

ORDINANCE NO. 1162

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AMENDING THE GIG HARBOR MUNICIPAL CODE BY ENACTING A NEW CHAPTER 8.10 OF THE GIG HARBOR MUNICIPAL CODE DEFINING, REGULATING AND PROVIDING FOR THE ABATEMENT OF PUBLIC NUISANCES, REQUIRING THE MAINTENANCE OF REAL PROPERTY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, public nuisances are unsightly and unsanitary, create fire, safety and health hazards, interfere with the enjoyment of public and private property, degrade the character of neighborhoods, and have a detrimental effect on property values; and

WHEREAS, residents of the City of Gig Harbor have complained about public nuisances in their neighborhoods; and have requested that the city regulate and abate public nuisances within the city; and

WHEREAS, pursuant to RCW 35A.11.020 and RCW 35.23.440(10) the city has the power to declare what shall be deemed nuisances, to prevent, remove, and abate nuisances at the expense of the parties creating, causing, committing or maintaining nuisances, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. New Chapter 8.10. A new chapter 8.10 is hereby added to the Gig Harbor Municipal Code to read as follows:

Chapter 8.10

PUBLIC NUISANCES

Section 8.10.010 Purpose and construction.

The purpose of this chapter is to define, regulate and provide for the abatement of public nuisances; reduce fire, safety and health hazards; preserve and enhance the attractiveness of the city's neighborhoods; and protect property values within the city. This chapter is an exercise of the police power and is necessary for the health, safety and welfare of the city and to preserve and protect the public peace. Therefore, the provisions of this Chapter shall be

liberally construed for the accomplishment of such purposes. This ordinance shall not apply to piers, docks, and net sheds along the shoreline.

Section 8.10.020 Definitions.

All terms used in this chapter shall have their common definition meaning. In addition to the common definition meaning, the terms used shall mean as follows:

* "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition that violates this chapter.

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

* "Dilapidated" means a building that is generally in a deteriorated condition and meets two or more of the following conditions:

- Exterior wall(s) and/or siding having loose or rotting materials or showing holes or breaks.
- One or more windows that are missing glass or are boarded.
- Roof, stairs, porch, or building structure that is sagging, leaning, or in a state of collapse.
- At least 25% of a roof with missing shingles (or other roofing materials).
- Roof, wall, or any portion thereof with tarps, plastic sheeting, or other temporary materials intended to compensate for leakage; provided that said materials are attached for more than six months.
- Any building which is determined to be a dangerous building pursuant to the Uniform Code for the Abatement of Dangerous Buildings as adopted by reference in the Gig Harbor Municipal Code.

* "Garbage" means waste food products, other organic waste products and packaging materials from food products.

* "Junk" means discarded, broken or disabled items, including, but not limited to, furniture, appliances, toys, vehicle parts, building materials, tools, machinery parts or other items that are not in functioning condition.

* "Person" means human beings of either sex as well as firms, partnerships, corporations, and all associations of human beings, whether acting by themselves or by a servant, agent or employee.

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

* "Public nuisance" means a thing, act, failure to act, occupation or use of property which (1) annoys, injures or endangers the comfort, repose, health or safety of the public; (2) unlawfully interferes with, obstructs, or renders dangerous for passage any stream, river, channel, public park, square, street, alley, highway or sidewalk; or (3) renders the public insecure in life or use of property. All of the conditions enumerated in Section 8.10.050, are "public nuisances"

* "Responsible party" means any person owning property, as shown on the real property records of Pierce County or on the last assessment role for taxes, and shall also mean any lessee, tenant or person having possession of the property. There may be more than one responsible party for a particular property.

* "Trash" includes, but is not limited to, used, discarded, torn or broken paper; plastic; glass; cardboard; packaging materials; small pieces of scrap metal; wire; pipe; stone; plaster; cement; office supplies; cosmetics; bottles; cans; jars; or boxes.

Section 8.10.030 Duty to maintain real property.

Any person owning, leasing, renting, occupying or in charge of any real property in the city, including vacant lots, has a duty to maintain the property free from junk, trash, and any other nuisance as defined in this chapter, in order that such property shall not endanger the safety, health or welfare of the general public.

Section 8.10.040 Prohibited conduct.

It is a violation of this chapter for any person to permit, create, maintain or allow upon any premises, any of the acts or things declared to be public nuisances herein.

Section 8.10.050 Public nuisances declared.

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance, if such conditions are

able to be viewed from the public right-of-way or adjacent public property:

A. Any unfenced, uncovered, unguarded or abandoned pit, hole, excavation, well, septic tank, cesspool, or swimming pool into which a child or other person could fall. This paragraph does not pertain to residential and commercial decorative water features that are maintained and are in good working order.

B. Attractive nuisances dangerous to children, including, but not limited to, abandoned, broken or neglected vehicles, boats, equipment and machinery; refrigerators, freezers or other insulated containers within which a child could suffocate; and abandoned, dilapidated or structurally unsound buildings.

C. The existence or accumulation of any trash, litter or inorganic waste, including used, broken, torn or discarded paper, cardboard, plastic, rags, empty bottles, cans, glass, plaster, barrels, boxes, crates, packing cases, construction debris, styrofoam, hay, straw, packing materials, scrap metal, wire, pipe, crockery, and plaster not in covered and enclosed receptacles.

D. The existence or accumulation of any junk, including broken, discarded, torn, or non-functional furniture, mattresses, bedding, appliances, toys, vehicle parts, or other articles of personal property.

E. The existence or accumulation of building material, lumber, salvage materials, scrap iron, tin and other metal, wire, stone, cement or brick that are not associated with an active building permit, or are not neatly piled and screened from view from the public right of way or any adjacent public property.

F. Any fence or structure which is sagging, leaning, fallen, or decayed; and is deemed a fire or safety hazard. Any building which is determined to be a dangerous building pursuant to the Uniform Code for the Abatement of Dangerous Buildings as adopted by reference in the Gig Harbor Municipal Code.

G. Any vacant building or accessory structure which is in a dilapidated condition.

Section 8.10.060 Abatement of public nuisance.

The responsible person or persons for any premises on which a nuisance as defined in Section 8.10.050 is found, shall abate such nuisance by removal, trimming, demolition, rehabilitation or repair.

Section 8.10.070 Enforcement.

A. The enforcement officer shall have the authority to enforce this chapter. The enforcement officer may call upon the building, fire, planning and community development or other appropriate city departments to assist in enforcement.

B. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public and not for the benefit of any particular person or class of persons.

C. It is the intent of this chapter to place the obligation of complying with its requirements upon the person owning, leasing, renting, or occupying the property upon which a nuisance is located.

D. No provision of or any term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

Section 8.10.080 Investigation and Notice of Violation.

A. Investigation. The enforcement officer shall investigate the premises which he/she reasonably believes does not comply with the standards and requirements of this chapter.

B. Notice of Violation. If, after investigation, the enforcement officer determines that the standards or requirements of this chapter have been violated, the enforcement officer shall serve a notice of violation upon the property owner, tenant, or other person responsible for the condition. The notice of violation shall contain the following information:

1. Name and address of the person(s) to whom the citation is issued;
2. The location of the subject property by address or other description sufficient for identification of the subject property;
3. A description of the public nuisance(s) present on the subject property;
4. A separate statement of each standard, code provision or requirement violated, and the reasons for which the city deems the condition of the property to constitute a public nuisance in violation of this chapter;

5. What corrective action, if any, is necessary to comply with the standards, code provisions or requirements;
6. A reasonable time for compliance;
7. A statement that if the person(s) to whom the notice of violation is issued fails to complete the corrective action by the date required, the city or its designee shall abate the public nuisance and will assess all costs of administration and abatement against the owner of the property upon which the public nuisance is located or otherwise attempt to collect such costs against the tenant or person(s) responsible for the violation;
8. A statement that the owner of the land on which the public nuisance is located may appear in person at the hearing and present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the public nuisance on the land, with his/her reasons for denial.

C. Service. The notice shall be served on the property owner and the tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the enforcement officer makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city's official newspaper; and
2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address as shown on the official Pierce County assessor's parcel data, or if unknown, to the address of the property involved in the proceedings.

D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Amendment. A notice or order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

F. Withdrawal. The city may choose to withdraw a notice of violation at any time without prejudice to the city's ability to reissue it if a certificate of compliance has not been obtained for the specific violations.

Section 8.10.090 Time to Comply.

A. Determination of Time. When calculating a reasonable time for compliance, the enforcement officer shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations; and
5. Any other circumstances beyond the control of the responsible party.

B. A copy of the notice may be recorded against the property with the Pierce County auditor. The enforcement officer may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

Section 8.10.100 Hearing.

A. The property owner, tenant, or other person responsible for the violation may appeal the notice of violation by requesting such appeal of the notice, accompanied by the appropriate appeal fee, within 15 calendar days after service of the notice. When the last day of the period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the appeal request, the enforcement officer shall forward the request to the municipal court judge.

B. If a request for a hearing is received, a notice giving the time, location and date of the hearing shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the county assessor records and to the tenant or other person responsible for the violation.

C. The owner of the land on which the public nuisance is located may appear in person at the hearing or present a written statement for consideration, and deny responsibility for the presence of the nuisance, with the reasons for denial. If it is determined that the public nuisance was present on the property without the consent of the landowner and that the landowner has not acquiesced in its

presence, then the cost of removal shall not be assessed against the landowner.

- D. At or after the appeal hearing, the municipal court judge may:
1. Sustain the notice of violation and require that the public nuisance be abated at the request of the enforcement officer after a date certain;
 2. Withdraw the notice of violation;
 3. Continue the review to a date certain for receipt of additional information;
 4. Modify the notice of violation, which may include an extension of the compliance date, and/or determine that the owner of the property is not responsible for the costs of removal, pursuant to subsection C of this section.

Section 8.10.110 Municipal Court Order.

A. Unless mutually agreed to by the appellant and the court, the order of the court shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to such person at his/her last known address as determined by the enforcement officer within 15 calendar days following the conclusion of testimony and hearings and the closing of the record.

B. Proof of service shall be made by a written declaration by the person effecting the service, declaring the time and date of service and the manner by which service was made.

C. The municipal court, in affirming the enforcement officer's notice of violation and abatement, may assess administrative costs or costs related to the abatement of the public nuisance. The court may also order the refund of hearings fees to parties deemed not responsible for the violation.

D. If it is determined at the hearing that the public nuisance was present on the property without the consent of the landowner and that he or she has not subsequently acquiesced in its presence, then the municipal court's order shall not assess costs of administration or removal of the public nuisance against the property upon which the public nuisance is located or otherwise attempt to collect the cost from the landowner.

Section 8.10.120 Abatement - Costs.

A. Commencing 45 calendar days after service of the notice of violation and abatement, if no appeal had been filed, or 15 calendar

days after the issuance of an order from the municipal court resulting in authority to remove, the enforcement officer shall supervise the abatement of the public nuisance.

B. The city's costs related to abatement of the public nuisance may be collected from the property owner unless the public nuisance existed on the property without the property owner's consent or acquiescence. If the city's costs cannot be collected from the property owner, the city may collect those costs from the tenant or other person responsible for the violation.

Section 8.10.130 Civil Penalties.

A. In addition to any other sanction or remedial procedure which may be available, any person, firm or corporation violating or failing to comply with any of the provisions of this chapter shall be subject to a cumulative civil penalty in the amount of \$100.00 per day for each violation from the date set for compliance until compliance with the order is achieved.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The enforcement officer shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the enforcement officer, take appropriate action to collect the penalty.

Section 8.10.140 Additional Relief.

The enforcement officer may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this chapter when civil penalties are inadequate to effect compliance.

Section 8.10.150 Liens.

A. Generally. The City shall have a lien for any civil penalty imposed or for the cost of any abatement work done pursuant to this chapter, or both, against the real property on which the civil penalty was imposed or any of the abatement work was performed.

B. Priority. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens, except for state and county taxes.

C. Contents. The claim of lien shall contain the following:

1. The authority for imposing a civil penalty or proceeding to abate the violation, or both;

2. A brief description of the civil penalty imposed or the abatement work done, or both, including the violations charged and the duration thereof, including the time the work is commenced and completed and the name of the persons or organizations performing the work;

3. A legal description of the property to be charged with the lien;

4. The name of the known or reputed owner, and, if not known, the fact shall be alleged; and

5. The amount, including lawful and reasonable costs, for which the lien is claimed.

6. Signed verification by the director or his/her authorized representative, under penalty of perjury under the laws of the State of Washington, that the declarant believes the claim is just.

D. Recording. The director shall cause a claim for lien to be filed for record in the Pierce County auditor's office within ninety days from the date the civil penalty is due or within ninety days from the date of completion of the abatement work performed pursuant to this chapter.

E. Duration. A lien created under this chapter shall be valid until the amount of money specified in the lien is paid in full.

F. Foreclosure. A lien created under this chapter may be foreclosed and enforced by a civil action in a court having jurisdiction. All persons who have legally filed claims or liens against the same property prior to commencement of the action shall be joined as parties, either as plaintiff or defendant. Dismissal of an action to foreclose a lien at the instance of a plaintiff shall not prejudice another party to the suit who claims a lien.

Section 2. Pending Actions. This ordinance shall not effect or abate any criminal prosecution or code enforcement action that is instigated or brought by or on behalf of the City prior to the effective date of this amendment. Such prosecution or enforcement actions shall continue unabated.

Section 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances by a court of competent jurisdiction shall not be affected.

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 26th day of May, 2009.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck, City Attorney

FILED WITH THE CITY CLERK: 05/06/09
PASSED BY THE CITY COUNCIL: 05/26/09
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