

CHAPTER 43

NUISANCE ABATEMENT

TITLE AND SCOPE

**43.005 TITLE.** This Chapter may be cited as the Nuisance Abatement Ordinance.

**43.010 PURPOSE AND SCOPE.**

- (1) It is the purpose of this Chapter to provide a just, equitable and practicable method, to be cumulative with and in addition to, any other remedy provided by law, whereby conditions exist which from any cause endanger the life, limb, health, safety or welfare of the general public are prohibited and may be abated.

**43.020 GENERAL.**

- (1) The directors of the departments responsible for, administration or oversight of the following sections of this Chapter or other Polk County codes and ordinances, or laws of the State of Oregon, are authorized to enforce the provisions of this Chapter.
- (2) The Board may, by order, designate enforcement officers to assist the directors in enforcing this Chapter.

DEFINITIONS

**43.030 GENERAL DEFINITIONS.** For the purpose of this Chapter, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory, and the term "this Chapter" shall be deemed to include all amendments hereafter made to this Chapter. The definitions applicable to this Chapter are:

- (1) **ABANDONED BUILDING.** A building or structure in which no one claims a right or interest in or one that the owner has withdrawn all rights or interest in.
- (2) **ADMINISTRATOR.** The County Engineer, County Health Officer, County Sanitarian or other person designated by resolution of the Board to administer the Solid Waste Collection and Disposal Code and the duly authorized deputy or assistant of such person.
- (3) **BOARD.** The Polk County Board of Commissioners.

- (4) BUILDING OFFICIAL. The person designated by the Board to administer the Building Code, or his or her duly authorized agent(s). [Ord. 94-4, Sec. 7.]
- (5) DANGEROUS BUILDING. For the purpose of this Chapter, any building or structure which has any or all of the conditions or defects herein described shall be deemed to be a dangerous building, provided that such condition or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.
  - A. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
  - B. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
  - C. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
  - D. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
  - E. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged. or to collapse and thereby injure persons or damage property.
  - F. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or

fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

- G. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- H. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
- I. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- J. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that the building official finds the building or structure to be hazardous.
- K. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside wall or coverings.
- L. Whenever the building or structure has been damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harborage or breeding area for rodents and insects (iii) a harbor for vagrants or criminals; or as to (iv) enable persons to resort thereto for the purpose of committing unlawful acts.
- M. Whenever any building or structure has been constructed, exists or is maintained in violation

of any specific requirement or prohibition applicable to such building or structure as specified by the Building Code, Zoning Ordinance or any applicable law, regulation, code or ordinance of the State or Polk County.

- N. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.
  - O. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, toxic chemical contamination, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the Health Officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
  - P. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Building Official or District Fire Chief to be a fire hazard.
  - Q. Whenever any building or structure is in such a condition as to constitute a public nuisance under Oregon statutes or Polk County ordinances.
  - R. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of four (4) months or vacant in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.
- (6) DIRECTOR. The persons designated by the Board as the

Building Official, Planning Director or Environmental Health Director.

- (7) DISPOSE OR DISPOSAL. Includes accumulation, storage, collection, transportation and disposal of solid wastes or recyclable materials.
- (8) DISPOSAL SITE. Any land or facilities used for the disposal, handling or transfer of or resource recovery from solid waste and waste including but not limited to dumps, landfills, sanitary landfills and composting plants, but does not include a landfill site which is not used by the public either directly or through a service and which is used by the owner or tenant thereof to dispose of soil, rock, or non-putrescible industrial waste products resulting from the process of manufacturing.
- (9) ENFORCEMENT OFFICER. The Director or other persons designated by the Board to assist the Director in enforcing this Ordinance.
- (10) FRANCHISE. A general privilege to provide specified solid waste management services issued by the Board. A "Franchisee" is the holder of a franchise.
- (11) INOPERABLE VEHICLE.
  - (A) A dismantled, unserviceable, inoperable, junked, or abandoned vehicle or any vehicle legally or physically incapable of being operated for a period exceeding 30 days unless such vehicle, or parts thereof, is completely enclosed within a building, or stored on property lawfully designated under the Zoning Ordinances of Polk County as a place where such vehicles may be stored.
  - (B) An inoperable vehicle shall not mean a licensed or unlicensed camper trailer, utility trailer or unlicensed operable vehicle or vehicles which are used on private property for the production, propagation or harvesting of agricultural products grown or raised on such lands.
- (12) COMMERCIAL KENNEL. A facility for the keeping of dogs which have a set of permanent canine teeth or have become six months of age, if:
  - (A) The facility receives more than \$250 in gross

receipts during a year for sheltering dogs which are not the property of the operator of the facility:

- (B) The facility is privately operated as an animal shelter, whether for profit or not for profit; or
  - (C) The facility is operated for the production or sheltering of dogs which are to be offered for commercial sale. [Amended by Ord. 91-11, Sec. 4]
- (13) LANDFILL. A disposal site operated by means of compacting and covering solid waste at specific designated intervals, but not each day.
  - (14) MOTOR VEHICLE TIRE. Any motor vehicle tire made wholly or in part of rubber or of any other synthetic material, including tire bodies, carcasses, casings or part of tires in whatever form, originally designed for use by any vehicle propelled by a motor, including any vehicle pushed or pulled by a motorized vehicle.
  - (15) NON-CONFORMING USE. The lawful use of land on the effective date of the Polk County Zoning Code which does not conform with the use regulations of the zone in which the land is located.
  - (16) ON-SITE SEWAGE DISPOSAL SYSTEM. A system or any part of a system to dispose of liquid and solid sewage. Parts include septic tank, disposal trenches, effluent pipe, dosing tank and pump, diversion ditch, tile dewatering trench, sand filter, capping fill, holding tank and alarms.
  - (17) PERMIT. A limited license to provide a specified service, or to install an on-site sewage disposal system, or to construct a building, or to make an electrical installation, or to use a parcel in a specified manner. "Permittee" is the holder of a permit. [Ord. 94-4, Sec. 8]
  - (18) PERSON. Includes individuals, corporations, associations, firms, partnerships and joint stock companies.
  - (19) RECYCLING DEPOT. A center, depot drop box or other place for receiving source-separated, recyclable materials with or without compensation. This shall not include a salvage, junk, or auto wrecking yard.

- (20) REGULATIONS. Rules or regulations promulgated by the Board pursuant to this Chapter.
- (21) RULES. Rules promulgated by State agencies.
- (22) SANITARY LANDFILL. A disposal site operated by means of compacting and covering solid waste at least once each operating day.
- (23) SEWAGE. Water carried human wastes, including kitchen, bath and laundry wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration, surface waters, or industrial waste as may be present.
- (24) SOLID WASTE. Solid waste shall include all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, waste paper and cardboard; grass clippings; composts; sewer sludge; residential, commercial and industrial appliances, equipment, and furniture; discarded, inoperable, or abandoned vehicles or vehicle parts and waste motor vehicle tires; manure, vegetable, or animal solid and semi-solid waste and dead animals. Waste shall mean useless, unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste or waste, may from time to time have value and thus be utilized shall not remove them from the definition. The terms solid waste or waste do not include:
  - (A) Environmentally hazardous wastes as defined in ORS 466.005.
  - (B) Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals. This exception does not apply to the keeping of animals on land which has been zoned for residential non-agricultural purposes.
  - (C) Septic tank and cesspool pumping or chemical toilet waste.
  - (D) Reusable beverage containers as defined in ORS 459.860.
  - (E) Source separated principal recyclable materials as defined in ORS Chapter 459 and the rules

promulgated thereunder and under this Chapter which have been purchased or exchanged for fair market value.

- (25) TRANSFER SITE OR TRANSFER FACILITY. A fixed or mobile facility, used as an adjunct to collection vehicle(s), resource recovery facility, disposal site between the collection of the waste/solid waste and disposal site, including but not limited to, another vehicle, a concrete slab, pit, building, hopper, railroad gondola or barge.
- (26) USE. The purpose of which land or a building is arranged designed, or intended, or for which either land or a building is or may be occupied.
- (27) VACANT. Any building or structure remaining unoccupied or unused for a period of six (6) months or longer shall be deemed vacant. This shall not include those buildings or structures found to be dangerous, imminently dangerous or contaminated by toxic chemicals. Such buildings may be deemed vacant if found to be unoccupied or unused at the time of the initial inspection.
- (28) WASTE. Useless, unwanted or discarded materials.
- (29) WASTE TIRE. A tire that is no longer suitable for its original intended purpose because of wear, damage or defect, and is fit only for:
  - (A) Remanufacture into something else, including a recapped tire; or
  - (B) Some other use which differs substantially from its original use.
- (30) WASTE TIRE PERMIT. Any person engaged in picking up transporting or accumulating waste tires for waste tire salvage or disposal, whether or not incidental to another business, and who has obtained a permit under this Chapter prior to so acting; but excluding franchise holders under the Solid Waste Collection and Disposal Code.
- (31) WASTE TIRE SALVAGE. The use of a scrap tire for a purpose other than on a motor vehicle. The term "waste tire salvage" does not include the recycling of waste tires through recapping or other means for the purpose



of making said waste tires suitable for use on a motor vehicle.

#### **NUISANCES DEFINED**

**43.040 NUISANCES DEFINED.** For purposes of this Chapter, a public nuisance consists of unlawfully doing an act, or omitting to perform a duty, which act or omission: annoys, injures, or endangers the safety, health, comfort, or repose of others.

#### **SOLID WASTE**

**43.050 CREATION OF NUISANCE BY ACCUMULATION OF SOLID WASTE PROHIBITED.** Except as provided in the Solid Waste Collection and Disposal Code, no person shall store, collect, maintain or display on private property, waste or solid waste that is offensive or hazardous to the health and safety of the public or which creates offensive odors or a condition of unsightliness. Storage, collection, maintenance or display of wastes or solid wastes in violation of this section shall be considered to be a public nuisance.

**43.055 UNAUTHORIZED DUMPING PROHIBITED.** Except at landfills, transfer sites and recycling depots approved by the Board; no person shall allow the accumulation or temporary storage of the following materials on any property.

- (1) Bulky, unsightly materials including, but not limited to; appliances, inoperable or abandoned vehicles or parts, building demolition wastes, industrial wood wastes, land clearing debris, discarded furniture and bedding or scrap metals shall not be accumulated or stored for more than thirty (30) days.
- (2) Household type rubbish, debris or garbage shall not be accumulated or stored for more than fourteen (14) days.

#### **43.056 UNAUTHORIZED DUMPING IN WATERS OF STATE.**

- (1) As used in this section, "waters of the state" has the meaning defined by ORS 468.700.
- (2) As provided in ORS 164.775, it is unlawful for any person to discard any glass, cans or other similar refuse in any waters of the state; and it is unlawful for any person to discard any glass, cans or other trash, rubbish, debris, litter or solid waste on land within 100 yards of any of the waters of the state other than in receptacles provided for the purpose of

holding such trash, rubbish, debris or litter. [Ord. 91-35, Sec. 2]

**43.057 UNAUTHORIZED DISPOSAL OF OFFENSIVE SUBSTANCES.** As provided in ORS 164.785:

- (1) It is unlawful for any person, including a person in the possession or control of any land, to discard any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into or in any other manner befoul, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond of water.
- (2) It is unlawful for any person to place or cause to be placed any polluting substance listed in subsection (1) of this section into any road, street, alley, lane, railroad right of way, lot, field, meadow or common. It is unlawful for an owner thereof knowingly to permit any polluting substances to remain in any of the places described in this subsection to the injury of the health or to the annoyance of any citizen of this state.
- (3) Nothing in this section applies to the storage or spreading of manure or like substance for agricultural, silvicultural or horticultural purposes, except that no sewage sludge, septic tank or cesspool pumpings shall be used for these purposes unless treated and applied in a manner approved by the Department of Environmental Quality. [Ord. 91-35, Sec. 3]

**43.058 OFFENSIVE LITTERING.**

- (1) As used in this section:
  - (a) "Public transportation facility" has the meaning defined by ORS 164.365.
  - (b) "Public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, a county or a local municipality for use by the general public.
- (2) As provided in ORS 164.805, a person commits the violation of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:

- (a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse or solid waste upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility; or
- (b) Draining or causing or permitting to be drained, garbage, debris or other refuse or solid waste upon any public way or in or upon any public transportation facility; or
- (c) Permitting any rubbish, trash, garbage, debris or other refuse or solid waste to be thrown from a vehicle which the person is operating. However, this paragraph does not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the public Utility Commission of Oregon, or to a person operating a school bus described under ORS 801.460. [Ord. 91-35, Sec. 4]

**43.059 EXEMPTION OF CERTAIN DISPOSAL SITES.** Sections 43.056 and 43.057 do not prohibit the operation of a disposal site, as defined in ORS 459.005, for which a permit is required by the Department of Environmental Quality, for which such a permit has been issued and which is being operated and maintained in accordance with the terms and conditions of such permit. [Ord. 91-35, Sec. 5]

#### **WASTE TIRES**

#### **43.060 CREATION OF A NUISANCE BY ACCUMULATION AND TRANSPORT OF WASTE TIRES.**

- (1) No person shall knowingly sell or otherwise make available to any other person more than 10 waste tires for the purpose of waste tire salvage or disposal in Polk County in any given calendar year unless that other person is a waste tire permittee under this Chapter or a franchisee under the Solid Waste Collection and Disposal Code.
- (2) No person shall knowingly receive more than 10 waste tires for the purpose of waste tire salvage or disposal in Polk County unless that person is a waste tire permittee under this Chapter or a franchisee under the Solid Waste Collection and Disposal Code.
- (3) No person shall knowingly transport or cause to be

transported wholly within, or to a destination within Polk County for the purposes of waste tire salvage or disposal, more than 10 waste tires in any given year unless the person receiving said tires is a waste tire permittee under this Chapter or a franchisee under this Ordinance.

- (4) No person shall accumulate more than 100 waste tires unless the person has obtained a waste tire storage site permit for the location where the tires are stored.
- (5) Businesses which have received a certificate from the Oregon Department of Revenue as a retail tire dealer in compliance with ORS Chapter 740 Section 25 may accumulate 1000 waste tires prior to obtaining a waste tire storage permit.

#### **WASTE TIRE STORAGE SITE**

**43.065 APPLICATIONS.** Applications for waste tire permits shall be on forms provided by the Administrator. In addition to any information required on the forms, the Administrator may require such additional information as deemed necessary to ensure compliance with this Ordinance. A non-refundable fee of \$60 shall be payable at the time the application is submitted to the Administrator.

- (1) Applicants shall state the particular use planned for the waste tires, the number of tires required, date use shall be completed, and the source of tires.
- (2) Applicant shall state, specifically, the manner in which waste tires shall be screened from public view, anchored to ground if applicable.
- (3) Applicant shall identify any potential vector or pest breeding or habitat areas in the proposed use and the control methods to be utilized in order to avoid them.
- (4) Applicant shall provide any other information deemed necessary by the Administrator.

#### **43.070 REVIEW.**

- (1) All applications shall be subject to review by the Administrator and the Planning Director for compliance with County Ordinances. Upon receipt of a complete application, the Administrator shall make such inspections as necessary and issue a decision in writing within 60 days. The Administrator shall submit

a copy of the written decision to the Board for review and consent. The effective date of the waste tire permit shall not precede Board review.

The Administrator shall make a finding on a decision to allow the application based on the following criteria:

- (A) Utility of proposed use.
  - (B) Effect of the proposed use on the esthetics of the surrounding neighborhood.
  - (C) Potential of the proposed use to create vector or pest breeding and/or habitat areas.
- (2) The decision of the Administrator may be appealed within 30 days from the date of the decision to the Board.

**43.075. FAILURE TO COMPLY A NUISANCE.** Failure to comply with Sections 43.060 to 43.070 constitutes a public nuisance.

**BUILDINGS 43.080 CERTAIN BUILDINGS**

**A NUISANCE.** The following are classified as public nuisances:

- (1) All buildings or structures, or portions thereof, which are determined by the building official to be dangerous as defined by Section 43.030 (5).
- (2) Constructing a building without a permit as required by the Building Code.
- (3) Placing a mobile home without a permit.
- (4) Occupying or changing the use of a building or structure without an occupancy permit.
- (5) Selling or renting a dwelling which has been used as a clandestine drug lab without providing a written notice to the new owner or renter.
- (6) Making an electrical installation without a permit. [Ord. 94-4, Sec. 9.]

#### **SEWAGE DISPOSAL**

**43.085 INADEQUATE SEWAGE DISPOSAL A NUISANCE.** The following acts constitute a public nuisance:

- (1) The discharge of raw or partially treated sewage onto

the ground surface or into the waters of the State of Oregon.

- (2) Placing into use an existing on-site sewage disposal system without an Authorization Notice as required by OAR 340-71-205.
- (3) Installing, replacing or repairing an on-site sewage disposal system without a permit as required by OAR 340-71-160.
- (4) Installing, replacing or repairing an on-site sewage disposal system without a license from the Department of Environmental Quality as required by OAR 340-71-600 (1) and (2). The owner of property who holds a valid permit for an on-site sewage disposal system is exempt from this section.

#### **ZONING**

**43.090 NON-PERMITTED LAND USE A NUISANCE.** The following acts constitute public nuisances:

- (1) Creating a use which is prohibited.
- (2) Creating or changing a use which requires a permit.
- (3) Expanding a use which is non-conforming.
- (4) Changing to a use which is not permitted.
- (5) Failing to comply with conditions of a permit.

#### **KENNELS**

**43.095 MAINTAINING COMMERCIAL KENNEL WITHOUT A LICENSE .** The following acts constitute a public nuisance.

- (1) Maintaining a commercial kennel unless a kennel license has been obtained.
- (2) Maintaining a kennel in violation of state law or county ordinance, or administrative rule issued thereunder. [Amended by Ord. 91-11, Sec. 5]

#### **KENNEL LICENSING**

**43.100 APPLICATIONS.** Applications for a commercial kennel shall be on forms provided by Polk County. In addition to any

information required on the forms, the County may require such additional information as deemed necessary to ensure compliance with this Ordinance and any other County ordinance or ORS or Administrative Rule. The application shall not be considered complete until all information requested has been submitted and a non-refundable fee has been paid. [Amended by Ord. 91-11, Sec. 6]

**43.105 REVIEW FOR COMPLIANCE WITH REQUIREMENT.**

- (1) All applications shall be subject to review by the Dog Control Officer and the Planning and Environmental Health Departments to check for compliance with other County ordinances.
- (2) A commercial kennel license shall not be issued in those areas for which the Zoning Code does not allow commercial kennels.
- (3) All dogs kept at the commercial kennel over four months of age shall be currently vaccinated for rabies.
- (4) Waste material generated by the dogs shall be disposed of in a manner which prevents water pollution and nuisances from odor and flies.
- (5) The license shall indicate the maximum number of dogs which may be kept.
- (6) Within 60 days of receipt of a complete application, the County shall issue or deny the application and shall notify the applicant in writing. [Amended by ord. 91-11, Sec. 6]

**43.110 SUSPENSION, REVOCATION, FAILURE TO RENEW.**

- (1) If at any time, the commercial kennel operator fails to comply with a provision of this Ordinance or any other County ordinance or ORS, the license shall be suspended or revoked.
- (2) If, at the time of renewal of a commercial kennel license, it is determined that provisions of this Ordinance or any other County ordinance or ORS, the license shall not be renewed.
- (3) If the number of dogs increases above that indicated on the license, the operator of the commercial kennel shall apply for an updated license to reflect the

number of dogs kept at the commercial kennel.

- (4) A commercial kennel license issued under this Ordinance shall be valid for one year from the date of issuance. The commercial kennel operator is responsible for timely application for renewal before the expiration date. [Amended by Ord. 91-11, Sec. 6]

**43.115** [Repealed by Ord. 89-13, Sec. 1]

**43.116 FEES.** The Board of Commissioners by resolution shall prescribe fees for commercial kennel licenses {Ord. 89-13, Sec. 1; Ord. 91-11, Sec. 6]

**43.120 APPEALS OF DECISION.** The decision on denial, suspension, revocation or failure to renew may be appealed to the Board. An appeal fee of one-half the license fee shall be submitted with the appeal application.

**43.125 EXEMPTIONS.** The following are exempt from the licensing requirements only. All other requirements of Section 43.105 must be complied with:

- (1) A commercial kennel which has obtained a Conditional Use Permit to operate.
- (2) A non-conforming boarding kennel in existence prior to adoption of this Ordinance. This does not exempt enlargement of a non-conforming commercial kennel from the Zoning Code.
- (3) Veterinary hospitals or clinics. [Amended by Ord. 91-11, Sec. 6]

#### **GRACE PERIOD**

**43.130 GRACE PERIOD.** Licenses and permits required under Sections 43.065 and 43.095 shall be obtained within 90 days of adoption of this Ordinance.

#### **INVESTIGATION FEE**

**43.135 INVESTIGATION FEE REQUIRED.** The following investigations of nuisances shall require the payment of an investigation fee upon application for permits:

- (1) Placing into use or installing, replacing or repairing an on-site sewage disposal system without a permit as



defined by Sections 43.085 (2) and (3).

- (2) Beginning construction of a building without a permit.
- (3) Placing a mobile home without a permit.
- (4) Changing the use of a building without a change of occupancy permit.
- (5) Creating or changing a use without a permit as defined by Section 43.090 (2).
- (6) Operating as a waste tire storage site or waste tire carrier without a permit.
- (7) Maintaining a kennel without a license.
- (8) Making an electrical installation without a permit.  
[Ord. 94-4, Sec. 10.]

**43.140 FEES.** The investigation fee shall be assessed to the violator at the actual cost to the County to conduct the investigation, correspondence and follow-up enforcement prior to the time the violator applies for the necessary permits. In no event shall the fee be less than \$100. This fee shall be collected prior to issuing any permit.

#### **ABATEMENT FUND**

##### **43.145 ABATEMENT FUND.**

- (1) There is hereby created the Environmental Nuisance Fund to be used to pay the County's cost to abate any nuisance as ordered by the Court or Board.
- (2) The Board may at any time transfer to the fund, out of the General Fund, such sums as it may deem necessary in order to expedite the performance of the work of abatement. Any sum so transferred shall be deemed a loan and shall be repaid out of the proceeds of the collections as ordered by the Court or Board.

#### **APPEALS**

**43.150 APPEALS.** All decisions of the Board under this Chapter shall be reviewable by the Circuit Court of the State of Oregon for the County of Polk.

## **OTHER PENALTIES AND ABATEMENT METHODS**

**43.152 REBUTTABLE PRESUMPTION** In any proceeding to enforce Section 43.056, 43.057 or 43.058, a name found on various items in a deposit of rubbish or other solid waste placed on land or in water in violation thereof constitutes rebuttable evidence that the person whose name appears on the items has violated Section 43.056, 43.057 or 43.058. However, the rebuttable presumption created by this section exists only when a name on items denotes ownership of the items, such as the name of an addressee on an envelope. [Ord. 91-35, Sec. 7]

### **43.155 OTHER ABATEMENT METHODS.**

- (1) Enforcement of this Chapter may be as provided for in Chapter 50 of the Polk County Code.
- (2) In addition to other remedies provided by law or by this Chapter, the Board may institute injunction, mandamus, abatement, or other appropriate legal proceedings to temporarily or permanently enjoin or abate such public nuisance.
- (3) The provisions of this section are in addition to and not in lieu of penalties described in Section 43.160.

### **43.157 CIVIL PENALTY FOR CERTAIN VIOLATIONS.**

- (1) In addition to any other penalty, any person who violates any provision of Sections 43.056, 43.057, or 43.058 shall incur a civil penalty in any amount not to exceed the penalty amount provided under Section 43.160. The penalty also may include all of the costs incurred by the county in removing the refuse or offensive substance unlawfully placed on property and in eliminating the effects of such unlawful placement.
- (2) Such civil penalty shall be collected as provided under ORS 468.135, except that the Director of the Community Development Department shall perform the duties provided under ORS 468.135, and recoveries shall be credited to the county treasury. However, action under this section shall be in lieu of enforcement action under Section 43.160. [Ord. 91-35, Sec. 6]

**43.160 PENALTIES.** Violation of Sections 43.040 through 43.105 shall be punishable upon conviction by a fine of not more than \$500 for a non-continuing violation and a fine of not more than \$1,000 for a continuing offense. These penalties shall be in

addition to any other remedies provided by law to Polk County.

**43.165 CONSTRUCTION.** Any finding by any court of competent jurisdiction that any portion of this Chapter is unconstitutional or invalid shall not invalidate any other portion of this Chapter.

**Note:** Sections 43.005 to 43.165 were adopted as Section 1 of Ordinance No. 88-16.