

**BEFORE THE BOARD OF COMMISSIONERS
OF BAKER COUNTY, OREGON**

AN ORDINANCE PROHIBITING)	ORDINANCE 2019-02,
CREATING OR MAINTAINING A)	REPEALING
PUBLIC NUISANCE; REPEALING)	ORDINANCES 2015-01
ORDINANCES 2015-01 AND 2006-02)	AND 2006-02

WHEREAS, the Baker County Board of Commissioners finds that prohibition of public nuisances is necessary for the protection of the health, safety and general welfare of the people of Baker County; and

WHEREAS, significant updates to the Baker County Nuisance Ordinance were determined to be necessary since the Baker County Nuisance Ordinance 2015-01 was adopted; and

WHEREAS, the Baker County Board of Commissioners reviewed this ordinance and accepted public testimony during public hearings on September 4 and September 18, 2019.

NOW THEREFORE THE BAKER COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. Ordinance 2015-01 and Ordinance 2006-02 is hereby repealed.

SECTION 2. The document included as Attachment A, entitled *Baker County Nuisance Ordinance*, is hereby adopted.

SECTION 3. If any part or section of this Ordinance is invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Ordinance will not in any way be impaired.

READ for the first time this 4th day of September, 2019.

READ for the second time this 18th day of September, 2019.

Adopted by the Baker County Board of Commissioners the 18th day of September, 2019.
This Ordinance shall take effect 90 days after adoption.

BAKER COUNTY BOARD OF COMMISSIONERS:



William Harvey, Commission Chair

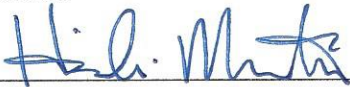


Mark E. Bennett, Commissioner



Bruce A. Nichols, Commissioner

Attest



Heidi Martin, Executive Assistant
Baker County Board of Commissioners

BAKER COUNTY NUISANCE ORDINANCE

ARTICLE ONE: CREATION OF NUISANCE PROHIBITED

Except as otherwise authorized in this ordinance, no person shall create or maintain a nuisance on private property. Such nuisances are declared to be public nuisances which may be abated as provided herein, or by instituting court proceedings as provided by law.

ARTICLE TWO: DEFINITIONS

For the purposes of this ordinance the following definitions apply, unless specifically excepted in this ordinance:

- A. "Nuisance" includes:
 - 1. An accumulation of solid waste, as defined herein, such that it injures or endangers the health, safety and general welfare of others;
 - 2. Dangerous buildings or structures, as defined herein;
 - 3. An accumulation of inoperable vehicles, vehicle bodies or parts equating to three (3) or more total vehicles on one property.

- B. "Solid Waste" includes: All putrescible and non-putrescible waste, which includes but is not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; rubber products, petroleum products, plastics and other man made products; grass clippings, compost; sewer sludge; hazardous solid waste; hazardous appliances and containers; residential, commercial, industrial, construction and demolition waste; equipment and furniture; metal, vehicle parts and waste motor oil, vehicle tires; manure; vegetable or animal solid and semi-solid waste and dead animals.

- C. "Dangerous Buildings or Structures" includes: A building, structure, mobile or manufactured home, when the conditions or defects of the building, structure, mobile or manufactured home, are to the extent that the life, health, property or safety of the public or its occupants are endangered.

- D. "Authorized Enforcement Officer" includes:
 - 1. Baker County Planning officials
 - 2. Baker County Sheriff and all deputies under the Sheriff's office
 - 3. Any other person specifically authorized by Order of the Baker County Board of Commissioners

ARTICLE THREE: EXCEPTIONS

The following do not constitute a nuisance under this ordinance:

- A. Generally accepted, reasonable and prudent farming and forest practices as described in ORS 30.930 to ORS 30.937.
- B. Commercial or mining operations on real property zoned for such use in Baker County.
- C. Materials located in an authorized landfill or transfer station, licensed and maintained in accordance with local and state law.
- D. Vehicles or equipment of historic significance that are utilized, restored or displayed in a way that promotes historic preservation of cultural values.

ARTICLE FOUR: ENFORCEMENT PROVISION

SECTION 4.1 PROCEDURE FOLLOWING COMPLAINT

When a complaint is made to Baker County alleging a violation of this ordinance, the process to be followed by Baker County for investigating and addressing the complaint is as follows;

- A. A site visit will be conducted by an Authorized Enforcement Officer and a determination made as to whether a violation of this ordinance exists. In making this determination, the Enforcement Officer may consider reports and other evidence from agencies and individuals contracted to perform services for Baker County, including but not limited to Baker County Sanitarian, Building Code Officials, and/or the State Fire Marshall or representatives thereof.
- B. At the discretion of the Enforcement Officer, an informal letter may be sent to the property owner informing the property owner of the complaint, with the intent to resolve issues surrounding the complaint prior to the issuance of a Notice of Violation.
- C. If an Authorized Enforcement Officer determines a violation of this ordinance exists, a Notice of Violation will be issued in accordance with Sections 4.3-4.4 of this ordinance.
- D. The Authorized Enforcement Officer may enter into a removal or abatement agreement with the property owner at any time, before or after a Notice of Violation is issued. Such a plan must be in writing, signed by the Enforcement Officer and the property owner, and must include a date by which the removal or abatement will be completed. Any extension or amendment to the agreed upon removal or abatement plan must also be in writing and signed by the property owner and Enforcement Officer.
- E. If notice is given as provided in Sections 4.3-4.4 and the property owner either rejects the Notice of Violation or receives the notice and fails to remedy or cure the violation within the time specified in the notice, or fails to remedy the violation pursuant to the removal or abatement agreement, the Authorized Enforcement Officer may cause a citation to be issued. Once a citation has been issued to the property owner, the matter will be heard by the Baker County Justice Court. Alternatively, if it is determined by the Authorized Enforcement Officer that abatement of the nuisance could require entry by the County onto property where the property

owner has a reasonable expectation of privacy, the matter will be heard by Baker County Circuit Court.

- F. The Authorized Enforcement Officer will make reasonable efforts to update the reporting party of the progress and outcome of the complaint.

SECTION 4.2 TIME TO REMEDY VIOLATIONS

Any situation or occurrence deemed to be a violation of this ordinance shall be abated by cessation, repair, rehabilitation or removal as specified in the Notice of Violation within 14 days of the Notice, unless the respondent has formulated a removal or abatement plan that is acceptable to the County, as described above.

SECTION 4.3 NOTICE OF VIOLATION.

An Authorized Enforcement Officer, after making a determination that a violation of this ordinance exists, shall cause notice of the violation to be posted on the premises where the nuisance exists, unless a removal or abatement agreement signed by the property owner and the County is in effect. The property owner shall also be given written notice of the violation. Service of written notice may be made in one of the following ways:

- A. In person by the Baker County Sheriff or any deputy authorized by the Baker County Sheriff's Office.
- B. By mailing via certified mail to the respondent's last known address as it appears on the last property assessment roll with the Baker County Assessor's Office.
- C. Through publication for two successive weeks once per week in a newspaper of general circulation in the county, to be designated by the Board.

An error in the name or address of the property owner shall not make the notice void, and in such a case, the posted notice shall be sufficient.

SECTION 4.4 NOTICE OF VIOLATION CONTENTS.

The following information shall be included in the notice of violation:

- A. A description of the real property, by street address or otherwise, on which the condition, substance, act or nuisance exists;
- B. A description or identification of the activity or condition constituting the alleged infraction, and the identification of the property owner as the respondent or responsible party;
- C. A statement that the Authorized Enforcement Officer has determined the activity or condition to be a violation of County ordinance;

- D. A statement of the action required to remedy, cure or abate the alleged infraction and the time and date by which the remedy must be completed;
- E. A statement that the respondent has the right to meet with the Authorized Enforcement Officer within 14 days of service, to formulate a removal or abatement plan that is acceptable to the County.
- F. A statement advising the respondent that if the required remedy is not completed within the time specified and the respondent has not entered into a removal or abatement plan with the County, a citation may be issued, an abatement hearing may be set with the Baker County Justice Court and a fine may be imposed.

SECTION 4.5 VIOLATION PROCEEDING

- A. Any hearing or trial on the citation will be conducted in accordance with ORS 153.076, and will not be scheduled fewer than seven (7) days after a citation is issued.
- B. The County shall have the burden of proving the violation by a preponderance of the evidence.
- C. At any hearing or trial on the citation, the Authorized Enforcement Officer will represent the interests of the County by presenting evidence, offering relevant documents, calling witnesses and offering exhibits in support of the citation, unless defense counsel appears representing the respondent.
- D. At any hearing or trial on the citation, and in every hearing or trial where defense counsel appears, the County will be assisted and/or represented by either the District Attorney or County Legal Counsel.

SECTION 4.6 IMMEDIATE REMEDIAL ACTION REQUIRED.

Notwithstanding the remedial time period above, if the Authorized Enforcement Officer determines that the alleged violation presents an immediate danger to the public health, safety or welfare, or that any continuance of the violation would allow the respondent to profit from the violation or would otherwise be offensive to the public at large, the Authorized Enforcement Officer may require immediate remedial action. If, in such cases, the Authorized Enforcement Officer is unable to serve a notice of violation on the respondent or, if after such service the respondent refuses or is unable to remedy the violation, the County may proceed to abate the violation once a court order has been granted by the Baker County Justice Court or Baker County Circuit Court.

ARTICLE FIVE: ABATEMENT PROCEDURE

- A. Owner Abatement

If the property owner is found guilty by the Court of the alleged violation, the court may impose a fine, as set forth in Article Six, or at the discretion of the Court, reduce the fine called for in this Ordinance. In addition to or in lieu of a fine, the Court may order the property owner to undertake such remedial action as may be necessary to abate the nuisance. A reasonable time shall be allowed for such action. A copy of the order shall be sent to the owner of the property. Appeal from such order shall be allowed in accordance with State law.

B. County Abatement

If, after an opportunity for the property owner to be heard, the Court finds that the remedial period has passed and the nuisance has not been fully abated, the Court may permit the County to, at its discretion, go onto the property, if necessary, and abate the nuisance either in whole or in part.

C. Fees associated with abatement.

The property owner shall be responsible for all costs incurred by the County, including collection costs, together with any additional amount as set by resolution, to cover the expense of inspection, overhead, and enforcement of this ordinance.

D. Billing.

1. Upon the completion of the work, the County shall cause a billing of all amounts due to be sent to the owner of the property.
2. After notifying the owner and giving him or her an opportunity to be heard, the Baker County Board of Commissioners may, by resolution, on a case by case basis, declare the correctness of the statement of costs and declare the same to be a lien upon the property involved, to be recorded and bear interest at the rate of 9% per annum commencing as of the date of recording. The lien shall continue until the assessment and all accrued interest has been fully paid.
3. An error in the name of the owner or person responsible shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void but it shall remain a valid lien against the property.
4. The County may, at its discretion, bring an action for recovery of cost of abatement in any court of competent jurisdiction.

ARTICLE SIX: CLASSIFICATION OF VIOLATION AND FINE

- A. Violation of this County ordinance is a Class A violation, subject to a maximum fine of \$500 for each day the nuisance is found to be in existence. Accrual of the fine begins 14 days after property owner is given notice of the violation, as provided in Article Four, Section 4.3-4.4. If a removal or abatement agreement exists, accrual of the fine begins the day after the expiration of the date specified in the agreement.
- B. Assessments recovered and assessed amounts forfeited shall be paid to the clerk of the court. After first deducting court costs in the proceedings, the clerk shall pay the remainder to the Baker County Treasurer for the General Fund of Baker County.

ORS 203.035 (Power of County Governing Body or Electors Over Matters of County Concern)
ORS 203.065 (Violation of County Ordinances)
ORS Chapter 153 (Violations and Fines)
ORS 153.08 (Violations described)
ORS 153.012 (Violation categories)
ORS 153.025 (Authority of political subdivisions to specify ordinance violation as particular level of violation)
ORS 153.045 through 153.051 (Citation, Complaint and Summons requirements)
ORS 153.076 (Conduct of Trial)