

ORDINANCE NO. 1061

AN ORDINANCE OF THE CITY OF ROSLYN, WASHINGTON, REPEALING ROSLYN MUNICIPAL CODE CHAPTER 8.10 RELATING TO NUISANCES AND ADOPTING A NEW CHAPTER 8.10 RELATING TO NUISANCES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in order to better protect the health, safety, and welfare of its citizens, the Roslyn City Council desires to update its nuisance provisions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROSLYN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Repealer. The existing RMC Chapter 8.10 (Nuisance) is hereby repealed in its entirety.

Section 2. A new Chapter 8.10 Adopted. A new Chapter 8.10 of The Roslyn City Code is hereby adopted to read as follows:

Chapter 8.10 NUISANCES

Sections:

- 8.10.010 Purpose and intent
- 8.10.020 Definitions
- 8.10.030 Compliance, authority and administration
- 8.10.040 Nuisances prohibited
- 8.10.050 Initial investigation
- 8.10.060 Procedures when probable nuisance violation is identified

8.10.010 PURPOSE AND INTENT.

The purpose and intent of this chapter is to create and maintain a safe and healthy environment for the citizens of the City by identifying and reducing the conditions that contribute to injury, illness, devaluation of property, and the incidence of crime through the existence of nuisance conditions on public and private property.

8.10.020 DEFINITIONS.

A. "Abate" means to take whatever steps are deemed necessary by the director to ensure that the property complies with applicable nuisance ordinance requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.

B. "City" means the City of Roslyn, Washington.

C. "Code enforcement officer" means a regular or specially commissioned officer so designated by the mayor for the City.

D. "Days" will be counted as business days when five or fewer days are allowed to do an act required by this chapter. "Days" will be considered calendar days when more than five days are allowed to do an act required by this chapter.

E. "Determination of compliance" means a written statement from the director that evidence exists to determine that the violation(s) has been sufficiently abated as to the nuisance violation(s) stated in the voluntary compliance agreement or notice and order.

F. "Director" means the planning and community development director for Roslyn, the code enforcement officer, or other person designated by the mayor.

G. "Found in violation" means that:

1. A notice and order has been issued and not timely appealed;
2. A voluntary compliance agreement has been entered into; or
3. The hearing examiner has determined that the violation has occurred and such determination has not been stayed or reversed on appeal.

H. "Graffiti" means unauthorized markings, inscriptions, words, figures, designs or other inscribed material visible from premises open to the public, that have been placed upon any property through the use of paint, ink, dye, or any other substance capable of marking property.

I. "Hearing examiner" means the City of Roslyn hearing examiner.

J. "Impound," for the purposes of this chapter, means to take and hold a vehicle, animal, or other personal property in legal custody.

K. "Inoperable" means incapable of being operated legally on a public highway, including, but not limited to, not having a valid, current registration plate or current certificate of registration.

L. "Junk vehicle" means a vehicle that meets three or more of the following criteria:

1. Is three years old or older;
2. Is extensively damaged, such damage including but not limited to any of the following: a broken window or windshield, or missing wheels, tires, motor, or transmission; or

3. Is apparently inoperable.

“Junk vehicle” also includes a partially disassembled vehicle or individual parts of vehicles no longer attached to one another.

4. Has an approximate fair market value equal only to the approximate value of the scrap in it.

M. “Mitigate” means to take measures, subject to City approval, to minimize the harmful effects of the nuisance violation where remediation is either impossible or unreasonably burdensome.

N. “Nuisance” means the unreasonable or unlawful use by a person of real or personal property, or the unreasonable, indecent or unlawful personal conduct which materially interferes with or jeopardizes the health, safety, prosperity, quiet enjoyment of property or welfare of others, offends common decency or public morality, or obstructs or interferes with the free use of public ways, places or bodies of water.

O. “Occupy” or “Occupied” means to reside as an owner, tenant, or caretaker at a premise in a manner that is usual and customary.

P. “Person” means any individual, association, partnership, corporation or legal entity, public or private, and the agents and assigns of such individual, association, partnership, corporation or legal entity.

Q. “Person(s) responsible for a junk vehicle nuisance violation” means:

1. The land owner where the junk vehicle is located as shown on the last equalized assessment roll; and

2. The last registered owner of the vehicle, unless the owner in the transfer of ownership of the vehicle has complied with RCW 46.12.101; and

3. The legal owner of the vehicle.

R. “Person responsible for a nuisance violation” means the person who caused the violation, if that can be determined, and/or the owner, lessor, tenant or other person entitled to control, use and/or occupancy of the property where the nuisance violation occurs.

S. “Remediate” means to restore a site to a condition which does not pose a probable threat to the general public health, safety or welfare.

T. “Repeat Violator” is a person, entity, or agent thereof, who has received a Notice of Violation, or similar notice of stop work or cease and desist, for the same property two times within one calendar year.

U. "Vehicle," for the purposes of RMC 8.10.040(P), includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. The term does not include devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks, as set forth in RCW 46.04.670.

8.10.030 COMPLIANCE, AUTHORITY AND ADMINISTRATION.

A. In order to discourage public nuisances and otherwise promote compliance with applicable nuisance ordinance provisions, the director may, in response to field observations or reliable complaints, determine that nuisance ordinance violations have occurred or are occurring, and may utilize any of the compliance provisions contained in Chapter 8.60 RMC.

B. The director is authorized to determine, based upon past complaints regarding a property, subsequent field investigations, and other relevant criteria, whether a complaint is reliable. If the director determines a complaint is not reliable, the director is not obligated to conduct a field investigation.

8.10.040 NUISANCES PROHIBITED.

No person, firm, or entity shall erect, contrive, cause, continue, maintain, or permit to exist any public nuisances within the City. Prohibited public nuisances include, but are not limited to:

A. All violations of development, land use, licensing, taxing, and public health ordinances are found and declared to be nuisances.

B. Buildings, Structures, Fences.

1. Buildings or portions thereof which are deemed dangerous pursuant to the Roslyn building code (currently adopted International Property Maintenance Code (IPMC) and the International Existing Building Code); provided, that such conditions or defects exist to the extent that the life, health, property or safety of the public or the structure's occupant(s) is endangered.

2. Buildings and structures that are determined by the City's building official to be vacant and so old, dilapidated, or have become so out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure (collectively referred to as a "vacant building").

3. Any fence that obstructs or obscures the view of traffic or traffic control devices, pursuant to clear view triangle policies adopted by the City.

C. Vegetation.

1. Overhanging limbs or branches that are less than eight feet above a public walkway or sidewalk, or less than 14 feet above a public street.

2. Vegetation that obstructs or hinders the use of any public walkway, sidewalk, or street, or that obstructs or obscures the view of traffic or traffic control devices, pursuant to clear view triangle policies adopted by the City.

3. Hedges in excess of the following heights:

- a. Residential zones: Front yard- four feet (4').
- b. Residential zones: Side and back yard- six feet (6').
- c. Commercial zones: All sides eight feet (8').

4. Any growth of noxious weeds or any toxic vegetation shall be subject to Chapter 16-750 WAC as currently adopted and hereafter amended.

D. Sidewalks.

1. Any protrusion, obstruction, awning, overhang, or object that inhibits or obstructs use of a public walkway or sidewalk that has not received a valid permit or other approval from the City.

2. Any object, construction, or damage that inhibits or obstructs the surface use or travel of a public walkway or sidewalk that has not received a valid permit or other approval from the City.

3. Snow or ice or water dripping or sliding or shoveled or moved from any roof or elevated place onto a street, alley, sidewalk or any other public place or city property. Such conditions may be summarily abated at the violator's expense by any city officer or employee upon failure of the violator to abate it immediately.

4. Accumulations of dirt or debris not removed from a public sidewalk.

E. Unauthorized Signs. Any sign not in compliance with the City's currently adopted sign code, provided that nothing herein limits the City's ability to summarily remove unauthorized signs in the City right-of-ways.

F. Accumulations of Materials, Garbage, Recyclables, Furniture, Machinery.

1. Building and Construction Materials. Accumulations, stacks, or piles of soil or fill, or building or construction materials not associated with a current, in-progress permitted project including metal, wood, wire, electrical or plumbing materials in disarray or exposed to the elements on the property. This provision does not apply to a designated contractor's yard, as defined in the currently adopted Roslyn Zoning and Development Regulation Code.

2. Garbage, Recyclables, Compost, and Infestations.

- a. Garbage not kept in a proper receptacle with a tight-fitting lid;
- b. Accumulations of broken or neglected items, litter, salvage materials, and junk not in an approved enclosed structure, in the front, back, or side yards of the property;
- c. Recyclables not properly stored and regularly disposed of; or
- d. Creating or maintaining accumulations of matter, including foodstuffs, that harbor or are an attraction for the infestation of insects or vermin; failing to eliminate such infestations; or failing to eliminate intrusive insects.

3. Furniture and Appliances.

- a. All broken or discarded household furniture, furnishings or equipment, or any appliances not in an approved enclosed structure, in the front, side, or back yard of a property; or
- b. All accessible refrigeration appliances not having the doors secured or removed, or any enclosure that can entrap humans or animals.

4. Machinery and Equipment. Broken, inoperable, accumulations of, or parts of machinery or equipment not in an approved enclosed structure, in the front, back, or side yards of the property. This subsection excludes nuisance vehicles that are regulated by subsection P of this section.

G. Fire Hazards. Stacks or accumulations of newspapers, dead vegetation (excluding properly maintained compost piles), cardboard, or other paper, cloth, or wood products left in a manner that could pose a substantial risk of combustion or the spread of fire.

H. Toxic or Caustic Substances. Improper storing or keeping of any toxic, flammable, or caustic substances or materials.

I. Smoke, Soot, or Odors. The escaping or emitting of any unnecessary or harmful smoke, soot, fumes, or gases or odors offensive or harmful to persons of ordinary sensibilities.

J. Bodies of Water.

1. Except for City-approved structures related to storm drainage systems, all stagnant, pooled water in which mosquitoes, flies or other insects may multiply.

2. The polluting of any waterway, well, or body of water.

K. Holes, Pits, and Excavations. All uncovered holes, pits, or excavations not marked or guarded that are in excess of 6 (six) or more inches in width at the top and 3 (three) feet or more in depth.

L. Attractive Nuisances. Any accessible attractive nuisance to children including, but not limited to, unattended machinery or equipment, unsecured abandoned or vacant buildings, open and unattended vehicle trunks, or other unguarded conditions or situations that could injure or trap a child.

M. Noise.

It is unlawful for any person to cause, or for any person to allow to be emitted, or for any person in possession of property to allow to originate from the property, a sound that unreasonably disturbs or interferes with the peace, comfort and repose of owners or possessors of real property without regard to sound level measurement. Such noises are determined to be public disturbance noises. The following sounds are determined to be public disturbance noises.

1. The frequent, repetitive or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law.

2. The creation of frequent, repetitive or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residential zone, so as to unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property.

3. The noisy operation of any automobile, truck, motorcycle or other vehicle in such a non-emergency manner to cause the squealing of tires by the rapid acceleration of the vehicle; the loud and continuous grinding, thumping or grading noises from trucks or other commercial vehicles; the engine compression noise from the unmuffled or poorly muffled compression braking of trucks; the sound from any motor vehicle audio sound system such as tape players, radios, and compact disc players at volumes so as to be audible greater than fifty (50) feet from the vehicle itself; and loud, excessive engine or exhaust noise from unmuffled vehicles or vehicles operating with inadequate muffler systems to prevent unreasonably loud noises.

N. Dust. Disturbing the topsoil of any land area, or permitting the same, by any person without taking affirmative measures to suppress and minimize the blowing and scattering of dust so as to unreasonably disturb or interfere with the peace and comfort of owners or possessors of real property. This provision does not include permitted agricultural activities as legal nonconforming uses or permitted agricultural activities in general agricultural zones.

O. Nuisance Premises. Any premises or structures allowing or maintaining prostitution, lewd behavior, underage consumption of alcohol, the harboring of juvenile runaways or wanted persons, or where there is the use, sale, manufacturing or distributing of any narcotic or controlled substance, or at which there is a pattern of criminal activity, are prohibited nuisances.

P. Yard Sales. The holding or permitting of a yard sale on the same real property more than three consecutive days in the same week or more frequently than four times in the same calendar year without having received a special use permit from the City.

Q. All junk vehicles, or parts thereof, placed, stored or permitted to be located on private property within the City limits are public nuisances to be abated as provided in this chapter. This chapter does not apply to:

1. A vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;

2. A vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer, and is fenced according to the provisions of RCW 46.80.130; and

3. A junk vehicle does not include a vehicle which is in the process of being repaired, as evidenced by the good faith efforts of the vehicle owner. This exception shall include having up to one "parts" vehicle, from which parts are being salvaged concurrent with the repair process for the vehicle being excepted from compliance in this section. Good faith efforts of repair can include producing invoices showing work or parts purchased for repair or renovation within 30 days prior to issuance of the notice of violation, or a declaration under penalty of perjury that the vehicle is in the process of being repaired and has been worked on within 30 days prior to issuance of the notice of violation. This exception allows up to 60 days for good faith repair. Upon good cause shown, the director shall have the discretion to grant one additional 60-day exception period to this chapter. Under no circumstance shall any good faith efforts of repair extend for more than 120 days, after which time this exception shall no longer apply. This exception shall apply to one vehicle and one parts vehicle per parcel of land per calendar year;

R. Graffiti. All graffiti upon public or private property is deemed a nuisance.

S. Any liquid, solid or snow unlawfully allowed or caused to overflow or be deposited on lands or property of the City or of the public in the City.

T. Unattended Animals. Any animal that is kept on any premises that is not being concurrently occupied.

U. Other Nuisances. Any act, omission or thing declared to be a nuisance by any other Chapter of the City of Roslyn, heretofore or hereafter enacted, is hereby declared to be a nuisance and the list of nuisances set forth in this Chapter are not intended to be an exclusive list.

8.10.050 INITIAL INVESTIGATION.

A. Upon receipt of a complaint, field verification should be made if possible prior to, concurrent with, or shortly after notifying the person responsible for the nuisance violation or alleged nuisance violation.

B. Advising interested parties of receipt of complaint and/or field investigation:

1. The person responsible for the nuisance violation should be advised of any complaint, by personal contact, phone, posting and mail (return receipt requested). The letter should state that a violation may have occurred, but has not been verified, and should ask the recipient to contact the person issuing the letter.

2. The complainant should be contacted by phone and, if possible, in person during the field visit.

C. The director will record all violations in a database system, including a list of all actions taken on the complaint.

D. To the extent possible, the director shall check the City's records and the records of other agencies for previous violations on the site of the alleged violation or by the owner or occupant of the site or such other person as may be responsible for the nuisance violation.

E. Staff undertaking field investigations shall comply with all legal provisions and any provisions of this chapter regarding right of entry.

8.10.060 PROCEDURES WHEN PROBABLE NUISANCE VIOLATION IS IDENTIFIED.

A. The director shall determine, based upon information derived from sources such as field observations, the statements of witnesses, relevant documents and data systems for tracking violations and applicable City codes and regulations, whether or not a nuisance violation has occurred. As soon as the director has reasonable cause to determine that a violation has occurred, he or she shall document the violation and promptly notify the person(s) responsible for the nuisance violation.

B. Except as provided in subsection D of this section, a warning shall be issued verbally or in writing promptly when a field inspection reveals a violation, or as soon as the director otherwise determines a nuisance violation has occurred. The warning shall

inform the person determined to be responsible for a nuisance violation of the violation and allow the person an opportunity to correct it or enter into a voluntary compliance agreement as provided for by Chapter 8.60 RMC. Verbal warnings shall be logged and followed up with a written warning within five days, and the site shall be reinspected within 14 days.

C. The guidelines set forth for warnings, notifications and reinspections are not jurisdictional, and failure to meet them in any particular case shall not affect the City's authority to enforce nuisance provisions with regard to that case.

D. No warning need be issued in emergencies, repeat violation cases, cases that are already subject to a voluntary compliance agreement, cases where the violation creates, or has created, a situation or condition that is not likely to be corrected within 72 hours, or when the person responsible for the nuisance violation knows, or reasonably should have known, that the action or condition was a nuisance violation.

E. Notice and orders should be issued in all cases where the director determines that the violation is unlikely to be fully corrected within 72 hours.

F. The director shall use all reasonable means to determine the person actually responsible for the nuisance violation when the property owner has not directly or indirectly caused the violation. Notwithstanding the foregoing, the property owner shall ultimately be responsible for the violation.

G. If the violation is not corrected, the director may utilize the enforcement provisions contained in Chapter 8.60 RMC as adopted or hereafter amended to obtain compliance with the applicable code provisions.

8.10.070 REPEAT VIOLATORS.

If a person is a repeat violator, the Code Enforcement Office shall issue a Notice of Repeated Violation. A Notice of Repeated Violation shall be issued and served as provided in Chapter 8.60 RMC but need not include a description of the corrective action necessary to eliminate the violation or a date by which the corrective action must be completed to avoid a hearing before the City's Hearing Examiner. The Notice of Repeated Violation shall notify the person receiving the notice that due to the repeat nature of his/her violations, the Code Enforcement Officer shall seek an order from the Hearing Examiner, at the date and time set forth in the notice, granting any and all relief to which the City is entitled.

8.10.080 SUCCESSIVE LIABILITY.

Every successive owner, occupant or caretaker of property who neglects to abate a continuing nuisance upon or in the use of such property, caused by a former owner, occupant or caretaker, is liable therefore in the same manner as the one who first created it. Partial abatement does not relieve the owner of liability.

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 14th DAY OF SEPTEMBER, 2010.

CITY OF ROSLYN


Mayor Jeri B. F. Porter

ATTEST/AUTHENTICATED:


Amber Shallow, Clerk-Treasurer

Approved as to form:


Margaret King, City Attorney

Filed with the City Clerk: September 15, 2010
Passed by the City Council: September 14, 2010
Date of Publication: September 17, 2010
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