

**CITY OF CORDOVA, ALASKA
ORDINANCE 1144**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA AMENDING CHAPTER 8.08 OF THE CORDOVA MUNICIPAL CODE ENTITLED “NUISANCES” TO EXPAND THE DEFINITION OF NUISANCES, GRANT THE CITY ADMINISTRATION AUTHORITY TO DECLARE AND ENFORCE NUISANCES AND ESTABLISH A RIGHT TO APPEAL A HEARING OFFICER’S DECISION REGARDING NUISANCES TO THE BOARD OF ADJUSTMENT AND AMENDING SECTIONS 8.24.050, 14.20.020, 13.20.050, 13.08.100, AND 18.80.040 OF THE CORDOVA MUNICIPAL CODE TO INCORPORATE THE RECOMMENDED AMENDMENTS TO CHAPTER 8.08

WHEREAS, it is in the City of Cordova’s best interest to clarify the nuisance notice and abatement process; and

WHEREAS, the current nuisance abatement process requires city council’s initial review of a nuisance complaint but does not provide a right of appeal to the Board of Adjustment; and

WHEREAS, it is in the City’s best interest to streamline the nuisance abatement declaration and hearing process while providing the City administration greater authority in declaring and enforcing nuisances within the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cordova, that:

Section 1. Chapter 8.08 of the Cordova Municipal Code entitled “Nuisance” is amended to read as follows:

8.08.005 - Purpose.

The purpose of this chapter is to define what constitutes a public nuisance and how a public nuisance will be abated. The intended result of abating a public nuisance is to protect public health, safety and property values by reducing visual blight, providing for safer pedestrian and automobile traffic flow, and reducing negative impacts to the environment.

8.08.007-Definitions.

Whenever used in this chapter, these words shall be defined as follows:

"Attractive nuisance" means a circumstance or condition which may reasonably be expected to attract youth and which constitutes a danger to such youth which includes but is not limited to: 1) unused or abandoned refrigerators, freezers, or other large appliances or any parts of these appliances or equipment; 2) any structurally unsound or unsafe fence or building edifice; 3) any unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; 4) any sizeable collection of scrap lumber, trash, debris vegetation, or 5) any artificially created deposit of sand, dirt or gravel of sufficient height and grade to create a danger to children.

"Container" or "can" means a sturdy receptacle, either furnished by the city or approved by the city manager for refuse collection for commercial or residential service.

"Garbage" means food waste, including every accumulation of animal, vegetable or other matter that attends the preparation, consumption, decay, dealing in, discard of or storage

of meats, fish, fowl, fruit or vegetables, including the cans, containers, wrappers or other tangible items wasted or used along with such materials.

"Hearing officer" means any person retained by the city manager or his or her designee but shall not be a city employee directly involved with declaring or abating nuisances within the city.

"Junk" means any worn-out, wrecked, scrapped, partially or fully dismantled or discarded tangible material, combination of materials or items such as chemicals, building materials, machinery, metal, rags, rubber, paper, plastics and wood that cannot without further or additional alteration and reconditioning be used for their original purposes.

"Liquid waste" means garbage, human and/or animal waste, litter, refuse, rubbish and other unwanted or discarded matter with sufficient liquid content to be free flowing.

"Litter" means "litter" as defined in section 8.32.010 of this code.

"Public nuisance" means any act or condition forbidden by any provision of this chapter and any act or condition that annoys, injures or endangers the safety, health, comfort, senses or repose of the public or any portion thereof or neighborhood within city boundaries or is an obstruction to the comfortable and safe enjoyment of public or private property.

"Rubbish" means all solid waste, liquid waste, garbage, junk, litter, ashes, combustible wastes and noncombustible wastes including grass clippings, hedge trimmings under three feet in length, paper and small light scrap lumber.

"Rubble" means brushwood, heavy yard trimmings which cannot be conveniently cut into three-foot lengths, discarded fence posts, ashes, cinders, street sweeping, catch basin muck, concrete, mortar, stones, bricks, scrap metal or other similar construction materials, trees or materials resulting from the erection or destruction of buildings.

"Solid waste" means garbage, human and/or animal waste, litter, refuse, rubbish and other unwanted or discarded matter with insufficient liquid content to be free-flowing.

8.08.010 –Creation or maintenance prohibited.

~~No person may create or maintain a public nuisance, or permit a public nuisance to occur on property that the person owns or controls.~~ No person shall create, maintain or permit a public nuisance.

8.08.020- Public Nuisances **designated.**

~~In addition to public nuisances under other provisions of law or this code, the following are public nuisances:~~ public nuisances include but are not limited to the following acts and conditions:

A. The keeping of a place where activities are conducted in violation of law;

B. All ditches, drains, wells, pools, cisterns, bodies or containers of water in which mosquitoes breed or are likely to breed, or which are so constructed, formed, conditioned or situated as to endanger the public health or safety;

C. Rank weeds or grass, carcasses, accumulations of manure, refuse or other things, which are, or are likely to be, breeding places for flies, mosquitoes, vermin or disease germs;

~~D. Any pit, hole or excavation which is so constructed, formed, conditioned and/or situated as to endanger public safety;~~

B. Plowing or dumping of snow from a premises upon a city street or other public property without prior written authorization from the city manager;

~~F. Permitting or enabling any premises to be inhabited by one or more feral cats. A feral cat is a descendant of a domesticated cat that has returned to the wild, as distinguished from a domesticated cat that has been lost or abandoned.~~

C. Abandoned and Unoccupied Buildings. No person shall allow vacant, unoccupied or abandoned buildings except those that have been boarded up at all doors, windows and other openings sufficiently to prevent ingress, or otherwise secured.

D. Attractive Nuisances. No person shall allow, maintain or permit an attractive nuisance to exist.

E. Dangerous Excavations. Any swimming pool, basement, gravel pit, ditch or other excavation in the earth more than three (3) feet in depth shall not be kept, maintained or permitted to be in an uncovered, unprotected or otherwise dangerous or hazardous condition.

F. Disposal of Rubbish on Another's Property. No person may deposit or place rubbish upon a street, alley or a municipally owned property or upon any property owned by another, or in a refuse container owned by another except if with the consent of the owner and for the purpose of collection.

G. A controlled burn that generates smoke that prevents a neighboring property owner from enjoying the owner's property

8.08.024 - Garbage, junk and rubbish—Disposal and storage.

A. No person may discard or place any garbage, litter, junk, rubbish, manure or other wastes upon public property not set aside by law as a refuse—disposal site or sanitary fill, or upon any private property not maintained as a junk or salvage yard in accordance with applicable state and local law. No owner, lessee, agent or occupant shall allow or permit any junk, litter, garbage or rubbish to remain on any property owned or controlled by him that is not maintained as a junk or salvage yard in accordance with applicable state and local law, nor fail to maintain premises subject to his control free of garbage, rubbish, junk or other wastes in a manner approved by law.

8.08.026 - Transportation—Dumping.

No person shall deposit, dump, abandon, throw, scatter or transport rubbish, solid waste, liquid waste, or other tangible material in any manner as to cause the littering of any public or private property, street, alley, ditch, drain, watercourse or gutter.

8.08.028 - Unsightly premises.

No person shall maintain property, including but not limited to building exteriors, in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same causes appreciable diminution of the property values of surrounding property or is materially detrimental to nearby properties and improvements. This includes but is not limited to the keeping or disposing of or the scattering over the property or premises of any lumber, junk, trash or rubbish; abandoned, discarded or

unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers; stagnant water or excavations; or any device, decoration, design, fence, structure, clothesline or vegetation that is unsightly by reason of its condition or its inappropriate location.

8.08.030 - Nuisance abatement.

A. The city manager, any other city official or **any person** resident may submit to the city council **notify** the **City Manager** a written statement describing an alleged **of an alleged** public nuisance, and requesting that it be abated. **Complaints made by private individuals or entities may be submitted to the City Manager in writing and must contain the name of the complainant, location of the property, and the alleged nuisance. The city manager or his or her designee may act on any complaint.**

B. **Prior to abating a nuisance, except as provided in subsection F of this section, the city manager or his or her designee shall issue a notice of nuisance violation and order of abatement.** Except as provided in subsection E of this section, **The** city manager shall give written notice of the public nuisance allegation to **all owners of the property; the person believed to be responsible for such violation if different from the owners of the property; and any person names as beneficiary in any recorded deed of trust related to the property .** the owner of the property that is the location of the alleged public nuisance, and to any other person alleged to be responsible for causing the public nuisance. The notice shall be given by certified mail, return receipt requested, and by posting at the location of the alleged nuisance, **The notice shall** describing the alleged nuisance, **order the abatement of the nuisance,** and stating **notify the recipient** that the nuisance will ~~will~~ **may** be abated **by the City no earlier than 30 days after the date the notice was mailed. The notice shall also notify the recipient of the right to a hearing before a hearing officer if requested in writing within 30 days of the date on which the notice was mailed.** unless the recipient of the notice requests a hearing in writing within twenty days after the date of the notice.

C. **Any person to whom notice of abatement is sent or is required to be sent under subsection B of this section may request a hearing. The appealing party must file a written request for a hearing with the city clerk specifying the reasons for the hearing.** Within ~~twenty~~ **30** days after a timely request for a hearing, a hearing officer **appointed by the city** shall hold a public hearing on whether the alleged public nuisance exists, and whether the public nuisance should be abated under this section. Notice of the hearing shall be given in the same manner as notice of the public nuisance, ~~allegation.~~

D. At the hearing, each participant may present its own evidence and cross-examine other parties' witnesses. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. **The city manager or his or her designee** ~~The person requesting abatement of the public nuisance~~ shall bear the burden of establishing that the public nuisance exists and that it should be abated under this section.

E. **No later than 30 days after the** ~~At the conclusion of the hearing,~~ the hearing officer shall prepare a written decision **containing the hearing officer's decision and his or her basis for that decision.** A copy of such decision and reasons therefor shall be provided to the **parties to the appeal.** ~~person requesting abatement of the public nuisance and the owner of the property where the alleged nuisance is located and to any other person responsible for causing the public nuisance.~~ **The written decision shall contain a notice to the parties stating that**

the parties have 30 days to appeal the hearing officer's decision to the Board of Adjustment. If the hearing officer finds that a public nuisance exists, the hearing officer shall direct the owner or other person responsible for causing the public nuisance to abate it within a specified time. If the owner or other person responsible for causing the public nuisance does not abate it within the specified time, the city manager **or his or her designee may**~~shall~~ abate the public nuisance. ~~at the expense of the property owner or other responsible person.~~

F.G. The city manager **or his or her designee** may abate a public nuisance that constitutes a grave and immediate danger to the public peace, health, safety, morals, or welfare, without a prior hearing under subsection B of this section.

G.H. The city manager **or his or her designee** shall keep an account of the cost of the abating a public nuisance. The costs and expenses incurred by the city in such abatement shall be chargeable to the owner or other responsible person, and may be recovered by the city in a civil action.

H.I.~~The~~ procedure for abating a public nuisance in this section is cumulative and in addition to any other procedure authorized by law.

8.08.035-Board of Adjustment Appeal

A. The city or any party participating in an appeal to the hearing officer may appeal to the Board of Adjustment within 30 days after the hearing officer mails his or her written decision.

B. The appealing party must file a written notice of appeal with the city clerk specifying the basis for the appeal.

C. The Board of Adjustment shall provide notice of the hearing in the same manner as the notice of hearing before the hearing officer.

D. The hearing before the Board of Adjustment shall provide each party with fifteen minutes to present their argument. No new evidence may be presented before the Board of Adjustment. The filing of an appeal shall stay all proceedings in the matter until a determination is made by the Board of Adjustment.

E. The Board of Adjustment shall issue a final written decision within 60 days of the hearing.

Section 2. Section 8.24.050 of the Cordova Municipal Code entitled "Nuisance" is amended to read as follows:

8.24.050 - Nuisance defined.

A controlled burn that generates smoke that prevents a neighboring property owner from enjoying the owner's property is a nuisance **under section 8.08** and must be extinguished immediately upon request of the fire department.

Section 3. Section 14.20.020 of the Cordova Municipal Code entitled "Definitions" is amended to read as follows:

In this chapter:

"Authorized collector" means a person with whom the city has contracted or whom the city has licensed to collect and dispose of refuse.

"Bag" means a refuse bag constructed of either polyethylene or paper approved by the city manager for indoor and outdoor storage of dry, wet and flammable refuse.

"Commercial service" means service that is not residential service.

"Container" or "can" means a sturdy receptacle, either furnished by the city or approved by the city manager for refuse collection for commercial or residential service.

"Garbage" means food waste, **including every accumulation of animal, vegetable or other matter that attends the preparation, consumption, decay, dealing in, discard of or storage of meats, fish, fowl, fruit or vegetables, including the cans, containers, wrappers or other tangible items wasted or used along with such materials.**

"Holiday" means a recognized city holiday under Section 4.48.040.

"Refuse" means all forms of solid waste including garbage and rubbish, but excluding rubble.

"Residential service" means service to one or more dwelling units.

"Rubbish" means grass clippings, hedge trimmings under three feet in length, paper and small light scrap lumber.

"Rubble" means brushwood, heavy yard trimmings which cannot be conveniently cut into three-foot lengths, discarded fence posts, ashes, cinders, street sweeping, catch basin muck, concrete, mortar, stones, bricks, scrap metal or other similar construction materials, trees or materials resulting from the erection or destruction of buildings.

Section 4. Section 13.20.050 of the Cordova Municipal Code entitled "Nuisance declared-Violation" is amended to read as follows:

13.20.050 – ~~Nuisance~~ **Violation** declared-Violation.

A. Any marquee, hood, canvas or cloth awning, or any sign erected within the jurisdiction of the city that does not conform to the requirements of this chapter shall be deemed a ~~public nuisance~~ as a matter of law **a violation of this chapter.**

B. Upon finding that any object described in subsection A of this section does not conform to the requirements of this chapter, the city shall provide written notice of ~~noncompliance~~ **violation** to the owner. The owner shall have two days from receipt of that notice to bring the object into compliance or otherwise abate the ~~nuisance~~ **violation.** If the owner fails to do so, the city may then remove the object or otherwise effect compliance without further notice. The owner is liable for all expenses incurred by the city in effecting removal or compliance after the two-day period expires.

C. Failure to obey or otherwise comply with any provision of this chapter or any rule, order or regulation issued thereunder is a violation. The minimum penalty upon conviction of a single violation of this chapter shall be a fine of fifty dollars.

Section 5. Section 13.08.100 of the Cordova Municipal Code entitled "Nuisance declared-Violation" is amended to read as follows:

13.08.100 - ~~Nuisance declared~~ Violation.

A. Any coal chute, freight chute or other opening in the sidewalk of the city not in compliance with Section 13.08.090 of this code shall be ~~deemed a public nuisance as a matter of law~~ **subject to the penalty set forth in (B) of this section.**

B. Failure to obey or comply with that section or any other provision of this chapter or any rule, order or regulation issued thereunder shall be a violation. The minimum penalty upon conviction of a single violation of this chapter shall be a fine of fifty dollars.

Section 6. Section 18.80.040 of the Cordova Municipal Code entitled “Nuisance Nonconforming building or structure” is amended to read as follows:

18.80.040 - ~~Nuisances~~ Nonconforming building or structure.

Any building or structure set up, erected, built, moved or maintained, or any use of property contrary to the provisions of this title shall be and the same is declared to be unlawful and a ~~public nuisance~~ **violation of this title** and the city attorney shall, upon order of the city council, immediately commence action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such building, structure or use, and restrain and enjoin any person from setting up, erecting, moving, or maintaining any such building or structure, or using any property contrary to the provisions of this title.

Section 7. Section 18.52.050 of the Cordova Municipal Code entitled “Junkyards- Declared nuisance when” is amended to read as follows:

18.52.050 - Junkyards—Declared nuisance when.

Regardless of any other provision of this title, any junkyard as defined in this title, which after the adoption of the ordinance codified in this title exists located in any district other than an I district as nonconforming use, is declared to be a public nuisance and shall be abated, removed or changed to a conforming use within two years ~~thereafter~~ **of adoption of this section.**

Section 8. Section 18.46.040 of the Cordova Municipal Code entitled “Nuisance Violation and removal” is amended to read as follows:

18.46.040 - ~~Nuisances~~ **Violation** and removal.

A. A wind energy system shall be erected and maintained plumb, level, and true and shall be repaired, painted, and maintained in accordance with this chapter, any manufacturer's recommendations and instructions, and with industry standards for wind energy systems.

B. A demolition permit is required to remove a wind energy system. The permit shall require the removal of the entire wind energy system, including foundations to below natural grade, collection, connection, and transmission equipment, at the owner's sole expense.

C. The city planner or designee may order the repair or removal of a wind energy system that is not maintained in accordance with this section. A wind energy system that that is not maintained in accordance with this section, or is not operated for a period of one hundred eighty consecutive days, is a public nuisance subject to abatement under Chapter ~~8.46-08~~ **8.46-08** of this Code.

Section 9. This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, and published within ten (10) days after its passage.

1st reading: May 4, 2016
2nd reading and public hearing: May 18, 2016

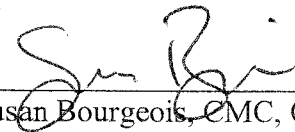
PASSED AND APPROVED THIS 18th DAY OF MAY, 2016.





Tom Bailer, Vice-Mayor

ATTEST:



Susan Bourgeois, CMC, City Clerk