

ORDINANCE 2008-382

AN ORDINANCE DEFINING NUISANCES; PROVIDING FOR THEIR ABATEMENT; PROVIDING PENALTIES; REPEALING ORDINANCE NO. 2006-378, ORDINANCE 2002-361, ORDINANCE 96-336, AND ORDINANCE NO. 282

The people of the City of Halsey do ordain as follows:

Section 1. Definitions. As used in this ordinance, the following words and phrases shall have the meaning ascribed:

City Administrator/Recorder. The person designated by the City Council to perform the administrative duties assigned in this Ordinance.

Debris. The remains of something broken down or destroyed, including, but not limited to: scrap metal, scrap paper, scrap plastic or scrap wood; pieces of asphalt, concrete, lumber or other building supplies; yard clippings or cuttings of plant material; broken empty glass, plastic or metal containers; broken furniture; discarded home or industrial appliances; or other putrescible or nonputrescible wastes and discard materials.

Junk. Any object or material which is manufactured or man-made, whether of artificial materials or natural materials, which has been abandoned or discarded, or which is inoperable, or which is in a state of disrepair, or which is useless to serve its intended purpose in its current condition, or which is being kept or stored to serve some useful purpose in the future. Junk may be included within, but is not limited to, one of the following classifications:

- (1) Inoperable household appliances such as washers, dryers, refrigerators, dishwashers, water heaters, stoves, and similar items.
- (2) Used household furniture such as sofas, beds, chairs, tables, mattresses and similar items.
- (3) Used machinery or vehicle parts, including but not limited to motors, tires, wheels, chassis, or similar items.
- (4) Used building materials such as lumber, stone, brick, plywood, wire, plumbing fixtures, lighting fixtures, heating fixtures, and similar items.
- (5) Discarded, useless, inoperable, or abandoned vehicles or recreation equipment.

Motor vehicle. A vehicle that is self-propelled or designed for self-propulsion

A. Inoperable motor vehicle. A vehicle, including but not limited to a motor vehicle, which has broken or missing windows; or a broken or missing windshield; or one or more missing wheels; or one or more missing tires; or is missing a transmission; or the existing transmission is inoperable; or is missing one or more other parts so that the vehicle is inoperable.

B. Vehicle. Any device in, upon, or by which any person or property is or may be transported, or drawn upon a public road, and includes vehicles that are propelled or powered by any means, but does not include a device propelled by human power.

Person. A natural person, firm, partnership, association or corporation.

Person in charge of property. An 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 the nuisance, as defined in this ordinance or another ordinance of the City, to come into or continue in existence.

Public nuisance. A condition or practice which is offensive, unsightly, obnoxious, or annoying, or which is hazardous to the public health or safety. A public nuisance includes, but is not limited to, the accumulation, collection, storage, maintenance, or display of excessive junk, licensed but inoperable, or inoperable vehicles, or tires.

Public place. A building, right-of-way, place or accommodation, publicly or privately owned, open and available to the general public.

Store or storage. To keep, accumulate, or allow to remain, on any property, any vehicle, junk, tire or other object or material subject to regulation by this ordinance.

Animals

Section 2. **Removal of Carcasses.** No person shall permit an animal carcass owned or controlled by that person to remain upon public property, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of the carcass.

Section 3. **Animals at Large.** Except for household pets, other than dogs, no owner or person in charge of an animal shall permit the animal to be at large. Animals at large may be disposed of in accordance with procedures provided by the County for the impoundment of dogs.

(Sections 4 to 10 reserved for expansion)

Nuisances Affecting Public Health

Section 11. **Nuisances Affecting Public Health.** No person shall cause or permit a nuisance affecting public health on property owned or controlled by the person. The following are nuisances affecting public health and may be abated as provided in this ordinance.

- (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 or storage of debris, manure or junk that are not removed within a reasonable time and that affect the health 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.

(Sections 12 to 14 reserved for expansion)

Nuisances affecting Public Safety

Section 15. Creating a Hazard. No person shall 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 person in charge 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.

Section 16. Attractive Nuisances. No owner or person in charge of property shall permit on the property:

- (1) Unguarded machinery, equipment or other devices that are attractive, dangerous and accessible to children.
- (2) Lumber, logs or piling placed or stored in a manner so as to be attractive, dangerous and accessible to children.

Section 17. Snow and Ice. No owner or person in charge of property, improved or unimproved, abutting on public sidewalk shall permit:

- (1) Snow to remain on the sidewalk for a period longer than the first 24 hours after the snow has fallen.
- (2) Ice to remain on the sidewalk for more than two hours of daylight after the ice has formed, unless the ice is covered with sand, ashes or other suitable material to assure reasonably safe travel.

Section 18. Trees and Noxious Vegetation.

- (1) No owner or person in charge of property that abuts on a street or public sidewalk shall permit trees or bushes on the property to interfere with street or sidewalk traffic. An owner or person in charge of property that abuts on a street or public sidewalk shall keep all trees and bushes on the premises, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than 10 feet above the roadway.
- (2) No owner or person in charge of property shall allow a dead or decaying tree to stand if it is a hazard to the public or to person or property on or near the property.
- (3) The term "noxious vegetation" does not include vegetation that constitutes an agricultural crop, unless the vegetation is a health hazard, or a fire or traffic hazard within the meaning of subsection (2).
- (4) The term "noxious vegetation" does include, at any time between May 15 and September 30.
 - (a) Weeds more than 10 inches high
 - (b) Grass more than 10 inches high
 - (c) Poison oak
 - (d) Poison ivy
 - (e) Blackberry bushes that extend into a public thoroughfare or across a property line.
- (5) Between May 15 and September 30 of any year, no owner or person in charge of property shall allow noxious vegetation to be on the property or in the right-of-way of a public thoroughfare abutting the property. An owner or person in charge of property shall cut down or destroy grass, shrubbery, brush, bushes, weeds, or other noxious vegetation as often as needed to prevent them from becoming unsightly, from becoming a fire hazard, or, in the case of weeds or other noxious vegetation from maturing or from going to seed.
- (6) Between April 15 and May 15 of each year, the City Recorder may cause to be published two times in a newspaper of general circulation in the city a copy of subsection (4) as a notice to all owners and persons in charge of property of the duty to keep their property free from noxious vegetation. The notice shall state that the City is willing to abate the nuisance on a particular parcel of property at the request of the owner or person in charge of the property for a fee sufficient to cover the City's abatement costs. The notice shall also state that, even in the absence of such requests, the City intends to abate all such nuisances 10 or more days after the final publication of the notice and to charge the cost of doing so on a particular parcel of property to the owner or the person in charge of the property, or the property itself.
- (7) If the notice provided for in subsection (6) is used, it shall be in lieu of the notice required by Section 46 of this ordinance.

Section 19. Scattering Rubbish. No person shall deposit, on public or private property, debris, junk or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property or would be likely to injure a person, animal or vehicle traveling on a public right-of-way.

Section 20. Hazardous Vegetation.

- (1) As used in this section “hazardous vegetation” includes:
 - (a) Any vegetation which interferes with the normal use of or obstructs a public street or sidewalk. Trees and bushes which are trimmed to a height of not less than eight feet above the sidewalk and not less than ten feet above the roadway are rebuttable and presumed not to interfere.
 - (b) Vegetation which impairs the traveling public’s view of the public thoroughfare or traffic signs located thereon.
 - (c) A dead or decaying tree which is a hazard to the public use of the public thoroughfare or to persons or property near the tree.
 - (d) Any vegetation which is near combustibles which are stored so as to create a hazard.
- (2) No owner or person in charge of property shall permit hazardous vegetation to exist upon the property or in the public right-of-way abutting the property which includes but is not limited to the adjoining parking strip.

Section 21. Waters, Drainage.

- (1) No owner or person in charge of a building or structure shall 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 drainpipes or a drainage system so that overflow water accumulating on the roof or about the building is not carried across or on the sidewalk

Section 22. Dangerous Buildings.

- (1) For the purposes of this Section “Dangerous Building” means any of the following:
 - (a) Any structure, building, building appendage, or building service equipment which is determined by the building official to be deficient in terms of life safety, including but not limited to, inadequate exitway facilities. The term “inadequate exitway facilities” for the purpose of this definition, means exit facilities which did not conform with all applicable laws at the time of their construction, which have not been properly maintained in good condition, or which have not been properly modified to cope with any increase in any occupant load, any alteration or addition to the building, or change in occupancy of the building.
 - (b) Any structure, building, or building appendage which, because of improper construction, damage, structural weakness, or deterioration by reason of lack or want of maintenance and proper repair, is structurally unsound and which could lead to its partial or entire collapse so as to endanger other properties or human life. These conditions may include, in addition to others:
 - i. Deteriorated or inadequate foundations;
 - ii. Defective or deteriorated flooring or floor supports;
 - iii. Flooring or floor supports of insufficient size to safely carry imposed loads;
 - iv. Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective materials, methods of construction or deterioration;
 - v. Members of walls, partitions or other vertical supports which are of insufficient size to safely carry imposed loads;
 - vi. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle, or which are of insufficient size to safely carry imposed loads;
 - vii. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle, due to defective material, methods of construction or deterioration;
 - viii. Fireplaces or chimneys which list, bulge or settle, due to defective material, methods of construction or deterioration;
 - ix. Fireplaces or chimneys which are of insufficient size or strength to safely carry imposed loads.

- (c) Any building appendage or service equipment which, because of improper construction, deterioration, improper installation, damage, or for the want of proper repairs, such as defective wiring or equipment, defective gas connection, defective heating apparatus, defective chimney, or for any other cause or reason, is especially liable to cause fire, electrical shock or asphyxiation.
 - (d) Any building, structure, or portion hereof, containing any combustible or explosive material, wood, paper, trash, rubbish, rags, waste, oils, gasoline or flammable substance of any kind especially liable to cause fire or damage to the premises or human life, and which is not maintained in accordance with law.
 - (e) Any building, structure, or portion thereof, which is maintained in a filthy or unsanitary condition, such as through an accumulation of garbage, human or animal waste, decaying animal or vegetable matter, wood, paper, trash, rubbish or debris in such a manner so as to attract rodents or be unhealthful and especially liable to cause a spread of fire or contagious or infectious disease.
 - (f) Any building, structure or portion thereof, which has not been provided with the fire-resistive construction or fire-extinguishing systems or equipment required by law, or, if built with fire-resistive and fire-extinguishing systems or equipment, has not been properly maintained or improved to comply with any increase in occupant load, any alteration or addition to the building, or any change in occupancy of the building.
 - (g) Any building or structure which contains any combination of unsafe conditions or items including open an abandoned buildings, which could endanger other property or human life.
- (2) No owner or person in charge of property shall permit a dangerous building to exist on the property.
 - (3) No person shall rent, lease, reside in or conduct business within a building which has been declared to be a dangerous building pursuant to the provisions of this ordinance during any period prior to abatement of the dangerous condition.

(Sections 23 to 30 reserved for expansion)

Nuisances Affecting Public Peace

Section 31. Radio and Television Interference.

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

Section 32. Junk and Debris

- (1) No person shall allow the accumulation, collection, or storage of junk or debris to occur on property under their possession or control or on the public right-of-way.
- (2) Junk or debris visible from abutting property or a public road and piled or strewn about the property, not maintained in a neat or orderly fashion, is a condition or practice which meets the definition of a public nuisance.

Section 33. Inoperable Vehicle Exceptions

- (1) This ordinance shall not apply to inoperable vehicle(s) which are being or are in the process of being repaired or restored. The person asserting this exception has the burden of persuasion by a preponderance of the evidence.
 - a. The term “being repaired” means the person is actively seeking new or used parts or is reshaping/welding or fixing the body, upholstery, or mechanical parts of the vehicle. If the vehicle is not repaired within ninety (90) days after the person is given notice as set forth in Section 46 of this ordinance, it shall be presumed the vehicle is not being repaired.
 - b. The term “being restored” or “restored” means the person is actively seeking new or used parts or is reshaping, welding, renewing or fixing body, upholstery or mechanical parts of the vehicle. If the vehicle is not restored within one year after the person is given notice as set forth in Section 46 of this Ordinance, it shall be presumed the vehicle is not being restored.

- (2) This exemption for inoperable vehicles does not apply to parts of a motor vehicle(s).
- a. The term “parts of a motor vehicle(s)” means body, frame, door(s), motor, glass, electrical, upholstery, or mechanical components that make up a motor vehicle. A motor vehicle which has lost or had removed more than 25 percent of its original components and equipment is presumed to be part or parts of a motor vehicle.

(Sections 34 to 42 reserved for expansion)

Declaration of Nuisances

Section 43. Enumerated Nuisances. The acts, conditions or objects specifically enumerated and defined in Sections 2 to 42 are declared public nuisances and may be abated by the procedures set forth in Sections 46 to 51.

Section 44. Unenumerated Nuisances. In addition to the nuisances specifically enumerated in the ordinance, and after giving written notice to a person responsible and an opportunity to be heard by the Council, every other thing, substance or act that is determined by the Council to be injurious or detrimental to the public health, safety or welfare of the City is declared a nuisance and may be abated as provided in this ordinance.

Investigation and Determination

Section 45. Investigation and Determination. The existence of an enumerated nuisance shall be determined by the City Administrator/Recorder. However, it shall be prima facie evidence of the existence of a nuisance should owners or three or more persons in charge of other properties within 300 feet of an alleged nuisance sign a petition and submit said petition to the City Administrator/Recorder complaining a nuisance exists. In such case, the petitioners must all complain of the same alleged nuisance. Upon receipt of said petition the City Administrator/Recorder may review the petition as well as inspect the alleged nuisance and make a determination as to whether a nuisance exists and if abatement is appropriate. Upon determination that a condition or action exists which violates this ordinance, the City Administrator/Recorder may cite the person responsible into municipal court for the offense, may initiate proceedings to abate the nuisance or both. The City Administrator/Recorder may also determine that even though a violation exists, the City lacks the resources to enforce this ordinance and will leave enforcement to a civil action by persons affected. When the City Administrator/Recorder has received a petition concerning an alleged nuisance, The City Administrator/Recorder shall notify the petitioners of the determination made concerning the alleged nuisance.

Abatement Procedure

Section 46. Notice.

- (1) On determination that an enumerated nuisance exists, the City Administrator/Recorder shall post a notice on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.
- (2) At the time of posting, the City Administrator/Recorder shall mail a copy of the notice by registered or certified mail to the person responsible at the person’s last known address.
- (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) One of the following directions:
 1. A direction to abate the nuisance within 10 days from the date of the notice if the nuisance is determined it affects the public health or safety.
 2. A direction to abate the nuisance within 30 days from the date of the notice if the nuisance does not affect the public health or safety.
 - (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 the abatement will be charged to the person responsible and become a lien against the property.
 - (e) A statement that failure to abate a nuisance may warrant imposition of a fine.

- (f) A statement that the person responsible may protest the order to abate by giving notice to the City Administrator within 10 days from the date of the notice if it affects the public health or public safety or within 30 days from the date of the notice if the public health or public safety is not affected.
- (4) If the person responsible is not the owner, an additional notice shall be sent to the owner, stating that the cost of abatement not paid by the person responsible may be assessed to and become a lien on the property.
- (5) Upon completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the mailing and posting.
- (6) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

Section 47. Abatement by the Person Responsible.

- (1) Within 10 days after posting and mailing of the notice as provided in Section 46 for nuisances affecting the public health or public safety, and 30 days after the posting and mailing of the notice if it does not affect the public health or public safety, the person responsible shall remove the nuisance or show that no nuisance exists.
- (2) A person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the City Administrator/Recorder.
- (3) The statement shall be referred to the Council as part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the Council. The Council shall determine whether a nuisance in fact exists, and the determination shall be entered in the official minutes of the Council.
- (4) If the Council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within 30 days after the Council determination unless the nuisance is determined to affect the public health or safety, then the person responsible shall abate the nuisance within 10 days after the Council determination.

Section 48. Joint Responsibility. If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the City in abating the nuisance.

Section 49. Abatement by the City.

- (1) If the nuisance has not been abated by the person responsible within the time allowed, the Council may cause the nuisance to be abated.
- (2) Any person acting on behalf of the City engaged in removing or correcting the nuisance shall have the right to enter into or upon property at reasonable times to perform the abatement.
- (3) The City Administrator/Recorder shall keep an accurate record of the expense incurred by the City in physically abating the nuisance and shall include a charge of \$100.00 or 10 percent of those expenses, whichever is greater, for administrative costs.

Section 50. Assessment of Costs.

- (1) The City Recorder shall forward to the owner and the person responsible, by registered or certified mail, a notice stating:
 - a. The total cost of abatement, including the administrative costs
 - 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 responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the City Administrator/Recorder not more than 10 days from the date of the notice.
- (2) No sooner than 30 days after the date of the notice, the Council, in the regular course of business, shall hear and make a decision on the objections to the costs assessed.
- (3) If the costs of the abatement 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 docket of City liens. When the entry is made, it shall constitute a lien on the property from which the nuisance was removed or abated.

- (4) The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the rate of 12% per annum. The interest shall begin to run from the date of entry of the lien in the lien docket.
- (5) An error in the name of the owner or the person responsible or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property.

Section 51. Summary Abatement of Imminent Nuisances.

- (1) When making the determination that a nuisance exists under this ordinance, if the City Administrator/Recorder determines that the condition which exists is an imminent danger to human life, safety or to property, the City Administrator/Recorder shall, without notice and hearing, summarily abate the nuisance.
- (2) Following such a summary abatement, the City Administrator/Recorder shall cause the notice required by Section 50 to be given to the owner and the person responsible. The owner or the person responsible may protest the City Administrator/Recorder’s determination that a nuisance existed and the cost of abatement. Such protest shall be in writing, filed with the City Recorder, and heard by the Council within the time limits provided in Section 50.

General

Section 52. Non-exclusive Remedy. The abatement procedures provided by this ordinance are not exclusive, but are in addition to any penalty or procedure provided by this or any other ordinance of the City or by state law.

Section 53. Penalty. A violation of a provision of this ordinance, or an order issued under authority of this ordinance, is punishable by a fine not to exceed \$500.

Section 54. Separate Violations.

- (1) Each day’s violation of a provision of this ordinance constitutes a separate offense.
- (2) The abatement of a nuisance is not a penalty for violating this ordinance, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. However, abatement of a nuisance within 10 days of the date of notice to abate if the nuisance affects the public health or safety and 30 days if it does not affect the public health or safety, or if a written protest has been filed, then abatement within 10 days of Council determination that a nuisance affecting the public health or safety exists, or 30 days if such a nuisance does not affect the public health or safety, will relieve the person responsible from the imposition of a fine under Section 53 of this ordinance.

Section 55. Severability. The sections and subsections of this ordinance are severable. The invalidity of any section or subsection shall not affect the validity of the remaining sections or subsections.

Section 56. Repeal. Ordinance #2006-378, Ordinance 2002-361, Ordinance 96-336, and Ordinance No. 282 are repealed.

Section 57. Saving Clause. Notwithstanding Section 56, the ordinance repealed thereby shall remain in force for the purpose of authorizing the prosecution, conviction and punishment of a person who violated this ordinance prior to the effective date of this ordinance and for the purposes of abating any nuisance determined to exist under that ordinance.

FIRST READ to the Council the _____ day of _____, 2008
SECOND READ to the Council the _____ day of _____, 2008
PASSED by the Council this _____ day of _____, 2008
SIGNED by the Mayor this _____ day of _____, 2008
Effective this _____ day of _____, 2008

Marjean Cline, Mayor

Judy Cleeton, City Administrator