unsuitable for service due to unsafe conditions, improper maintenance or obsolescence the Council may order the replacement of the vehicle within sixty (60) days. Vehicles used in collection shall be kept in good and safe operating condition, kept clean and be so loaded and operated as to prevent solid waste from escaping onto public ways or public or private lands adjacent thereto.
- l. Exercise due care to prevent injury to public or private property.



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2. The Franchisee is not required to store, collect, transport, transfer, dispose of or resource recover any hazardous waste; provided, however, that the Franchisee may provide such service outside this chapter in compliance with all applicable laws, ordinances and regulations.

3. The Franchisee may subcontract with others to provide a portion of the service where Franchisee does not have the necessary equipment of service. Such a Subcontract shall not relieve the Franchisee of total responsibility for providing and maintaining service and from compliance with this Chapter.

4. The Franchisee shall not:

a. Give any rate preference to any person except as relating to senior citizens on limited income who qualify as hardship cases.

b. Transfer this franchise or any portion thereof to other persons without prior written approval of the Council, which consent shall not be unreasonably withheld.

F. Supervision: Service provided under the franchise and other requirements of this Chapter shall be under the supervision of the City Administrator. Franchisee shall, at reasonable times, permit inspection of his facilities, equipment and personnel providing service.

G. Suspension, Modification or Revocation of Franchise:

1. Failure to provide necessary service or otherwise comply with the provisions of this Chapter after written notice and a reasonable opportunity to comply shall be grounds for modification, suspension or revocation of the franchise.

2. After written notice from the Council that such grounds exist, the Franchisee shall have at least twenty (20) days from the date of mailing of the notice in which to comply or request a public hearing before the Council.

3. At the public hearing on grounds, the Franchisee and other interested persons shall have an opportunity to present oral, written or documentary evidence to the Council.

4. If the Franchisee fails to comply within the time specified or, if the Council hearing is held, with the order of the Council entered upon the

basis of findings at the public hearing, the Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance.

- H. Preventing Interruption of Service: The Franchisee agrees as a condition to this franchise that whenever the Council determines that a failure of service is creating an immediate and serious health hazard or serious public nuisance, the Council may, after a minimum of twenty four (24) hours' actual notice to Franchisee and a public hearing thereof if requested by Franchisee, authorize another person to temporarily provide service or use and operate the equipment of the Franchisee through leasing to provide emergency service. The Council shall return any seized equipment upon actual abatement of the actual interruption of service.
- I. Termination of Service: The Franchisee shall not terminate service to all or a portion of his customers unless:
1. The street or road access is blocked and there is no alternate route.
  2. Excessive weather conditions render providing service unduly hazardous to persons providing service or such termination is caused by accidents or casualties caused by an act of God, public enemy or vandalism.
  3. A customer has not complied with subsection 5--2--5A of this Chapter or has not paid for service provided or the City has requested the Franchisee to discontinue service.
  4. The occasion of strike or riot which makes the giving of service unduly risky to service personnel.
  5. Ordered by a legislative, administrative or judicial body having jurisdiction.
  6. When the above conditions are removed or abated service shall immediately resume unless otherwise determined by this Chapter.
  7. The Franchisee shall not terminate service to the City unless ninety (90) days' written approval is obtained from the Council.

**5--2--4: BILLING, COLLECTION AND RATE REGULATION:****A. Rate Regulation:**

1. The rate schedule shall remain the same as set out in this Section until July 1, 1981. During the period January through April of 1981 and each year thereafter, the Franchisee may call for a rate review to determine if an adjustment to the rate schedule is justified to compensate for increased operating costs and other cost. Any such adjustment approved by the council shall become effective on July 1 following the rate review.

2. Changes in the rate schedule shall be made by resolution of the Council amending the rate schedule. In determining rates, the Council shall give due consideration to current and projected revenue and expense; actual and overhead expense; the cost of acquiring and replacing equipment; a reasonable return to Franchisee for doing business; the services of management; the cost of providing landfill requirements; other services; research and development; and, such other factors as the Council deems relevant. The Council shall consider rates charged by other persons performing the same or similar service in the same or similar areas.

3. The Franchisee may call for a rate review as provided for in subsection A1 of the Section by written application for a rate adjustment to the Council with accompanying justification for propose rate adjustment to the rate schedule.

4. The Council shall consider the request for the rate adjustment at a regular Council meeting or a special Council meeting called for that purpose within thirty (30) days after receiving the request from the Franchisee. Council shall give Franchisee at least ten (10) days' written notice of said meeting and Franchisee may present arguments and documents in support of the need for the requested rate adjustment. Thereafter, within thirty (30) days the council shall act on the said request and either grant the request in whole or in part or reject the request. If the Council rejects all or part of the request for rate adjustment it shall do so upon the basis of written findings under this Section and this Chapter.

**B. Billing, Collection and Franchise Fee:** The City shall do the billing and Collecting of solid waste service fees and shall retain twelve percent (12%) of the gross collections in payment of two percent (2%) franchise fee and ten

percent (10%) for billing and collection service and pay the balance to Sanitary Disposal, Inc.

5--2--5: **PUBLIC RESPONSIBILITY:**

- A. Public Responsibility Declared: In addition to and not in lieu of compliance with Oregon Revised Statutes, chapter 459 and other applicable laws and regulations:
1. No person shall place hazardous waste for collection or disposal by Franchisee without notice to the City Administrator or office of Franchisee. This shall not apply to minor quantities of wastes generated at or by a single-family residential unit.
  2. No unauthorized person shall place materials in or remove materials from a solid waste collection container without permission of the owner of the container. For the purpose of this Section, the Franchisee is the "Owner" of containers supplied by Franchisee.. Persons to whom the Franchisee supplies containers shall be authorized persons within the meaning of this Section.
  3. No unauthorized person shall remove solid waste placed out for collection and resource recovery by the Franchisee or a person exempted by subsection 5--2--3A of this Chapter and operating solely within that exemption.
  4. Unless permitted by the Franchisee, no person shall install or use any container over thirty-two (32) gallons in capacity for pickup by Franchisee other than those supplied by Franchisee. The purpose of this subsection is to insure safe equipment, sizes and weights and facilitate Franchisee utilizing the most efficient collection equipment and methods.
  5. No person shall install an underground solid waste container for storage and collection after the effective date of the Chapter. The Franchisee is not required to service an underground container unless the person responsible for it places the can above ground prior to time for collection.
  6. Each customer shall provide safe access other solid waste container or wastes without risk or hazard to Franchisee's employees, the public or Franchisee.

7. No container designed for mechanical pickup shall exceed safe loading weights or volumes as established by the Franchisee to protect service workers, the customers, the public and the collection equipment.

8. No container designed for manual pick-up shall exceed thirty-two (32) gallons in size or sixty (60) pounds in weight when loaded and eighteen (18) pounds when empty. Such containers shall be made of metal or rigid, fireproof, rodent proof and not be subject to cracking or splitting and have proper hand holds and bales. Containers must be kept in good condition by customer.

9. Customers using one yard and larger container furnished by Franchisee shall provide a smooth, level, hard surface area for the container.

10. Unless special service or service equipment is provided by the Franchisee for handling unconfined waste, then materials such as rubbish and refuse, brush leaves, tree cuttings and other debris for manual pickup and collection shall be in securely tied bundles or in boxes, sacks or to the receptacles and solid waste so bundled, tied or contained shall not exceed sixty (60) pounds in weight.

11. Where a customer requires an unusual volume of service or a special type of container requiring substantial investment in equipment, the Franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment not become a charge against other ratepayers who are not benefited.

12. Stationary compacting devices for solid wastes shall comply with Federal and State safety standards and provide adequate protection to the user.

13. Any vehicle used by a person to transport solid waste shall be so loaded and operated as to prevent the wastes from dropping, sifting, leaking, blowing or otherwise escaping from the vehicle onto any public right of way or lands adjacent.

14. No person shall block access to any container or drop box or roll off box supplied by Franchisee. Franchisee may charge extra for return service to such blocked container or drop or roll of box.

15. Every person who generates or produces wastes shall have removed all putrescible wastes at least every seven (7) days. More frequent removal may be required where a facility or service involves the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards or pollution.

16. All garbage and putrescible materials shall be stored in cans supplied by the generator or producer or in containers supplied by the Franchisee. When cans are used, they shall be covered except during loading or emptying.

17. The producers or generator of waste shall clean both cans and containers and shall keep the area around such cans or containers free of accumulated wastes. The Franchisee shall provide maintenance as required to containers supplied by Franchisee. For cans supplied by Customers, plastic liners are recommended but not required.

18. Approved disposal methods shall be as follows:

a. No person shall burn, dump, bury, collect, remove or in any other manner dispose of solid waste upon any street, alley, public place or private property within the City except as provide in this Chapter.

b. Wastepaper, boxes, rubbish and debris; brush, leaves, grass, wood and cuttings from trees, lawns, shrubs, and gardens (but excepting paper, cardboard, or wood containers in commercial quantities,) may be burned on private property only if the method of burning is approved by the Fire Chief and is done in accordance with Oregon Department of Environmental Quality Rules and Regulations.

19. All garbage must be drained of excess liquids and wrapped.

20. Ashes will be taken only if place in a plastic bag and tied.

21. Residential cans must be placed at the curb or in the alley on pickup day.

**B. Payment for Service:**

1. Any person who receives service from the Franchisee shall be responsible for payment for such service. The owner of the a rental or lease facility shall

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be liable for payment for service provide to a tenant of such dwelling or business, if the tenant fails to make timely payment for such service.

2.. Payment for solid waste service is due and payable as hereafter prescribed by the City. If payment is not made within the required time, enforcement proceeding may be instituted by the City as follows:

- a. In the event of nonpayment after proper notice the City may establish the dept. as a lien against the property in the same manner as liens are created for utility services and or street improvements provided by the City, which lien shall include the cost of service, administration, legal time, recording and other direct or indirect costs plus one percent (1%) per month interest for each month or fraction thereof from the time of required payment; or
- b. Withdraw any City service of any kind from the property except fire and police protection; or
- c. Collect the debt in the same manner that other debts are collected including, without limitation, the payment for the service, costs of collection by the City or other persons and interest of one percent (1%) per month or fraction thereof from the date payment was required; or
- d. Any combination of the above. (Ord. 236-80, 1-16-80)

5--2--6:                   **ACCUMULATION OF GARBAGE, RUBBISH AND FILTH:**

- A.     Accumulations of Garbage Prohibited: No person or persons shall place or permit the placement or accumulation of, in or about any yard, lot, place or premises or upon any street, sidewalk or alley adjacent to or abutting upon any yard, lot, place or premises owned, occupied, or for which such person or persons may be agent or agents, within the City limits of the City, any decaying or decayed substances, dead animals, hides, blood, guts, feces or any garbage, ashes, tin cans, crockery, glassware, metal or any other substances intended for or fit only for delivery to scavengers, and no such person or persons aforesaid shall permit to accumulate in or about any yard , lot, place or premises any old refuse, lumber, barrels, boxes or any paper from which there may be danger of fire or which would render such yard, lot, place or

- A) premises unsightly, nor shall such person or persons aforesaid permit to accumulate in or about any yard, lot place or premises or upon any street or alley any rubbish or filth of any kind.
- B. Throwing Wastepaper Prohibited: No person shall cast or throw any wastepaper or any kind in such a manner as to permit the same to accumulate in any yard, lot place or premises or upon any street or alley within the city. (Ord. 221-76, 12-8-76)
- C. Nuisance Declared: The doing, allowing or permitting to be done such act or thing which is prohibited or forbidden by this Chapter is declared a public nuisance and the City police shall be charged with the responsibility of servicing notice to such person or persons to abate or remove such nuisance within twenty four (24) hours after receiving notice so to do, and said notice may be verbal or in writing, and such method of notice shall be at the discretion of the City police. Failure to comply with said notice within the allowed time frame shall cause such person or persons to be required to appear in court and upon conviction therein shall be fined for each violation not more that two hundred fifty dollars (\$250.00) and in addition, the court may, upon conviction, order such person or persons to immediately abate or remove such nuisance, and in the event such order is neglected or refused, the court may order the City police to cause the abatement or removal of said nuisance and the cost of such abatement or removal shall be made a lien on the lots of premises where such nuisances existed, and such action shall not affect the court in pursing and exercising it's full judicial powers and responsibility in the matter as originally presented before. it.
- D. Nuisance Abatement, Lien: When the City police shall be required to cause the abatement or removal of such nuisance, the City Recorder shall keep an accurate account of all sums expended in the abatement or removal of such nuisance on each lot, piece or parcel of land describing the same, together with the name of the owner or owners thereof, or if the owner's name is unknown, the Council shall by resolution declare such sum or sums so expended a lien upon the part, lot or parcel of land upon which such sum or sums was expended and direct the City Recorder to enter the same upon the docket of City liens, and such liens shall be enforced against the property described in like manner , and effect as for the improvement of streets. (Ord. 221-76, 12-8-76; 1986 code).
- E. Council Responsibility: It shall be the responsibility of the City Council to keep all lands, lots or premises belonging to the City or over which it has



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control, clean and free from all refuse matter, garbage, filth or rubbish of any kind. (Ord.. 221--76, 12-8-76)

Chapter 3

**OFFENSIVE LITTERING**

5-3-1           **OFFENSIVE LITTERING:** a person commits the offense of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by:

- A.     Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way, or
- B.     Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which the person is operating; except that this subsection shall not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or Public Utility Commission of Oregon or a person operating a school bus described under ORS 801.460.

5-3-2           **DEFINITIONS:** As used in this chapter "public way" includes, but is not limited to, the improved or unimproved portions of streets, trails, beaches, and all recreation facilities operated by the state, county or city for use by the general public.

5-3-3           **ADMINISTRATION:** The Public Works Superintendent shall from time to time compile a list of property owners who have been depositing garbage, trash or debris on the public ways in violation of this chapter. The list shall be turned over to city law enforcement official for investigation and possible citation. (Ordinance No. 277-89)

5-3-4           **PENALTY:** A person violating any section of this chapter may, upon conviction, be fined a maximum of two hundred fifty dollars (\$250).

Chapter 4

**5-4-1 DEFINITIONS**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**Chronic Nuisance Property.**

A. Property on which three or more nuisance activities exist or have occurred during a 90-day period; or

B. Property on which or within 400 feet of which any person associated with the property has engaged in three or more nuisance activities during any 90-day period; or

C. Property which, upon request for execution of a search warrant, has been the subject of a determination by a court that probable cause does exist that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, 475.005 through 475.285 and/or ORS 475.940 through 475.995 has occurred within the previous 90 days, and the city Police Department has determined that the search warrant was based on evidence of continuous or repeated nuisance activities at the property; or

D. Property on which continuous or repeated “nuisance activities” as defined in divisions (G), (H), (M) and (N) of that definition, exist or have occurred.

**Control.** The ability to regulate, restrain, dominate, counteract or govern property, or conduct that occurs on a property.

**Nuisance Activities.** Any of the following activities, behaviors or conduct:

A. Harassment as defined in ORS 166.065(1)(a).

B. Intimidation as defined in ORS 166.155 through 166.165.

C. Disorderly conduct as defined in ORS 166.025.

D. Assault or menacing as defined in ORS 163.160 through 163.190.

E. Sexual abuse, contributing to the delinquency of a minor or sexual misconduct as defined in ORS 163.415 through 163.445

F. Public indecency as defined in ORS 163.465.

- G. Prostitution or related offenses as defined in ORS 167.007 through 167.017.
- H. Alcoholic liquor violations as defined in ORS Chapter 471.105 through 471.482.
- I. Offensive littering as defined in ORS 164.805.
- J. Criminal trespass as defined in ORS 164.243 through 164.265.
- K. Theft as defined in ORS 164.015 through 164.140.
- L. Arson or related offenses as defined in ORS 164.315 through 164.335.
- M. Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through 475.285, and/or ORS 475.940 through 475.995.
- N. Illegal gambling as defined in ORS 167.117, and/or ORS 167.122 through 167.127.
- O. Criminal mischief as defined in ORS 164.345 through 164.365.
- P. Any attempt to commit (as defined in ORS 161.405), and/or conspiracy to commit (as defined in ORS 161.450), any of the above activities, behaviors or conduct.
- Q. Fire or discharge of a firearm as defined in Echo City Code Chapter 3-5-1.
- R. Unlawful operation of sound producing or reproducing equipment as defined in Echo City Code 5-1-9.
- S. Curfew as defined by ORS 419C.860.
- T. Curfew as defined in Echo City Code Chapter 3-3.

**Person.** Any natural person, agent, association, firm, partnership, corporation or other entity capable of owning, occupying or using property in the city.

**Person Associated With.** Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner of a property.

**Person in Charge.** Any person, in actual or constructive possession of a property, including but not limited to an owner or occupant of property under his or her ownership or control.

**Property.** Any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to any business or residence, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property may be limited to the unit or the portion of the property on which any nuisance activity has occurred or is occurring, but includes areas of the property used in common by all units of property including without limitation other structures erected on the property and areas used for parking, loading and landscaping.

**Police/Police Department.** Includes any authorized law enforcement officer of the City, County, State or Federal Government.

### **5-4-2 VIOLATION**

- (A) Any property determined by the Police Department to be chronic nuisance property is in violation of this chapter and subject to its remedies.
- (B) Any person in charge of property determined by the Police Department to be chronic nuisance property is in violation of this chapter and subject to its remedies.

### **5-4-3 PROCEDURE**

- (A) When the Police Department receives two or more reports documenting the occurrence of nuisance activities on or within 400 feet of a property, the reports shall be reviewed to determine whether they describe the activities, behaviors or conduct enumerated under section 1 “nuisance activities” (1) through (20). Upon such a finding, the Police Department may notify the person in charge in writing that the property is in danger of becoming chronic nuisance property. The notice shall contain the following information:
  - (1) The street address or a legal description sufficient for identification of the property.
  - (2) A statement that the Police Department has information that the property may be chronic nuisance property, with a concise description of the nuisance activities that exist, or that have occurred. The Police Department shall offer the person in charge an opportunity to propose a course of action that the Police Department agrees will abate the nuisance activities giving rise to the violation.
  - (3) Demand that the person in charge respond to the city Police Department within ten days to discuss the nuisance activities.
- (B) When the Police Department receives a police report documenting the occurrence of additional nuisance activity on or within 400 feet of a property after notification as provided by division (A); or, in the case of “chronic nuisance property” as defined in section 1, division (3) or (4), for which notice under division (A) is not required, the Police Department shall notify the person in charge in writing that the property has been

determined to be a chronic nuisance property. The notice shall contain the following information:

- (1) The street address or a legal description sufficient for identification of the property.
  - (2) A statement that the Police Department has information that the property may be chronic nuisance property, with a concise description of the nuisance activities that exist, or that have occurred. The Police Department shall offer the person in charge an opportunity to propose a course of action that the Police Department agrees will abate the nuisance activities giving rise to the violation.
  - (3) Demand that the person in charge respond within ten days to the city Police Department and propose a course of action that the Police Department agrees will abate the nuisance activities giving rise to the violation.
  - (4) Service shall be made either personally or by first class mail, postage prepaid, addressed to the person in charge at the address of the property determined to be a chronic nuisance property, or such other place which is likely to give the person in charge notice of the determination by the Police Department.
  - (5) A copy of the notice shall be served on the owner at the address shown on the tax rolls of the county in which the property is located, and/or the occupant at the address of the property, if these persons are different than the person in charge, and shall be made either personally or by first class mail, postage prepaid.
- (C) If the person in charge fails to respond as required by division (B)(3), the Police Department may refer the matter to the City Attorney. Prior to referring the matter to the City Attorney, the notice required by division (B) shall also be posted at the property.
- (D) If the person in charge responds as required by division (B)(3) and agrees to abate nuisance activities giving rise to the violation, the Police Department may postpone referring the matter to the City Attorney. If an agreed course of action does not result in the abatement of the nuisance activities within 60 days; or, if no agreement concerning abatement is reached within 60 days, the Police Department may refer the matter to the City Attorney.
- (E) When a person in charge makes a response to the Police Department as required by divisions (A)(3) or (B)(3) any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have occurred or are occurring. This section does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.
- (F) The failure of any person to receive notice as provided by divisions (A) or (B) shall not invalidate or otherwise affect the proceedings under this chapter.

#### **5-4-4 COMMENCEMENT OF ACTIONS; REMEDIES; BURDEN OF PROOF**

- (A) The city Police Department may request the City Attorney to commence legal proceedings in a court to abate chronic nuisance property and to seek closure, the imposition of civil penalties against any or all of the persons in charge thereof, and, any other relief deemed appropriate.
- (B) If the court determines the property to be chronic nuisance property, the court shall order that the property be closed and secured against all unauthorized access, use and occupancy for a period of not less than 30 days, nor more than one year. The order shall be entered as part of the final judgment. The court shall retain jurisdiction during any period of closure.
- (C) If the court determines a property to be chronic nuisance property, the court may impose a civil penalty of up to \$100 per day for each day nuisance activities occurred on the property, following notice pursuant to Section 3 (B); or the cost to the city to abate the nuisance activities at the property whichever is greater. The amount of the civil penalty shall be assessed against the person in charge and/or the property and may be included in the city's money judgment.
- (D) If satisfied of the good faith of the person in charge, the court shall not award civil penalties if the court finds that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property.
- (E) In establishing the amount of any civil penalty, the court may consider any of the following factors and shall cite those found applicable:
  - (1) The actions taken by the person in charge to mitigate or correct the nuisance activities at the property;
  - (2) The financial condition of the person in charge;
  - (3) Repeated or continuous nature of the problem;
  - (4) The magnitude or gravity of the problem;
  - (5) The cooperation of the person in charge with the city;
  - (6) The cost to the city of investigating and correcting or attempting to correct the nuisance activities;
  - (7) Any other factor deemed relevant by a court.
- (F) The city shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.
- (G) Evidence of a property's general reputation and/or the reputation of persons residing in or frequenting it shall be admissible.

#### **5-4-5: SUMMARY CLOSURE**

Any summary closure proceeding shall be based on evidence showing that nuisance activities exist or have occurred on the property and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of summary closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders. In the event of summary closure, the city is not required to comply with the notification procedures set forth in Section 3 (A) and (B).

#### **5-4-6: ENFORCEMENT**

- (A) The court may authorize the city to physically secure the property against all unauthorized access, use or occupancy in the event that the person in charge fails to do so within the time specified by the court. In the event that the city is authorized to secure the property, the city shall recover all costs reasonably incurred by the city to physically secure the property as provided by this section. The city department(s) physically securing the property shall prepare a statement of costs, and the city shall thereafter submit that statement to the court for its review as provided by ORCP 68.
- (B) The person in charge shall pay reasonable relocation costs of a tenant as defined by ORS 90.100(28), if, without actual notice, the tenant moved into the property after either:
  - (1) A person in charge received notice of the determination of the Police Department pursuant to Section 5-4-3(B); or
  - (2) A person in charge received notice of an action brought pursuant to Section 5-4-5.
- (C) A lien shall be created against the property for the amount of the city's money judgment. In addition, any person who is assessed penalties under Section 5-4-4(C) and/or costs under Section 5-5-6(A) shall be personally liable for payment thereof to the city. Judgments imposed by this chapter shall bear interest at the statutory rate.

#### **5-4-7: ATTORNEY FEES**

The court may, in its discretion, award attorneys' fees to the prevailing party. (2013)