

CITY OF WESTPORT

ORDINANCE #1374(a)

AN ORDINANCE DECLARING AND DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; AND REPEALING ORDINANCE NO. 963 AND ALSO REVISED MUNICIPAL CODE SECTION 6.04 (ENTIRE SECTION).

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTPORT AS FOLLOWS:

SECTION 1. DEFINITIONS

Unless the context requires otherwise, the following means:

1. Person. A natural person, firm, partnership, association, or corporation, whether he is acting for himself or representative or agent of another.
2. Person in charge of property. An agent, lessee, contract purchaser or other person having possession or control of property or the supervision of any construction project.
3. Person responsible. The person responsible for abating a nuisance shall include:
 - A. The owner.
 - B. The person in charge of property, as defined in subsection 2.
 - C. The person who caused to come into or continue in existence a nuisance as defined in this ordinance or another ordinance of this City.
4. Public Place. A building, public street, alley or right-of-way, place or accommodation, whether publicly or privately owned, open and available to the general public.
5. Premises. As used herein, shall include property, landscaping, plantings, trees, bushes, fences, buildings, fixtures and exterior storage of personal property, equipment, supplies and vehicles.
6. Officer, Enforcement Officer or Designated Person. The Officer or designated person for the purpose of this ordinance shall mean either the Public Works Director, Police Chief, Police Officer, Building Inspector, Code Enforcement Official or anyone so designated in writing by the Mayor.

SECTION 2. RIGHT OF ENTRY

Whenever it is necessary to make an inspection to enforce the provisions of this ordinance, or whenever the enforcement officer has reasonable cause to believe that there exists in a building or upon any premises any conditions or violations of this ordinance which make the building or premises unsafe, dangerous or hazardous, the enforcement officer shall have the authority to enter the building or premises at all reasonable times to inspect or to perform the duties imposed upon the enforcement officer by this ordinance. If such building or premises is occupied, the enforcement officer shall present credentials to the occupant and request

entry. If such building or premises is unoccupied, the enforcement officer shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the enforcement officer has recourse to every remedy provided by law to secure entry.

SECTION 3. PUBLIC NUISANCE DECLARED

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance, and whenever the enforcement officer determines that any of these conditions exist upon any premises, the officer may require or provide for the abatement thereof pursuant to this ordinance:

The construction, maintaining, using, placing, depositing, causing, allowing, leaving, or permitting to be or remain in or upon any private or public lot, building, structure, or premises, on, in or upon any street, avenue, alley, park, parkway or other public, private place in the City, any one or more of the following places, conditions, things, or acts to the prejudice, danger, or annoyance of others:

(1) Accumulations of manure, or rubbish except a compost pile so covered or concealed as not to affect the health, safety or depreciation of adjacent property.

(2) Pollution of a body of water, spring, stream or drainage ditch by sewage, industrial wastes, or other substances that cause harmful material to pollute the water.

(3) All limbs of trees overhanging a public sidewalk which are less than nine (9) feet above the surface of said sidewalk, or overhanging a city street which are less than fourteen (14) feet above the surface of said street.

(4) Premises or residences which are in such a state of decay to cause an offensive odor or which are in an unsanitary condition.

(5) Ponds or pools of stagnant water being consistent with Department of Ecology and Environmental regulations.

(6) Installing or maintaining any privies, vaults, cesspools, sumps, pits, or like places.

(7) All unused abandoned or discarded refrigerators, ice boxes, or like containers which are left in any place exposed or accessible to children; or any water closet, bath tub or other appliance.

(8) All places not properly fenced which are used or maintained as junkyards or dumping grounds, or for the wrecking, disassembling, repair or rebuilding of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which said places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others.

(9) Deposit, keep or leave or to permit to be deposited, kept or

left in any place accessible to children, or in any place viewable from a street, alley or from other public or private property, any abandoned, unused, non-running, unlicensed, junk or discarded automobile, vessel, trailer, truck or other such vehicle, or any vehicle hulk or any part thereof. For the purposes of this subsection "abandoned, non-running" refers to a vehicle which is not movable under its own power and which has been in a stationary position for more than fourteen (14) calendar days. For the purposes of this subsection "unused" refers to a vehicle which has been in a stationary position for more than fourteen (14) calendar days.

(A) This section shall not apply to:

i. A vehicle or vessel which is completely enclosed within a building in a lawful manner, or a vehicle/vessel which is not visible from the street, alley or from other public or private property (a covering such as a tarp on the vehicle/vessel does not constitute a visual barrier); or

ii. A vehicle or vessel which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle/vessel dealer and is fenced as required by state law; or

iii. A vehicle or vessel which is used as artwork or as a display provided that the use of such vehicle/vessel must not pose a risk to the safety and health of children or others by containing any sharp edges, loose or broken parts, broken glass, entrapment hazards or any other condition which may pose a safety or health risk. Use of such vehicles/vessels must be authorized by a permit signed by the enforcement officer prior to their placement on any public or private property. The City, at its sole discretion, reserves the right to limit the number of vehicles/vessels per property address which shall be used as artwork or displays.

The term "junk" as used in this section includes all motor vehicles or vessels not currently licensed, old or unusual motorized or non-motorized vehicle/vessel or vehicle/vessel parts, abandoned automobiles or vessels, old machinery, old machinery parts, old appliances or parts thereof, old iron or other metal, glass, paper, lumber, wood or other waste or discarded material. The term "junk" as used in this ordinance shall not include fishing equipment, storage or repair incidental to an off premise commercial fishing business.

(10) An open pit, quarry, cistern or other excavation without safeguards or barriers to prevent such places from being used by children.

This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.

(11) The depositing or burning or caused to be deposited or burned in any street, alley, sidewalk, park, parkway, or other public place which is open to travel, any hay, straw, grass, grass clippings, papers, wood, boards, boxes, leaves, manure, or other rubbish or material except by permission of the Fire Marshall.

(12) The existence of any dead, diseased, infested or dying tree that may constitute a danger to property or persons. No tree on property which abuts upon a street or public sidewalk shall interfere with street or sidewalk traffic.

(13) All noxious weeds as defined in RCW 17.10 as it currently exists or as hereinafter amended and other rank growth upon public or private property which shall create a health or fire hazard or be permitted to go to seed and contaminate adjacent or other properties or which in the determination of the enforcement officer shall otherwise constitute a nuisance.

(14) Any tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire, pipe, metal articles, plaster, and all other trash or abandoned material, unless the same is kept in covered bins or metal receptacles approved by the enforcement officer and further except for recyclables kept in approved containers.

(15) Any trash, litter, rags, accumulations of empty barrels, boxes, crates, packing cases, mattresses, bedding accessories, packing hay, straw, or other packing material, scrap iron, tin, pipe and other metal not neatly piled.

(16) Lumber, logs, pilings or wood not neatly stacked or piled.

(17) Any unsightly and dangerous building, billboard or other structure, or any old, abandoned or partially destroyed building or structure, or any building or structure commenced and left unfinished.

(18) Repair of an automobile, truck or other motor vehicle of any kind upon the public streets, alleys or other public property of the city, except for emergency repairs not to exceed forty-eight (48) hours.

(19) Any putrid, unsound or unwholesome bones, meat, hides, skins, skeletons or the whole or part of any dead animal, fish or fowl, butcher's trimmings and offal, or any waste, vegetable or animal matter, in any quantity, garbage, human excreta or other offensive substance, provided nothing contained in this ordinance shall prevent the temporary retention of waste in receptacles in the manner approved by the enforcement officer of the City or the local disposal company.

(20) Burning or disposal of refuse, sawdust or other material in such a manner to cause or permit ashes, sawdust, soot or cinders to be cast upon the streets or alleys of the City, or to cause or permit dense smoke, noxious fumes, ashes, soot or gases arising from such burning to become annoying or injurious to the health, comfort, or repose of the general public. Nothing contained in paragraph 20 or other provisions of this ordinance shall permit conduct which is inconsistent with Department of Ecology or other environmental regulations.

(21) The existence of any vines, plants growing into or over any street, sidewalk, public hydrant, pole or electrolier, or the existence of any shrub, vine or plant, growing on, around or in front of any hydrant, stand pipe, sprinkler system connection or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof or impair the access thereto, or obstruct or interfere with the proper diffusion from the light from any street lamp, or obstruct the vision of vehicle or pedestrian traffic.

(22) Any poisonous or harmful substance which is reasonably accessible to persons or to animals.

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

(24) Poultry which creates a nuisance.

(25) Disposal of animals within the city limits.

(26) Any accumulation of debris, brush, wood, materials or objects when, in the opinion of the enforcement officer, the same endangers property, safety or constitutes a fire hazard.

SECTION 4. PROHIBITED CONDUCT

It shall be unlawful for any responsible person or owner to create, permit, maintain, suffer, carry on or allow upon any premises any of the acts of things declared by this ordinance to be a public nuisance.

SECTION 5. VOLUNTARY CORRECTION

This section applies whenever the enforcement officer determines that a public nuisance is occurring.

The enforcement officer shall pursue a reasonable attempt to secure voluntary correction by contacting the person responsible for the public nuisance and, where possible, explaining the public nuisance and requesting correction.

A voluntary correction agreement may be entered into between the person responsible for the public nuisance and the City, acting through and at the discretion of the enforcement officer as follows:

1. The voluntary correction agreement is a contract between the City and the person responsible for the public nuisance under which such person agrees to abate the public nuisance within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

a. The name and address of the person responsible for the public nuisance;

b. The street address or a description sufficient for publication of the building, structure, premises or land upon or within which the public nuisance is occurring;

c. A description of the public nuisance;

d. The necessary corrective action to be taken, and a date or time by which correction must be completed;

e. An agreement by the person responsible for the public nuisance that the City may inspect the premises as may be necessary to determine compliance with the voluntary correction;

f. An agreement by the person responsible for the public nuisance that the City may abate the public nuisance and recover its costs and expenses and a monetary penalty pursuant to Section 11 of this chapter from the person responsible for the public nuisance if terms of the voluntary correction agreement are not met; and

g. An agreement that by entering into the voluntary correction agreement the person responsible for the nuisance waives the right to an administrative appeal of the public nuisance and/or the required corrective action.

2. Upon entering into a voluntary correction agreement, the person responsible for the public nuisance waives the right to an appeal of the enforcement officer's finding of public nuisance and the required corrective action as provided in Section 7.

3. The City shall have the right to inspect the subject property to determine compliance with the terms of the voluntary correction agreement.

4. An extension of the time limit for correction of a modification of the required corrective action may be granted by the enforcement officer if the person responsible for the public nuisance has shown due diligence and/or substantial progress in abating the public nuisance, but unforeseen circumstances render abatement under the original conditions unattainable within the time limit for correction.

5. The City may abate the public nuisance in accordance with Section 8 if the terms of the voluntary correction agreement are not met.

6. If the terms of the voluntary correction agreement are not met, the person responsible for the public nuisance shall be subject to the penalties set forth in Section 11, plus all costs and expenses of abatement as set forth in Section 8.

SECTION 6. ENFORCEMENT--NOTICE

Upon finding that a public nuisance exists, the enforcement officer shall take such action as is reasonably necessary to cause the nuisance to be abated. If the person responsible for the nuisance fails to abate the same within the time determined and as directed by the enforcement officer pursuant to the preceding sections, the enforcement officer shall cause any owner or other responsible person to be notified of the existence of the public nuisance, including posting of a notice on the premises where the nuisance exists if possible, directing the owner or person in charge of the property to abate the condition within ten (10) calendar days after notice or other reasonable period.

At the time of posting, if in the determination by the enforcing officer that said property appears abandoned, a copy of such notice shall be forwarded by registered or certified mail to the legal owner or designated guardian, postage paid, and if known or disclosed from official public records of the tax assessor's office, any other legal interest in the building or land.

The enforcement officer, upon receiving written complaint from any neighbor, person, citizen or otherwise where a nuisance may exist, shall

investigate within 10 days of receipt of said complaint.

SECTION 7. APPEAL

Within the time allowed after posting (if possible) and mailing of such notice, as provided in Section 6, the person responsible shall remove the nuisance or within the same 10 day time period show that no nuisance exists. An owner or person responsible, protesting that no nuisance exists, shall file with the enforcement officer a written statement which shall specify the basis for so protesting.

The statement shall be referred to the City Council as part of the Council's next regular agenda. 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 the determination shall be entered in the official minutes of the Council. Council determination shall be required only in those instances where a written statement has been filed as provided.

If the Council determines that a nuisance does in fact exist, the person responsible shall within the time specified after the Council determination abate the nuisance.

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

If, within the time allowed, the nuisance has not been abated by the person or persons responsible, the Council may cause the nuisance to be abated.

SECTION 8. ABATEMENT BY THE CITY

In all cases where the enforcement officer or city council has determined to proceed with abatement, the City shall acquire jurisdiction to abate the condition at the person's expense as herein provided. Upon the abatement of the condition or any portion thereof by the City, all the expenses thereof shall constitute a civil debt owing to the City jointly and severally by such persons who have been given notice as herein provided. The debt shall be collectible in the same manner as any other civil debt owing to the City.

SECTION 9. ABATEMENT BY OWNER OR OTHER RESPONSIBLE PERSON

If and when an owner or other responsible person shall undertake to abate any condition described in this ordinance, whether by order of the enforcement officer or otherwise, all needful and legal conditions pertinent of the abatement may be imposed by the enforcement officer. It is unlawful for the owner or other responsible person to fail to comply with such conditions. Nothing in this ordinance shall relieve any owner or other responsible person of the obligation of obtaining any required permit to do any work incidental to the abatement.

SECTION 10. IMMEDIATE DANGER--SUMMARY ABATEMENT

Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger

to the health or safety of the public or a significant portion thereof, the enforcement officer shall have the authority to summarily and without notice abate the same. The expenses of such abatement shall become a civil debt against the owner or other responsible party and be collected as provided in Section 8.

SECTION 11. CIVIL PENALTY

The monetary penalty for each day or part thereof the public nuisance is permitted to continue after the date set for abatement by the enforcement officer shall be as follows:

1. First day through seventh day: \$100.00 per day
2. Eighth day through fourteenth day: \$200.00 per day
3. Fifteenth day through twenty-second day: \$300.00 per day
4. Twenty-third day through thirtieth day: \$400.00 per day
5. Each additional day beyond thirty days: \$500.00 per day.

Payment of the monetary penalty pursuant to this chapter does not relieve the person to whom the notice of abatement was issued of the duty to correct the public nuisance. The monetary penalty constitutes a personal obligation of the person to whom the notice of abatement is issued. Any monetary penalty assessed must be paid to the City within thirty (30) calendar days from the date set by the enforcement officer for abatement of the nuisance. The City attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty, plus reasonable attorney's fees and costs of suit incurred in collecting the monetary penalty.

SECTION 12. VIOLATIONS

Any person violating any of the provisions of this ordinance, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment in jail not to exceed ninety (90) days or by both such fine and imprisonment.

SECTION 13. REMEDIES NOT INCLUSIVE

The remedies prescribed in this ordinance are in addition to all other remedies provided or authorized by law.

SECTION 14. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The city council hereby declares that it would have approved this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of clauses or phrases be declared illegal, invalid or unconstitutional.

SECTION 15. EFFECTIVE DATE.

This ordinance shall become effective five (5) days from and after its passage, approval and publication as provided by law.

Passed by the City Council and approved by the Mayor of
the City of Westport, Washington at a regular meeting thereof this 17TH
day of JANUARY, 2006.

APPROVED:



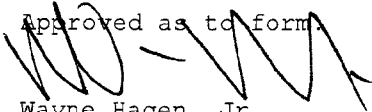
MICHAEL BRUCE, Mayor

Attest:



Margo Tackett
CLERK

Approved as to form



Wayne Hagen, Jr.
City Attorney