

City of Wheeler
ORDINANCE NO. 2012-03
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Wheeler, OR 97131
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AN ORDINANCE UPDATING 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 appointed a citizen committee to provide recommendations for updating the City's nuisance regulations, which are included herein,

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

SECTIONS:

1. GENERAL PROVISIONS

6.01.010 Short Title.

6.01.015 Definitions.

6.01.017 Sidewalks and Curbs: Abutting Property Owner's Duties • and Liabilities.

6.01.018 Unsafe Sidewalks. Curbs and Monolithic Curbs and Gutters.

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1. GENERAL PROVISIONS

- 6.01.010 Short Title.
- 6.01.010 through 6.06.260 shall be known and may be cited as the Nuisance Ordinance" and may be referred to herein as "this ordinance. "

6.01.015 Definitions.

For the purposes of this ordinance, the following mean:

Adjacent: - Nearby or close to. A street tree shall be considered adjacent to property if the tree would be "within the lateral boundaries of the property if those boundaries were extended to meet the nearest portion of roadway.

Animal at large: - An animal off or outside the premises of the owner or person in charge of the animal, not restrained by a rope, line, leash, chain, or other similar means, or not under the immediate control, restraint, and command of the person or its owner.

City Representative: - The City Manager or the City Manager's designee responsible for representing the City's interest in a nuisance abatement proceeding.

Costs: -The expense of removing, storing, or disposing of nuisances, including a charge of 20 percent of the expense for administrative overhead.

Dangerous Animal - Any non-human animal that is of a wild or predatory nature, and constitutes an unreasonable danger to human life or property. A Dangerous Animal includes, but is not limited to, snakes of the family Pythonidae or Boinae, unless incapable of growing to eight feet or more in length; any alligator, crocodile or caiman; and any poisonous or venomous reptile.

Discarded vehicle:- A vehicle that is not legally operable on a public street, wrecked, dismantled, partially dismantled, abandoned, junked, or major parts of discarded vehicles including, but not limited to, bodies, engines, transmissions, and rear ends.

Person in charge of property - An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or the supervision of any construction project.

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

A. the owner of the property;

B. the person in charge of property as defined above; or

C. the person who caused a nuisance to come into or continue in existence.

Physically Impaired Person A person who is permanently physically impaired, whose physical impairment limits one or more of daily life activities, and who has a record of impairment and is regarded by health care practitioners as having such an impairment requiring the use of an assistance animal, including but not limited to blindness, deafness, and complete or partial paralysis.

Public place: - A building, way, place or accommodation, whether or not privately or publicly owned, open and available to the general public.

Public right-of-way: -Land that by deed, conveyance, agreement, easement, dedication, usage or process of law is conveyed, reserved for or dedicated to the use of the general public for street, road or highway purposes, including curbs, gutters, parking strips, pedestrian ways, and sidewalks and bicycle trails.

Roadway: - The portion of the public right-of-way that is improved and designed for use by motor vehicles.

Sidewalk:- The portion of the public right-of-way designed for preferential or exclusive use by a pedestrian.

Top or Topped - Cutting or removing the terminal leaders in the crown of an ornamental shade or flowering tree or conifer to an extent that removes the normal canopy and disfigures the tree.

Vehicle: - Every device in, on or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively on stationery rails or tracks.

6.01.017 Sidewalks and Curbs; Abutting Property Owner's Duties and Liabilities.

A. Property Owners shall maintain at all times any sidewalk or curb adjacent to their land in a reasonably safe condition and shall be liable for any damage or injury by a failure to do so.

B. No recourse whatsoever shall be had against the City, its Council, Mayor, employees or agents

for damage or loss to person or property arising out of the negligent or otherwise harmful maintenance of any sidewalk or curb.

C. The existence of sidewalks, curbs or monolithic curbs and gutters in such condition as to present an unreasonable risk of danger to persons or property hereby is declared to be a public nuisance and may be abated by any of the procedures set forth in 6.06.200 et seq.

D. A person who owns property that abuts a sidewalk, curb or monolithic curb and gutter in such condition as to present an unreasonable risk of danger to persons or property is civilly liable for all claims arising from that condition notwithstanding the person's notice of the condition and notwithstanding the time period allowed by law to correct the condition before abatement as a public nuisance.

11. ANIMAL NUISANCES

6.02.020 Dangerous Animals.

No owner or person in charge of any dangerous animal, wild or domesticated, shall pennit such animal to run at large in the City.

6.02.025 Livestock and Poultry.

Livestock and Poultry shall be kept or maintained by City permit only as defined by City ordinance or code.

6.02.030 Animals at Large.

Except for animals of the species Felis Catus (domestic cat), no owner or person in charge Of an animal shall permit the animal to run at large in the City.

6.02.033 Removal of Animal Excrement.

Any person responsible for any animal, except for animals of the species Felis Catus (domestic cat), shall be in possession of tools for the removal of, and shall remove, excrement deposited by the animal in any public area not designed to receive those wastes, including but not limited to streets, sidewalks, and parking strips.

6.02.035 Removal of Carcasses.

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

111. NUISANCES AFFECTING PUBLIC HEALTH AND SAFETY

6.03.050 Nuisances Affecting the Public Health.

No person shall cause or permit a nuisance affecting the public health on property the person owns or controls. The following are nuisances affecting the public health and may be abated as

provided in this chapter:

- A. Privies: An open vault or privy constructed and maintained within the City, except those constructed or maintained in connection with construction projects in accordance with the State Health Division regulations.
- B. Debris: Accumulations of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the City.
- C. Stagnant Water: Stagnant water which affords a breeding place for mosquitoes and other insect pests.
- D. Water Pollution: Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes, or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.
- E. Food: Decayed or unwholesome food that is offered for human consumption.
- Odor: Premises that are in such a state or condition as to cause an offensive odor or that are in
- F. an unsanitary condition.
- G. Surface Drainage: Drainage of liquid wastes from private premises.
- H. Cesspools: Cesspools or septic tanks that are in an unsanitary condition or which cause an offensive odor for which a special permit has not been obtained.
- I. Failure to Connect to City Sewer System: Failure to connect to City sewer system when the property requires sewage disposal.

6.03.080 Attractive Nuisances.

- A. No owner or person in charge of property shall permit on the property:
 - 1. Abandoned or discarded iceboxes, refrigerators, or similar containers, without first removing the doors.
 - 2. Unguarded machinery, equipment, or other devices which are attractive, dangerous, and accessible.
 - 3. Lumber, logs, building material or piling placed or stored in a manner so as to be attractive, dangerous, and accessible.
 - 4. An open pit, quarry, cistern, or other excavation without safeguards or barriers.
 - 5. An exposed foundation or portion of foundation, any residue, debris or any other building or structural remains for more than 30 days after the destruction, demolition or removal of any building or portion of the building.
- B. This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death.

6.03.081 Vacant Buildings.

- A. Definition. "Vacant building" as used herein means a building, or substantial portion thereof, that is unoccupied or has not actively been furnished and so used as a place of business or residence for more than 60 days. This includes manufactured housing and mobile homes, whether located in a mobile home park or not. A vacant building also includes any building under construction where no substantial work has taken place for more than 180 days. "Vacant building" does not include a building designed for storage, intermittent or similar types of use, if such building is secure from unauthorized entry, in good repair and does not otherwise constitute a nuisance.
- B. A vacant building, including adjoining yard areas, shall be maintained free of debris, garbage,

graffiti, litter, portable toilets, rodents and standing water.

C. A vacant building shall be kept secure from the unauthorized entry of persons by any methods deemed effective and approved by the City of Wheeler.

D. If an address has been assigned, a vacant building shall display address numbers on the exterior of the building that are plainly visible from the street.

E. A vacant building that is not maintained or that has repeatedly been entered by unauthorized persons, or is allowed to be unsecured or open to entry by unauthorized persons, is declared a public nuisance and subject to abatement.

6.03.090 Noxious Vegetation.

A. The term "noxious vegetation" does not include vegetation that constitutes an agricultural crop, unless that vegetation is a health hazard or a fire or traffic hazard within the meaning of subsection (B) of this section.

B. The term noxious vegetation includes those plants identified by the State of Oregon Department of Agriculture or those expressly stated in this ordinance:

1. Weeds more than 12 inches high and/or that are going to seed;

a. Blackberry bushes that extend into a public thoroughfare or across a property line;

2. Grass more than 12 inches high and not within the exception stated in subsection A;

3. Vegetation that is:

a. a health hazard;

b. a fire hazard;

c. a traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous;

4. The types of vegetation defined in the Development Code as nuisance, applicable to significant natural resource areas.

C. 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.

6.03.093 Graffiti.

A. No person shall place, or cause to be placed, graffiti upon any property in the City of Wheeler.

No owner or occupant of property shall allow graffiti to be on the property. Property upon which graffiti has been placed and has remained for more than seven (7) days is hereby declared to be a public nuisance, and shall be subject to the provisions relating to summary abatement.

B. Graffiti is defined as any unauthorized drawing, inscription, etching, or scratching made on a wall, fence, building, sidewalk, or other structure, that is visible from public rights-of-way, bike paths, walking paths, sidewalks, publicly owned property, or premises open to the public.

6.03.095 Rubbish.

A. No person shall cause to be placed upon public or private property any kind of rubbish, trash, debris, refuse, or other substance that creates a stench or a fire hazard, detracts from the cleanliness or safety of the property, or constitutes an unreasonable danger to human life or property.

B. No person shall cause rubbish, trash, debris, or refuse to be placed in a dumpster, drop box, garbage can, or other container unless the person either owns or has authority to use the

container.

6.03.110 Surface Waters; Drainage.

A. No owner or person in charge of any building or structure shall cause, suffer or permit rain water, ice or snow to fall from the building or structure onto a street or public sidewalk or to allow concentrated water flow across the sidewalk

B. 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 any overflow water accumulating on the roof or about the building does not flow across the sidewalk.

6.03.115 Obstructing Public Right-of-Way.

Except as otherwise allowed by City ordinance, resolution, or permit, no person shall obstruct any public right-of-way, or portion of it, or place or cause to be placed on it anything tending to obstruct or interfere with the full and free use of the public right-of-way or in any degree interfere with the normal flow of pedestrian or vehicular traffic.

6.03.116 Obstructing Public Easements.

A. No person shall obstruct any sewer or water easement, or portion of it, or place or cause to be placed on it or maintain or allow to remain on it anything tending to obstruct or interfere with the sewer or water easement.

B. The City may authorize conditions which encumber its easements upon written authorization of officers, agents or employees having authority to grant the obstruction.

IV. NUISANCES AFFECTING THE PUBLIC PEACE

6.04.125 Radio and Television Interference.

A. No person shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

B. This section does not apply to devices licensed, approved, and operated under the rules and regulations of the Federal Communications Commission.

6.04.130 Unnecessary Noise.

A. No person shall make, assist in making, continue or cause to be made any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others.

B. No person or business shall create, assist in creating, continue, or permit the continuance of unreasonable noise in the City between the hours of 10:00 p.m. and 7:00 a.m. unless a special event license or a permit has been granted by the City for a specific time and occasion.

6.04.133 Exterior Lighting.

No person shall knowingly allow or direct an exterior lighting fixture to shine light that unreasonably interferes with another person's use or enjoyment of property or shine direct rays of light into a significant natural resource area, vegetated corridor, water quality sensitive area, or preserved habitat benefit area. Lighting fixtures must be a full cut-off design that is shielded, hooded and oriented towards the ground so that direct rays of the lighting source are not visible past the property boundaries and do not shine into the night sky.

6.04.134 Posting Notices or Advertisements.

A. No person shall affix, post, place, attach, secure, nail, staple, lay or otherwise deliver or cause to be delivered any placard, handbill, advertisement, leaflet, poster or printed material of any nature upon real or personal property when such property is legibly signed with a notice prohibiting such delivery. The notice required by this section shall be deemed adequate if it is not less than 10 square inches, is visible and legible from the place where the material was delivered and states "No Posting" or words of similar effect.

B. No person shall affix, post, place, attach, secure, nail, staple, lay or otherwise deliver or cause to be delivered any placard, handbill, advertisement, leaflet, poster or printed material of any nature upon public property unless a permit has been obtained from the City.

C. No person shall affix, post, place, attach, secure, nail, staple, lay or otherwise deliver or cause to be delivered any placard, handbill, advertisement, product sample, leaflet, poster or printed material of any nature at a residence without the permission of the owner or resident.

D. This section shall not be construed to limit the City regarding notices that are required by this Code or other City ordinances and shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the City regulating the use and location of signs and advertising.

E. This section shall not be construed to limit delivery of items regularly received through the United States Postal Service, nor the delivery of goods or services ordered by the owner, resident or other person in charge of the property.

6.04.145 General Nuisance.

A. When, in the opinion of the City Representative, a nuisance exists which is not specifically enumerated in this Code, a public hearing before the Council may be held for Council determination of whether a nuisance in fact exists. Every thing, substance, or act which is determined by the Council at a public hearing to be offensive, injurious or detrimental to the public health, safety or welfare of the City shall be declared to be a nuisance and may be abated as provided in this Code.

B. Prior to the public hearing the City Representative shall cause a notice to be posted on the premises or at the site of the alleged nuisance and shall cause a notice to be forwarded to a person responsible at the person's last known address. Any error in mailing shall not make the notice void and in such case the posted notice shall be sufficient. The notice shall contain:

1. A description of the real property by street address or otherwise on which the nuisance exists;
2. A general description of the thing, substance or act which is alleged to be a nuisance;
3. A statement outlining necessary corrective measures to abate the nuisance;
4. A statement that, unless the corrective measures are taken within ten days of the date of posting, that the City Council will schedule a public hearing for the purpose of determining on the record whether a nuisance in fact exists, and if it is decided that a nuisance does exist and is not abated within ten days after the Council's determination or such time as the Council may set, the City may issue a civil infraction citation or may abate the nuisance and the cost of abatement shall be charged to the person responsible or assessed against the property or both;
5. The date of the proposed public hearing which shall be at least thirty (30) days

later than the date of posting;

6. A statement that the person responsible may attend the public hearing and that the person or legal representative of the person may submit evidence and argument relative to the question of whether a nuisance exists.

C. If corrective measures are not taken within a period established by the City Representative at the time of posting, the City Representative shall cause a notice to be forwarded to a person responsible and shall cause a notice to be posted on the premises or at the site of the alleged nuisance giving notice of public hearing before the City Council. At the time set for the public hearing the Council will hear the matter de novo and may consider any material it deems relevant and probative. The Council shall allow argument by a person responsible or their legal representative and by the City Representative. The Council shall make its decision based upon a determination of whether the thing, substance or act is offensive, injurious or detrimental to the public health, safety or welfare of the City. The Council, after hearing the matter, may determine that no nuisance exists, determine that a nuisance exists and order its abatement, impose conditions on the person responsible, or delay the time for abatement of the nuisance. The Council shall make written findings in support of its decision when a nuisance is determined to exist, and its decision shall be final.

V. VEHICLES AS A PUBLIC NUISANCE

6.05.150 Discarded Vehicle.

A. The open accumulation and storage of a discarded vehicle is hereby found to create a condition tending to reduce the value of private property, to promote blight, deterioration and unsightliness, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety, and general welfare of the public.

B. No person shall store or permit the storing of a discarded vehicle upon private property within the City unless the vehicle is completely enclosed within a building or unless it is in connection with a business enterprise dealing with junked vehicles lawfully conducted within the city.

C. The presence of a discarded vehicle on private or public property is hereby declared to constitute a public nuisance that may be abated in accordance with the provisions of this ordinance and result in the issuance of a civil infraction complaint

VI. ABATEMENT PROCEDURES

6.06200 Abatement Notice.

A. If the City Representative is satisfied that a nuisance as defined by this ordinance exists, the Representative shall cause a notice to be posted on the premises or at the site of the nuisance directing the person responsible to abate the nuisance.

B. At the time of posting, a copy of the notice shall be forwarded to the person responsible at the person 's last known address.

C. The notice to abate shall contain:

1. a description of the real property by street address or otherwise, on which the nuisance exists;

2. a direction to abate the nuisance within ten days from the date of posting;

3. a description of the nuisance and a reference to the ordinance or Code section number involved;
 4. a statement that, unless the nuisance is removed, the City may abate the nuisance and the cost of abatement shall be charged to the person responsible or assessed against the property, or both;
 5. a statement that the person responsible may protest the order to abate by giving written notice to the recorder within ten days from the date of posting;
 6. a statement that failure to abate a nuisance may result in abatement by the City and/or the issuance of a civil infraction citation;
 7. if the person responsible is not the owner, an additional notice shall be sent to the owner, stating that all or part of the abatement costs not paid by the person responsible will be assessed to and become a lien on the property.
- D. On 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.
- E. An error in the notice mailed shall not make the notice void and in such a case the posted notice shall be sufficient

6.06.205 Abatement by a Person Responsible.

- A. Within ten days after the posting and mailing of the notice as provided in 6.06.200, a person responsible shall remove the nuisance or show that no nuisance exists.
- B. A person responsible, protesting that no nuisance exists, shall, within ten days after posting, file with the city recorder a written statement specifying the basis for protesting. "The city recorder shall give the person responsible who files a written protest notice of the date and time when the Council will consider the abatement. The notice from the recorder shall be mailed by regular mail at least five days prior to the Council hearing. The failure to file a written statement waives any objection that the person may have to the finding that a nuisance exists or to the abatement of the nuisance by the City.
- C. The statement shall be referred to the Council as part of the Council's regular agenda at its next succeeding meeting or at such time as may be convenient. At the time set for the public hearing the Council will hear the matter de novo and may consider any material it deems relevant and probative. The Council shall allow argument by a person responsible or their legal representative and by the City Representative. The Council shall make its decision based upon a determination of whether the thing, substance or act is offensive, injurious or detrimental to the public health, safety or welfare of the City. The Council, after hearing the matter, may determine that no nuisance exists, determine that a nuisance exists and order its abatement, impose conditions on the person responsible, or delay the time for abatement of the nuisance. The Council shall make written findings in support of its decision when a nuisance is determined to exist, and its decision shall be final. Council determination shall be required only in those cases where a written statement has been filed as provided.
- D. If the Council determines that a nuisance does in fact exist, a person responsible shall abate the nuisance within ten days after the Council's determination, unless the Council has delayed the time pursuant to subsection C.

6.06.210 Abatement by the City.

- A. If the nuisance has not been abated by a person responsible within the time allowed, the City

may abate the nuisance or cause it to be abated.

B. The City Representative charged with abatement of the nuisance shall have the right at reasonable times to enter into or upon property in accordance with law to investigate or cause the removal of a nuisance. The City Representative shall have the authority to dispose of all seized property in any manner deemed suitable and shall, if practical, attempt to obtain salvage value for material which per item has a fair market value in excess of \$25.00 as determined by the City Representative.

C. The recorder shall keep an accurate record of the costs incurred by the City in physically abating the nuisance.

6.06.215 Assessment of Costs and Entry of Lien.

A. The City Representative, by certified mail and regular first class mail, postage prepaid, shall send to the owner and the person responsible a notice stating:

1. The total cost of abatement pursuant to 6.06.210 including the cost of administrative overhead minus any salvage value pursuant to 6.06.210, subsection B;

2. That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days of the date of mailing of the notice;

3. That for the period until the 30-day notice has lapsed, the recorder shall temporarily enter the cost of abatement in the City's lien docket;

4. That if the property owner or the person responsible objects to the cost of the abatement as indicated, a written notice of objection may be filed with the City recorder not more than ten days after the date the notice was mailed. In the event that the certified mail and regular first class mail, postage prepaid, is returned to the City by the postal service, then the City Representative shall post the notice on the property in question or publish the notice two times in a newspaper of general circulation.

B. If an objection is received on or before the expiration often days after the date the notice was mailed, or the date the notice was posted or published, whichever is later, the recorder, in the regular course of business, shall hear any timely objection and determine the costs to be assessed. The finance director's determination shall be by written order.

C. The property owner or person responsible may appeal the recorder's decision to the City Council by making a written request to the city recorder within ten days of the recorder's determination. If the costs of the abatement are not appealed in a timely manner and not paid within 30 days from the date the notice was mailed, or the date the notice was posted or published, whichever is later, an assessment of the costs of abatement shall be entered into the City's permanent lien docket and shall become a final lien on the property from which the nuisance was abated. In the event of a timely objection or appeal, the assessment, if any, shall be entered upon conclusion of the objection or appeal process.

D. The City may include in one foreclosure proceeding as many accounts as the City may have against separate properties for abating nuisances pursuant to this chapter and may proceed to assess and collect single lot assessments against each of them in a single proceeding.

E. An error in the name of the person responsible shall not void the assessment, nor will a failure to receive the notice of the total cost of abatement render the assessment void, but it shall remain a valid lien against the property.

6.06.220 Abatement: Joint Responsibility.

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

6.06.225 Abatement: Noxious Vegetation.

Whenever procedures are instituted to abate a nuisance defined under 6.03.090, the required mailings of notice may be performed by use of ordinary mail. The notice may be supplemented with a statement that the City, for a given fee, will cut the noxious vegetation at the written request of the person responsible.

6.06.227 Other Methods of Collection of Costs.

The costs assessed for abatement of a nuisance may be collected pursuant to ORS 30.310 or 30.315.

6.06.230 Summary Abatement.

A. The City Representative may proceed summarily to abate a nuisance that imminently endangers human life or property. Notwithstanding 6.06.200, a person responsible for the nuisance condition shall pay the cost of abatement incurred by the City pursuant to 6.06.210, and the property shall be subject to an assessment and placement of a lien in accordance with 6.06.215.

VII. Repeal and Severability

6.07.300 Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance, which shall continue in full force and effect.

6.07.310 Repeal

Ordinance Number 83-4, Ordinance Number A7 passed May 20, 1917, and the unnumbered ordinance passed April 20, 1954 entitled "An ordinance to require the owners, occupants and persons in custody of cleared lots and parcels of land to cut and remove brush, grass and weeds; providing that upon failure to do so, the Street Commissioner shall cut and remove the same and that the cost thereof shall be charged as a lien upon the property; providing a penalty for the violation thereof; and declaring an emergency" are hereby repealed.

CITY COUNCIL

WHEELER, OREGON

Loren Remy resident

Aye

Nay

Absent/Abstain

Dave Bell,

r

Karen Mathews, Councilor

Vacant

Vacant

Jeffrey P. Aprati, City Manager/Recorder

Attest: Stevie S. Burden, Mayor

Date Signed