

CITY OF WHEELER
ORDINANCE NO. 2024-02

AN ORDINANCE AMENDING THE CITY OF WHEELER’S NUISANCE REGULATIONS

WHEREAS nuisance regulations are necessary to preserve a clean, safe, well-kept community for all Wheeler residents; and,

WHEREAS the City’s nuisance regulations have not undergone a comprehensive update in many years; and,

WHEREAS the City Council held a special workshop for updating the City’s nuisance regulations, which are included herein,

NOW, THEREFORE, the City of Wheeler ordains as follows:

91.000 State Law Adopted. The provisions of ORS chapters 161, 162, 163, 164, 165, 166, 167, and 475 are adopted; and a violation of a provision of those chapters is an offense against the city.

91.002 Definitions. For the purposes of this Chapter, the following definitions shall apply:

Abate or Abatement: Actions to remove, stop, prevent, correct, reduce, or otherwise take steps necessary, in such a manner and to such an extent as the applicable City department director or designee(s) determines is necessary in the interest of the general health, safety and welfare of the community, to remove a condition deemed to constitute a violation of this ordinance or that has been deemed a nuisance.

Boarded Building: A vacant building or portion of a vacant building whose doors and/or windows have been covered with plywood or other material for the purpose of preventing entry into the vacant building by persons or animals.

Building Available for Sale, Lease, or Rent: A building that is in compliance with the minimum property maintenance standards and has an advertising or posting of contact information concerning its availability; and/or is listed with a certified agent for the sale, lease, or rent transaction.

Chronic Nuisance: Individual property on which multiple nuisance activities have occurred during a specified period; or nuisances which have occurred on multiple properties that are owned or controlled by a single person or entity.

Demolition by Neglect: The gradual deterioration of a historic building as a result of insufficient routine or major maintenance.

Exterior Property: The open space on the premises and on adjoining property under the control of owners or operators of such premises.

Garbage: The animal or vegetable waste resulting from the handling, preparation, cooking, and consumption of food.

Inoperable Motor Vehicle: A vehicle that cannot be driven upon the public streets for reasons including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

Junk: All old motor vehicles, motor vehicle parts, abandoned motor vehicles, old machinery or machinery parts, old appliances or appliance parts, old iron or other metal, glass, paper, lumber, wood, or other waste or discarded material.

Owner: Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the State, County, or City as holding title to the property; or otherwise having control of the property, including the conservator of the estate of any such person, and the personal representative of the estate of such person if ordered to take possession of real property by a court.

Owner, Junk: The registered owner of a vehicle or junk as described in this Chapter; a person having equity or a beneficial right, title, or interest in or to such vehicle or junk; a person having the right of temporary or permanent control of such vehicle or junk; a person who is the owner of real property on which such vehicle or junk is situated; or a person who is the lessee or in possession of property on which such vehicle or junk is situated.

Person in Charge: Unless otherwise required by the context, shall be deemed to include a property owner, agent, occupant, lessee, contract purchaser, or other person having possession or control of property or supervision of a construction project.

Person responsible. The person responsible for abating a nuisance includes:

- (1) The owner.
- (2) The person in charge of property, as defined in this section.
- (3) The person who caused a nuisance or offense, as defined by this Chapter to come into or continue in existence.

Rubbish: Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, dust, and other similar materials.

Vacant Building: A building/structure that appears to be empty of furnishings and/or merchandise and not otherwise legally occupied, or any condition that, on its own or combined with other conditions present, would lead a reasonable person to believe that a property or building is unoccupied. Such conditions include but are not limited to: overgrown and/or dead vegetation; accumulation of newspapers, circulars and/or flyers; disconnected utilities; accumulation of trash, junk and/or debris; broken or boarded up windows and/or doors; the absence of merchandise consistent with retail sale; and statements by neighbors or government employees that the property or building is vacant. Portions of buildings with more than one section such as buildings with separate storefronts may be determined to be vacant even if other portions of the building are occupied.

Weeds and Noxious Growth: All grasses, annual plants, and vegetation, other than trees, shrubs, and cultivated flowers and gardens.

91.003. Right to Enter Property. The City may take appropriate steps to gain entry into or upon a property to investigate and/or cause the removal of a nuisance or other offense.

Offenses Against Public Peace and Safety

91.005 Firearm Defined. As used in 91.010, firearm means pistol, revolver, rifle, shotgun, gun, machine gun, pellet gun, BB gun, or other similar device, including a miniature weapon, that projects a missile or shot by force of gunpowder or any other explosive, or by spring or by compressed air.

91.010 Carrying Loaded Firearm Unlawful.

- (A) No person shall knowingly carry a firearm, loaded or unloaded, in a park, school ground or public building.
- (B) No person on a public street or in a public place shall knowingly carry a firearm upon the person, or in a vehicle under the person's control or in which the person is an occupant, unless all ammunition or missile has been removed from the chamber and from the cylinder, clip or magazine.
- (C) Subsections (A) and (B) of this section shall not apply to:
 - (1) A peace officer acting within the scope of the officer's duty;
 - (2) Any government employee authorized or required by the employee's employment or office to carry or use firearms; or

- (3) Any person having a valid permit issued to the person by lawful authority to carry or use concealed firearms;
- (4) Any person whose primary business duty is the protection of financial institutions; or
- (5) Any person whose primary business duty involves transporting for hire money, securities, negotiable instruments or similar commodities; or
- (6) Any person justified in using deadly, physical force under the provisions of ORS Chapter 161.

(D) It is unlawful for any person carrying a firearm upon the person, or in a vehicle under the person's control or in which the person is an occupant, to refuse to permit a peace officer to inspect that firearm.

91.025 Unnecessary Noise. No person may make, assist in continuing, or cause to be made any loud, disturbing, or unnecessary noise that annoys, disturbs, injures, or endangers the comfort, repose, health, safety, or peace of others. Loud, disturbing, or unnecessary noises in violation of this section include but are not limited to the following:

- (1) Keeping a bird or animal that, by frequent or long-continued noise, disturbs the comfort and repose of any person in the vicinity.
- (2) Attaching a bell to an animal or allowing a bell to remain on an animal.
- (3) Using a vehicle or engine, either stationary or moving, so out of repair, loaded, or operated that it creates loud or unnecessary grating, grinding, rattling, or other noise.
- (4) Sounding a horn or signaling device on a vehicle on a street, or public or private place, except as a necessary warning of danger.
- (5) Blowing a steam whistle attached to a stationary boiler, except to give notice of the time to begin or stop work, or as a warning of danger, or by request of city authorities.
- (6) Using a mechanical device operated by compressed air, steam, or otherwise, unless the noise created is effectively muffled.
- (7) Construction, excavation, demolition, alteration, or repair of a building between the hours of 6 p.m. and 7 a.m., except with a permit granted by the city manager. If the city manager determines that public health, safety, and welfare will not be impaired by such activity, and that loss of inconvenience will result to a person unless the work is permitted, he may grant permission for the work to be done within those hours. An owner may do work on property occupied by him between the hours of 6 p.m. and 10 p.m. without a permit.
- (8) Using a gong or siren on a vehicle other than a police, fire, or other emergency vehicle.

- (9) Creating excessive noise on a street adjacent to a school, institution of learning, church or court of justice while it is in use, or adjacent to a hospital or institution for the care of the sick or infirm, that unreasonably interferes with the operation of the institution, or that disturbs or unduly annoys patients.
- (10) Discharging in the open air the exhaust of a steam engine, internal combustion engine, motor boat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke.
- (11) Operating an automatic or electric piano, phonograph, radio, television, loudspeaker or any instrument for sound producing or sound amplifying so loudly that it disturbs persons in the vicinity or becomes a nuisance. Permits may be granted by the city manager to persons or organizations for the broadcast or amplification of programs of music, news, speeches or general entertainment as a part of a national, state, or city event, public festival or outstanding events of a noncommercial nature. The broadcast or amplification shall not be audible for a distance of more than 300 feet from the instrument, speaker, or amplifier; and a permit shall not be granted if traffic obstruction, vehicular or pedestrian, will result.
- (12) Making a noise by crying, calling, or shouting, or using a whistle, rattle, bell, gong, clapper, horn, hammer, drum, musical instrument, or other device for the purpose of advertising goods, wares or merchandise or of attracting attention or inviting patronage of a person to a business.
- (13) Conducting, operating, or maintaining a garage within 100 feet of a private residence, apartment, rooming house, or hotel in a manner that causes loud or disturbing noise between the hours of 11 p.m. and 7 a.m.

91.030 Discharge of Weapons. Except at a firing range approved by the chief of police, no person other than a peace officer may fire or discharge a gun or other weapon, including spring- or air-actuated pellet guns, or weapons that propel a projectile by use of gunpowder or other explosive or jet or rocket propulsion.

91.035 Interference with Public Justice.

- (1) No person may use or permit the use of property for planning or promoting criminal activities or for violation of this code.

91.040 Obstructing, Delaying or Interfering with a Police Officer.

- (1) A person commits the offense hereinabove stated if that person intentionally and unreasonably interferes with, obstructs, or delays a person known by him to be a Peace Officer from discharging, or attempting to discharge his official duties.
- (2) Definitions used with respect to this section:

- (a) "Intentionally" means that a person acts with a conscious objective to cause the result or engage in conduct so described.
- (b) "Interfere" means to impede or intervene either by use of physical force or by any instrumentality under an individual's personal control.
- (c) "Obstruct" means to impede, hinder, or block, either by use of physical force or by any instrumentality under an individual's personal control.
- (d) "Delay" means to detain or cause to be late, either by use of physical force or by any instrumentality under an individual's personal control.
- (e) "Peace Officer" means any municipal, county, or state employee authorized to act as a policeman, fireman, or emergency technician.
- (f) "Unreasonably" means without good and justifiable cause.

91.045 Operation of Fire Hydrants.

- (1) No person, without authorization by the fire chief and paying the prescribed fee, may unfasten, open, or draw water from, or otherwise interfere with, the operation of a fire hydrant.
- (2) This section does not apply to the fire department of Nehalem Bay, nor to city employees in carrying out their assigned duties.

91.050 Police and Fire Communications. No person may operate a generator or electromagnetic wave or cause a disturbance of such magnitude as to interfere with the proper functioning of a police or fire department radio communication system.

91.055 Narcotics and Dangerous Drugs. No person may, without proper authority, sell, use or possess for any purpose narcotic drugs or dangerous drugs, as defined by the state of Oregon.

91.060 Obstructions in Passageways.

- (A) Purpose. The purpose of this ordinance is to ensure that any objects placed on sidewalks, streets, and other rights-of-way are appropriately located, are compatible with surrounding allowed uses, and are conducive to the public health, safety, and welfare.
- (B) Portable Signs. All portable signs must conform to the rules and regulations as set forth in the Zoning Ordinance enacted by the Planning Commission of Wheeler.
- (C) Planter Boxes. Planter Boxes may be allowed on sidewalks and passageways lying within street rights-of-way in accordance with the following:

- (1) “Planter Box” is defined as a container with a display of landscape plant material, excluding city-approved and/or installed street trees.
- (2) A planter box shall be clean and the plants well-maintained.
- (3) It is the responsibility of the permittee to position the planter box to provide an unobstructed passageway on the sidewalk in compliance with the Americans With Disabilities Act Administrative Guidelines (ADAAG).
- (4) A planter box shall be located at the curb or against the building.
- (5) A planter box shall be positioned to not obstruct any entrances or exits to buildings or to legally parked vehicles.
- (6) A planter box shall not be placed on a corner.
- (7) There shall be no fee or permit required for a planter box.

(D) Miscellaneous Objects. Objects other than those described in this section or elsewhere in this Code may be allowed to be placed on sidewalks and passageways lying within street rights-of-way in accordance with the following:

- (1) The object shall be placed adjacent to the building or site and extend no more than two (2) feet into the sidewalk area from the face of the building or site.
- (2) The object will be kept clean and well-maintained.
- (3) It is the responsibility of the permittee to position the object to provide an unobstructed passageway on the sidewalk in compliance with the Americans With Disabilities Act Administrative Guidelines (ADAAG).

(E) Permit Requirements. Use of sidewalks and passageways lying within street rights-of-way described in this section shall be in accordance with the following:

- (1) Before use of a sidewalk area, an application with the required fee must be submitted to the City Manager. The permit shall be valid for the calendar year, or any part thereof, and shall expire on December 31. A permit is not required for a planter box.
- (2) The fee for use of a sidewalk area shall be as follows:
 - (a) Portable sign or miscellaneous object - \$10.00 for each sign or object.
 - (b) Temporary portable signs associated with a community-wide event or festival - \$10.00 for each event, not for each sign.
 - (c) Tables and chairs - \$10.00 per business at one location.
 - (d) Planter box - No fee.

- (3) The permittee is liable for damages to a person injured upon a sidewalk because of the permittee's fault or negligence in the placement or condition of obstructions placed upon such sidewalk by the permittee.
 - (4) The permittee is responsible for compliance with Americans With Disabilities Act Administrative Guidelines (ADAAG) concerning the placement or condition of obstructions placed upon such sidewalk by the permittee.
- (F) Exceptions. Exceptions to the regulations concerning Obstructions in Passageways may be allowed in accordance with the following:
- (1) An application shall be submitted to the City Manager identifying the exception that is requested, and the reason the exception is needed.
 - (2) The City Manager shall make a written determination that the exception will not create a safety hazard, and will meet the intended purpose of this ordinance.
 - (3) City approved and/or installed street trees shall be allowed outright.
 - (4) If the City Manager believes that substantial issues are involved in the Exception application, the City Manager shall refer the issue to the City Council for review.
 - (5) If the request is denied by the City manager, the applicant shall have the right to appeal the decision to the City Council .

(G) Other Obstructions.

- (1) No person may deposit earth, gravel, or debris on a street or sidewalk, except as otherwise authorized by this Code.
- (2) No person may throw or deposit in the Nehalem River or on the tidelands of the Nehalem River any rubbish, refuse, ballast, sawdust, or other articles that may obstruct the channel of the Nehalem River or landings of the City.
- (3) No person may permit a cellar door or grate located in or upon a sidewalk to remain open except when such entrance is being used and, when being used, such entrance has adequate safeguards to protect pedestrians using the sidewalks.

(H) Enforcement. In addition to any other method of enforcement available to the City, the provision of this ordinance may be enforced by the issuance of citations by the City Manager or their designee.

91.062. Retail Street Vendor.

(A) Definition. For the purposes of Section 91.062, the following means:

Retail Vendor Cart or Stand. A Retail Vendor Cart or Stand is a small, moveable cart that is operated from a fixed location and is designated and sized to be readily moved under the control of one person, but not under its own power. EXCEPT; The use of battery-powered or other method that is needed to provide power to the cart or stand for movement, as necessary to comply with the requirements of the American Disabilities Act (ADA), may be permitted when authorized by approval of an administrative variance.

(B) Purpose. The purpose of this ordinance is to ensure that retail street vendor carts or stands are appropriately located, are compatible with surrounding uses allowed, are conducive to the public health, safety and welfare, and promote a diversity of retail activity.

(C) Standards. All proposed retail street vendor stands or carts must be compatible with the permitted and conditional uses of the zoning district in which it is located and must be compatible with the use of sidewalks by pedestrians. In addition, all retail street vendors shall obtain a separate City business license and shall comply with the following minimum standards:

- (1) The retail street vendor cart or stand shall not be more than four (4) feet in width, six (6) feet in length, and five (5) feet in height. One retail cart or stand per person shall be permitted.
- (2) A canopy or umbrella may be included with the cart or stand which may not exceed 48 square feet in area or a diameter of six (6) feet and shall have a minimum clearance above the sidewalk of at least seven (7) feet.
- (3) Each retail street vendor cart or stand shall be a self-contained unit, PROVIDED, however, self-contained electrical power generators are not permitted. Each cart or stand shall have one 2A10BC fire extinguisher mounted on it if it includes cooking facilities with an open flame.
- (4) Advertising signs may be placed only on the cart or stand. Signs must conform to the sign requirements for the zone as specified in the Wheeler Sign Regulations
- (5) The operator of a retail street vendor cart or stand shall obtain a business license from the City of Wheeler and a permit from the State of Oregon Health Department when required.
- (6) Retail street vendor carts or stands shall be removed from the site daily between the hours of 9:00 p.m. and 6:00 a.m. The site and cart or stand shall be kept clean and orderly at all times. No cart or stand shall be left unattended for more than 15 minutes. Carts or stands may not be locked or chained to any street furniture, trash container, landscaping planters or trees, or utility poles.
- (7) The cart or stand shall be placed a minimum of six (6) feet from the curb and shall maintain a minimum pedestrian walkway of six (6) feet. Drive-up service is not permitted.

- (8) No retail street vendor cart or stand shall be placed directly adjacent to, or within a 50-foot radius (excluding rights-of-way), of any business which specializes in the sale of products that are the same or similar to that offered for sale by the cart operator. This requirement does not apply if the applicant owns the establishment or has written consent from the proprietor of the adjacent business establishment.
 - (9) No retail street vendor cart or stand shall be located within ten (10) feet of an intersection.
 - (10) No retail street vendor cart or stand shall be placed within 200 feet of any public or private school, park, or playground, except when the entity having jurisdiction and control of such facility states in writing that it has no objection to the placement.
- (D) Application Procedure. A permit application for a retail street vendor cart or stand shall be submitted to the Planning Commission for review and approval. The application shall be submitted on a form provided by the City and shall include a filing fee and the following information:
- (1) A scaled drawing of the cart, including materials of construction, dimensions, exact location on the sidewalk, and any signs to be incorporated in the cart.
 - (2) Written approval from adjacent business owners, if applicable, as required above.
 - (3) Evidence of Insurance.
- (E) Routing and Review. Upon receipt of an application, the President of the Planning Commission or his designee shall review the request and all comments received from other city departments and shall determine compliance with all requirements.
- (F) Planning Commission President Decision. The President of the Planning Commission shall approve, approve with modifications, or deny the application based on compliance with all applicable standards.
- (G) Permit Limitations. The permit shall not be transferred to another person or location, other than that stated on the permit. Each permit shall be valid for a period not to exceed 12 months unless otherwise stated. The permit may be renewed for an additional year at the end of the 12 months upon written request by the applicant and payment of the annual fee.

The City Manager may revoke or suspend the permit if:

- (1) The applicant or permittee has violated or failed to meet any of the provisions of this ordinance.
- (2) The vendor cart/stand, or operation is detrimental to the surrounding businesses or the public.
- (3) Any required licenses or permits have been suspended, revoked, or canceled.

- (4) The applicant does not have current insurance coverage as required by City Code.

The applicant shall be notified by Certified Mail of the denial, suspension or revocation of the permit by the City Manager, stating the reasons for the action. If the retail vendor cart or stand has not been removed within 15 days of the notice, the City Manager or their designee may cause a removal of the cart or stand found in violation.

- (H) Appeals. The decision of the City Manager may be appealed to the Planning Commission.

Offenses Involving Morals

(A) *Generally*. No person shall participate in, operate or assist in operating any gambling game or activity, including a lottery, except as permitted by O.R.S. [167.117](#) through [167.162](#). No person shall have in his or her possession any property, instrument or device designed or adapted for use in any type of gambling activity. Any such property, instrument or device is a nuisance and may be summarily seized by the city. Property so seized shall be placed in the custody of the city. Upon conviction of the person owning or controlling such property for a violation of this section, the Court shall order such property confiscated and destroyed.

(B) *Definitions*. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CARD ROOM. Any private business, private club or place of public accommodation wherein any table is maintained upon which games of cards or other social games are played.

CHARITABLE, FRATERNAL OR RELIGIOUS ORGANIZATION. Any person organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal or other non-profit purposes, and who is also exempt from payment of federal income taxes because of its charitable, fraternal or religious purposes. The fact that contributions to an organization profiting from the contest do not qualify for charitable deduction for tax purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the Internal Revenue Code of 1986, as amended, constitutes prima facie evidence that the organization is not a bona fide **CHARITABLE, FRATERNAL OR RELIGIOUS ORGANIZATION**.

GAMBLING.

(A) A person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome.

(B) The term **GAMBLING** shall not include:

- (1) Bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including, but not limited to, contracts of indemnity or guaranty and life, health or accident insurance;
- (2) Engaging in contests of chance under the following conditions:
 - (a) The contest is played for some token other than money;
 - (b) An individual contestant may not purchase more than \$100 worth of tokens for use in the contest during any 24-hour period;
 - (c) The tokens may be exchanged only for property other than money;
 - (d) Except when the tokens are exchanged for a beverage or merchandise to be consumed on the premises, the tokens are not redeemable on the premises where the contest is conducted or within 50 miles thereof; and
 - (e) Except for charitable, fraternal or religious organizations, no person who conducts the contest as owner, agent or employee profits in any manner from operation of the contest.
- (3) Social games, if such games are conducted in compliance with this section; and/or
- (4) Bingo, lotto or raffles operated in compliance with O.R.S. [167.118](#), by a charitable, fraternal or religious organization licensed pursuant to O.R.S. [167.118](#), [464.250](#) to [464.380](#), [464.420](#) and [464.450](#) to [464.530](#) to operate such games.

SOCIAL GAME.

- (A) A game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the ***SOCIAL GAME***.
- (B) A game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the ***SOCIAL GAME***.
- (C) *Application for license.* From and after this date, it shall be lawful for any person, firm or corporation (hereafter referred to as “enterprise”) to engage in or carry on, or maintain or conduct, any card room in the city only if such enterprise has a valid card room license from said city. All persons having a financial interest in such enterprise shall file an application on forms provided by the city for such license with the City Manager and which shall be accompanied by a \$65 non-refundable deposit investigation fee. Upon receipt of the application and deposit investigation fee, the City Manager shall order an investigation. Should the cost of the investigation exceed the deposit investigation fee, the excess shall be paid to the city by the applicant prior to issuance of the license. Any enterprise desiring to obtain a license under the provisions of this section shall pay to the City Manager the amount required in division [\(I\)](#) below.

(D) *Card room license not transferable.* No card room license shall be assignable or transferable. Change of persons having a financial interest in a licensed card room business shall be reported immediately to the City Manager, who shall order an investigation under the same terms and conditions as described in division (C) above, and the change must be approved or denied by the City Council. Applications for change of financial ownership shall be accompanied by a \$65 non-refundable deposit investigation fee. Should the cost of the investigation exceed the deposit investigation fee, the excess shall be paid to the city by the transferee prior to final approval by the City Council being given for the transfer.

(E) *Granting and denial of application.* The City Council shall either approve the application and grant the license applied for or deny the application and refuse to grant the license. The license shall not be granted if the card room enterprise or any person with a financial interest in the card room enterprise:

- (1) Has been previously convicted of a felony within the last ten years;
- (2) Has been convicted of two misdemeanors, excepting minor traffic offenses, within the last five years;
- (3) Has been convicted of or forfeited bail for any crime involving gambling within the last five years;
- (4) Has been directly or indirectly involved in a forfeiture proceeding regarding a gambling device as defined in the Oregon Revised Statutes where such gambling device has been ordered destroyed or a bond has been forfeited in lieu of the gambling device being destroyed within the last five years;
- (5) Has included in the application any false or misleading information or has omitted any information;
- (6) Has had a license which was in his or her name revoked or suspended three times by the State Liquor Control Commission, the last of which was within the last five years;
- (7) The enterprise or any of the enterprise's employees violates any section of this section; and/or
- (8) Has engaged in any other conduct involving moral turpitude.

(F) *Suspension and revocation of the license; appeal.*

- (1) The City Manager shall temporarily suspend any card room license issued hereunder if the City Attorney determines there is substantial evidence that:
 - (a) Any person who has any interest in the enterprise has been previously convicted of a felony within the last ten years;

- (b) Any person who has any interest in the enterprise has been convicted of two misdemeanors, excepting minor traffic offenses, within the last five years;
 - (c) Any person who has any interest in the enterprise has been convicted of or forfeited bail for any crime involving gambling within the last five years;
 - (d) Any person who has any interest in the enterprise has been directly or indirectly involved in a forfeiture proceeding regarding a gambling device, as defined in the Oregon Revised Statutes, where such gambling device has been ordered destroyed or a bond has been forfeited in lieu of the gambling device being destroyed within the last five years;
 - (e) Any false or misleading information is supplied in the application or any information requested is omitted from the application;
 - (f) Any person who has any interest in the enterprise has had a license which was in his or her name revoked or suspended three times by the State Liquor Control Commission, the last of which was within the last five years;
 - (g) Any person who has any interest in the enterprise or any employee who violates any division of this section; and
 - (h) Any person who has any interest in the enterprise is involved with any other conduct involving moral turpitude.
- (2) Appeal from issuance of a temporary suspension shall be made to the City Council, at a meeting in regular Council session. Notice of such appeal shall be filed with the City Manager within ten days or such action shall stand until issuance of a permanent revocation or expiration of the temporary suspension. A temporary suspension shall be for 60 days.
- (3) Permanent revocation may be made only by the City Council and such revocation shall only take place at a City Council meeting in regular Council session upon application of the City Manager and only after the licensee has been served with notice at least 20 days prior to the City Council meeting.

Such notice shall include the time and date of the City Council meeting and the grounds upon which the permanent revocation is sought. Notice shall be deemed to have been received by the licensee if the City Manager mails such notice to the address listed by the licensee on his or her application for a license.

(G) *Regulations.* It shall be unlawful to operate a card room in violation of any of the following regulations and rules.

- (1) With respect to the social games set forth in this section, there shall be a limit on any bet of \$10 and a three-raise limit.

- (2) The licensee holding or obtaining licenses under the provisions of this section shall thereby automatically agree to be bound by and observe each and all of the terms and conditions, and provisions of this section and of the regulations and rules established thereby.
- (3) Each and all of the games conducted or operated in the city pursuant to the provisions of this section shall be conducted and operated in full conformity with, and subject to, all the provisions of the laws of the state and the city.
- (4) No licensee shall allow the use of any card room between the hours of 2:00 a.m. and 10:00 a.m. of any day.
- (5) All card rooms shall be open to police inspection during all hours of operation. Card rooms licenses shall be available for inspection during all hours of operation.
- (6) No licensee, nor any of the licensee's employees, shall participate in any card game nor procure players, back, farm out, assign or sublet any card games lawfully permitted under this section on the premises in which said licensee has any interest or any of licensee's employees work.
- (7) The playing of all card games shall be so arranged as to provide free access and visibility to any interested party. Doors leading into the card room must remain unlocked during all hours of operation.
- (8) No person under the age of 21 shall be permitted to participate in any card game or to enter or remain upon such premises.
- (9) No charge shall be collected from any player for the privilege of participating in any game.
- (10) With respect to tables at which any form of blackjack or 21 is played, there shall be a limit of four tables for such play in any licensed room.

(H) *Signs.* All signs to comply with the city's Zoning Ordinance (Ch. [157](#) of this code).

(I) *Card table fees.* Any enterprise who shall keep, maintain or operate any card table or other social game table shall pay in advance a yearly license fee which shall expire on December 31 of the year for which it is issued. Tables at which any form of blackjack or 21 is played shall be charged an annual fee of \$500 for all such tables collectively. Card tables used for other social games shall be charged a \$50 annual fee for each card table kept or maintained therein.

(J) *Exceptions to license.* A non-profit society, club or fraternal organization having adopted bylaws and duly elected directors and members may be granted a permit at an annual fee of \$500, expiring on December 31, when it appears that the tables are for the exclusive use of members of the society, club or fraternal organization and no charge is made for participation. The society, club or fraternal organization shall have been in continuous existence, actively conducting its affairs within the city for a period of two years immediately preceding application for a license, and only if the conduct of a

card room is not the primary reason for existence of the society, club or fraternal organization. (Ord. 89-1, passed 04/4/1989; Ord. 91-02, passed 07/9/1991; Ord. 92-01, passed 05/12/1992)

91.115 Public Indecency.

- (1) No person may, while in or in view of a public place, perform an act of urination or defecation, except in toilets provided for that purpose.
- (2) No person may bathe or swim in a lake, river, stream, pond, slough or creek or in a public swimming pool without wearing suitable bathing attire. For purposes of this subsection, the words "suitable bathing attire" mean attire that is generally used, recognized and accepted by the public and that does not expose the bather or swimmer in a manner offensive to contemporary community standards.

91.120 Soliciting Drinks. No person may frequent, loiter, or be employed on a licensed premises where alcoholic liquor is sold or consumed by individual drink for the purpose of soliciting another person to purchase drinks. No proprietor of such an establishment may allow in the establishment any person who violates the provisions of this section. This section does not apply to persons regularly employed for the purpose of serving food or alcoholic liquor.

91.125 Violating Privacy of Another. No person other than a peace officer performing a lawful duty may enter upon land or into a building, used in whole or in part as a dwelling, not his own without permission of the owner or person entitled to possession and, while so trespassing, look through or attempt to look through a window, door or transom of the dwelling or that part of the building used as a dwelling with the intent to violate the privacy of another person.

Offenses Against Property

91.200 Banners, etc., Attached to Street Light Standards. No person may attach festoons, streamers, banners, or other attachments to a street light standard, or to the extension of a standard, or to any other public or utility pole or standard, unless permitted by the city.

91.205 Horses on Public Property. No person may ride or permit a horse on public property except a road or other area where a motor vehicle may be lawfully operated.

91.210 Use of Bulldozing Equipment.

- (1) An owner of property who intends to improve, alter, excavate or fill property by means of a bulldozer, caterpillar tractor, grader or other power-propelled device, before making the improvement, shall obtain a permit from the city. All restrictions or conditions on the permit shall be complied with. A person who fails to comply is liable for all damage that may result from such noncompliance.

- (2) No person may permit another to go on the property and use power equipment described in subsection (1) without a permit from the city to improve, excavate, fill or clear the property.
- (3) No person may operate power equipment described in subsection (1) on property without first obtaining a permit from the city.

Offenses Affecting Minors

91.250 Property Transactions with Minors. No person may purchase property or an article of value from a minor or have dealings respecting the title to property in the possession of a minor without the written consent of the parent or guardian of the minor.

91.255 Curfew.

- (1) No minor under 18 years of age may be on a street, highway, park, alley or other public place between the hours specified in subsection (2), unless:
 - (a) The minor is accompanied by a parent, guardian or other person 21 years of age or over and authorized by the parent or by law to have custody of the minor;
 - (b) The minor is engaged in a lawful pursuit or activity which requires the minor's presence upon the street, highway, park, alley or other public place; or
 - (c) The minor is emancipated under ORS 419B.550 to 419B.558.
- (2) For the purposes of this section, the applicable hours of curfew are the hours between 12 midnight and 6 a.m. of the following morning
- (3) No parent, guardian or other person having legal custody of a minor under the age of 18 years may permit the minor to be in violation of this section.
- (4) Any police officer is authorized to take a minor violating a provision of this section into custody as provided by ORS 419C.680.
- (5) Violation of subsection (3) by a parent, guardian, or person having legal custody of a minor is punishable as provided by section 91.010 of this code.

91.260 Failing to Supervise a Minor. A person commits the offense of failing to supervise a minor if: the Person is the parent, legal guardian or person with legal responsibility for the safety and welfare of a child under 18 years of age and the child has been found on private property or premises open to the public in violation of any provision of the Wheeler City Code or Oregon Revised Statutes.

91.265 Restitution for Damages. In addition to any fine or penalty imposed pursuant to this ordinance, the Court may order the person to pay restitution to all victims of the minor's conduct. The amount of restitution ordered pursuant to this ordinance shall be set by the fee schedule.

91.270 Affirmative Defense. It is an affirmative defense, for which the Person shall bear the burden of proof, that the Person took reasonable steps to control the conduct of the child at the time the Person is alleged to have failed to supervise the minor.

91.280 Penalty. The offense described in this ordinance of failure to supervise a minor is an Infraction punishable by a fine according to the fee schedule.

Liquor Control

91.300 Definitions. For purposes of sections 91.305 to 91.395, the following mean:

Alcoholic liquor: Alcoholic beverages containing more than one-half of one percent alcohol by volume and every liquid or solid, patented or not, containing alcohol and consumable by a human being.

Commission: The Oregon Liquor Control Commission.

Licensee: A person who has a license from the commission to sell or dispense alcoholic liquor.

Licensed premises: The room or enclosure at the address for which a license has been issued by the commission for serving, mixing, handling or selling alcoholic liquor.

Liquor Control Act: The state law as designated by ORS 471.027 and the Oregon Distilled Liquor Control Act as defined by ORS 472.020.

Minor: A person under 21 years of age.

Other responsible relative: An adult who is the spouse of a minor; an adult who is related to a minor and has taken over the parental duty of governing the minor's actions; or a duly appointed, qualified and acting guardian who has taken over the parental duty of governing the minor's actions.

Person: An individual, partnership, corporation, association or club.

Sell: To solicit or receive an order, keep or expose for sale, deliver for value or in any way other than gratuitously, to peddle, keep with intent to sell, traffic in or procure or allow to be procured for

another person for any consideration promised or obtained, directly or indirectly, or under any pretext or by any means.

91.305 Providing Liquor to Certain Persons Prohibited. No person may sell, give, furnish or serve alcoholic liquor to:

- (1) A minor except as provided in section 91.320.
- (2) A person visibly intoxicated.

91.310 Persons Not Allowed to Drink Alcoholic Liquor on Licensed Premises.

- (1) No person may allow a person who is visibly intoxicated to drink alcoholic liquor on a licensed premises.
- (2) No bartender may drink alcoholic liquor or be under the influence of alcoholic liquor while on duty in a licensed premises.

91.315 Purchase or Possession of Liquor by a Minor.

- (1) Except as provided in section 91.320, no minor may attempt to purchase, purchase, acquire or possess alcoholic liquor.
- (2) For purposes of this section, possession of alcoholic liquor includes acceptance or consumption of alcoholic liquor. This section does not prohibit acceptance or consumption of sacramental wine as part of a religious rite or service.

91.320 Lawful Consumption of Liquor by a Minor. Nothing in this code shall be construed as prohibiting a parent or other responsible relative of a minor from giving the minor alcoholic liquor and permitting him to consume it within the home of the parent or other responsible relative of the minor, or at another private place not in view of the public when the parent or other responsible relative is present.

91.325 Loitering on Licensed Premises by Minors. Except as provided in section 91.335, no minor, whether or not accompanied by a parent or other responsible relative, may enter, loiter or remain on a licensed premises that has been posted by the commission to prohibit the use thereof by minors.

91.330 Minors Not Permitted to Drink or Loiter on Licensed Premises.

- (1) No licensee or his employee or agent may permit a minor to:
 - (a) Consume alcoholic liquor on licensed premises, whether or not such alcoholic liquor is given to the minor by a parent or other responsible relative.

- (b) Loiter on licensed premises that have been posted by the commission to prohibit use by minors, except as provided in section 91.335.
 - (c) Remain on licensed premises except as provided in section 91.335.
- (2) The fact that a parent or other responsible relative has accompanied a minor onto licensed premises is not a defense to a charge brought for violation of this section, except as provided in section 91.335.

91.335 Permitting Minors on Licensed Premises.

- (1) The provisions of sections 91.325 and 91.330 shall not prohibit:
- (a) A minor from entering licensed premises for transacting business in the regular course of the minor's lawful employment.
 - (b) A minor spouse from entering and remaining on a licensed premises when in the immediate company of the minor's spouse who is 21 years of age or older.
 - (c) A minor who is lawfully employed under the conditions described in Ch. 610, 1981 Or. Laws from entering or remaining on a licensed premises.
- (2) This section shall not be construed to authorize a minor spouse to consume alcoholic liquor on licensed premises.

91.340 Delivering or Selling Liquor by a Minor.

- (1) Except as provided in subsection (3), no minor, either personally or as an agent or employee of another, may sell, offer for sale or deliver alcoholic liquor.
- (2) Except as provided in subsection (3), no person may employ, hire or engage a minor to sell, offer for sale or deliver alcoholic liquor.
- (3) An employee, 18 years of age or older, of a person who holds a package store license from the commission may sell alcoholic liquor authorized by the license on the licensed premises.

91.345 Sales by Unlicensed Persons. No person may sell alcoholic liquor without a license from the commission. Sales by a licensee or licensee's employee shall be only sales that are authorized by the license issued for the premises.

91.350 Bringing Alcoholic Liquor Onto Licensed Premises. No licensee or licensee's agent or employee may keep or knowingly permit to be kept, brought or consumed on the licensed premises alcoholic liquor not allowed to be sold or served on the premises.

91.355 Disposal of Liquor Containers.

- (1) No licensee or licensee's employee or agent may permit empty or discarded containers of alcoholic liquor to be in the public view on the exterior of the licensed premises or in parking areas maintained in connection with the premises.
- (2) No person may discard, throw away or dispose of a container of alcoholic liquor, whether broken or not, on a street, alley, public grounds or public place.

91.360 Lawful Hours of Sale.

- (1) No package store licensee may sell, dispense, deliver, or permit the removal of alcoholic liquor from the licensed premises between the hours of 2:30 a.m. and 7 a.m.
- (2) No retail malt beverage restaurant or dispenser may sell, dispense, deliver or allow the consumption of alcoholic liquor on licensed premises or permit the removal of alcoholic liquor from licensed premises between the hours of 2:30 a.m. and 7 a.m.

91.365 Statement of Age as Defense. If a written statement of age and the information pertaining to the evidence which was exhibited to the permittee or licensee at the time the statement was made that is entered in writing on the statement are offered as evidence in any administrative or criminal prosecution for sale or service of alcoholic liquor to a person not having reached 21 years of age, the permittee or licensee shall be found to have committed no crime or other wrong, unless it is demonstrated that a reasonable person would have determined that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was sold or served.

91.370 Consumption of Alcoholic Liquor in Public Places. No person may drink or consume alcoholic liquor in or on a street, alley, public grounds or other public place, unless such place has been licensed for that purpose by the commission.

91.375 Liquor in Public Dance Halls. No person may possess, keep, sell, give away or otherwise dispose of or consume alcoholic liquor in a public dance hall or in a room or building used for public dancing that is not licensed under the Oregon Liquor Control Act.

91.380 Nuisances.

- (1) A room, house, building, boat, structure, or place where alcoholic liquor is sold, manufactured, bartered or given away in violation of the law; or where persons are permitted to resort for the purpose of drinking alcoholic liquor in violation of the law; or where alcoholic liquors are kept for sale, barter or gift in violation of the law; and all alcoholic liquor, whether purchased from or through the commission or purchased or acquired from any source, and all property including registers, music devices and all furniture, furnishings and equipment, and all facilities for mixing, storing, serving or drinking alcoholic liquor kept and used in such place, are declared to be a common nuisance.

- (2) No person may maintain or assist in maintaining a common nuisance as defined in subsection (1).

91.385 Arresting Officer to Seize Property. When an officer arrests a person for violation of sections 91.305 to 91.380, the officer shall take into his possession all alcoholic liquor and other property included under section 91.380 that the person arrested has in his possession or on his premises and that apparently is being used or kept in violation of this code. If the person arrested is convicted, and the court finds that the alcoholic liquor and other property have been used in violation of this code, forfeiture proceedings authorized by ORS 471.605, 471.610 and 471.615 may be instituted.

91.390 Responsibility of Licensee for Employees. Each licensee is responsible and liable to prosecution for a violation of a provision of sections 91.305 to 91.380 pertaining to his licensed premises and for any act or omission of a servant, agent or employee of the licensee in violation of a provision of sections 91.305 to 91.380.

91.395 Commission to Be Notified. When a conviction is obtained against a licensee of the commission, or a conviction is obtained against a person and the violation was committed on licensed premises, the municipal court shall notify the commission of the conviction.

DOG CONTROL

91.400 Definitions. As used in sections 91.405 to 91.440 the following mean:

At large: Off the premises of the owner while not under the complete control of the owner by an adequate leash not over eight feet in length.

Dog: A male or female dog.

91.401 Presumption of Ownership.

- (1) It is presumed that the person shown on the application for license of a dog as the owner is the owner of such dog.
- (2) The adult occupants of a dwelling shall be presumed to be the co-owners of any dogs housed in such dwelling or on the premises thereof.

91.405 Dogs at Large. No owner may allow a dog to run at large.

91.410 Nuisances. A dog is a public nuisance if it:

- (1) Bites a person.
- (2) Habitually chases vehicles or persons.
- (3) Damages or destroys property of persons other than the owner of the dog.
- (4) Scatters garbage.
- (5) Habitually trespasses on private property of persons other than the owner of the dog.
- (6) Disturbs any person by frequent or prolonged noises.
- (7) Is running at large.

91.411 Animal Waste. The owner of every animal shall be responsible for the removal of any excreta deposited by his animal(s) on public walks or any public right of way between the street curb and the adjacent public or private property line, recreation area, or private property.

91.415 Seizing Certain Dogs. A dog that bites a person or shows a propensity to bite persons may be summarily seized by any person and promptly delivered to any authorized law enforcement department or officer for impounding.

91.420 Rabid Dogs. A dog that is rabid may be summarily killed by any person.

91.425 Licensing. A dog shall be licensed according to state law, and no person may own or have custody of a dog not so licensed.

91.430 Impounding. A dog that is running at large, is a nuisance, or is unlicensed is in violation of section 91.405, 91.410, 91.420 or 91.425 and may be impounded by any authorized law enforcement officer. The officer may impound the dog or cite the owner into court.

91.435 Pound Regulations.

- (1) When a dog is impounded under the provisions of section 91.430, if the owner of the dog is known to the impounding official, he shall give notice to the owner of the impounding, by personal service or by mail. If the owner does not, within five days after the date of service of the notice, claim the dog and pay a redemption fee as established by the Tillamook County dog pound, the dog may be humanely killed or disposed of to a person agreeing to provide it a suitable home.
- (2) If the owner or custodian of the dog is not known to the county dog pound, a notice of impoundment shall be placed on the bulletin board at city hall. If, at the expiration of five

days after notice is posted, the owner does not claim the dog and pay a redemption fee as established by Tillamook County dog pound, the dog may be humanely killed or disposed of to a person agreeing to provide it a suitable home.

91.436 Penalties. Any person violating any provision of Section 91.400 through 91.440 of the Wheeler Code shall be deemed guilty of a violation and shall be punished by a fine according to the fee schedule. If any violation be continuing, each day's violation shall be deemed a separate violation.

91.440 Right of Appeal. A dog owner, believing himself aggrieved by the seizure and impounding of his dog, may apply to the municipal judge for the release of the dog. The municipal judge shall set a time and place for hearing the application and notify the enforcing officer. At a summary hearing at the specified time and place, the municipal judge shall have full power to determine whether the dog has been wrongfully impounded, whether he shall be returned to his owner, and upon what terms.

NUISANCES

Animals and Fowl

91.505 Communicable Disease. No person may permit an animal or bird owned or controlled by him to be at large within the city if the animal or bird is afflicted with a communicable disease.

91.510 Dangerous Animals. No person may permit a wild or domesticated dangerous animal to run at large.

91.515 Livestock and Poultry.

- (1) No person may permit livestock or poultry owned by him to run at large within the city. Poultry and livestock must be fenced in on a person's property.
- (2) Livestock or poultry or other animals or fowl running at large in the city shall be impounded by the City Manager or their designee, and disposed of in accordance with the procedure provided by this code for the disposition of abandoned personal property. The provisions of this subsection do not apply to persons keeping cats, dogs or other household pets.
- (3) No person may keep a live horse, mule, cow, calf, swine, sheep, goat, chicken or other livestock or poultry in a dwelling.
- (4) The city may prohibit the keeping of goats, horses, chickens, or other livestock in any part of the city when keeping such animals may impair public health and create a nuisance. The city may issue a notice, to be served by the City Manager, to prohibit keeping such animals. The person to whom the notice is directed shall remove the animal within five days from the service of the notice.

91.520 Removal of Carcasses. No person may permit a fowl or animal carcass owned by him or under his control to remain on the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass.

Nuisances Affecting Public Health

91.550 Public Health Nuisances. No person may cause or permit a nuisance affecting public health on property owned or controlled by him. The following are such nuisances and may be abated as provided in this code.

- (1) Open vaults or privies constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with State Health Division regulations.
- (2) Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health and well-being of the city.
- (3) Stagnant water that affords a breeding place for mosquitoes and other insect pests.
- (4) 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.
- (5) Decayed or unwholesome food offered for human consumption.
- (6) Premises that are in such a state or condition as to cause an offensive odor or that are in an unsanitary condition.
- (7) Drainage of liquid wastes from private premises.
- (8) Cesspools or septic tanks that are in an unsanitary condition or that cause an offensive odor.
- (9) Mastics, oil, grease or petroleum products allowed to be introduced into the sewer system by a user connected to the sewer system.

91.555 Smoke Control. No owner or person in charge of property may permit:

- (1) The emission or discharge of dense or thick black or gray smoke or soot or cinders from a chimney or smokestack into the open air.
- (2) Burning rubber, plastic, household garbage, or other material if the burning causes an unreasonable stench or otherwise pollutes the air.

Nuisances Affecting Public Safety

91.600 Creating a Hazard. No person may create a hazard by:

- (1) 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.
- (2) Being the owner or otherwise having possession of property on which there is a well, cistern, cesspool, excavation, or other hole of a depth of 4 feet or more, and a top width of 12 inches or more and failing to cover or fence it with a suitable protective construction.

91.605 Attractive Nuisances.

- (1) No owner or person in charge of property may permit on the property:
 - (a) Unguarded machinery, equipment or other devices that are attractive, dangerous and accessible to children.
 - (b) Lumber, logs or piling placed or stored in a manner that is attractive, dangerous and accessible to children.
- (2) This section does not apply to authorized construction projects if during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children.

91.610 Property Below Grade, Fencing. The owner or person in charge of property which is below the established grade of a fully improved street shall construct and maintain a fence, safety rail or similar barrier where the property line abuts the street line. The fence, safety rail or similar barrier shall be built and maintained to protect children and the public generally from accidentally falling or from being pushed off the street onto the property.

91.615 Snow and Ice Removal. No owner or person in charge of property abutting on a public sidewalk may permit:

- (1) Snow to remain on the sidewalk for a period longer than the first four hours of daylight after the snow has ceased falling.
- (2) Ice to cover or remain on a sidewalk for a period longer than the first four hours of daylight after the ice has ceased to form. The person shall remove ice accumulating on the sidewalk or cover the ice with sand, ashes or other suitable material to assure safe travel.

91.625 Scattering Rubbish. No person may throw, dump or deposit on public or private property an injurious or offensive substance or rubbish, trash, debris, refuse, or any substance that would mar

the appearance, create a stench or detract from the cleanliness or safety of the property, or would be likely to injure an animal, vehicle or person traveling on a public way.

91.630 Fences.

- (1) No person may construct or maintain a barbed wire fence or allow barbed wire to remain as part of a fence along a sidewalk or public way, unless the wire is placed not less than six inches above the top of a fence that is not less than six feet high.
- (2) No person may install, maintain, or operate an electric fence along a street or sidewalk, or along the adjoining property line of another person.
- (3) Use of concertina or razor-style barbed wire is prohibited.

91.635 Surface Water, Drainage.

- (1) No owner or person in charge of a building or structure may permit rainwater, ice or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk.
- (2) The owner or person in charge of property shall install and maintain in a proper state of repair adequate gutters, drainpipes, or a drainage system so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk, or across a property line onto another property.

Nuisances Affecting Public Peace

91.655 Radio and Television Interference.

- (1) No person may 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 that is of good engineering design.
- (2) This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

91.660 Notices and Advertisements.

- (1) No person may attach or cause to be attached a placard, bill, advertisement or poster on real or personal property, whether public or private, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any city regulation of the use and location of signs.
- (2) This section does not prohibit the distribution of noncommercial material.

- (3) This section does not prohibit mail service or the distribution of advertising material during a parade or approved public gathering.

PROPERTY MAINTENANCE, VACANT BUILDING, AND DERELICT BUILDING

91.670 Purpose. The purpose of this Ordinance is to establish an enforcement program to address the problem of derelict, abandoned, and vacant commercial and residential buildings and property within the City in order to protect the public health, safety, and welfare of the community through the required maintenance of unkempt, unsightly, unsafe, unsanitary, and otherwise improperly maintained premises and structures.

The program is intended to protect the City from blight, deterioration, and decay as a result of properties in a condition or state that potentially would have an adverse effect on the value, utility, and habitability of property within the City. In addition to the obvious hazards which these conditions pose to the public health, safety, and welfare, they specifically cause damage to adjoining and nearby properties. A property which is merely unkempt or vacant for long periods may reduce the value of adjoining and nearby property, and the habitability and economic well-being of the City may be materially and adversely affected.

The goal of this Ordinance is as follows:

- (1) To supplement the City Nuisance Ordinance and further define as public nuisances those conditions which constitute visual blight and which could result in conditions which are harmful or deleterious to the public health, safety and welfare; and
- (2) To develop regulations that will promote the sound maintenance of property, enhance the livability, community appearance, and the social, economic, and environmental conditions of the community; and
- (3) To establish guidelines for the correction of property maintenance violations and nuisances that afford due process and procedural guarantees to affected property owners; and
- (4) To support responsible environmental practices with the repair and reuse of existing structures in lieu of demolition of buildings that are able to be repaired.
- (5) To prevent demolition by neglect of historic properties within the City as they are deemed to be an economic resource of the City.

91.672 Administration.

- (1) City Manager shall be responsible for administering a program for identifying and monitoring the condition of buildings and properties within the City.
- (2) The City may take appropriate steps to gain entry into or upon the property to investigate and/or cause the removal of a nuisance.

91.674 Derelict Buildings or Property. A structure or property in violation of the standards identified in the Property Maintenance, Vacant Building, and Derelict Building Ordinance shall be declared a derelict building/property and a nuisance. Derelict buildings or properties are subject to the requirements for Abatement of Nuisances, Housing Receivership, and/or other methods of enforcement available to the City. Derelict buildings may include demolition by neglect of historic buildings.

Determination of whether a building or property is in violation of the Property Maintenance, Vacant Building, and Derelict Building Ordinance shall be made by the City Manager. The decision of the City Manager may be appealed to the City Council.

Minor infractions of the Property Maintenance, Vacant Building, and Derelict Building Ordinance may be determined by the City Manager to be reasonable maintenance deficiencies and not be declared as a nuisance depending on the degree or intensity of the infraction.

91.676 Exceptions. The Property Maintenance, Vacant Building, and Derelict Building Ordinance shall not apply to a building and/or properties that are actively undergoing construction or repair as indicated by a valid building permit and appearance that the person in charge is progressing diligently to complete the repair or construction. This exception does not apply to requirements relevant to public safety or health concerns.

91.678 Property Maintenance Standards. No person in charge of a property shall maintain or permit to be maintained any property which does not comply with the requirements of this Chapter and is deemed to be a nuisance and detrimental to the City. All property shall be maintained to the building code requirements in effect at the time of construction, alteration, or repair, and shall meet the minimum requirements described in this Chapter.

- (A) Accessory Structures. All accessory structures, including sheds, trellises, awnings, fences, and other similar features, shall be maintained structurally safe and sound, and in good repair. Exterior steps and walkways shall be maintained free of unsafe obstructions or hazardous conditions.
- (B) Roofs. The roof shall be structurally sound, tight, and have no defects which might admit rain. Roof drainage shall be adequate to prevent rainwater from causing dampness in the walls or interior portion of the building. Roof drains, gutters, and downspouts shall be maintained in good repair and free from obstructions and shall channel rainwater into approved receivers.
- (C) Chimneys and Towers. All chimneys, cooling towers, smoke stacks, towers, and similar appurtenances / attachments shall be maintained so as to be structurally safe and sound, and in good repair. They shall remain adequately supported and free from obstructions and shall be maintained in a condition which ensures there will be no leakage or back-up of noxious

gases. They shall be reasonably plumb. Loose bricks or blocks shall be rebonded. Loose or missing mortar shall be replaced. Unused openings into the interior of the structure must be permanently sealed using approved materials.

(D) Foundations And Structural Members.

- (1) Foundation elements shall adequately support the building and shall be free of rot, crumbling elements, or similar deterioration.
- (2) The supporting structural members in every structure shall be maintained so as to be structurally sound, showing no evidence of deterioration or decay which would substantially impair their ability to carry imposed loads.

(E) Exterior Walls And Exposed Surfaces.

- (1) Exterior wall and weather-exposed exterior surface or attachment shall be free of holes, breaks, loose or rotting boards or timbers and any other conditions which might admit rain or dampness to the interior portions of the walls or the occupied spaces of the building.
- (2) Exterior wood surfaces shall be made substantially impervious to the adverse effects of weather by periodic application of an approved protective coating of weather-resistant preservative, paint, or other approved coating, and be maintained in good condition.
- (3) Exterior metal surfaces shall be protected from rust and corrosion of an extent that would substantially impair its ability to carry imposed loads.
- (4) Exterior brick, stone, masonry, or other veneer shall be maintained so as to be structurally sound and be adequately supported and tied back to its supporting structure.
- (5) Cornices, belt courses, corbels, terra cotta trim, wall facings, and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.
- (6) Overhang extensions, including, but not limited to, canopies, marquees, signs, metal awnings, fire escapes, standpipes, and exhaust ducts shall be maintained in good repair and be properly anchored so as to be kept in a sound condition.

(F) Stairs And Porches. Stair, porch, deck, balcony, and appurtenances / attachments attached thereto, shall be constructed and maintained so as to be safe to use and capable of supporting the loads to which they are subjected and shall be kept in sound condition and good repair, including replacement as necessary of flooring, treads, risers, and stringers that evidence excessive wear and are broken, warped, or loose.

- (G) Handrails And Guardrails. Handrail and guardrail shall be firmly fastened, and shall be maintained in good condition, and capable of supporting the loads to which they are subjected.
- (H) Windows. Each window shall be substantially weather-tight, shall be kept in sound condition and repair for its intended use, and shall comply with the following:
- (1) Window sash shall be fully supplied with glass window panes or an approved substitute without open cracks and holes.
 - (2) Window sash shall be in good condition and fit weather-tight within its frames.
 - (3) Window frame shall be constructed and maintained in relation to the adjacent wall construction so as to exclude rain as completely as possible and to substantially exclude wind from entering the structure.
- (I) Doors. Exterior doors, door assemblies, and hardware shall be maintained in good condition, be weather-tight, and substantially exclude wind and rain from entering the structure.
- (J) Hazardous Materials.
- (1) Residential property shall be free of dangerous levels of hazardous materials, contamination by toxic chemicals, or other circumstances that would render the property unsafe.
 - (2) No residential property shall be used as a place for the storage and handling of highly combustible or explosive materials or any articles which may be dangerous or detrimental to life or health. No residential property shall be used for the storage or sale of paints, varnishes, or oils used in the making of paints and varnishes, except as needed to maintain the dwelling.
 - (3) Residential property shall be kept free of friable asbestos.
- (K) Exterior Facilities and Equipment. In addition to other requirements for maintenance described in this Chapter, all exterior facilities and equipment, such as heat pumps, generators, etc. shall comply with the following:
- (1) All required facilities on the exterior of a structure shall be constructed and maintained to properly and safely perform their intended function.
 - (2) All non-required facilities or equipment on the exterior of a structure shall be maintained to prevent structural damage to the building, or hazards of health, sanitation, or fire.

(L) Exterior Property. All properties, including vacant properties, shall comply with the following:

(1) Debris.

Property shall be kept free of debris, trash, building materials, or the storage of other goods which are visible from the street or adjacent properties.

Debris shall include, but not be limited to: tires, lumber, household appliances, inoperable or excess vehicles, furniture, sinks, toilets, cabinets, other household fixtures, equipment, rubbish, garbage, debris, salvage materials, or parts thereof which constitute a fire hazard and/or are stored or accumulated in such a manner as to be visible from a public street, alley or adjoining property;

(2) Junk. An owner or person in charge of junk shall comply with the following:

(a) No person may keep junk outdoors on a street, lot, or other premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.

(b) No person may park, store, or abandon junk, litter, or rubbish on property owned by the City outside the City limits without the permission of the City Manager.

(c) This section does not apply to junk kept in a licensed junk yard or automobile wrecking yard.

(d) All property removed and held by the City under the provisions of this section shall be disposed of according to the provisions of the Wheeler City Code.

(3) Weeds and Noxious Vegetation.

Weeds or other noxious vegetation shall be cut down or destroyed, or otherwise prevented from becoming unsightly, from becoming a fire hazard, from growing over 12 inches in height, or from maturing or going to seed.

(4) Landscaping.

(a) Landscaping improvements shall be maintained in a healthy condition, trimmed, and pruned to maintain adequate clearance over pedestrian and vehicular areas.

(b) Landscaping improvements designated on an approved landscape plan shall be retained and maintained as denoted on the approved plan unless otherwise approved by the City.

(5) Walkways, Parking Areas, and Walls.

(c) Walls, driveways, walkways, parking areas, and retaining and/or decorative walls shall be maintained in such condition as to not become so defective, unsightly, or in such

condition of deterioration or disrepair that the same causes potential depreciation of the values of surrounding property, or is materially detrimental to nearby properties and improvements.

- (d) Maintenance and/or construction of walls, driveways, walkways, parking areas, and retaining and/or decorative walls located within the right-of-way shall be the responsibility of the adjacent property owner unless otherwise approved by a legally recorded easement or other legal document.

91.680 Vacant Buildings.

(A) Purpose.

Vacant buildings are a cause and source of blight in both residential and non-residential neighborhoods, especially when the person in charge of the building fails to actively maintain and manage the building to ensure that it does not become a liability to the neighborhood. Vacant buildings discourage economic development and retard appreciation of property values. Vacant buildings are potential fire hazards and can jeopardize the ability of owners of neighboring property from securing or maintaining affordable fire insurance. Vacant buildings cause increased need for police protection due to misuse of the property by persons not having permission or right to use the property. It is the responsibility of property ownership to prevent owned property from becoming a burden to the neighborhood and community and a threat to the public health, safety, or welfare. One vacant building which is not actively and well maintained and managed can be the core and cause of spreading blight.

(B) Maintenance and Security Requirements.

In addition to the maintenance standards in Sections 91.670 to 91.678, the person in charge of a vacant property and/or building shall comply with the following maintenance and security requirements:

- (1) The building and/or property shall be kept free of any accumulation of newspapers, circulars or flyers, graffiti, discarded items including but not limited to furniture, clothing, appliances, or any other items that give the appearance that the property or building is vacant.
- (2) The building and/or property shall be secure so that it is not accessible to unauthorized persons, including but not limited to the closure and locking of windows and doors (walk through, sliding, and garage) and any other opening of such size that may allow a child to access the interior of a structure; chaining or padlocking gates, and repairing fencing.
- (3) Broken windows and/or doors shall be secured by means of reglazing with undamaged glass or other approved permanent material, and not by cardboard, plywood, or other temporary means except as necessary temporarily for not more than three months while awaiting reglazing.

(4) If the person in charge of the property or building is an entity or does not reside within 50 miles of the City limits, the person in charge shall contract with or otherwise engage a person to provide property management to perform inspections to verify that all requirements of this ordinance, enforcement notice, and any other applicable laws are being met.

(5) The property shall be posted with name and 24-hour contact phone number of the owner, person in charge, or a local property management representative. The posting shall be no larger than 18" X 24" and shall contain the words "THIS PROPERTY MANAGED BY . . ." The posting shall be secured to the exterior of the building or placed in a location on the property so it is visible from the street.

(6) Vegetation

(a) Vegetation around the building shall be pruned back from the walls to allow good airflow and security visibility. Overhanging dead tree limbs and branches shall be removed.

(b) All vegetation on the property must be maintained per city code.

(7) Buildings located in commercial areas shall have some street presence by the display of goods in the storefront windows, interpretive displays, or some other activity that give the appearance of the building being occupied. Displays in vacant buildings shall be reviewed and approved by the City Manager prior to installation. Displays shall be reviewed for the following:

(a) The goods and/or interpretive displays should encompass a minimum of approximately 25% of the window area.

(b) The displays shall be maintained in good condition and not faded or deteriorated.

(c) Content of the displays shall be in compliance with allowable uses within the zone.

(d) Displays shall comply with the requirements of the Sign Code if applicable.

(C) Long Term Vacant Buildings.

If a property is determined to be vacant for more than two years, the property may be subjected to a fee as established by Resolution.

(1) A building is deemed to be a Long Term Vacant Building if the following has occurred for a period of two years or more, including the years prior to adoption of this Code as verified by City records or other documentation:

(a) Utilities have been turned off or not in use; or

- (b) Building has been boarded up or secured against any regular use entry; or
- (c) Building is in disrepair to a state that is obviously not habitable; or
- (d) Building is not in compliance with the Maintenance and Security Requirements of Section 91.680.B above; or
- (e) Building has not been legally occupied, regardless of the condition of the building.

(1) Exception.

- (a) The person in charge has obtained a building permit and is progressing diligently to repair the building for occupancy; or
- (b) The building meets all applicable codes, including the Property Maintenance Standards, and is actively being offered for sale, lease, or rent; or
- (c) The City Manager may approve an exception based on a written finding that there is a benefit to the community in the building remaining vacant such as, but not limited to, historical significance of the building interior that prevents current use of the building, use of the building that serves a current or future need of the business and/or property owner, etc. and provided that the building is maintained to the standards as identified in the Property Maintenance Code.

(D) Enforcement and Fees.

After a determination that a building is deemed a Long Term Vacant Building, the City shall notify the person in charge of the property of the following requirements:

(1) Repair and/or Use of Property.

The building shall be repaired to a useable condition and shall be offered for sale, lease, or rent, or shall be legally occupied; and

(2) Fee Payment.

There is imposed upon the person in charge of a vacant building pursuant to this Code, a quarterly Vacant Building Fee in an amount as established by resolution. The fee shall be payable for any building vacant for more than two consecutive years. Regardless of an imposition of a fee, the building shall be repaired to a usable condition.

Payment shall be in accordance with the following procedures:

- (a) Payment is due within 30 days of the date the City notifies the person in charge of the property of the Long Term Vacant Building determination. Payment for additional years shall be due on the same due date as the first year's determination.
- (b) Failure to pay the fee by the due date shall result in a 10% per month penalty. If payment is not received by the end of the year in which it is due, it may be turned over to a collection agency, become a lien on the property in accordance with this Chapter, and/or be subject to any other enforcement available to the City.

(3) Waiver of Fee.

The Vacant Building Fee may be waived at the discretion of the City Manager if the person in charge of the property makes the necessary repairs and offers the building for sale, lease, or rent as follows:

- (a) During the first year of imposition, the full amount of the fee may be waived; or
- (b) During subsequent years of imposition, an amount equal to the cost of improvements may be waived upon submittal of a request to the City Manager with copies of receipts for work completed. The City may retain a portion of the fee for administrative costs.

91.682 Chronic Nuisances.

(1) Purpose.

The purpose of this Ordinance is to establish an expedited enforcement program to address the problem of properties and/or property owners (person in charge) with multiple, continuing violations concerning derelict, abandoned, or vacant commercial and residential buildings and property within the City. Violations of other offenses as defined in Chapter 91 of this Code may also be declared to be a chronic nuisance.

Chronic nuisance properties present health, safety, economic, and welfare concerns, where the persons responsible for such properties have failed to take corrective action to abate the nuisance condition. Chronic nuisance properties have a negative impact upon the quality of life, safety and health of the neighborhoods where they are located. This Section is enacted to remedy nuisance activities that are particularly disruptive to quality of life and repeatedly occur or exist at properties, by providing a process for abatement. This remedy is not an exclusive remedy and may be used in conjunction with such other remedy authorized by law.

Chronic nuisance properties are also a financial burden to the City by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property. This Section is a means to ameliorate those conditions and hold accountable those persons responsible for such property.

(2) Chronic Nuisance Determination.

The City Manager and/or his designee shall determine that a nuisance is chronic based upon personal observation by a City employee, or after an investigation by the City as a result of a complaint filed with the City, and a determination that there are reasonable grounds to conclude that the alleged nuisance activities did, in fact, occur in violation of the City Code. Violations of nuisances and offenses as identified in Chapter 91 of the City Code shall be deemed a chronic nuisance if the following circumstances exist. For the purpose of Chronic Nuisance Determination, each day a citation is issued for an existing violation shall constitute a separate “nuisance activity”.

- (1) Property on which three (3) or more nuisance activities exist or have occurred during any consecutive 60 day period; or
- (2) Property on which six (6) or more nuisance activities exist or have occurred during any consecutive 12 month period; or
- (3) A person in charge of properties on which nuisance activities exist or have occurred on three (3) or more separate properties during any consecutive 12 month period.

(3) Enforcement.

- (1) In addition to any other enforcement remedies available to the City, properties and/or persons in charge of properties that have been deemed to be a chronic nuisance shall be subject to expedited enforcement including, but not limited to the following:
 - (a) Fewer days allowed to abate the nuisance; and/or
 - (b) Fewer contacts by the City in the enforcement process prior to abatement by the City.
- (2) Any fees, fines, or costs associated with a chronic nuisance shall be double the amount established by the City for the nuisance cited.

If the nuisance is abated by the person in charge of the property to the satisfaction of the City Manager or his designee within 30 days of the date of notice issued pursuant to Section 91.682.D, the matter shall not be referred to the City Attorney and the person in charge shall not be subject to the double penalty of this Section. Standard amount of penalties may still be assessed.

(4) Procedures.

(1) Notice.

Once it is determined that a property or person in charge of property is subject to this Chronic Nuisance Ordinance, the City Manager or designee shall expedite enforcement procedures as established by City policy to abate the nuisance. The expedited process shall include notification to the person in charge and the property owner.

The notice shall include the following information:

- (a) State that the person in charge shall respond within ten (10) days to the City Manager or designee with the following information:
 - 1. Identify a plan for abatement of the nuisance including a schedule for completion; or
 - 2. Indicate good cause as to why the nuisance cannot be abated; or
 - 3. Contest the determination of the existence of a chronic nuisance.
- (b) State that an acceptable abatement plan must be reached with the City Manager or designee within thirty (30) days from the date of the notice of determination that a chronic nuisance exists.
- (c) State that if the nuisance is not abated and good cause for failure to abate is not shown, the matter may be referred to the City Attorney to seek any remedy deemed to be appropriate to abate the nuisance.
- (d) State that fines, fees, and other costs may be doubled due to the chronic nuisance determination.

(2) Commencement of Enforcement Action by City Attorney.

Upon referral, the City Attorney may initiate an action in any court of competent jurisdiction to abate a chronic nuisance property, to impose penalties pursuant to this Chapter, and/or seek any other relief authorized by law.

(3) Additional Remedies.

(a) Rental Properties.

In addition to the remedies authorized by this Section, if as part of its order abating a chronic nuisance property, the court orders a person in charge to cease renting or leasing a property, the court may order the person in charge to pay relocation assistance to a tenant who must relocate because of the order of abatement and the court has found that the tenant has not caused or participated in the nuisance activity at the property.

(b) Existing City Permits.

1. Permit Suspension or Revocation.

In addition to any other remedy that is authorized by this Chapter or other laws, upon the finding by the City Manager that a property is a chronic nuisance property, the person in charge is subject to the suspension or revocation of a business license, other City license, or City permit for the subject property issued pursuant to the Wheeler City Code, Wheeler Zoning Ordinance or other City codes. Permits and/or licenses issued to a tenant

who has not caused or participated in the nuisance activity shall not be suspended or revoked as a result of the actions of the person in charge of the subject property.

2. Permit Reinstatement.

If a permit or license is suspended, it may be reinstated by the City Manager or designee once the nuisance has been abated and all liens, fines, fees, or costs have been satisfied. A new permit or license for the subject property shall not be issued to the person in charge or business associated with the nuisance until the nuisance has been abated and all City liens, fines, fees, or costs have been satisfied.

(5) Appeals.

The person in charge shall have the right to contest the chronic nuisance determination by responding within ten (10) days to the City Manager with a request for a review of the determination.

If the City Manager determines that the chronic nuisance still exists, the person in charge may appeal that decision to the City Council.

General Nuisance

91.700 Declaration of Public Nuisance.

- (1) The acts, conditions, or objects specifically enumerated and defined in this Chapter are declared to be public nuisances; and such acts, conditions, or objects may be abated by the procedures set forth in this Chapter.
- (2) In addition to those nuisances specifically enumerated, every other act, condition, or object that is determined by the City Council to be injurious or detrimental to the public health, safety, or welfare of the City is declared to be a nuisance and may be abated as provided in this Chapter.
- (3) All property found to be in violation of the Property Maintenance, Vacant Building, and Derelict Building Ordinance is declared to be a public nuisance and shall be abated by rehabilitation, demolition, or repair pursuant to the procedures set forth herein. Structures designated as historic shall be repaired rather than demolished when possible, unless the Historic Landmarks Commission has approved a demolition request or the building has been declared as “dangerous” and is an immediate threat to life and safety. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or abating public nuisances in any other manner provided by law.

91.702 Notification of Nuisance. Whenever the City Manager, or such other City official as may be designated by the City Manager, determines that any property within the City is being maintained contrary to one or more of the provisions of this Chapter, a written notice shall be sent to the person in charge of said property stating the sections being violated. Such notice shall provide 30 days for correcting the violation(s). Such notice shall be prepared and served upon the person in charge per provisions as established by City policy.

91.704 Failure to Comply with Enforcement. In the event a person in charge shall fail, neglect, or refuse to comply with the notice to correct a violation, the City Manager may proceed with the abatement of the nuisance in accordance with the requirements of this Chapter, other methods of enforcement available to the City, or may refer the violation to the City Attorney for legal action.

ABATEMENT PROCEDURE

91.706 Purpose. The purpose of this Section is to allow the City Council to take further action on the enforcement of a nuisance when the normal enforcement process has not been successful. The abatement process would allow the City to do the necessary work on the property at the expense of the person in charge.

91.708 Authority. The abatement of nuisances that would result in the City expenditure of \$2,000 or less for each occurrence shall be approved by the City Manager and/or Public Works Director. Abatements in excess of \$2,000 shall be reviewed and approved by the City Council.

91.709 Notice.

- (1) On determination by the City Manager that a nuisance exists and that the person in charge has not abated the nuisance through the nuisance enforcement process, the Council shall direct the City Manager or his designee to proceed with the abatement process to abate the nuisance.
- (2) The City Manager or his designee shall send a notice by certified mail to the person in charge at the person's last known address, as indicated on the records of the Tillamook County Assessor and/or other generally reliable source.
- (3) The notice to abate shall contain:
 - (a) A description of the real property, by street address or otherwise, on which the nuisance exists.
 - (b) A direction to abate the nuisance within 10 days from the date of the notice.
 - (c) A description of the nuisance.

- (d) A statement that, unless the nuisance is removed, the City may abate the nuisance and the cost of abatement, including administrative costs, will be charged to the person in charge.
 - (e) A statement that failure to abate a nuisance may warrant imposition of a fine or jail sentence.
 - (f) A statement that the person responsible may protest the order to abate by filing an appeal of the decision with the City Manager within 10 days from the date of the notice.
- (4) If the person in charge is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person in charge may be assessed to and become a lien on the property.
 - (5) Upon completion of the mailing, the person mailing shall execute and file a certificate stating the date and place of the mailing.
 - (6) If the notice is sent to the name and address as indicated on the records of the Tillamook County Assessor, and/or other generally reliable source, an error in the name or address of the person responsible shall not make the notice void.

91.710 Abatement by the Person in Charge. Within 10 days after the mailing of notice as provided in Section 91.708, the person in charge shall remove the nuisance or show that no nuisance exists.

91.714 Appeals. The person in charge shall have the right to contest the abatement notice by filing an appeal of that decision to the City Council within ten (10) days after the notice is mailed.

91.716 Joint Responsibility. If more than one person is a person in charge, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

91.718 Abatement by the City.

- (1) If the nuisance has not been abated by the person in charge within the time allowed, the City Manager may cause the nuisance to be abated.
- (2) The City may take appropriate steps to gain entry into or upon the property to investigate and/or cause the removal of a nuisance.
- (3) The Finance Director shall keep an accurate record of the expenses incurred by the City in abating the nuisance and shall include a charge of 20 percent of the expenses for administrative overhead.

91.720 Assessment of Costs.

- (1) The Finance Director shall forward to the owner and the person in charge, by certified mail, a notice stating:
 - (a) The total cost of abatement, including the administrative costs, lien search fees, recording fees, and any other applicable fees or fines.
 - (b) That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
 - (c) That if the owner or the person in charge objects to the cost of the abatement as indicated, a notice of objection may be filed with the Finance Director not more than 10 days from the date of the notice.
- (2) No sooner than 10 days after the date of the notice, the Council, in the regular course of business, shall hear and make a decision on any objections to the costs assessed.
- (3) An error in the name of the person in charge or a failure to receive the notice of the proposed assessment will not void the assessment.

91.722 Summary Abatement. The procedures provided by this Chapter are not exclusive, but are in addition to procedures provided by other parts of this Code. The City Manager, Public Works Director or an authorized law enforcement officer may proceed summarily to abate a health or other nuisance which imminently endangers human life or property. Costs associated with a Summary Abatement may be charged to the person in charge in accordance with this Chapter.

91.724 Relief from Penalty. The following will relieve the person in charge from the imposition of a fine imposed after the date of notice to abate by the City Council:

- (1) Abatement of a nuisance within 10 days of the date of notice to abate; or
- (2) If a written appeal has been filed, abatement within 10 days of Council determination that a nuisance exists.

91.726 Lien.

- (A) All fees, fines, and costs associated and imposed in accordance with the enforcement of nuisances in Sections 91.025, 91.200 to 91.210, 91.300 to 91.682, 91.800 to 91.830, or other nuisance or offense associated with private property may become a lien on the property as follows:
 - (1) If the fees, fines, or costs are not paid within 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 electronic lien docket of the City.

- (2) If the lien is not paid, the lien shall bear interest at the rate listed in the fee schedule. The interest shall begin to run from the date of entry of the lien in the lien docket.
- (3) The lien may be foreclosed as provided by Oregon law.
- (4) If the notice is sent to the name and address as indicated on the records of the Tillamook County Assessor and/or other generally reliable source, an error in the name of the owner or the person in charge, or a failure to receive the notice of the assessment will not void the assessment, and it shall remain a valid lien against the property.

91.727 Attorney's Fees. In the event suit or action is instituted to enforce any of the terms of this Ordinance, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

HOUSING RECEIVERSHIP

91.740 Purpose. The purpose of this Code is to establish an authority and procedures for the use of the Oregon Housing Receivership Act (ORS is established if an animal at large is found to menace, 105.420 to 105.455), and shall apply to all residential property as defined by that Act.

91.742 Authority. When the City Manager finds residential property in violation of a building or housing code enforced by the City, and in the exercise of reasonable discretion believes that violation is a threat to the public's health, safety, or welfare, the City, in addition to any other remedies available to it, may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement.

91.744 Selection of Properties. In selecting properties where the City may seek appointment of a receiver, the City Manager shall consider those properties that have, at a minimum:

- (1) Been declared a nuisance and are in violation of any provision of Sections 91.670 to 91.682; and
- (2) The person in charge has not acted in a timely manner to correct the violations.

91.746 Public Contracting Exemption. All abatement work done under the Housing Receivership statutes is exempt from the public contracting ordinances of the City.

DANGEROUS ANIMALS

91.800 Purpose. The purpose of Sections 91.805 through 91.830 is to establish a procedure whereby animals that pose a reasonably significant threat of causing serious injury to humans or other animals are identified and subjected to precautionary restrictions.

91.805 Classification of Levels of Dangerousness. An animal shall be classified as dangerous based upon specific behaviors exhibited by the animal. Behaviors establishing various levels of dangerousness are as follows:

- (A) Level 1 behavior is established if an animal at large is found to menace, chase, display threatening or aggressive behavior, or otherwise threaten or endanger the safety of any animal.
- (B) Level 2 behavior is established if an animal at large is found to chase, display threatening or aggressive behavior, or otherwise threaten or endanger the safety of any person.
- (C) Level 3 behavior is established if an animal, while confined, aggressively bites any person.
- (D) Level 4 behavior is established if an animal, while at large, aggressively bites or causes physical injury to any person or animal.
- (E) Level 5 behavior is established if:
 - (1) an animal, whether or not confined, causes the serious injury or death of any person; or
 - (2) an animal, while at large, kills any animal; or
 - (3) an animal engages in or is found to have been trained to engage in exhibitions of fighting; or
 - (4) an animal that has been classified as a Level 4 dangerous animal repeats the behavior described in subsection (D) of this section after the owner receives notice of Level 4 classification.
- (F) Notwithstanding subsections (A) through (E) of this section, City Council shall have discretionary authority to refrain from classifying an animal as potentially dangerous, even if the animal has engaged in the behaviors specified in subsections (A) through (E) of this section, if the City Council determines that the behavior was the result of abusing or tormenting the animal or other extenuating circumstances. In any case, no animal shall be classified as dangerous if the behavior in question was directed against a trespasser inside any fully enclosed building on private property if all exterior doors of the building were locked at the time the trespassing occurred.

91.810 Identification of Dangerous Animals; Appeals; Restrictions Pending Appeal.

- (A) The City Council shall have authority to determine whether any animal has engaged in the behaviors specified in Section 2. This determination shall be based upon an investigation that includes observation of and testimony about the animal's behavior. These observations and

testimony can be provided by county animal control officer or by other witnesses who personally observed the behavior. They shall sign a written statement attesting to the observed behavior and agree to provide testimony regarding the animal's behavior if necessary.

- (B) The City Council shall give the animal's owner written notice by certified mail or personal service of the animal's classification as a dangerous animal and of the additional restrictions applicable to that animal by reason of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the decision to the City Council within ten (10) days of the date the notice was mailed to the owner by certified mail or the owner was personally served.
- (C) The City Council shall hold a public hearing on any appeal from the City Council's decision to classify an animal as potentially dangerous. The owner and any other persons having relevant evidence concerning the animal's behavior as specified in section 2 shall be allowed to present testimony. The City Council shall determine whether behavior specified in section 2 was exhibited by the animal in question. The City Council shall issue an order containing their determination, which shall be final.
- (D) Once the owner has received notice of the animal's classification as a Level 1, 2, 3, or 4 dangerous animal pursuant to subsection (B) of this section, the owner shall comply with the restrictions specified in the notice until such time as the City Council's decision may be reversed on appeal. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this ordinance for which a fine can be imposed. Additionally, the City Council shall have authority to impound the animal pending completion of all appeals.
- (E) If the City Council finds that an animal has engaged in Level 5 behavior, the animal shall be impounded pending the completion of an appeal. If the City Council's decision is upheld on appeal, the animal's owner shall be liable for the cost of the animal's impoundment.

91.815 Regulation of Dangerous Animals. The owner of a dangerous animal shall comply with the following regulations:

- (A) If the animal has been classified as a Level 1 dangerous animal, the animal shall be restrained by a physical device or structure that prevents the animal from reaching any public sidewalk or adjoining property whenever that animal is outside the owner's home and not on a leash.
- (B) If the animal has been classified as a Level 2 dangerous animal, the owner shall confine the animal within a secure enclosure whenever the animal is not on a leash or inside the home of the owner.
- (C) If the animal has been classified as a Level 3 dangerous animal, the owner shall meet the requirements of subsection (B) of this section, and shall also post warning signs on the property where the animal is kept.
- (D) If the animal has been classified as a Level 4 dangerous animal, the owner shall meet the requirements of subsections (B) and (C) of this section and shall, additionally, not permit the

animal to be off the owner's property unless the animal is muzzled and restrained by an adequate leash and under the control of a capable person.

- (E) Any animal that has been classified as a Level 5 dangerous animal shall be euthanized. In addition, the City Council may suspend, for a period of up to five years that animal owner's right to be the owner of any animal within the city limits, including animals currently owned by that person.

91.820 Banning of Dangerous Animals. At the discretion of the City Council, an animal that has been classified as a Level 3 or 4 dangerous animal may be prohibited from entering or residing within the city limits except to be transported in a secure vehicle while passing through the city.

In addition, the City Council is empowered to ban a Level 3 or 4 animal from the city limits for a specified period of time or permanently, however, the animal's owner shall have the right of appeal, specified in section of any decision under this section.

91.825 Selling of Dangerous Animals. No person shall sell or otherwise transfer to another ownership of a dangerous animal within the city limits. No person shall secrete or harbor a dangerous animal for another while the owner of that animal exercises the right of appeal.

91.830 Penalties. Violation of any provision of this ordinance is punishable by a fine as set forth in the fee schedule.

OVERNIGHT CAMPING

91.900 Overnight camping and campfires, including overnight sleeping in recreational vehicles, automobiles, or other forms of shelter shall be prohibited on all public rights-of-way, waterfront areas, public parks, and public and private parking lots unless specifically permitted by the City of Wheeler.

91.905 Recreational vehicle parking areas that have been permitted by the city of Wheeler Planning Commission shall be exempt from the requirements of this ordinance. Violation of this ordinance shall be a Class B infraction as defined by ORS 153.310.

91.920 PARKS RULES AND REGULATIONS

91.925 Definitions. As used in this chapter, unless the context requires otherwise:

- (A) "Council" means the city council of the city.
- (B) "City Manager" means the City Manager of Wheeler and the City Manager's authorized representatives.

- (C) "Parks Committee" means the Parks & Recreation Committee of Wheeler.
- (D) "Park" means any area listed as follows and any other area designated as a park by Council:
Waterfront Park and Upper Park
- (E) "Person" means an individual, partnership, company, association, corporation or any other legal entity.
- (F) "Vehicle" means any motor-powered conveyance that travels on land but does not include vehicles operated by the City and emergency service agencies.
- (G) "Watercraft" means any conveyance designed to travel upon water, but does not include watercraft operated by the City and emergency service agencies.

91.930 Park Hours.

- (A) Parks will be open for public use from dawn until 10:00 p.m. unless otherwise posted.
- (B) No person between the ages of 7 and 18 years who has not completed the twelfth grade shall be in or upon any City of Wheeler Park during regular school hours unless:
 - (1) The person is accompanied by a parent, guardian or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the person;
 - (2) The person is then engaged in a lawful pursuit or activity which requires the presence of the person in such park during regular school hours and is authorized by the person's parent, guardian, or other person having the legal care and custody of such person;
 - (3) The person is authorized and approved to be away from the school and is not suspended or expelled from school.
 - (4) For purpose of this section, regular school hours are those hours for the school which the person would attend in the school district in which the person resides, on any day for which school is in session.

91.935 Limiting Use and Closure Authority.

- (A) Any park or portion of any park may be declared closed to the public by the City Manager at any time and for any interval of time, either entirely or merely to certain uses as the City Manager shall find reasonably necessary;
- (B) The City Manager may limit the use of any park or portion of any park to a particular event or function for a specified time and interval of time as the City Manager deems appropriate.

91.940 Use of Community Buildings and Parks.

- (A) A permit must be obtained from the City Manager before any person may use a park or any part of a park on a reserved or exclusive-use basis;
- (B) No person shall refuse to produce any permit upon request of the City Manager or a police officer;
- (C) The City Manager shall have the authority to revoke a permit upon determining that any rule or ordinance has been violated;
- (D) A fee may be charged for permission to exclusively use a park or any part of a park.

91.945 Vending and Peddling – Conditions. No person shall display, advertise or offer for sale any article or thing, or station or place any stand, cart or vehicle for the transportation, sale or display of any article or thing in any park without the written permission of the City Manager.

91.950 Activities Limited or Prohibited.

- (A) Horseback Riding. No person shall ride a horse in a park unless permitted in writing by the City Manager.
- (B) Killing or Disturbing Animals Prohibited. No person shall hunt, molest, harm, frighten, kill, trap, chase, shoot or throw missiles at any animals, bird, fish or other living creature or remove or have in possession the young of any wild animal, or the eggs or nest or young of any reptile or bird in a park.
- (C) Alcoholic Beverage Consumption. No person shall bring into, possess or consume alcoholic beverages in any park; provided, however, that the City Manager may, from time to time, designate in writing certain parks or parks areas where alcoholic beverages may be brought for use.
- (D) When the approval of the Oregon Liquor Control Commission or other authority is required, such approval must also be obtained. Alcoholic beverages found in City Parks in violation of this section may be seized and destroyed by city employees or police officers.
- (E) Bicycles, Skateboards, Roller-Blades, Scooters. Bicycles, skateboards, roller-blades, and scooters are permitted only on a park road or path designated for that purpose. Any Person operating a skateboard, in-line skates, or other such device to control speed or movement while at the park shall use the minimum protective headgear of a type approved under ORS 815.052 for bicycle helmets.
- (F) Conduct – Fighting, Obscenity, and Noise. No person shall engage in, promote, instigate, encourage, aid or abet fighting or similar violent conduct, use obscene language, make obscene gestures or cause excessive amplified or nonverbal noise in a park.
- (G) Fires. No person shall:

- (1) Build or attempt to build a fire in a Park except in such areas and under such rules as may be designated by the City Manager;
 - (2) Drop, throw or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco paper or other inflammable material, within any park;
 - (3) Leave a fire of any type unattended or fail to completely extinguish any fire after use in a Park.
- (H) Firearms. No person shall discharge a firearm, air rifle, spring gun, bow and arrow, sling shot, blow gun, spear gun or other weapon in or over any park.
- (I) Fireworks and Explosives. No person shall bring, or have in his possession, or set off or otherwise cause to explode, discharge or burn, any fireworks, explosive or inflammable material in any park, or discharge them or throw them into any park from adjacent land or highway. This prohibition includes any substance, compound, mixture or article that in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints. Professional firework displays in park sites may be allowed with written permission from the City Manager.
- (J) Games and Other Prohibited Activities. No person shall participate or assist others in the playing of any game or activity within which any object such as a stone, arrow, javelin, golf ball, or any other sharp or hard object or projectile is thrown or otherwise propelled except in areas specifically designed and designated for that use unless written permission therefor has been issued by the City Manager.
- (K) Vehicles – Traffic Prohibitions. No person shall:
- (1) Operate a vehicle in a park except where allowed by posted notice;
 - (2) Fail to comply with all applicable provisions of the state motor vehicles traffic laws regarding equipment and operation of vehicles together with such regulations as are contained in this chapter and other ordinances when operating a vehicle in a park;
 - (3) Fail to obey all traffic officers and park attendants, which persons are authorized and instructed to direct traffic whenever and wherever needed in the parks and on the highways, streets or roads immediately adjacent to the parks in accordance with the provisions of this chapter and such supplementary rules as may be issued by the City Manager.
- (L) Motor Vehicles – Parking Prohibitions. No person shall:
- (1) Park a motor vehicle in other than a designated parking area or fail to comply with posted directions or failure to comply with instructions of any attendant;
 - (2) When a motor vehicle is placed in any manner or location that constitutes an obstruction to traffic or a hazard to public safety, a police officer or city employee

may order the owner or operator of the vehicle to remove it. If the motor vehicle is unattended, the officer or city employee may cause the vehicle to be towed and stored at the owner's expense.

(M) Water Craft — Mooring Prohibitions. No person shall moor or leave a watercraft unattended in a place where posted notice prohibits mooring. A watercraft moored in a place where mooring is prohibited may be caused to be removed and stored by a city employee or police officer at the owner's expense.

(N) Park Buildings and Other Property Restrictions. No person shall:

(1) Willfully mark, deface, disfigure, injure, tamper with or displace or remove any building, restroom, bridge, table, bench, fireplace, railing, paving or paving material, water line or other public utility or part or appurtenance thereof, sign, notice or placard whether temporary or permanent, monument, stake post or other boundary marker, or other structure or equipment, recreation facility or park property or appurtenance whatsoever, either real or personal without the permission of the City Manager;

(2) Dig or remove any soil, rock, stone, tree, shrub or plant, down- timber or other wood or material or make any excavation by tool, equipment, blasting or other means or agency without the permission of the City Manager.

(O) Refuse and Trash. No person shall deposit, dump, place or leave rubbish, bottles, cans, garbage or refuse of any type regardless of its source in a city park except refuse, garbage or litter occasioned through use of those areas which shall be deposited in refuse receptacles provided for that purpose.

(P) Sign Restrictions. No person shall paste, glue, tack or otherwise post any sign, placard, advertisement or inscription whatsoever in a park or erect any sign whatever on any public lands or highways or road adjacent to a park except upon permission of the City Manager. No person shall modify, edit, or deface any existing sign in a park.

(Q) Swimming and Wading Prohibitions. No person shall swim, bathe or wade in any waters or waterways in or adjacent to a city park, except in such waters and at such times and places as are designated.

(R) Trees, Shrubbery, Lawns and Other Park Property. No person shall:

(1) Damage, cut, carve, transplant or remove any tree or plant or injure the bark, or pick the flowers or seeds, of any tree or plant in a Park;

(2) Climb any tree or walk, stand or sit upon monuments, vases, fountains, railing, fences or upon any other property not designated or customarily used for those purposes in a Park.

(S) Water Pollution Prohibited. No person shall throw, discharge or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay, or other body of water in or adjacent to any park, any matter or thing, liquid or solid, which will or may result in the pollution of those waters.

91.955 Additional Rules and Regulations. The City Manager may adopt additional rules and regulations when necessary for park administration. Such rules are effective upon adoption and must be ratified by the Council within 90 days.

91.960 Enforcement. In addition to the penalties provided in the Wheeler City Code and penalties provided by State Law, these Park Rules and Regulations, general city ordinances and State Law may be enforced in parks by the following:

- (1) Ejection: The City Manager, the City Manager's authorized representatives, and police officers shall have the authority to eject from a park any person acting in violation of the Park's Rules and Regulations or violating general ordinances of the Code or laws of the State;
- (2) Seizure of Property: The City Manager, the City Manager's authorized representatives, and police officers shall have the authority to seize, confiscate, and destroy any property, thing, or device in the park that is in violation of the Park's Rules and Regulations.