

## **Title 8**

### **HEALTH AND SAFETY**

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## Chapter 8.02

### TAXIS AND TAXI DRIVERS

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Ordinance History: #1480, 1483

#### 8.02.010 Definitions

- A. Taxi means any motor vehicle, including but not limited to limousines and vehicles specifically manufactured or converted for use in the transportation of passengers for hire, used in the transporting of people where the owner or operator of the vehicle is compensated by the passenger or someone of behalf of the passenger for the service. It is not intended that taxi means privately or publicly operated ambulances or vehicles operated by government authorities.
- B. Taxi Driver means the person who drives the taxi.

#### 8.02.020 Purpose

The purpose of this section is to protect the safety and health of the passengers in the vehicle by ensuring the taxi is maintained in a safe and clean condition, and the driver is appropriately licensed and insured.

#### 8.02.030 License

- A. It is unlawful for any person to engage in the business of operating a taxi within the city without first securing a license therefor under the provisions of this chapter.
- B. Operating a taxi within the city means picking up or dropping off passengers within the city limits of Bandon. In the event of only dropping off passengers, a Bandon license is not required if the taxi company and driver is licensed in another jurisdiction under similar licensing rules.
- C. There is authorized to be issued by the City Recorder in the manner specified in this chapter one license for each taxi, and one license for each taxi driver.
- D. Licenses for each taxi and each driver shall be displayed in the taxi in full view of passengers at all times the driver is engaged for hire.

#### 8.02.040 Fees

A license fee for each taxi and each taxi driver may be set by Council Resolution.

- 8.02.050 License Cancellation
- A. Any license issued under this chapter may be canceled by the City Manager or City Recorder for any violation of the terms of this chapter, or violation of the traffic ordinances of the City, or the state laws governing traffic, or the violation of any other state laws, and this provision shall apply equally to the drivers of taxis or to the companies operating them.
  - B. When any license shall be canceled , there shall be refunded to the licensee the unused portion of any license fee paid.
- 8.02.060 Appeal Procedure
- A. Whenever a violation of the terms of this chapter shall be reported to the Chief of Police or other City official, an investigation shall at once be made as to the truth of the allegations. If the holder of the license or any employee shall be found to have violated any of the terms of this chapter, the license shall be canceled.
  - B. In the event the holder of the license shall feel aggrieved by such action, he or she shall have the right of appeal to the City Council at its next regular meeting and to present his or her case on the cancellation. The decision of the city council shall be final and conclusive.
- 8.02.070 Driver Requirements
- A. The holder of each license shall employ competent drivers over 21 years of age who shall be holders of an appropriate license to drive a taxi under the laws of the State of Oregon.
  - B. Upon receipt of an application, the Chief of Police or designee shall investigate the applicant's business background and legal record, and the statements contained in the application, as may be necessary for the protection of the public health and safety and welfare, and to determine whether any cause exists for denial of the license. Such investigation shall include fingerprinting. Upon concluding the investigation, a report of findings shall be prepared with a recommendation to either issue or deny the license.
  - C. The license of a driver shall be automatically and without further notice suspended from and during any time that such licensee's Oregon motor vehicle driver's license has been suspended or revoked by the Oregon Motor Vehicle Division.
  - D. No operator shall permit any person who is under the influence of intoxicating liquor or drugs to drive any vehicle for hire.
  - E. Operators and drivers shall conduct themselves toward their passengers in a courteous manner, shall not drive or operate their vehicles in a reckless manner, and shall at all times keep the vehicles clean and suitable for occupancy by the general public.
- 8.02.080 Vehicle Inspection
- A. Upon receipt of the application provided for in this chapter, the City Recorder shall proceed to have each vehicle described in the application examined by such person as the City Manager shall designate to determine its adequacy and suitability for use as a taxi. Inspection costs are the responsibility of the taxi owner.
  - B. If the vehicle is found to be suitable and in safe condition for use as a taxi, and the required liability and property damage insurance (in a minimum amount mandated by Oregon law) is in good standing, the City Recorder shall proceed to issue the license to the applicant.

- C. A similar inspection shall be conducted annually prior to renewal of the vehicle's license and proof of such inspection and insurance presented to the City Recorder along with the application for renewal.
- D. Every taxi shall be equipped with such safety equipment as is required by State and federal law. Every taxi shall be equipped with seat belts or other restraining devices for each passenger.
- E. In the event the vehicle fails to pass the examination, or the applicant cannot produce evidence of insurance in good standing, the Recorder shall deny the license. The applicant may reapply after correcting any deficiencies.

8.02.090 Fares

- A. The schedule of rates shall be conspicuously posted in each taxi in a manner that may be easily read.
- B. Whenever demanded by a passenger, the driver shall deliver to the person paying for the hire of the taxi, a receipt in legible writing or printing, containing the name of the driver, the total amount paid, and the date of the payment.
- C. It shall be unlawful for any person to fail to pay the rates fixed and provided for after having hired the taxi.
- D. No passenger shall be required to share a taxi with another passenger. A driver may pick up a second passenger only if the original passenger has given permission. Under no circumstances shall a driver pick up a second passenger when transporting a minor.

8.02.100 Current Status

Any person holding a license to operator a taxi within the city shall file with the City Recorder the following which shall be maintained on current status as a provision of licensing:

- A. The license number of vehicles so used, along with the serial number, make and model of the vehicle(s).
- B. A copy of the current license number of each driver.
- C. The City shall be provided proof of commercial insurance for each vehicle and driver transporting persons or goods for the taxi company. The City shall be named as a certificate holder with a 30-day notice of cancellation.

8.02.110 License Assignable

- A. Any license issued under the provisions of this chapter shall not be assignable by the owner of it to any other person, except as provided herein.
- B. The assignee shall make similar application to the City Recorder, shall be similarly examined and found to be similarly qualified before such assignment of the license shall become valid.
- C. The assignee shall take the license subject to all the conditions and limitations existing at the time that it was assigned, or as amended by the City at the time of the assignment.

Any person or taxi company violating any provision of this ordinance shall be subject to a civil penalty of not more than seven hundred and fifty dollars (\$750.00) for each offense.

The sections and subsections of this Ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

A taxi operating in the City of Bandon has 30 days from the passage of this ordinance to comply with the provisions.

## Chapter 8.04

### GARBAGE AND SOLID WASTE

#### Sections:

- 8.04.010 Purposes, policy and scope.
- 8.04.020 Definitions.
- 8.04.030 Requirement of franchise.
- 8.04.040 Grant of exclusive franchise.
- 8.04.050 Exemptions.
- 8.04.060 Franchise term.
- 8.04.070 Franchise fee and municipal services.
- 8.04.080 Franchisees' duties.
- 8.04.090 Hazardous waste and medical waste disposal services.
- 8.04.100 Rate regulation.
- 8.04.110 Rate preferences prohibited.
- 8.04.120 Transfers; subcontracting.
- 8.04.130 Performance review.
- 8.04.140 Termination, suspension, modification or revocation of franchise.
- 8.04.150 Right to lease franchisees' equipment.
- 8.04.160 New or expanded resource recovery services.
- 8.04.170 Termination of solid waste disposal service.
- 8.04.180 Regulated and prohibited acts.
- 8.04.190 Payment of service
- 8.04.200 Oversight.
- 8.04.210 Enforcement and penalties.
- 8.04.220 Severability.

Ordinance History: #1409, 1470, 1517

#### 8.04.010 Purposes, policy and scope.

- It is the public policy of the city of Bandon to regulate the management of solid waste to:
- A. Provide a means whereby the city carries out its responsibility for solid waste management in compliance with statutes, regulations and the policy of the State of Oregon relating to the planning for, and management of, solid waste;
  - B. Insure safe, efficient, economical, and comprehensive solid waste disposal service;
  - C. Ensure fair and equitable consumer rates, and prohibit rate preferences or other discriminatory practices;
  - D. Increase efficiency and decrease truck noise, street wear, energy use, air pollution, and public inconvenience by the elimination of overlapping solid waste disposal service;
  - E. Protect public health and the environment;
  - F. Protect against improper or dangerous handling of hazardous wastes;
  - G. Provide public service standards;
  - H. Provide a basis and incentive for investment in solid waste management equipment, facilities, sites, and technology;
  - I. Conserve energy and material resources, reduce solid waste, and promote material and energy recovery in all forms;

- J. Provide the opportunity to recycle as part of an overall solid waste management system, taking advantage of coordinated area-wide service, promotion, marketing, and education.

8.04.020 Definitions.

For the purposes of this ordinance, the following mean:

"Franchisee" means Bandon Disposal & Recycling, Inc.

"Hazardous waste" means any substance defined as hazardous waste pursuant to state or federal law.

"Person" means any individual, partnership, association, corporation, trust, firm, estate, joint venture, or other legal entity or public agency.

"Resource recovery" means the process of obtaining useful materials or energy resources from solid waste, including reuse, recycling, and other recovery of materials or energy resources from solid waste.

"Solid waste disposal service" means the collection, transportation, and disposal of, or resource recovery from, solid waste.

"Solid waste" means all residential, commercial, industrial, governmental, or institutional wastes in a solid or semisolid state including, but not limited to, garbage, rubbish, refuse, trash, ashes or swill, newsprint or wastepaper, cardboard, grass clippings, compost, discarded home or industrial appliances, equipment or furniture, vehicle parts or tires, medical wastes, and vegetable or animal wastes.

"Solid waste management" means the control, reduction, and disposal of solid waste; and the management and provision of services, facilities and equipment necessary and convenient to such activities.

"Source-separated materials" means solid waste separated into separate materials by the source, generator, or producer in preparation for recycling or reuse.

"Waste" means material that is no longer directly usable by the source, generator, or producer of the material and which is to be disposed of or resource-recovered by another person. The fact that all or any part of such material may have value or that the source, generator, or producer of materials has separated or segregated such material from other waste does not remove the material from this definition.

8.04.030 Requirement of franchise.

No person shall provide solid waste disposal service or advertise or offer to provide such service within the corporate limits of the city of Bandon unless granted a franchise.

8.04.040 Grant of exclusive franchise.

A. The City of Bandon hereby grants to Waste Connections of Oregon, Inc., dba Bandon Disposal & Recycling, Inc. the exclusive franchise, right, and privilege to provide solid waste disposal service within the corporate limits of the city of Bandon, and also grants the exclusive right and privilege to extend this franchise to any unincorporated areas adjacent to the city of Bandon which are hereafter annexed into the city, on and after the date of such annexation.

B. Within thirty (30) days after the passage of this ordinance, or any amendment hereto, the franchisee shall file with the city recorder written acceptance by endorsement of a copy thereof.

8.04.050 Exemptions.

The following persons and activities are exempt from the requirement of a franchise:

- A. Collection, transportation, reuse, re-cycling of or operation of a collection center for totally source-separated materials or repairable or cleanable discards by a religious, charitable, benevolent or fraternal organization which was not organized and is not operated for any solid waste management purpose and which is using the activity for fund-raising. Organizations within the scope of this subsection include, but are not limited to, the Boy Scouts of America, the Salvation Army, St. Vincent de Paul, Goodwill, and churches;
- B. Collection, transportation or redemption by any person of returnable beverage containers under ORS Chapter 459 commonly known as the "Bottle Bill";
- C. Transportation and disposal of wastes generated or produced as an incidental part of regularly carrying on the business or service of auto wrecking licensed by the State of Oregon, or generated or produced by demolition, land clearing or construction, janitorial services, gardening, park maintenance or landscaping service, street sweeping, auto body recovery, septic tank pumping or sludge collection. As used in this subsection, "janitorial service" does not include cleanup of accumulated or stored wastes;
- D. Transportation by a person of solid waste or source-separated recyclable materials generated or produced on his or her own premises to a disposal site, resource recovery site, or market;
- E. Purchase of totally source-separated solid waste at fair market value;
- F. Provision of disposal service for hazardous wastes;
- G. Provision of disposal service for medical wastes;
- H. Collection of recyclable material from non-residential sources;
- I. In addition to the exemptions listed above, the city council may, after public hearing and by resolution, make other exceptions from the requirement of a franchise. The city manager shall give thirty (30) days written notice to the franchisee of the public hearing and the proposed basis of the exception. Any grant of an exemption shall be supported by written findings that the exemption carries out the policies set forth in Section 8.04.010; that there is a need for the proposed service; that the franchisee cannot provide the proposed service; that the person seeking the exemption has the necessary equipment, experience, finances and personnel to adequately provide the proposed service; and that granting the exemption will not have a material detrimental impact on customer service, consumer rates, or business activities of the franchisee.

8.04.060 Franchise term.

The franchisee's exclusive franchise, right, and privilege shall become effective on February 1, 2002, and shall continue for a period of seven years. At the end of the initial year, and each initial year thereafter, the franchise shall automatically be extended so that the term of the franchise remains seven years, unless the city notifies the franchisee, in writing, at least thirty (30) days prior to February 1, that the franchise will not thereafter automatically be extended to provide for a seven-year term, in which case the franchise shall terminate in seven years. Nothing in this section restricts the city council from terminating, suspending, modifying or revoking the franchise for cause.



8.04.070 Franchise fee and municipal services.

- A. In consideration for the franchise granted by this ordinance, the franchisee shall pay to the city five percent of the franchisee's gross revenue. As used in this section, "gross revenue" includes the total of all receipts from the solid waste disposal services covered by this franchise.
- B. On or before August 15 of each year, the franchisee shall furnish the city with a statement of the franchisee's gross revenue generated from solid waste disposal service within the city for the prior calendar year. The statement shall include the number of residential, commercial, industrial, and institutional customers, and shall identify any other services performed by the franchisee and the revenue derived from those services. The franchisee shall pay its franchise fee to the city on or before the fifteenth (15th) day of each month for the gross revenue received during the previous month.
- C. The franchisee shall keep complete and accurate records of the franchisee's operations in a form acceptable to the auditors of the city and in accordance with generally acceptable accounting practices. By accepting the grant of franchisee, the Franchisee thereby consents to an annual audit, at the city's option, to determine compliance with this section.
- D. In addition to the five percent franchise fee, the franchisee shall provide, at no cost to the city, the following solid waste disposal services:
  - 1. The franchisee shall, upon request of the city, remove all assembled debris, trash, or waste, including garbage, from any premises operated by the city, within two days after being notified of the availability of the material for removal.
  - 2. The franchisee shall furnish adequately sized dumpsters and public trash receptacles at mutually agreed locations on the following municipal premises, and shall provide and schedule solid waste disposal services as necessary to ensure that such trash containers are emptied prior to becoming completely full:
    - a) Public trash receptacles, with the design and color approved by the city, at the following locations: four in Uptown Bandon, fourteen (14) in Old Town Bandon, one at city hall, one at the senior center, one in city park and one at Coquille Point;
    - b) Dumpsters at the following locations: one at city hall, one at the main fire station, one at the city shop, one at the community center (Barn), one at city park, one at the water treatment plan, and two for the Bandon rural fire district.
  - 3. Additions, amendments, and deletions to these no-cost services shall be determined annually by the city council in January of each year.

8.04.080 Franchisees' duties.

The Franchisee shall:

- A. Dispose of solid waste at a site approved by the Oregon Department of Environmental Quality (DEQ);
- B. Obtain and maintain public liability and comprehensive automobile liability insurance, naming the city as additionally insured, in an amount not less than one million dollars (\$1,000,000) per occurrence, which shall be evidenced by a certificate of insurance filed with the city recorder. With respect to coverage of the city as

- additionally insured, such coverages shall not be canceled or otherwise terminated without at least thirty (30) days advance written notice to the city;
- C. Provide sufficient collection vehicles, containers, facilities, personnel, and finances to provide all necessary solid waste disposal service or demonstrate the ability to sub-contract with others to provide such service. Vehicles and equipment shall be designed, maintained, operated, and loaded so that solid waste and liquids shall not be spilled, dropped, leaked or otherwise deposited on public ways or private property, and shall conform to all regulatory requirements of public authority with respect thereto at all times;
  - D. Provide weekly solid waste disposal service in residential areas and daily solid waste disposal service in commercial and industrial areas, Sundays and holidays excepted. Collections in residential areas shall not be scheduled between the hours of six p.m. and six a.m. Wet or offensive waste shall be collected in commercial and industrial areas before the hour of twelve (12) noon each day, Sundays and holidays excepted;
  - E. Furnish solid waste disposal service to all city residents and businesses requesting and paying for such service;
  - F. Furnish durable, wheeled, thirty-five (35) gallon trash containers, with attached lids, to each residential customer. At the customer's option, sixty-five (65) gallon containers may be provided to those residential customers paying the two-can rate. The use of these containers shall be mandatory for all residential customers, and the charge for furnishing them shall be included within the basic residential rate approved by the city council pursuant to Section 8.04.100;
  - G. Furnish optional curbside recycling service to all city residents requesting and paying for such optional service. The Franchisee shall formulate, and advise all customers of, the regulations regarding the manner in which recycled materials are to be separated and placed for pick-up;
  - H. Operate and maintain a recycling depot in, or within one mile of, the corporate limits of the city of Bandon, for the purpose of providing a public facility where residents may take recyclable materials;
  - I. Provide pick-up for the city's annual "Clean-Up Day" program. This program shall be offered annually, at a date and time determined by the city council, and shall apply only to non-putrescible waste including but not limited to: brush, furnishings, appliances, tires, and similar refuse. There shall be no charge to the city or the customers for collection and hauling of waste, except that the franchisee may charge a fee equal to the dump fee for all waste for which the dump has a special fee. Said "Clean-Up Day" shall consist of hauling away of all refuse, trash, and non-putrescible wastes within the city, which are deposited on the curb or street-side by individual residents and property owners, regardless of whether those individuals are a customer of the franchisee. The following conditions shall apply to the items to be collected:
    - 1. No single item shall weigh over one hundred (100) pounds;
    - 2. All wood and brush shall be cut into lengths of not more than five feet, bundled, and limited to a maximum of five yards per residence. As defined in this subsection, "brush" shall not include grass clippings or other similar material. A collection and hauling fee may be charged by the Franchisee for any amounts of brush in excess of the five yard maximum.
  - J. Permit inspection at reasonable times by the city of the franchisee's facilities, equipment, and personnel providing service;

- K. When a customer requires disposal of an unusual volume of solid waste or needs a special type of solid waste disposal service requiring a substantial new investment in equipment, the franchisee may enter into a contract with the customer to finance such service and thereby ensure amortization of such equipment. The purpose of this subsection is to ensure the franchisee's purchase of equipment shall not become a charge against ratepayers who do not need or are not benefitted by the franchisee's investment;
- L. Comply with the applicable requirements of the ORS Chapter 459 and other applicable laws and regulations;
- M. Respond to any customer complaint regarding service;
- N. Maintain a twenty-four (24) hour, publicly available local phone number;
- O. Operate a Christmas tree pickup program to collect Christmas trees during January of each year. Individuals placing their Christmas trees for collection will be responsible for cutting the trees into lengths no longer than five feet, and for paying the applicable charges in accordance with the fee schedule approved by the city council. The franchisee will coordinate the schedule with non-profit and charitable organizations as described in Section 8.04.050.A, to ensure that those organizations have the first opportunity to provide a Christmas tree pickup program for fund-raising purposes.

8.04.090 Hazardous waste and medical waste disposal services.

The franchisee is not required to store, collect, transport, transfer, dispose of, or resource recover any hazardous waste or medical waste, but may elect to provide such services. The franchisee, or any other person providing such hazardous waste or medical waste disposal services, must be properly licensed by the appropriate regulating authorities to do so, and must perform those activities in compliance with all applicable laws, ordinances, rules, and regulations.

8.04.100 Rate regulation.

- A. Rates for solid waste disposal service provided by the franchisee shall be set by resolution of the city council and may be modified from time to time upon request of the franchisee or the city council's own motion.
- B. Prior to any change in rates, a hearing shall be held before the city council. The franchisee shall be given reasonable notice of time and place of the hearing and an opportunity to appear and be heard. Notice of the hearing shall be published at least once in a newspaper of general circulation within the city, not less than ten (10) days and not more than thirty (30) days prior to any such hearing, which shall state that a proposed change in the rates for solid waste disposal service is before the city council, and that any resident of the city may appear and be heard. Any revision of rates shall be made by resolution of the city council adopted following such hearing.
- C. In determining rates, the city council shall give due consideration to the franchisee's current and projected revenues and expenses; overhead; acquisition and replacement cost equipment; cost of providing added or different service; reasonable return to the franchisee for doing business; research and development by the franchisee; and such other factors deemed relevant by the city council to determine rates. The city council may consider rates charged by the franchisee or other persons performing the same or similar solid waste disposal service in similar areas under same or similar service conditions.

- D. If approved in the rate schedule, the franchisee may charge an initial fee for new service, a re-initiation fee for recommencing service to any customer who has been terminated for failure to pay, and interest on past due accounts.

8.04.110 Rate preferences prohibited.

The franchisee shall not give a rate preference to any person or to any locality or for any type of solid waste stored, collected, transported, disposed of or resource recovered. This subsection shall not prohibit the establishment of uniform classes of rates based upon length of haul, type or quality of solid waste handled or customer location, so long as such rates are reasonably based upon cost and are approved by the city council.

8.04.120 Transfers; subcontracting.

- A. The franchisee may not transfer this franchise or any portion hereof to any other person without prior written approval of the city council (found, which consent shall not be unreasonably withheld. The city council may attach conditions to any such transfer it deems necessary to guarantee maintenance of solid waste disposal service and compliance with this ordinance. A pledge of this franchise as financial security shall be considered a transfer for purposes of this subsection.
- B. If the franchisee does not have necessary equipment or personnel, the Franchisee may subcontract to provide a portion of its solid waste disposal service, provided that such subcontracting does not relieve the franchisee from total responsibility for providing and maintaining service under and from compliance with this ordinance.

8.04.130 Performance review.

- A. The city council may, in December or January of each year, hold a public hearing, at which the franchisee shall be present and participate, to review the performance of the franchisee and to review the current state of technology available for solid waste management. The city council may continue these hearings from month to month.
- B. Any customer may submit comments or complaints before or during the hearing, orally or in writing, which shall be considered by the city council in making its performance review.
- C. If, as a result of such performance review, the city council and the franchisee agree changes to the franchise are necessary, amendments shall be drafted, reviewed, agreed to by the parties and incorporated into the franchise.
- D. Within thirty (30) days after the date of the performance review, the city council shall issue a report with respect to the franchisee's performance and quality of service. If substantial violations of this franchise are found which the city council determines may be reasonably corrected by the franchisee, the city council may direct the franchisee to correct such violations within a reasonable period of time.
- E. Failure by the franchisee after due notice to correct or to commence correcting any such substantial material violation shall be considered a material breach of this franchise, and the franchise may be terminated.

- 8.04.140 Termination, suspension, modification or revocation of franchise.
- A. Failure by the franchisee to provide necessary solid waste disposal service or otherwise comply with the provisions of this ordinance shall be grounds for termination, modification, suspension, or revocation of the franchise.

- B. If the city manager determines grounds for termination, modification, suspension, or revocation exist, he or she shall send written notice to the franchisee identifying the specific deficiencies, and stating that the franchisee has not less than twenty (20) days from date of mailing to correct the deficiencies or to request a hearing before the city council.
- C. If a hearing is requested, the city manager shall set the hearing at the earliest practicable opportunity. The franchisee and other interested persons shall have an opportunity to present oral or written evidence at the hearing. Persons presenting evidence may be questioned by the city council. After hearing evidence, the city council shall make findings based on evidence in the record whether the franchisee has violated this franchise and shall specify remedial action.
- D. If the franchisee fails to correct deficiencies within the time specified in the notice sent pursuant to Section 8.04.140.B, or within the time specified in the order entered pursuant to Section 8.04.140.C, the franchise may be terminated, suspended, modified, or revoked, and any such action may be made contingent upon continued noncompliance.
- E. If the city manager finds the franchisee's violation of this franchise poses an immediate and serious danger to public health, he or she may order summary action within a time specified in the notice to the franchisee. In such an event, the franchisee shall still be afforded the opportunity for a hearing before the council at the earliest practicable opportunity, although the request and scheduling of such a hearing shall not delay implementing the action necessary to protect the public health.

8.04.150 Right to lease franchisees' equipment.

- A. If the franchise is suspended, revoked, or otherwise terminated, the city shall have the right to lease, for a period not to exceed six months, the franchisee's equipment necessary to conduct solid waste disposal service within the city. Such lease shall be at the then reasonable rental value for equipment so leased and shall provide for the release of the equipment back to the franchisee by noon on each day so the franchisee may use such equipment in performing services for franchisee's customers, if any, outside the city limits.
- B. If the city elects to lease the franchisee's equipment and the city and the franchisee are unable to agree on reasonable rental value, then each shall, within ten (10) days of the first written notice provided to the other, appoint an arbitrator, who together shall, within five days of appointment, name a third arbitrator. The arbitrators shall sit as a panel, and the panel's decision as to the reasonable rental value shall be deemed conclusive upon the parties. If either party or the arbitrators fail to comply with the terms of this subsection, then arbitration shall be pursued under ORS 33.230 et seq.

8.04.160 New or expanded resource recovery services.

Where a new resource recovery service or substantial expansion of existing resource recovery service is proposed by the city or person other than the franchisee:

- A. The city manager shall provide written notice of the proposed new or expanded service to the franchisee at least thirty (30) days prior to consideration by the city council.

- B. The city council may, on its own motion, and shall, upon request of the, franchisee or applicant for an exception, hold a public hearing on the proposed new or expanded service.
- C. In determining whether the service is needed, consideration shall be given to the purposes of this ordinance, public need for the service, technological and economical feasibility, effect on consumer rates, effect on other service by the franchisee, costs and justification, applicable laws, ordinances, or regulations, and any applicable solid waste management plan.
- D. If the city council determines that such new or expanded service is needed, the city council may require the Franchisee provide the service within a specified period of time, or may allow an exemption from the requirement of a franchise to allow another person to provide the new or expanded service, and, if applicable, may set rates.

8.04.170 Termination of solid waste disposal service.

The franchisee shall not terminate or suspend solid waste disposal service to any of the franchisee's customers unless:

- A. Street or road access is blocked and there is no alternate route, provided, however, that the city shall not be liable for blocking of such access.
- B. Extreme weather conditions render providing solid waste disposal service unduly hazardous, or the franchisee is prevented from providing such service by accidents or casualties caused by an act of God or the public enemy.
- C. A customer has violated an applicable provision of Section 8.04.180, or is in violation of Section 8.04.190 by being delinquent in making payment for solid waste disposal service after regular billing, written notice of delinquency, and demand for payment.
- D. The franchisee has given not less than ninety (90) days written notice of intent to terminate all or a substantial part of solid waste disposal service to the city council, and the city council has given written approval to terminate such service.
- E. The franchisee is ordered to suspend, reduce, or terminate all or a portion of its solid waste disposal service by a legislative, administrative or judicial body having competent jurisdiction to make such order.

8.04.180 Regulated and prohibited acts.

In addition to, and not in lieu of, compliance with ORS Chapter 459 and other applicable laws and regulations:

- A. No person shall place hazardous waste for collection or disposal by the franchisee without prior notice to the city manager and the franchisee. This requirement shall not apply to minor quantities of hazardous wastes generated at or by a single-family residential unit.
- B. No person shall place material in or remove material from a solid waste collection container without prior authorization from the owner of the container. For the purpose of this subsection, the franchisee is the owner of any container supplied by franchisee.
- C. No person, other than the franchisee or a person granted an exemption pursuant to this chapter, shall take or remove solid waste which has been placed for solid waste disposal service by the franchisee or by a person granted the exemption.

- D. The franchisee is not required to service an underground solid waste container, unless the person responsible for it places the container above ground prior to the time of solid waste disposal service.
- E. No container used for residential solid waste disposal shall be located behind any locked or latched door or gate or inside of any building or structure.
- F. All solid waste to be collected by the franchisee shall be placed by the customer in containers as specified in this chapter, or as otherwise specifically allowed by the franchisee and the city. No such containers shall exceed thirty-two (32) gallons in volume or sixty (60) pounds in weight, unless approved by the franchisee.
- G. Each customer shall, on the scheduled collection day, place their trash container(s) at the street side or curb line. Each commercial and industrial customer shall place their containers in a location approved by the franchisee. All such container placements shall provide safe access to the customer's container or wastes without risk or hazard to the franchisee, its employees or agents, or any other person.
- H. No container designed for mechanical pickup shall exceed a safe loading weight or volume as established by the franchisee to protect service workers, the franchisee's collection equipment, the customer and the public.
- I. Stationary solid waste compacting devices shall comply with federal and state safety standards and provide adequate protection for the user.
- J. Every person who generates or produces waste shall remove or have removed from their premises, at least once every seven days, all waste which may putrefy during that period. More frequent removal may be required where a facility or service involves public health. All waste shall be removed at sufficient frequency to prevent health hazards, nuisances or pollution.
- K. Producers and generators of waste shall clean both waste containers and shall keep the area around such containers free of accumulated wastes. The franchisee shall provide periodic maintenance to containers supplied by the franchisee.
- L. Commercial dumpster users must have all garbage bagged or otherwise contained in such a manner that the contents will not leak.
- M. Any person hauling solid waste within the city of Bandon shall be required to convey those materials in a covered or tightly closed vehicle or in covered containers to prevent blowing and scattering of the solid waste on the streets and other property. In the event that wet garbage or liquids are hauled, they shall be hauled in such containers and in such manner as will prevent them from spilling, leaking or dripping on the streets and other property.

8.04.190 Payment of service.

Persons who receive solid waste disposal service from the franchisee shall be responsible for payment of service.

8.04.200 Oversight.

Solid waste disposal service provided by the franchisee shall be under the oversight of the city manager.

8.04.210. Enforcement and penalties.

- A. The city or the franchisee may take such legal action as is necessary to ensure compliance with this ordinance, including actions to recover payment for services from any customer.



- B. Violation by any person of this ordinance shall be punishable as provided in Bandon Municipal Code, Chapter 1.16. Penalties imposed pursuant to this section are in addition to, and not in lieu of, other remedies provided by other applicable law, rule or regulation.
- C. Any action or determination by franchisee under a pursuant to this chapter may be appealed to the city manger. Any action or determination of the city manger under this ordinance may be appealed to the city council.

8.04.220 Severability.

Any finding by any court of competent jurisdiction that any section, subsection or other provision of this chapter is unconstitutional or otherwise invalid shall not invalidate any other section, subsection or other provision of this chapter.

## Chapter 8.08

### NUISANCES

#### Sections:

#### **Article I. General Provisions**

- 8.08.010 Purpose.
- 8.08.020 Definitions.
- 8.08.030 Liability for injuries.
- 8.08.040 Un-enumerated nuisances.

#### **Article II. Nuisances Enumerated**

- 8.08.050 Nuisances affecting public health.
- 8.08.060 Nuisances attractive to children.
- 8.08.070 Junk.
- 8.08.080 Fences.
- 8.08.090 Scattering rubbish.
- 8.08.100 Hauling materials.
- 8.08.110 Offensive littering.
- 8.08.120 Sidewalks.
- 8.08.130 Surface water drainage.
- 8.08.140 Trees and shrubs.
- 8.08.150 Noxious vegetation.
- 8.08.160 Noise disturbance.
- 8.08.170 Radio and television interference.

Ordinance History: #961,1388, 1428, 1477

#### **Article I. General Provisions**

##### 8.08.010 Purpose.

It is the intent of this chapter to encourage a clean, healthy and satisfying environment for its citizens, one free from nuisances, eyesores, unhealthy or devaluating conditions. To these ends, this chapter and Chapter 8.12 seek to regulate, identify and provide a means to enforce the regulations to protect the health, safety and welfare of residents and property owners.

##### 8.08.020 Definitions.

As used in this chapter and Chapter 8.12:

"Nuisance" means an unlawful act, an omission to perform a duty, or suffering or permitting any condition or thing to be or exist, which either:

1. Injures or endangers the welfare, health or safety of others; or
2. Offends decency; or
3. Creates offensive odors; or
4. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
5. In any way renders other persons insecure in life or the use of property; or

6. Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

"Person responsible" means the person responsible for abating a nuisance and shall include:

1. The owner;
2. The person in charge of property;
3. The person who caused to come into or continue in existence a nuisance as defined in this chapter or another ordinance of this city.

"Public place" means a building, way, place or accommodation, whether publicly or privately owned, open and available to the general public.

8.08.030 Liability for injuries.

- A. The owner of real property on which a nuisance exists is liable to the person injured because of failure by the owner to abate the nuisance.
- B. If the city is required to pay damages for an injury to any person caused by the failure of an owner to abate a nuisance, the owner shall reimburse the city for the amount of any damages paid, and for the attorney fees and costs of defending against the claim for damages. The city may maintain an action in court to enforce the provisions of this section.)

8.08.040 Un-enumerated nuisances.

- A. The acts, conditions or objects specifically enumerated and defined are declared public nuisances, and may be abated as provided by Chapter 8.12.
- B. In addition to the nuisances specifically enumerated in Article II of this chapter, every other thing, substance or act that is determined by the city council to be injurious or detrimental to the public health, safety or welfare of the city is declared a nuisance and may be abated as provided in Chapter 8.12.

**Article II. Nuisances Enumerated**

8.08.050 Nuisances affecting public health.

No person shall cause or permit a nuisance affecting public health on property owned or controlled by the person. The following are nuisances affecting public health and may be abated as provided in Chapter 8.12:

- A. Cesspools. Cesspools or septic tanks which are in an unsanitary condition or which cause an offensive odor;
- B. Debris. Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the city;
- C. Food. Decayed or unwholesome food offered for human consumption;
- D. Privy. Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Oregon Department of Environmental Quality regulations;
- E. Odor. Premises that are in such a state or condition as to cause an offensive odor, or which are in an unsanitary condition;
- F. Oils. Mastics, oil, grease or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system;
- G. Slaughterhouse. An establishment where animals are butchered; also a tannery or pigsty;

- H. Stagnant Water. Standing water that affords a breeding place for mosquitoes and other insect pests;
- I. Surface Drainage. Drainage of liquid wastes from public or private premises;
- J. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

8.08.060 Nuisances attractive to children.

- A. No person shall create a hazard by maintaining or leaving, in a place accessible to children, a container with a compartment of more than one and one-half cubic feet capacity and a door or lid that locks or fastens automatically when closed and that cannot be easily opened from the inside.
- B. No owner or person in charge of property shall permit the following to occur on that property:
  1. Leaving unguarded machinery, equipment or other devices where they are dangerous and accessible to children;
  2. Lumber, logs or pilings placed or stored in a manner so as to be attractive, dangerous and accessible to children;
  3. Failing to cover or fence with a suitable protective construction any well, cistern, cesspool, excavation, or other hole of a depth of four feet or more, and a top width of twelve (12) inches or more.
- C. This section does not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children.

8.08.070 Junk.

- A. For the purposes of this section:
  1. The term "junk" includes old machinery or parts thereof, old appliances or parts thereof, old iron or other metal, glass, paper, lumber, wood or other waste or discarded material;
  2. The term "junk" does not include motor vehicle parts, abandoned, dismantled or unlicensed motor vehicles.
- B. No person shall store or permit the storing of any junk on any public right-of-way.
- C. No person shall store or permit the storing of any junk on any lot or premises for more than seventy-two (72) hours, unless it is completely enclosed within a building or in a space within zoning setback requirements which is entirely enclosed by a solid fence, hedge or screen, not less than six feet in height.
- D. This section does not apply to junk kept in a licensed junk yard or automobile wrecking house or to properly stacked cords of firewood.

8.08.080 Fences.

- A. No owner or person in charge of property shall construct or maintain a barbed-wire or razor wire fence.
- B. Notwithstanding subsection A of this section, a fence constructed of other materials may be capped by barbed-wire that shall be placed no less than six feet, six inches from the ground, provided that the fence is no closer than three feet from a sidewalk, public way or adjoining residential property line.
- C. No owner or person in charge of property shall construct, maintain or operate an electric fence.

8.08.090 Scattering rubbish.

Except at a city designated dump site, no person shall deposit upon public or private property any kind of rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property or would be likely to injure a person, animal or vehicle traveling upon a public way.

8.08.100 Hauling materials.

No person shall haul sand, gravel, rock, wood or other substances in any vehicle or conveyance that is so constructed or in such condition as to allow the sand, gravel, rock, wood or other substance to fall on and litter the public streets of the city.

8.08.110 Offensive littering.

- A. No person shall create an objectionable stench or degrade the beauty or appearance of property or detract from the natural cleanliness or safety of property by intentionally:
1. 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;
  2. Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank, or other contaminated source upon the land of another without permission of the owner, or upon any public way;
  3. Permit any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which he or she 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 the Public Utility Commissioner of Oregon or a person operating a school bus subject to ORS 485.010 to 485.060.
- B. As used in this section, "public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks, and all recreational facilities operated by the city, state or county for use by the general public.

8.08.120 Sidewalks.

It is the duty of an owner or occupant of land adjoining a street to maintain in good repair and remove obstructions from the adjacent sidewalk. No owner or person in charge of property, improved or unimproved, abutting on a paved public sidewalk, shall permit snow, ice or debris to accumulate so that the sidewalk becomes a hazard to persons using it.

8.08.130 Surface water, drainage.

No owner or person in charge of property shall permit rainwater, ice or snow to fall from any building or structure thereon onto any street or sidewalk or to flow across any abutting public sidewalk. Drainpipes or a drainage system shall be properly maintained so that any overflow water accumulated on the property will not be carried across or upon any abutting public sidewalk.

8.08.140 Trees and shrubs.

- A. No owner or person in charge of property shall permit trees or shrubs on their property to interfere with street or sidewalk traffic or with overhead utility lines.
- B. It shall be the duty of an owner or person in charge of property abutting the right-of-way of an opened public street or a sidewalk to:

1. Keep all trees and shrubs on the premises trimmed so that any overhanging portions are at least eight feet above the sidewalk if it exists, or at least twelve (12) feet above the vehicular travel surface;
  2. Keep tree limbs from blocking stop signs, street signs or other signs;
  3. Keep shrubs from growing out over the sidewalk or curb; and
  4. Keep all vegetation cleared from the sight triangle required at intersections on corner lots as specified in the Bandon zoning ordinance, Section 17.104.090 of this code, no more than two and a half feet above the curb, or where no curb exists, from the established street center line grade.
- C. Removal of vegetation that may cause interference with overhead utility lines shall be supervised by qualified city personnel.
- D. It shall be the duty of an owner or person in charge of property that abuts upon a public right-of-way to contact the city manager and follow the city's instructions prior to trimming or removal of any tree in the right-of-way adjacent to that property.

8.08.150 Noxious vegetation.

- A. As used in this section, the term "noxious vegetation" means vegetation left unmanaged which creates traffic visibility problems at intersections or poses a threat of conflagration that may endanger the safety and welfare of the citizens of Bandon. Noxious vegetation includes:
1. Irish furze (also known as gorse) or Scotch Broom more than twelve (12) inches high, except when maintained as prescribed in subsection B of this section;
  2. Poison oak;
  3. Blackberry vines, except when maintained as prescribed in subsection B of this section;
  4. Any vegetation, including grass and weeds, that:
    - a. Poses a fire hazard because it is dry and more than twelve (12) inches high; and within one hundred (100) feet of a structure or opened public right-of-way, or within thirty (30) feet of other types of combustibles,
    - b. Encroaches onto an opened public right-of-way or across a property line,
    - c. Poses a traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous,
    - d. Creates an unsafe area to which children may be attracted,
    - e. Is used for habitation by trespassers,
    - f. Harbors rodents or other animals that pose a health threat to humans, or
    - g. Are listed as noxious by federal, state or county authorities.
- B. The term "noxious vegetation" does not include:
1. Vegetation that constitutes an agricultural crop;
  2. Vegetation if its removal may be inadvisable because it exposes the land to erosion;
  3. Vegetation (except Irish furze, Scotch broom and blackberry vines) that is maintained as an ornamental hedge, privacy screen or windbreak no wider than approximately five feet;
  4. Vegetation that is maintained as a safety barrier at the top edge of a steep slope or other hazardous location;

5. Irish furze (gorse), Scotch broom or blackberry vines up to four feet in height that are maintained as a barrier to trespassers but do not encroach on a public right-of-way, cross a property line or create a fire, health or traffic hazard within the meaning of subsection A of this section;
  6. Vegetation used to control the spread of gorse; or
  7. Trees.
- C. It shall be the duty of the owner or person in charge of property to cut down or destroy any noxious vegetation as often as needed to prevent the health and safety hazards described above.
- D. No owner or person in charge of property abutting the right-of-way of an opened street or public sidewalk (whether part of a street easement or right-of-way or located on public land) shall permit vegetation to interfere with adjacent street or sidewalk traffic. It shall be the duty of an owner or person in charge of such property to keep all vegetation trimmed so that any overhanging portions are at least twelve (12) feet above the vehicular travel surface (roadway). No person shall maintain vegetation in an opened public right-of-way within five feet of the travel surface, which hinders pedestrian traffic adjacent to the roadway, provided that trimming or removal of trees on public property, easements or rights-of-way shall be the responsibility of the city.

8.08.160 Noise disturbance.

- A. For the purposes of this section:  
 "Noise disturbance" means that at certain levels, noise is detrimental to the health, comfort, convenience, safety or welfare of the citizens of Bandon.  
 "Plainly audible" means where the listener can hear clearly the content of the sound produced by the noise source. Sounds which may be clearly audible include, but are not limited to, musical rhythms, spoken words, vocal sounds and engine noises.
- B. It is unlawful for any person to intentionally or recklessly create or continue any noise disturbance.
- C. Construction Noise. Any person who operates powered construction equipment, erects, constructs, demolishes, excavates for, alters or repairs any building, structure, roadway or utility within the city in such a manner as to cause noise to be received beyond the boundaries of the property on which the construction work is occurring shall comply with the following:
1. No construction work shall be performed on Sundays or city holidays, except that a person may perform construction work on the person's own property, provided such construction activity is not carried on for profit or livelihood, between the hours of ten a.m. and five p.m. on Sundays and city holidays.
  2. No construction work shall be performed on Saturday before nine a.m. or after seven p.m.
  3. No construction work shall be performed before seven a.m. or after seven p.m. on weekdays (exclusive of holidays).
  4. Provided, however, that in case of urgent necessity in the interest of the public welfare and safety, permission may be granted by the city manager for construction activities to occur on Sundays or city holidays or during otherwise proscribed hours for the duration of an emergency, or if the city manager determines that the public health, safety and welfare will not be impaired by construction activities but loss or severe inconvenience would result to any person unless such work were permitted within those hours.

- D. Sound Broadcasting and Amplifying Devices. The use or operation of any sound production or reproduction device, radio receiving set, musical instrument, phonograph, television set, loud speaker, sound amplifier or other machine or device for producing or reproducing sound in such a manner as to disturb the peace, quiet and comfort in any residential or public area is prohibited. The city manager may grant a permit for the broadcast or amplification of programs of music, news, speeches, or general entertainment as part of a national, state or city event, public festivals or events of a noncommercial nature.
- E. Public Nuisance Noise. The following acts are in violation of this section, but the enumeration shall not be construed to be exclusive:
  - 1. Keeping of any animal or bird which frequently or for a long duration makes vocal or other sounds which create a noise disturbance in violation of the city animal control ordinance;
  - 2. Unnecessary use or operation of horns, signaling devices, etc., on a motor vehicle;
  - 3. Blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work, or as a warning of danger, or upon the request of proper city authorities;
- F. Prima Facie Violations. The operation of any machine or any device designed for sound production, amplification or reproduction between the hours of ten p.m. and eight a.m. in such a manner as to be plainly audible on an adjacent property shall be prima facie evidence of a violation of this section.
- G. Criteria. The characteristics and conditions which should be considered in determining whether a violation of the provisions of this section exists should include, but not be limited to the following:
  - 1. The level of the noise;
  - 2. Whether the nature of the noise is usual or unusual;
  - 3. Whether the origin of the noise is natural or unnatural;
  - 4. The time of day or night the noise occurs;
  - 5. The duration of the noise;
  - 6. Whether the noise is recurrent, intermittent or constant;
  - 7. The proximity of the noise to a dwelling or other premises used for sleeping; and
  - 8. The nature and zoning of the area from which the noise emanates and the area where it is received. (Ord. 1428 (part), 1999; Ord. 1388 § 30, 1997)
- H. Use of Unmuffled Brakes. No person shall use any un-muffled engine brake, commonly known as Jake or Jacob brake, on any motor vehicle, except to avoid imminent danger to persons or property.

8.08.170 Radio and television interference.

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



## Chapter 8.12

### ABATEMENT OF NUISANCES

#### Sections:

- 8.12.010 Determination of nuisance.
- 8.12.020 Notice of Nuisance Violation and Abatement' provision.
- 8.12.030 Appeal of administrative determination of nuisance.
- 8.12.040 Authorization for Abatement by the City' provision:
- 8.12.050 Assessment of costs.
- 8.12.060 Enforcement and discharge of duties.
- 8.12.070 Summary Abatement.
- 8.12.080 Violation--Penalty.
- 8.12.090 Separate violations.

Ordinance History: #1388, 1428, 1447, 1588

#### 8.12.010 Determination of nuisance.

Whenever a nuisance is found to exist within the city or within its extraterritorial jurisdiction, the city manager or designee may follow procedures prescribed in this chapter to obtain compliance with Chapter 8.08 from the person responsible.

#### 8.12.020 Notice of Nuisance Violation and Abatement' provision:

- A. Upon determination by the City that a violation of 8.08 exists, the City Manager or designee shall serve a notice on the owner or person responsible for the property, directing the owner or person responsible for the property to abate the violation.
- B. The notice to abate shall contain:
  - 1. A description of the real property by street address on which the violation exists;
  - 2. A direction to abate the violation within ten (10) days from the date of notice;
  - 3. A description of the violation and a reference to the ordinance or Bandon Municipal Code section number involved;
  - 4. A statement that, unless the violation is privately abated, the City may abate the violation and the cost of abatement shall be charged to the person responsible, assessed against the property, or both.
  - 5. A statement that the owner or person responsible for the property may appeal the determination of a nuisance violation, order to abate, or both by giving written notice to the city recorder within 10 days from the date of service of the abatement notice.
- C. On completion of service, the persons responsible for service shall execute and file certificates stating the date and place of service.

#### 8.12.030 Appeal of administrative determination of nuisance.

- A. A property owner or person responsible may appeal the City's decision of a nuisance violation and abatement by filing with the city recorder a written appeal within ten (10) days from the date of service of the abatement notice, specifying the basis for the protest. The statement shall be referred to the Council at its next meeting, at which time a hearing date shall be set.

- B. The council shall hear the matter at either a regular or special meeting, with not less than ten (10) calendar days' notice being given to the property owner or the person responsible.
- C. At the hearing for consideration of the abatement, the person protesting may appear and be heard by the Council, and the Council shall determine whether or not a nuisance in fact exists. The decision of the Council shall be entered in the official minutes of the Council, and it shall be final and conclusive.
- D. If the council determines that a nuisance exists, it may:
  - 1. Direct the person responsible to abate the nuisance within ten (10) days of the council's determination; or
  - 2. Authorize abatement by the city.

8.12.040 Authorization for Abatement by the City' provision:

- A. If, within the time allowed, the nuisance has not been privately abated or scheduled for private abatement within a scheduled time approved by the City Manager or designee, the City Manager may submit to the council at its next meeting a description of the nuisance, an estimate of the cost to abate the nuisance, and a request for authorization for the City to expend funds to do so.
- B. If the Council authorized abatement by the City, the person authorized to abate the nuisance may enter upon the property at reasonable times for purposes of investigating abating the nuisance.
- C. The City Finance Director or designee shall keep accurate record of the expense incurred by the City in abating the nuisance and shall include a charge equal to ten (10) percent of those expenses or not less than one hundred dollars (\$100.00) for administrative costs

8.12.050 Assessment of costs.

- A. The city manager shall send by certified mail to the owner (as the name and address appear on the latest assessment roll of the county) and the person responsible, a notice stating:
  - 1. The total cost of abatement, including administrative costs;
  - 2. That the costs will be assessed to and become a lien against the property unless paid within thirty (30) days from the date of the notice.
- B. 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 decided by the council shall be made by resolution and shall be entered in the docket of city liens. When the entry is made, it shall constitute a lien on the property from which the nuisance was removed or abated.
- C. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the current statutory interest rate. The interest shall begin to accrue from the date of entry of the lien in the lien docket.
- D. An error in the name of the owner or the person responsible or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property.

8.12.060 Enforcement and discharge of duties.

In case a duty under Chapter 8.08 or this chapter bears on two or more persons, discharge of the duty by one of the persons shall discharge the duty for the other person and preclude any lien to enforce discharge of the duty from being imposed on the other person's property.

8.12.070 Summary Abatement.

A. The City of Bandon may summarily abate any violation or nuisance on any property or premises which the City Manager or designee, in the exercise of reasonable discretion, determines poses an imminent danger or threat to the public's health, safety or welfare. In the event such a determination is made, it shall be recorded in writing and at a minimum include information on the following:

1. The location of the property where the violation constituting the imminent threat or danger is located;
2. The nature of said violation or condition; and
3. The attempts, if any, to contact the owner of the property and the reasons why said owner or responsible person did not abate the violation.

B. In the event the City Manager or designee makes the above written determination, the City need not provide pre-abatement notice consistent with Section 8.12.020. However, the City shall provide notice to the owner of property within ten (10) days after the City's summary abatement of the violation. This notice shall include the following:

1. A copy of the written determination noted in 8.12.070(A);
2. A brief description of the action(s) taken by the City to abate the violation; and
3. The costs, if known, incurred by the City to abate the violation.

8.12.080 Violation--Penalty.

Unless otherwise established by statute or ordinance, violation of a provision of this chapter is a civil violation.

8.12.090 Separate violations.

- A. Each day's violation of a provision of this chapter constitutes a separate offense.
- B. The imposition of a penalty does not relieve a person of the duty to abate the nuisance.
- C. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. Private abatement within the time allowed will relieve the person responsible from the imposition of any fine under subsection A of this section.

## Chapter 8.16

### ABANDONED AND IMPOUNDED VEHICLES

#### Sections:

- 8.16.010 Definitions.
- 8.16.020 Responsibility for abandoned vehicle.
- 8.16.030 Administration and enforcement.
- 8.16.040 Exemptions.
- 8.16.050 Towing without notice.
- 8.16.060 Notice after removal.
- 8.16.070 Notice of intent to impound.
- 8.16.080 Statutory requirement of notice prior to removal.
- 8.16.090 Removal and sale of abandoned vehicles.
- 8.16.100 Inventory of vehicle.
- 8.16.110 Notice of removal.
- 8.16.120 Effect of notice of removal.
- 8.16.130 Release of vehicle--Fee.
- 8.16.140 Request for hearing.
- 8.16.150 Exemption from notice and hearing.
- 8.16.160 Hearing procedure to contest the validity of removal and custody--Appeal.
- 8.16.170 Towing and storage liens.
- 8.16.180 Statutory requirements for sale or disposal of vehicles.
- 8.16.190 Disposal of vehicles--Procedure.

Ordinance History: #1412, 1415

#### 8.16.010 Definitions.

As used in this chapter:

"Abandoned" means the vehicle has been parked or left standing upon any public way of the city of Bandon for a period in excess of twenty-four (24) hours without authorization by statute or local ordinance, or upon any public or private property, and is therefore a public nuisance.

"Department of Transportation" means the Oregon Department of Transportation, or other registration authority analogous to the Department of Transportation in any state other than Oregon.

"Police department" means the police department of the city of Bandon. (Editorially amended during 2000 codification)

#### 8.16.020 Responsibility for abandoned vehicle.

The owner of the vehicle as shown in the records of the Department of Motor Transportation shall be considered responsible for the abandonment of a vehicle in the manner prohibited and shall be liable for the costs of removal, storing and disposition of the abandoned vehicle.

#### 8.16.030 Administration and enforcement.

The provisions of this chapter shall be administered and enforced by the chief of police of the city.

- A. In the enforcement of this chapter, the chief of police and his or her deputies may enter upon private or public property to examine a vehicle or parts thereof, to obtain information as to the identity of the vehicle (and to remove or cause the removal of a vehicle or parts thereof) declared to be a nuisance pursuant to this chapter.

- B. This chapter shall supplement and be in addition to the other regulatory codes and statutes enacted by the county, the state or any other legal entity or agency having jurisdiction.

8.16.040 Exemptions.

This chapter shall not apply to:

- A. A vehicle, or parts thereof, lawfully enclosed within a building in a manner where it is not visible from the street or other public or private property; or
- B. A vehicle, or parts thereof, which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business.

8.16.050 Towing without notice.

A police officer, without prior notice to the owner or operator of a motor vehicle, may cause a motor vehicle to be towed and impounded in the following circumstances:

- A. When the police officer reasonably believes the operator is driving the motor vehicle uninsured or without other means to prove financial responsibility as required by ORS 806.010;
- B. When the motor vehicle is illegally parked on a public street, private street, parking lot, or in a restricted space, zone, or traffic lane where parking is limited or prohibited to designated classes of vehicles or during designated periods of time, or where the motor vehicle at any time interferes with the intended use of such restricted space, zone or traffic land;
- C. When the operator of the motor vehicle does not possess or cannot produce a valid operator's license;
- D. When the motor vehicle is in the possession of a person taken into custody by the police officer and no other reasonable disposition of the motor vehicle is available;
- E. When the motor vehicle has not been registered or the operator is unable to produce a valid registration card;
- F. When a police officer has good cause to believe the motor vehicle is stolen;
- G. When the police officer reasonably believes a vehicle is disabled or abandoned and the vehicle has been parked or left standing on a public right-of-way for a period in excess of twenty-four (24) hours without authorization as provided by law;
- H. When a vehicle is left on a public right-of-way in such a location or manner as to create a hazard or obstruction to traffic.

8.16.060 Notice after removal.

Under ORS 819.180, if immediate custody and removal is taken of a vehicle which constitutes a hazard or obstruction, notice shall be given by certified mail within forty-eight (48) hours with the procedures available for obtaining a hearing under ORS 819.190 to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation.

8.16.070 Notice of intent to impound.

A police officer may provide written notice of intent to impound when the officer reasonably believes the vehicle is abandoned as provided in Section 8.16.050(G). Notice shall be sent to the owner of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation, and must state that the vehicle will be towed unless the owner

removes the vehicle within five days of the date of mailing. A notice of intent to impound shall also be posted in a conspicuous place on the vehicle and must state the vehicle will be towed on a date not later than five days after the date of posting. Failure to provide notice under this section shall not affect the validity of any action taken to tow and impound an abandoned vehicle pursuant to Section 8.16.050.

8.16.080 Statutory requirement of notice prior to removal.

Under ORS 819.170 notice shall be given by affixing a notice to the vehicle with the required information at least twenty-four (24) hours before taking the vehicle into custody, including holidays, Saturdays and Sundays.

8.16.090 Removal and sale of abandoned vehicles.

- A. After providing required notice the chief of police may take a vehicle into custody and remove the vehicle if:
  - 1. He or she has reason to believe the vehicle is disabled or abandoned; and
  - 2. The vehicle has been parked or left standing upon any public right-of-way for a period in excess of twenty-four (24) hours without authorization.
- B. The chief of police may immediately take custody of a vehicle that is disabled, abandoned, parked or left standing unattended on a road or highway right-of-way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway under ORS 819.140.
- C. Vehicles and contents of vehicles removed and taken into custody are subject to a lien as provided under ORS 819.160.
- D. The chief of police shall cause the vehicle to be appraised within a reasonable time by a person authorized to perform such appraisals as provided under ORS 819.230.
- E. Vehicles removed and taken into custody are subject to sale if the vehicles are not reclaimed under ORS 819.150 or returned to the owner or person entitled to possession under ORS 819.190.

8.16.100 Inventory of vehicle.

- A. The contents of any vehicle which is to be towed and impounded shall be inventoried by the police officer. The inventory shall be conducted prior to towing except where there is reasonable suspicion to believe the safety of the police officer or other persons is at risk, in which case the inventory shall be made as soon as safely practical.
- B. The inventory shall be made for the following purposes only:
  - 1. To promptly identify personal property for the protection of such property while the vehicle is impounded;
  - 2. To prevent false claims for lost or stolen property;
  - 3. To locate toxic, flammable, explosive or other dangerous substances.
- C. The inventory shall be conducted throughout the passenger and engine compartments of the vehicle, including accessible areas under or within the dashboard areas, pockets in the doors or the back of the front seats, in any consoles between seats, and under floor mats and seats.
- D. Inventories of the following property shall be made:
  - 1. Of all personal property in plain view or in open containers;
  - 2. All open containers found in any unlocked compartments, including the trunk, glove box and car-top carriers;

3. All open containers found in any locked compartments; provided, however, that the person in possession of the vehicle consents to entry or the keys to the compartments have been left with the vehicle;
  4. No closed container shall be opened for inventory purposes; as used in this subsection, "closed container" means any container secured in such a manner that a reasonable person would know or should know that access required permission.
- E. The police officer shall prepare a written list of property inventoried contemporaneously with the inventory. The inventory shall be signed, dated, including the time the inventory was complete. A copy of the inventory shall be filed with the police department, a copy shall be left with the vehicle or tendered to the person in control of the vehicle if present at the time of towing, and a copy shall be provided with the notice of removal under Section 8.16.110.

8.16.110 Notice of removal.

- A. After a vehicle has been towed and impounded and within forty-eight (48) hours after the vehicle is towed, excluding Saturdays, Sundays and legal holidays, notice of removal is provided to the owner of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation by sending, certified mail, notice stating the following:
1. The vehicle has been towed and impounded;
  2. The reason the vehicle has been towed and impounded;
  3. An address and telephone number that may be used to obtain information on the charges which must be paid before the vehicle will be released and on the procedures for procuring such release;
  4. The owner is entitled to and may request a hearing on the validity of the impoundment by filing a request for hearing with the city police department within ten (10) calendar days, excluding Saturdays, Sundays and legal holidays, of the receipt of the notice;
  5. The location of the vehicle;
  6. The vehicle is subject to towing and storage charges, the amount of charges that have accrued as of the date of the notice, the rate of the daily storage charges and that daily storage charges will continue to accrue;
  7. The person who towed and is storing the vehicle has a lien on the vehicle for the towing and storage charges, and will retain possession of the vehicle until the charges are paid and, if the charges remain unpaid for more than thirty (30) days, may have the vehicle sold to satisfy the lien;
  8. The vehicle and its contents may be immediately reclaimed upon presentation to the police department of proof of ownership or right to possession, payment to the police department of the fee specified in Section 8.16.130, and payment to the person who towed and is storing the vehicle all towing and storage charges;
  9. The vehicle may be sold or otherwise disposed of if a person entitled to possession of the vehicle does not reclaim the vehicle within thirty (30) days of the date the vehicle was towed.

- B. No notice is required under this section in the following circumstances:
  - 1. The vehicle does not display license plates or other identification by which registration or ownership of the vehicle can be determined; and



2. The identity of the owner of the vehicle is not available from the Oregon Department of Transportation or other registration authority or the identity and address of the owner cannot be reasonably otherwise determined.

8.16.120 Effect of notice of removal.

If the owner of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation do not contact the city, in writing, within thirty (30) days of the date of notice of removal being provided, or thirty (30) days from the date of towing and impoundment if no notice is required, then the vehicle shall be deemed an abandoned vehicle.

8.16.130 Release of vehicle--Fee.

A vehicle towed and impounded shall be released to a person entitled to lawful possession upon payment to the city of a fee in an amount established by resolution of the council. Upon payment of the fee, the city shall authorize the person storing the vehicle to release the vehicle upon payment of towing and storage charges. Entitlement to lawful possession shall be established by the owner presenting proof of current ownership, proof of insurance and financial responsibility and proof of a valid operator's license; provided, however, if the person seeking release does not have a valid operator's license, the person may be accompanied by a licensed driver who shall operate the vehicle after release. If the person seeking release is the holder of a validly perfected security interest, then entitlement to lawful possession shall be established by presentation of a certified copy of the document creating the security interest, along with a copy of a letter to the owner, with proof of mailing, providing notice the vehicle will be released to the secured party.)

8.16.140 Request for hearing.

A person provided notice under ORS 819.170 or 819.180 or any other person who appears to have an interest in the vehicle may request a hearing with the appropriate authority not more than five days from the date of the notice not including holidays, Saturdays and Sundays. The hearing will be conducted under procedures specified in ORS 819.190.

8.16.150 Exemption from notice and hearing.

A vehicle being held as part of a criminal investigation is not subject to any requirements under ORS 819.170 or 819.190 unless the criminal investigation relates to the theft of the vehicle.

8.16.160 Hearing procedures to contest the validity of removal and custody--Appeal.

- A. A request for a hearing must be filed with the police department by the owner of the vehicle within ten (10) days of receipt of the notice of removal under Section 8.16.110. The request must be in writing, and shall state with particularity the basis of the owner's objection to the towing and impoundment of the vehicle. Failure to timely file a request for hearing shall be a waiver of right to hearing.
- B. A hearing shall be held within five calendar days of a timely filed request, excluding Saturdays, Sundays and legal holidays, before a municipal judge appointed by the city. The city shall have the burden of providing the validity of the towing and impoundment by a preponderance of the evidence.
- C. If the municipal judge finds the towing and impoundment of the vehicle was improper, the vehicle shall be ordered released to the person entitled to possession, and the city shall pay charges for towing and storage.
- D. Appeal of the decision by the municipal judge shall be by writ of review under ORS 34.010-34.100.

- 8.16.170 Towing and storage liens.
- A. A person who tows and impounds a vehicle pursuant to this chapter shall have a lien on the vehicle for just and reasonable towing and storage charges, may retain the vehicle until the charges are paid or, if the charges are unpaid for the time specified herein, may have the vehicle sold to satisfy the lien. The lien shall be a possessor chattel lien as provided in ORS 87.152 and shall be perfected and foreclosed in the manner provided in ORS 87.152--87.212.
  - B. A person who tows a vehicle pursuant to this chapter is immune from civil liability for towing the vehicle unless loss, damage or injury to the vehicle is the result of the person's negligent or wilful acts.
- 8.16.180 Statutory requirements for sale or disposal of vehicles.  
The sale and/or disposal of abandoned vehicles are covered under the following: ORS 819.210, 819.215, 819.220, 819.240, 819.250 and 819.260.
- 8.16.190 Disposal of vehicles--Procedure.
- A. If a vehicle is not reclaimed within thirty (30) days after it is impounded, the city may dispose of the vehicle and its contents. The city shall first give the person who towed and is storing the vehicle ten (10) days' written notice of the city's intent to dispose of the vehicle under this section, provided such written notice may be given prior to thirty (30) days after the vehicle is impounded.
  - B. At any time after thirty (30) days after the vehicle notice of removal has been provided pursuant to Section 8.16.110, or thirty (30) days after the date the vehicle is towed if no notice is required pursuant to Section 8.16.050, the city may institute proceedings to sell the vehicle and its contents. The sale may be with or without public auction. The city shall have the vehicle appraised by a person who has been issued an appraiser's certificate by the Oregon Department of Transportation, shall photograph the vehicle and shall notify the Department of Transportation the city will be disposing of the vehicle.
  - C. Notice of sale of the vehicle shall be given to the owner and any lessors and security interest holders as shown in the records of the Department of Transportation, by registered or certified mail, at least thirty (30) days prior to the sale. In addition, the city shall post notice of sale in a public place located within the Bandon City Hall. The notice of sale shall contain a particular description of the vehicle, the name of the owner, the amounts due under this chapter for towing, storage and other charges, and the time, place and manner of sale. If the vehicle is appraised at a value of two thousand five hundred dollars (\$2,500.00.00) or greater, notice of sale shall be printed once a week for two successive weeks in a daily or weekly newspaper generally circulated in Coos County.
  - D. A person holding a security interest may, prior to sale, obtain release of the vehicle by providing entitlement to possession as required by Section 8.16.130 and by paying the amounts due under this chapter under Section 8.16.130 and the towing and storage charges. If a person holding a security interest in the vehicle fails to do so prior to the date of sale, the person's security interest is extinguished. If the city fails to notify a person holding a properly perfected security interest of the sale as required by this section, then the vehicle remains subject to the security interest, and any subsequent purchaser takes the vehicle subject to the security interest.
  - E. Disposal.

1. If the vehicle is appraised at a value of five hundred dollars (\$500.00) or less, the city may dispose of the vehicle and its contents by sale to a person who holds a valid wrecker's certificate issued under ORS 822.110, or may dispose of the vehicle at public auction.
  2. If the vehicle is appraised at a value less than one thousand dollars (\$1,000.00) but more than five hundred dollars (\$500.00), the city may dispose of the vehicle and its contents by sale to a person who holds a valid wrecker's certificate issued under ORS 822.110 if:
    - a. The owner of the vehicle, any lessor or holder of a security interest shown in the records of the Department of Transportation signs a release, under oath, disclaiming any interest in the vehicle; or
    - b. The owner of the vehicle, any lessor or holder of a security interest shown in the records of the Department of Transportation have been provided notice of removal as provided in Section 8.16.110, and have failed to sign a release or reclaim the vehicle.
  3. In all other cases where the vehicle is appraised at a value less than one thousand dollars (\$1,000.00) but more than five hundred dollars (\$500.00), the vehicle shall be sold at public auction.
  4. If the vehicle is appraised at a value of one thousand dollars (\$1,000.00) or more, the city shall sell the vehicle at public auction.
- F. Upon sale and payment of the purchase price, the city shall execute a certificate of sale in duplicate. The original certificate of sale shall be delivered to the purchaser and the copy retained by the city. The certificate of sale shall contain the name and address of the purchaser, the date of sale, the price paid, a description of the vehicle and a stipulation that the sale is without any warranty as to the condition or title of the vehicle. The purchaser shall be notified that the purchaser might be required to apply for a salvage title under ORS 819.010. The purchaser shall be entitled to be issued a title and registration card for the vehicle, or to be issued a salvage title to the vehicle.
- G. Return of Sale and Proceeds of Sale.
1. When a vehicle is sold pursuant to this section, the city shall provide a return of sale to the Department of Transportation setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.
  2. The city shall deduct from the proceeds of the sale the costs incurred in the sale and the costs and expense incurred in the removal, preservation and custody of the vehicle; provided, however, that the city shall only disburse proceeds to the person who towed and stored the vehicle if that person properly perfected their lien under ORS 98.176. The city's finance officer shall then deposit the proceeds from the sale in a fund specifically designated for such purpose, and shall file a copy of the return of sale, along with a copy of any notices required by this section in the records of the city. At any time within two years after the sale of the vehicle, the former owner or former security interest holder may recover the proceeds, minus costs incurred in the sale and costs of removal, preservation and custody of the vehicle, and fee charged pursuant to Section 8.16.130, along with interest at the legal rate, by filing a claim with the city, proving the person's ownership or security interest in the vehicle as of the date of sale. If no

person has filed a claim within two years of the date of sale, then the proceeds shall be deposited in the city's general fund.

## Chapter 8.20

### OPEN BURNING

#### Sections:

- 8.20.010 Prohibited Fires
- 8.20.020 Permit Required Fires
- 8.20.030 Exempt Fires
- 8.20.040 Violations

Ordinance History: #1425, 1545, 1563

#### 8.20.010 Prohibited Fires

No person shall conduct any outside open burning including kindling, maintaining or burning any bonfire, outdoor rubbish or waste fire or use any trash burners, incinerators or burn barrels nor authorize any such fires or use of such devices on private land, unless as authorized by the city as provided herein.

#### 8.20.020 Permit Required Fires

Notwithstanding the prohibition in Section 2, the Council may authorize other wise prohibited fires for special events or occasions subject to the payment of the cost of the permit for inspection by the fire chief or city manager or their designee.

#### 8.20.030 Exempt Fires

The following fires are exempt from the prohibition of this ordinance: fires in appropriate barbecue appliances or outdoor patio or yard fireplaces, decorative or ornamental, ceremonial or recreational fires.

#### 8.20.040 Violations

Unless otherwise established by statute or ordinance, violation of a provision of this chapter is a civil violation, punishable under the provision of Bandon Municipal Code, Chapter 1.16 – Civil Violations and Enforcement.

## Chapter 8.24

### FIREWORKS

Ordinance History #21, 732, 750, 961

#### Sections:

8.24.010 State fireworks regulations adopted.

8.24.010 State fireworks regulations adopted.

The following sections of the Oregon Fireworks Law, together with all acts and amendments applicable to cities which are now or hereafter enacted, are adopted by reference and made a part of this section: ORS 480.110, 480.120, 480.130, 480.140(1) and 480.150. (Editorially amended during 2000 codification)

Chapter 8.28

SMOKE FREE CITY CAMPUSES

Sections

- 8.28.100 Definitions
- 8.28.110 Smoking Prohibited on City Campuses
- 8.28.120 Removal from Premises

8.28.100 Definitions

- A. "City Campus" means any City owned property and/or facility where official business, events, or recreational activities are conducted. This includes the land and interior and exterior of City buildings and facilities including, but not limited to, City Hall, Public Works and Electric Department shops and yards, water treatment plant, wastewater treatment plant, sewer pump stations, and all City parks and recreation facilities. It does not include public sidewalks or public streets located outside the boundaries of a City Campus.
- B. "Smoking" includes possessing and/or inhaling smoke from a lit cigarette, cigar, pipe or any other tobacco burning device.

8.28.110 Smoking Prohibited on City Campuses

- A. Smoking is prohibited on all City Campuses, except within private motor vehicles located in the parking lots.

8.28.120 Removal from Premises

- A. Any City Police Officer, City Code Compliance Officer, the City Manager or his/her designated representative shall have the authority to direct any person to leave the City Campus who fails to discontinue smoking on the City Campus after requested to do so by one of the above mentioned City officials or officers.