

1994 Municipal Code of Dayton, Oregon

CHAPTER 5 - ABATEMENT OF PUBLIC NUISANCE

5.1 Enacting Ordinance. Unless otherwise indicated in code sections, Chapter 5 of Dayton Municipal Code is enacted by Dayton City Ordinance #485, adopted 10/03/94 and effective 11/03/94; and amended by Ordinance #496, adopted and effective 04/08/97; and #512, adopted 03/01/99 and effective 04/01/99.

5.2 Animals. *(Revised by Ordinance #512, 03/01/99 and effective 04/01/99)*

5.2.1 Definitions.

- (a) **Animal.** Any nonhuman mammal, bird, reptile, amphibian, or fish.
- (b) **Apiary.** The assembly of one or more colonies of bees at a single location. *(Added ORD 628, Effective 09/02/15)*
- (c) **Beekeeper.** A person who owns or has charge of one or more colonies of bees. *(Added ORD 628, Effective 09/02/15)*
- (d) **Beekeeping Equipment.** Anything used in the operation of an apiary, such as hive bodies, supers, frames, top and bottom boards and extractors. *(Added ORD 628, Effective 09/02/15)*
- (e) **Colony.** An aggregate of bees consisting principally of workers, but having, when perfect, one queen and at times drones, brood, combs, and honey. *(Added ORD 628, Effective 09/02/15)*
- (f) **Domestic Animal.** An animal conditioned so as to live and breed in a tame environment and normally amenable to human habitats.
- (g) **Enforcement Complaint.** That document(s) which, when properly served upon the alleged violator of a City Code which is punishable as a violation, brings the matter before the appropriate court for resolution.
- (h) **Fowl.** A bird of any kind.
- (i) **Hive.** The receptacle inhabited by a colony that is manufactured for that purpose. *(Added ORD 628, Effective 09/02/15)*
- (j) **Honey Bee.** All life stages of the common domestic honey bee. *Apis mellifera* species. *(Added ORD 628, Effective 09/02/15)*
- (k) **Violation.** An offense or violation of a City Code punishable only by a fine, forfeiture, suspension, or revocation of the registration or other privilege, or other civil penalty.
- (l) **Injury.** Includes, at a minimum, the breaking or scraping of bodily tissue of any person or animal, no matter how slight.

- (m) **Keeper.** Any person, firm, corporation, organization, association, or department possessing, or harboring, or having the care and custody of, or authority to control, an animal.
- (n) **Livestock.** Horses, mules, jackasses, burros, cattle, sheep goats, donkeys, swine and any fur-bearing animal bred and maintained, commercially or otherwise, within pens, cages and hutches, and generally raised for commercial purposes.
- (o) **Mistreatment.** Improper care of an animal, which includes but is not limited to, abusive treatment, neglect, over driving, overloading, torturing, tormenting, cruel acts, beating, mutilation, deprivation of necessary sustenance and shelter, or abandonment of any animal.
- (p) **Owner of Property.** Any person who has legal or equitable interest in real property, or who has a possessory interest therein, or who resides on the property, or is a guest of any person who owns, rents, or leases said property.
- (q) **Poultry.** Domestic fowl, including but not limited to, chickens, turkeys, ducks, geese, emu, ostrich or other fowl raised for meat or eggs.
- (r) **Running at Large.** An animal which is off or outside the premises belonging to the owner, keeper, or person having control, custody, or possession of the animal, and is not in the company of and under the control of, its owner or keeper by means of an adequate leash, pen, cage, coop, vehicle, or other means of confinement.
- (s) **Swarm.** Any bee colony not residing in a hive intended for beekeeping.
(Added ORD 628, Effective 09/02/15)
- (t) **Wild Animal.** An animal which normally lives in a state of nature and is not ordinarily tame or domesticated and usually not amenable to human habitats.

5.2.2 Enforcement Authority. Provisions of this Code shall be enforced by the City Administrator, his/her designee, Yamhill County Dog Control, City Code Enforcement Officer, or any peace officer. For the purposes of this section of the Code, those officers or persons are referred to as the "animal control official."

5.2.3 Enforcement Complaint. Any person authorized to enforce the provisions of this Code may issue an enforcement complaint to any person found in violation of the provisions of this Code, and shall deliver said complaint, or cause to be delivered, to the person alleged to have violated the provisions of this Code.

5.2.4 Interference with Animal Control Official.

- (a) It is unlawful for any person to interfere in any way with an animal control official engaged in enforcing, seizing, impounding, or lawfully disposing of any animal under the authority of this Code.

- (b) It is unlawful to release any animal from the custody of the animal control official after such animal has been seized or impounded under the authority of this Code.

5.2.5 Registration Requirements.

- (a) Every person owning or keeping any animal requiring registration, or a license as may be defined by federal, state, county, or municipal law or regulation shall register or license such animal in accordance with the specific regulation or law requiring the registration or license.
- (b) Registration tags, when required, shall be attached to the animal.

5.2.6 Offenses.

- (a) No animal shall run at large within the city limits upon any public street, right-of-way or other public place, or trespass upon private property not owned or controlled by the owner or keeper of such animal. A dog, or dogs, under the control of a law enforcement agency or its authorized representative or agent may be exercised or utilized in the performance of their duties as police dogs without being on a leash, tether, or any other restrictive device and shall not be considered as running at large.
- (b) No domestic animal shall:
 - (1) Make excessive or unreasonable noise in such a manner as to disturb or annoy any person or deprive any person of peace and quiet, other than the owner or keeper of such animal;
 - (2) Cause injury to a person, animal, or property, or show a propensity to cause injury to persons, animals, or property;
 - (3) Chase persons or vehicles;
 - (4) Chase, injure or kill an animal belonging to a person other than the owner or keeper of the offending animal;
 - (5) Damage property belonging to a person other than the animal's owner or keeper.
- (c) Any person who keeps, possesses, or otherwise maintains an animal shall not allow the accumulation of raw or untreated animal waste which creates an offensive odor to occur upon any property, whether public or private, or attracts insects or vermin to such property.
- (d) No person shall:
 - (1) Subject any animal to mistreatment; nor shall any person transport or permit to be transported any animal in a cruel and inhumane manner.
 - 2) Kill any animal under the custody or control of another without legal privilege.

- (3) Slaughter or allow slaughtering within the city limits.
- (4) Place or distribute any poison or other substance with the intent of poisoning any animal, except those animals commonly recognized as pests or rodents.
- (e) **Violation; Penalty.** A violation of Section 5.2.6 (d) of Dayton Municipal Code is a Class A violation.

5.2.7 Dog Control.

- (a) **County Ordinance.** Yamhill County Dog Control Ordinance, in its current form and as it may be subsequently amended, is incorporated by reference into the Dayton Municipal Code, as though it were set forth fully.
- (b) **Violation; Penalty.** Any violation defined by the Yamhill County Dog Control Ordinance shall be a Dayton Class B violation.
- (c) **Dayton Municipal Code Precedence.** The provisions of Section 5.2 of the Dayton Municipal Code, where in conflict with the Yamhill County Dog Control Ordinance, shall take precedence.

5.2.8 Dangerous Animals.

- (a) No person shall keep, possess, or otherwise maintain under their control any dangerous, ferocious, or biting animal.
- (b) "Dangerous, ferocious, or biting animal" includes any such animal which, with a lack of provocation, is likely to injure, attack, or otherwise threaten the lawful presence of any person or animal.
- (c) In addition to any fines or other penalties provided in this code, the Dayton Municipal Court may order such disposition of any dangerous, ferocious, or biting animal as it considers necessary for the safety or health of the public.

5.2.9 Wild Animals.

- (a) No person shall keep or possess or otherwise maintain any wild animal within the City limits, except for purposes of public display.
- (b) "Public display" means keeping in a public place approved by the City Council or its designee for the sole purpose of exhibiting wild animals held in captivity and open to the general public during reasonable hours.
- (c) No wild animal shall be allowed to run at large, or to run at large upon the property of the person authorized to keep, possess, or otherwise control such animal for public display.

5.2.10 Keeping of Bees within the City Limits. Is permitted with the following restrictions: *(Added & Amended by Ordinance 628, Effective 09/02/15)*

- (a) The purpose of this section is to establish certain requirements of sound beekeeping practices, which are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas.
- (b) Notwithstanding compliance with the various requirements of this section, it shall be unlawful for any beekeeper to keep any colony or colonies in such a manner or of such disposition as to cause any unhealthy condition, interfere with the normal use and enjoyment of human or animal life of others or interfere with the normal use and enjoyment of any public property or property of others.

5.2.10.1 Registration Required. Registration with the City is required to keep beehives within the City limits. The City Manager shall provide applicants with a beekeeping registration process.

5.2.10.2 General Requirements.

- (a) Bee colonies shall be kept in hives with removable combs, which shall be kept in good repair, and in sanitary and usable condition. Bed colonies and beekeeping equipment shall not create a nuisance or disturb neighboring residents due to noise, odor, damage, or be a threat to public health in general.
- (b) A water source shall be provided for all bee colonies on the property where the bee colonies are located. The hive shall be raised or mounted in such a way that it does not sit directly upon the ground.
- (c) Hives must be located on private property in backyards or side yards. However, the City Manager may approve hives being located on public property on a case-by-case basis. The intention of approving hives on public property would be for school or educational purposes, or for another public benefit as approved by the City Manager.

5.2.10.3 Lot Size and Number of Colonies. A maximum of three (3) bee colonies are permitted on properties of 10,000 square feet or less and an additional three (3) colonies are permitted for properties over 10,000 square feet.

- (a) Beekeepers who are registered with the City may temporarily house excess swarms of bees when another property has a swarm of bees that the property owner requests be removed from their property. In such instances, beekeepers that acquire excess swarms must remove the swarms from their property within 30 days from the date the swarms are acquired.

5.2.10.4 Setbacks and Flyway Barriers.

- (a) Hives must be located a minimum of fifteen (15) feet from all public walkways, streets, alleys, or any property line that borders public property. Hives must also be located a minimum of ten (10) feet from all other adjacent property lines.
- (b) Colonies may be located on a rooftop of a building only where there is permanent, legal access to the roof via permanent stairway or elevator.
- (c) A flyway barrier of at least six (6) feet in height shall be maintained parallel to the property line for a minimum of ten (10) feet in either direction from the hive. The flyway barrier may consist of a wall, fence, dense vegetation or a combination thereof, such that bees will fly over rather than through the material to reach the colony.
- (d) Any violation of section 5.2.10 is a class C violation. Violations of section 5.2.10 shall be abated per the nuisance abatement procedure set out in section 5.13 of the Dayton Municipal Code.

5.2.11 Disposition of Habitual Offenders. In addition to any fines or other penalties provided herein, if an animal has been found to repeatedly violate the provisions herein, the Dayton Municipal Court may order such disposition of the animal as it considers necessary for the safety or health of the public.

5.2.12 Shelter Requirements.

- (a) The owner or keeper of any animal shall provide adequate shelter for such animal. "Adequate shelter" means that which provides protection from the meteorological elements. All fences or enclosures shall be properly erected to prevent the escape of any animal. *(Amended Ordinance 616, 10/7/13- Effective 11/06/13)*
- (b) The council may prohibit the housing or keeping of any animal within the city limits when such housing or keeping may impair the public health, welfare, safety, or create a nuisance. The City Council or its designee may direct the animal control official or Code Enforcement Officer to deliver a written notice to the owner or keeper of such animal, directing the owner or keeper to remove the animal within seven (7) days from the service of such notice.

5.2.13 Keeping of Livestock and Poultry within the City Limits. Is permitted with the following restrictions: *(Amended Ordinance 628, Effective 09/02/15)*

5.2.13.1 Lot Size. Minimum lot sizes for permitted animals are outlined below. Such space requirements shall be in addition to that required for shelters, accessory buildings and homes on the property:

- (a) One horse, one cow, or one potbelly pig for each 10,000 square feet of lot area.
- (b) One sheep or one goat for each 5,000 square feet of lot area. The land required for horses, cows and potbelly pigs shall be

in addition to the land required for any sheep or goats and vice versa. *(Added Ordinance 616, 10/7/13- Effective 11/06/13)*

- (c) Twelve poultry or rabbits (or any combination of the two equaling twelve animals total) may be maintained on a lot in any residential zone as long as the lot is at least 6,000 square feet. *(Amended Ordinance 616, 10/7/13- Effective 11/06/13)*

5.2.13.2 Prohibited Poultry. The keeping of turkeys, geese, emu, ostriches, or any fowl not defined as domestic animal or fowl under 5.2.1 of the Dayton Municipal Code shall be prohibited. The keeping of roosters is prohibited unless it is a non-crowing or bantam rooster. *(Added Ordinance 616, 10/7/13- Effective 11/06/13)*

5.2.13.3 Other Requirements. All livestock and poultry shall be properly caged and proper sanitation shall be maintained at all times. All animal or poultry food, other than properly baled and stacked hay, shall be stored in metal or other rodent-proof containers. Animal shelters located closer than 5 feet from any neighboring fence or property line shall provide a barrier between the shelter and the fence or property line that prevents any order or sanitary nuisances. *(Amended Ordinance 628, Effective 09/02/15)*

5.2.13.4 Removal of Animals. The City Manager may order the removal of animals from any premises whenever the maintenance of such animals violates any provision of city codes. *(Amended Ordinance 616, 10/7/13- Effective 11/06/13)*

5.2.13.5 Violation; Penalty. Violation of Section 5.2.13 of Dayton Municipal Code is a Class A violation.

5.2.14 Dead Animals: Carcass Removal. No person may permit the carcass of any animal kept, possessed, or otherwise maintained under that person's control to remain upon any public street, right-of-way, or other public place, or upon any private property for more than twenty-four (24) hours.

- (a) **Violation; Penalty.** Violation of Section 5.2.14 of Dayton Municipal Code is a Class B violation.

5.2.15 Summary Destruction of Certain Animals. Any animal, whether domestic or wild, which presents an imminent threat of serious physical injury or death to any person or other animal, or which has caused injury or death to any person or other animal, and which, under the immediate circumstances, cannot be captured or impounded as provided in this chapter, may be summarily destroyed in as humane a manner as is practicable under the existing circumstances.

5.2.16 Rabid Animals. The statutes and regulations of the State of Oregon and Yamhill County shall apply.

5.2.17 Violations. Unless otherwise stated, a violation of Section 5.2 of the Dayton Municipal Code is a Class C violation.

5.3 Sidewalks & Adjacent Areas. *(Revised by Ordinance #512, 03/01/99 and effective 04/01/99)*

5.3.1 Definitions:

5.3.1.1 "Sidewalk" means that part of a street right-of-way between the curb line or the lateral line of the paved portion of the roadway and the adjacent property line, that is intended for the use of pedestrians.

5.3.1.2 "Adjacent Areas" means curbs, separation strips between sidewalks and curbs or pavement, or curbside sidewalks and the adjacent private property, driveways and parking strips that are placed in the public right-of-way.

5.3.2 Sidewalk & Adjacent Areas Maintenance . Owners of real property abutting public street rights-of-way shall construct, maintain and repair curbs, driveways, separation strips, parking strips and sidewalks in the public rights-of-way, abutting or immediately adjacent to said real property. Maintenance shall include repairing defects that create a danger to pedestrians, including, but not limited to, repairing or replacing broken or heaved sections, keeping sidewalks free of debris, leaves, yard clippings, or other growing matter, clearing snow and ice, and keeping them clear of any other object or matter which may impede or render hazardous the use of the sidewalk and property lying between the same and the pavement or abutting or adjoining property in the case of curbside sidewalks. All repairs shall conform to specifications and standards for public works construction adopted in Dayton Municipal Code Chapter 6. If the City Administrator finds that any sidewalk needs repair, he or she shall post a notice on the adjacent property directing the owner immediately to repair the sidewalk in accordance with the specifications and standards of the City and within a specified time. The City Administrator shall also send by certified or registered mail a copy of the notice to the property owner. If the property owner fails to make repairs within the time specified in the notice, the City Administrator may cause the repairs to be made and may assess costs, including a charge of 25% of the expense for administrative overhead, as provided in Section 5.13 of this Code.

5.3.2.1 Downtown Area Street Trees - Sidewalk Repair Cost Apportionment.

5.3.2.1.1 Definition. "Street Trees" means any maple or flowering cherry tree planted by the City in the separation strip between the curb and sidewalk along Ferry Street between 5th and 3rd Streets; along 4th Street between Main and Alder Streets; and along 3rd Street between Ferry and Mill Streets.

5.3.2.1.2 The City shall equally share with the adjoining property owner the costs to repair a sidewalk that has heaved or broken because of street trees as defined in Section 5.3.2.1.1. The City's participation is subject to the City Administrator's finding that the broken sidewalk is in violation of Section 5.3.2 of this Code. The sharing of

costs is an exception to Section 5.3.2 of this Code and applies only within the area designated.

5.3.3 Liability.

- (a) Owners of real property abutting public street rights-of-way shall be liable for any person suffering personal injury or property damage, by reason of any defect in the sidewalk adjacent to or abutting upon the real property of the respective owner or owners thereof.
- (b) Said property owners shall be liable to the City of Dayton for any amounts which may be paid or incurred by the City by reason of all claims, judgments or settlements, and for all reasonable cost of defense, including investigation costs and attorney fees, by reason of said property owners' failure to satisfy the obligations imposed by the Charter and the Code of the City of Dayton to construct, maintain and repair such sidewalks, curbs, driveways, separation or parking strips.
- (c) The City shall not be liable to any person for loss or injury to a person or property suffered or sustained by reason of any accident on sidewalks caused by ice, snow, leaves, encumbrances, obstructions, cracks, chipping, weeds, settling, holes covered by dirt or other similar conditions.

5.3.4 Removal of Leaves from Sidewalks. It is made the duty of the occupants of the premises or the owner of the property, if the same is unoccupied, to keep the sidewalks clean from leaves fallen thereon.

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

- (a) Snow to remain on the sidewalk for a period longer than the first twelve (12) hours of daylight after snow has fallen.
- (b) Ice to cover or remain on a sidewalk after the first twelve (12) hours of daylight after the ice has formed. Such person shall remove ice accumulating on the sidewalk or cover the ice with sand, ashes or other suitable material to assure safe travel.
- (c) No person shall place or deposit snow or ice, except that removed from public sidewalks, on any parking strip or street.

5.3.5.1 Violation; Penalty. A violation of Section 5.3 of Dayton Municipal Code is a Class C violation.

5.3.6 Unlawful Activities on Sidewalk.

- (a) It shall be unlawful for any person to obstruct a sidewalk with their person, vehicle, signs, merchandise, tables, or any other materials. A sidewalk shall be considered obstructed when pedestrians are unable to utilize the sidewalk surface without stepping onto private property or into the planting strip or street. This section shall not apply to vehicles making

deliveries provided that sidewalks are not blocked more than fifteen (15) minutes, or during special commercial sales otherwise known as “sidewalk sales” or other community activities that are limited to not more than twelve (12) hours in duration and do not completely block access to the sidewalk

- (b) It shall be unlawful for any person to have an open or contained fire on a sidewalk or adjacent planting strip, including but not limited to charcoal or propane barbecue equipment, This section shall not apply during special commercial or other community activities that are limited to not more than twelve (12) hours duration and do not completely block access to the sidewalk, provided that reasonable safeguards are utilized to protect the public from harm due to heat, fire or cooking activities.

5.3.7 Placement of News racks on Streets and Sidewalks.

5.3.7.1 Definitions.

- (a) **News Rack.** “News Rack” means any self-service or coin-operated box, container, storage unit or other dispense installed, used or maintained for the display and sale of newspapers or other news periodicals.
- (b) **Sidewalk.** “Sidewalk” means any surface provided primarily for the exclusive use of pedestrians.
- (c) **Street.** “Street” means all that area dedicated to public use for public street purposes, and shall include, but not be limited to, roadways, parkways, alleys and sidewalks.

5.3.7.2 Placement of News racks. News racks placed upon a sidewalk shall be located as far from the street curb as is possible. No News Rack shall be placed within a grass strip between curb and sidewalk, nor shall any box be placed on an island between lanes of vehicle traffic.

- (a) News racks placed on a public sidewalk next to a building shall not be placed in front of a store front window, entrance way, or display case without the written approval of the store owner or manager unless such rack is owned by the store. A News Rack shall not be placed in such a manner as to obstruct the use of a bench, vehicle parking space, bicycle rack, public telephone, mailbox, or bulletin board.
- (b) News racks shall not be secured by any means to private or public property, including sign poles of any type or construction, utility poles, trees, or structures, without the written approval of the private property owner or manager, in the case of private property, or the City Administrator, in the case of public property.
- (c) News racks shall be located so as not to obstruct a crosswalk or public street.

(d) No portion of a News Rack shall intrude onto a public sidewalk for a width greater than twenty-two inches (22") as measured from the rear of a sidewalk toward the curb.

5.3.8 Violation; Penalty. Unless otherwise stated, a violation of any provision of Section 5.3 of Dayton Municipal Code is a Class C violation.

5.4 Fences. *(Revised by Ordinance #512, 03/01/99 and effective 04/01/99)*

5.4.1 Prohibited Fences. Fences shall not be constructed of, or contain, any material which will do bodily harm, such as electric or barbed wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:

(a) Barbed wire or upturned barbed selvage is permitted more than six (6) feet above grade in General Commercial and General Industrial, and around public water or waste-water treatment facilities, provided that barbed wire shall not extend over a street or alley and, provided further, that any barbed wire that is slanted toward the public right of way shall be constructed so as to be located no less than one foot from the public right of way.

5.4.2 Sight-Obscuring Fences. For the purpose of this Code, a sight-obscuring fence is one constructed of recognized fencing materials as approved by the City Administrator. Such materials shall be constructed so as to make a substantially tight fence, and which shall be at a height of six (6) feet.

5.4.3 Clear Vision. Fencing shall not conflict with the requirements for a Clear-Vision Area as set forth in Dayton Zoning Code.

5.4.4 Violation; Penalty. A violation of any provision of Section 5.4 of Dayton Municipal Code is a Class C violation.

5.4.5 Fence Permit Required. The City shall require a written fence permit to be obtained from the Building Department/Inspector before fence construction may commence. (per ORD 376 10/6/1980-added 5-26-09)

5.4.6 Fence Permit Fee. A fee of \$5.00 shall be charged for said written fence permit. (per ORD 376 10/6/1980-added 5-26-09)

5.5 Solid Waste. *(Revised by Ordinance #512, 03/01/99 and effective 04/01/99)*

5.5.1 Definitions

(a) **Ashes.** The residue of the combustion of solid fuels.

(b) **Bulk.** Discarded household furniture, bedding, mattresses, leaves, yard trimmings, appliances, building wastes, or other non-putrefactive and non-hazardous materials too large to be placed into containers.

(c) **Container.** Any vessel used for the storage of solid waste.

- (d) **Dispose or Disposal.** Includes accumulation, storage, collection, transportation, disposal, or resource recovery of solid waste.
- (e) **Garbage.** All classes of putrefactive and easily decomposable animal and vegetable matter, including without limitation, wastes produced from the handling and preparation of food and cans originally used for foodstuffs.
- (f) **Rubbish.** Includes cardboard, plastic, metal, glass, paper, rags, sweepings, wood, rubber, leather, and similar waste materials that ordinarily accumulate on premises.
- (g) **Solid Waste.** All waste in solid or liquid form including, but not limited to, garbage, rubbish, ashes, street refuse, waste paper, corrugated and cardboard; commercial, industrial, demolition and construction waste; discarded vehicle parts, discarded home and industrial appliances; vegetable or animal solid and semisolid wastes, small dead animals, and other wastes.
- (h) **Waste.** Material that is no longer wanted by or usable by the source generator or producer of the material and which material is to be disposed of or be resource recovered by another person and includes both source separated material and non-source separated material.

5.5.2 Solid Waste Container. It shall be the responsibility of every occupant or owner of every residence, apartment house, dwelling unit, or other buildings, structure, or premises on which solid waste is produced for collection to provide a solid waste container. Users must assure that containers are maintained in a clean and sanitary manner. Sunken solid waste containers are prohibited.

5.5.3 Storing of and Removing Solid Waste on Premises.

- (a) It shall be unlawful for any person owning or occupying any building, lot, or premises to allow any solid waste to collect and remain upon said lot or premises; provided, however, that this provision shall not be construed as interfering with building under a building permit during the course of construction or demolition of a building and within a reasonable time thereafter. This subsection does not apply to loose bulk material temporarily stored pending removal by a franchisee who provides service, provided that such storage shall not be allowed to create an odor, or be a safety, fire, health, or nuisance hazard as determined by the City Administrator, peace officer, or fire department personnel.
- (b) It shall be unlawful for any person to compost materials which either cause offensive odors which are discernible to adjacent property owners, or create a health hazard, or are capable of attracting or providing food for potential disease carriers such as rodents, flies or other vectors.
- (c) It shall be unlawful for any person, upon vacating or removing from dwellings, storerooms, or any other buildings, structures, or premises to fail to remove all solid waste from such buildings and premises, or to fail to restore the same to a thoroughly sanitary condition within forty-eight (48) hours after the said premises shall be vacated.

5.5.4 Dumping and Disturbance of Solid Waste Prohibited.

- (a) It shall be unlawful for any person to sort, scatter, dump, deposit or cause to be deposited any amount of solid waste along the bank of, or in, any canal, ditch, creek or river, or more than one cubic foot of solid waste in or upon any public place or in or upon any private property without the consent of the owner. Such materials shall be disposed of only in disposal sites approved by the Oregon Department of Environmental Quality or other governmental agency having jurisdiction.
- (b) It shall be unlawful for any person not authorized to do so, to remove the lid from any solid waste container, or to collect, molest or scatter solid waste stored in such container or to deposit solid waste in such container.
- (c) Subsection (a) of this section does not apply to solid waste materials for recycling or reuse placed for collection in conformance with the rules of the appropriate franchise.

5.6 Door-to-Door Solicitation or Materials Distribution. *(Revised by Ordinance #586, 05/12/08 and effective 06/11/08)*

5.6.1 Definitions.

- (a) Distribute, distributor or materials distribution : Any printed or written matter including but not limited to placards, handbills, advertisements or posters, including signs for garage sales placed upon real property used for residential purposes with the intent of communicating with a resident of the property.
- (b) Notice: Any printed or written matter including but not limited to placards, commercial or non-commercial handbills, advertisements or posters, including signs for garage sales.
- (c) Solicit, solicitor or solicitation: Entry onto real property used for residential purposes with the intent of visually or verbally communicating with a resident of the property.

5.6.2 Solicitation and Materials Distribution Violations. It shall be unlawful for any person to:

- (a) Solicit or distribute before 9 a.m. or after 9 p.m. when the local time is daylight savings time or after 8 p.m. when local time is standard time, without the consent of the occupant to do so.
- (b) Solicit or distribute materials upon real property where a sign conforming to the requirements of Subsection 5.6.4 is posted.

5.6.3 Consent to Enter Onto Real Property, Exemptions.

- (a) It shall be an affirmative defense to an alleged violation of Subsection 5.6.2 that the person charged with the violation had received actual or

constructive consent of the resident prior to entering onto the real property. Constructive consent to enter onto real property may be implied from the circumstances of each instance, the relationship of the parties and actual or implied contractual relationships.

- (b) The resident of the real property shall be considered to have given constructive consent to enter onto the real property for the purpose of solicitation or materials distribution between the hours of 9:00 a.m. and 9:00 p.m. when the local time is daylight savings time or after 8:00 p.m. when the local time is standard time, if they have not posted a "No Solicitation" sign, pursuant to Subsection 5.6.4.
- (c) Nothing in this subsection shall be construed to authorize the entry into a structure located on real property. The right to enter any structure must be otherwise provided for by law.
- (d) Officers, employees or agents of a governmental entity while performing activities within the scope of their office, employment or agency are exempt from the requirements of Chapter 5.6.
- (e) No person may be charged with a violation of Subsection 5.6.3 in connection with an act committed between 4:00 p.m. and 9:00 p.m. on each October 31st.

5.6.4 "No Solicitation" Sign.

- (a) If a resident of real property chooses to not invite solicitors or distributors onto their property the resident may post a "No Solicitation" sign pursuant to this subsection. The effect of the posting of such a sign is to express the refusal of the resident to grant consent to any person to enter onto their real property to solicit or distribute, except to those persons exempt from these provisions by subsection 5.6.3.
- (b) Signs posted pursuant to this section shall be posted on or near the boundaries of the property at the normal points of entry, and must be no smaller than 6 inches in height by 8 inches in width, and must contain wording sufficient to notify potential solicitors and distributors that solicitation and distribution is not allowed upon the property.
- (c) For real property possessing no apparent barriers to entry at the boundaries of the property which limit access to the primary entrance of a structure located on the property, placement of the sign at the primary entrance to the structure constitutes compliance with this subsection.

5.6.5 Posting or Distribution Restrictions.

- (a) No person may affix any notice on utility poles, street lights, stop signs, other street signs, trees in the public right of way, public places or premises. This section shall not be construed as an amendment to or repeal of any regulation now or hereafter adopted by the City regulating the use and location of signs and advertising.

- (b) No person, either as principal or agent, may scatter, distribute or cause to be scattered on public places or premises any notice.

5.6.6 Evidentiary Matters.

- (a) It shall be prima facie evidence of a violation of Subsection 5.6.2 if written material is found on real property upon which a sign conforming to the requirements of Subsection 5.6.4 has been posted. The person responsible for such written material shall be the person identified in the written material as its proponent, sponsor, distributor or potential beneficiary of the communication conveyed.
- (b) It shall be prima facie evidence of a violation of Subsection 5.6.5 if written material is found on the property described by that subsection.

5.6.7 Violation. A violation of Chapter 5.6 of the Dayton Municipal Code is a Class B violation.

5.7 Surface Waters and Drainage. *(Revised by Ordinance #512, 03/01/99 and effective 04/01/99)*

- (a) No owner or person in charge of any building or structure may suffer or permit rainwater, ice or snow to fall from such building or structure onto a street or public sidewalk or to flow across such sidewalk.
- (b) The owner or person in charge of property shall install and maintain in a proper state of repair, adequate drain pipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across or upon the sidewalk.
- (c) Any owner or person in charge of property shall keep open drainage ways on property which they possess or control cleared of debris and vegetation.
- (d) Any owner or person in charge of property shall maintain non-public storm water facilities on property which they possess or control so as to prevent flooding or damage to the property not possessed or controlled by the owner or person in charge of property and to prevent injury to any other person.
- (e) Storm water facilities to be managed by the owner or person in charge of property include but are not limited to:
 - (1) An underground storm water facility not located on city-owned property, city right-of-way, or easement.
 - (2) A private parking lot storm drain.
 - (3) Any roof, footing or area drain.
 - (4) A storm water facility not designed and constructed for use by the general public.

- (5) An open drainage way.
 - (6) Access drive culverts in the public right-of-way or on private property.
 - (7) A detention or retention system, in the construction of which the City did not financially participate.
- (f) The failure of any owner or person in charge of property to comply with the obligations stated in this section is a violation.
 - (g) The conditions on private property which may result in situations proscribed by subsections (a), (b), (c) or (d) of this section are declared to be a danger to public health and safety and therefore are a nuisance to be abated as provided by this ordinance.

5.7.1 Violations; Penalty. Violation of Section 5.7 of Dayton Municipal Code is a Class C violation.

5.8 Radio and Television Interference. *(Revised by Ordinance #512, 03/01/99 and effective 04/01/99)*

- (a) 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.
- (b) This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

5.9 Attractive Nuisance. *(Revised by Ordinance #512, 03/01/99 and effective 04/01/99)*

5.9.1 Prohibited Hazards. No property owner shall allow the following hazardous conditions to exist on his or her property in the City, unless the hazardous condition is surrounded by a fence, at least 6 feet in height, with gates that are locked when the property is unoccupied, or is enclosed in a building that is locked when property is unoccupied:

- (a) Demolition sites;
- (b) Machinery, engines, or other mechanical devices with moving parts, projections or sharp edges;
- (c) Cisterns, wells, or pits without locking covers;
- (d) Unoccupied buildings that can be entered;
- (e) Open pools or ponds in which the liquid is more than 18 inches deep;
- (f) Unstable earth or gravel embankments that could shift under a person climbing on them;

- (g) Piles of logs, construction materials, or other material that could shift under a person climbing on them;
- (h) Containers with compartments of more than one cubic foot capacity and a door or lid that locks or fastens when closed; or
- (I) Discarded or dismantled items that are likely to harbor pests.

5.9.2 Firewood, Logs and Building Materials. *(Added by Ordinance #512, 03/01/99 and effective 04/01/99)*

- (a) **Firewood.** Firewood may be stored outdoors on any private property so long as it is neatly stacked and is not a public nuisance pursuant to this ordinance, nor offensive to the surrounding neighbors.
- (b) **Logs.** Logs may be stored on private property for a period not to exceed sixty (60) days if said storage pile is not otherwise a public nuisance pursuant to this ordinance.
- (c) **Building Materials.** Building materials, including lumber, pipe, roofing material or other material required for an in-progress construction project, may be stored in a manner no offense to surrounding neighbors for a period of time not to exceed ninety (90) days from the start of the project. Permits may be issued for longer periods if the size of the project requires it, there is a valid building permit for the project, and the project is under active construction.

5.9.3 Public Health Nuisance

5.9.3.1 Prohibited Hazards. No property owner shall allow the following hazardous substances to exist on his or her property for more than seven (7) consecutive days, unless the substance (1) is contained in compliance with all Oregon Department of Environmental Quality regulations, (2) cannot be smelled by a human being on public rights of way or on private property belonging to anyone other than the person allowing the hazardous substance to exist, and (3) does not attract pests:

- (1) Human or animal excrement;
- (2) Decaying carcasses or parts of carcasses (including meat scraps);
- (3) Decaying vegetable matter; and
- (4) Toxic substances identified and defined by the Oregon department of Environmental Quality.

5.9.4 Violation. A violation of any provision of Section 5.9 of the Dayton Code shall be a Class A violation and a nuisance.

5.10 Noxious Vegetation. No owner or person in charge of property shall permit noxious vegetation upon public or private property. *(Added by Ordinance #496, adopted and effective 4/7/97)*

- (a) The term "noxious vegetation" does not include vegetation that constitutes an agricultural crop, unless that vegetation is a fire hazard, a health hazard or a traffic hazard and it is vegetation within the meaning of subsection (b) this section. The term "noxious vegetation" does not include vegetation that is part of the natural topographic condition of City or state parks, wetlands, or greenway areas.
- (b) The term "noxious vegetation" includes:
- (1) Weeds more than ten (10) inches high.
 - (2) Grass more than ten (10) inches high, and not within the exceptions stated in subsection (a) of this section.
 - (3) Poison oak, poison ivy or similar vegetation.
 - (4) Dead trees, dead bushes, stumps, and any other thing likely to cause a fire.
 - (5) Vegetation that is a fire or health hazard.
 - (6) Blackberry bushes that extend into a public right-of-way or across a property line.
 - (7) Vegetation that is a health hazard because it impairs the view of a public right of way or otherwise makes use of the right of way hazardous.
 - (8) Trees, bushes, weeds, grass or debris on property, or on the adjoining street or public right of way, which interferes with vehicular or pedestrian traffic. This includes:
 - (i) Trees and bushes on the property and on the adjoining right of way which are not trimmed to a height of less than eight (8) feet above the sidewalk and not less than eleven (11) feet above the street on streets without curbs.
 - (ii) Except as permitted in other sections of this Code, hedges, shrubs, etc., which are not trimmed to prevent impeding foot traffic and allow a minimum of three (3) feet of horizontal clearance between the edge of pavement and the hedges, shrubs or other vegetation in areas where sidewalks do not exist, or between the sidewalk and the edge of the pavement in areas with sidewalks.
 - (9) Any plants listed on the April 1, 1991, Yamhill County noxious weeds list as it may be amended, attached to this section as Attachment A and incorporated herein by reference.
 - (10) It is unlawful for any person to plant any cottonwood or poplar trees along the streets of the City for any purpose.

5.10.1 Notice to Mow or Trim.

- (a) When the City Administrator determines that a nuisance pursuant to this section of the code exists, he/she shall cause to be served upon the person in charge of the property a written notice to remove said nuisance within five (5) calendar days or the City will cause the same to be done and charge the cost thereof to the person in charge of the property or to attach a lien against the property. Such notice shall be served upon the person in charge of any premises, if he/she be found upon said premises or within the City of Dayton, or such notice may be posted in a conspicuous place upon said premises, and a copy thereof mailed to the last known address of such owner or person in charge of the premises as shown

- (b) If any person in charge of any premises within the City of Dayton shall fail or neglect to destroy the said nuisance within five (5) calendar days of such notice, the City Administrator may direct City staff to go upon such lots or parcels with such assistance as they deem necessary and destroy and eradicate said nuisance in such manner as shall be most effective in their judgment. The City Administrator may also hire a contractor to go upon such lots or parcels and destroy and eradicate said nuisance.
 - (1) Upon completion of said work, the City Administrator shall file with the Council an itemized statement of the cost thereof including the cost which may be charged to the City by a contractor hired to remove the nuisance, plus 25% to cover the expense of inspection, overhead, enforcement of this section of the code, and service or posting of the notice required by Section 5.10.1(a). The minimum charge for any lot or parcel of land shall be twenty-five dollars (\$25.00). After a reasonable opportunity for the owner to be heard and object thereto, the Council shall then, by motion, declare the correctness of said statement, and declare the same to be a lien upon the property involved, to be entered in the lien docket and enforced against said property.

 - (2) The cost of nuisance abatement under this section shall be paid from the General Fund and all income resulting from the enforcement of this section shall be credited to such fund.

- (c) Notwithstanding any other provision of this section of the code, if any fire official deems that there is an imminent fire danger due to the nuisances covered in this section, the five (5) calendar day notice may be waived under the following conditions:
 - (1) That if the person in control of the property cannot be found within the City, a notice shall be posted on the property that there will be an immediate abatement of the property by the City of Dayton.

 - (2) The City Administrator shall set out specific findings of the fire danger that prevents the five (5) day notice due to emergency.

5.10.2 Definition of Person in Charge of Property. Any agent, contract purchaser, owner or person having possession, control or title to property.

5.10.3 Violation; Penalty. A violation of any provision of Section 5.10 of the Dayton Municipal Code is a Class B violation.

5.11 Junk. *(Added by Ordinance #496, adopted and effective 4/7/97)*

The accumulation and storage of junk creates a condition tending to reduce the value of private property, promotes blight and deterioration, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, creates a harborage for rodents and insects, and is injurious to the health, safety and general welfare of the public. Therefore, the presence of junk on private or public property, except as expressly permitted by the provisions of this section, is declared a public nuisance which may be abated as such in accordance with the terms of Section 5.13 of this Code.

5.11.1 Definitions:

(a) **Approved Enclosure.** An approved enclosure means:

- (1) A building that is wholly or entirely enclosed except doors for use for ingress and egress.
- (2) A sight-obscuring fence. For the purpose of this Code, a sight-obscuring fences is one constructed of recognized fencing materials as approved by the City Administrator. Such materials shall be constructed so as to make a substantially tight fence, and which shall be at a height of six (6) feet. Wooden materials shall be protected from rot, decay and insect infestation, and shall be maintained in a safe and structurally sound condition.

(b) **Junk.** Junk as used in this section shall include, but is not limited to, regardless of value any derelict, neglected or wrecked motor vehicles or parts thereof, or any appliances or parts thereof, glass, paper, waste tire, waste or discarded material, old machinery or parts thereof, used fixtures, metal, lumber or wood.

- (1) **Derelict Vehicle.** Any used motor vehicle without a vehicle license or with an expired license.
- (2) **Fixture.** Any item that is designed to be used indoors or otherwise protected from environmental elements. This includes, but is not limited to, upholstered furniture and heating, plumbing, and electrical fixtures.
- (3) **Neglected Vehicle.** A motor vehicle that is missing its engine or transmission but has all of its body parts intact including fenders, hood, trunk, glass and tires.
- (4) **Waste Tire.** A tire that is no longer suitable for its original intended purpose because of wear damage or defect.

- (5) **Wrecked Vehicle.** A motor vehicle that is dismantled or partially dismantled or having a broken or missing window or windshield or lacking a wheel or tire.

5.11.2 Keeping of Junk.

- (a) Except as otherwise provided in Subsection (b), it is unlawful for any person, or the agent or employee of any person, to keep any junk out of doors on any street, or for more than ten (10) days on any lot or premises within the city or in a building that is not wholly or entirely enclosed except doors used for ingress or egress.
- (b) It is unlawful to store, or permit the storing of more than two derelict, neglected, or wrecked vehicles upon any private property within the City, unless the vehicle is in an approved enclosure as defined in Section 5.11.1 (a)(1) of this code. Any derelict, neglected, or wrecked vehicle shall be contained within an approved enclosure as defined in Section 5.11.1(a) of this code. All vehicles under this section shall be in compliance with ORS 819.010, as it is included in this code for reference, or they shall be subject to immediate abatement and appropriate enforcement action.
- (c) The abatement of junk nuisances from private or public property is subject to the provisions of Section 5.13 of this Code.

5.11.3 Exceptions. The provisions of this section shall not apply to:

- (a) Any wrecked, neglected or derelict motor vehicle or parts thereof kept in a motor vehicle wrecking business licensed by the City.
- (b) Open storage of material directly associated with the primary activity of a business, provided the business is a permitted special or conditional use within any commercial or industrial zone and the materials are enclosed by a sight-obscuring fence erected in conformance with Section 5.11.1(a)(2).

5.11.4 Violation; Penalty. Unless otherwise stated, a violation of Section 5.11 of the Dayton Municipal Code is a Class A violation.

5.12 Businesses or Places Where Patrons, Employees, Residents or Occupants Engage in a Pattern of Unlawful Activities. *(Added by Ordinance #496, adopted and effective 4/7/97)*

5.12.1 Definitions.

- (a) **Chronic Nuisance Property.**
 - (1) Property on which three or more nuisance activities have occurred during any 6 month period; or
 - (2) Property on which or within 300 feet of which any person associated with the property has engaged in three or more nuisance activities during any 6 month period.

- (b) **Nuisance Activities.** Any of the following activities, behaviors, or criminal conduct:
- (1) Public drinking of alcohol as defined by Dayton Municipal Code Section 2.15 and/or any alcoholic liquor violation as provided in ORS 471.105-.500. *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (2) Loitering to solicit prostitution (ORS 167.002);
 - (3) Unlawful prostitution procurement activities (ORS 167.012);
 - (4) Unnecessary noise, as defined by Dayton Municipal Code Section 2.8. *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (5) Assault (ORS 163.160, 163.165, 163.175, or 163.185) *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (6) Sexual abuse (ORS 163.415, 163.425, or 163.427)
 - (7) Public indecency (ORS 163.465)
 - (8) Criminal trespass (ORS 164.245 or 164.255)
 - (9) Criminal mischief (ORS 164.345, 164.354, or 164.365)
 - (10) Disorderly conduct (ORS 166.025)
 - (11) Harassment (ORS 166.065)
 - (12) Minor in possession of alcohol (ORS 471.430)
 - (13) Unlawful sale of tobacco to minors and/or unlawful possession of tobacco by minors (ORS 163.575)
 - (14) Unlawful manufacture, delivery, or possession of a controlled substance (ORS 475.992)
 - (15) Public urination or defecation as defined by Dayton Municipal Code Section 2.11.2 *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (16) Firing or discharging of a firearm as provided in Dayton Municipal Code Section 2.6.1 *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (17) Illegal gambling as provided in ORS 167.117, 167.122, or 167.127
 - (18) Endangering the welfare of a minor as defined in ORS 163.575. *(Added by Ordinance #596, 5/3/10 and effective 6/2/10)*

- (19) **Offensive littering** as defined in ORS 164.805. *(Added by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (20) **Menacing** as defined in ORS 163.190. *(Added by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (21) **Reckless endangering** as defined in ORS 163.195. *(Added by Ordinance #596, 5/3/10 and effective 6/2/10)*
 - (22) **Animal abuse, neglect, abandonment, or fighting, or dog fighting** as defined in ORS 167.310 through 167.330. *(Added by Ordinance #596, 5/3/10 and effective 6/2/10)*
- (c) **Permit.** To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.
 - (d) **Person.** Any natural person, agent, association, firm, partnership or corporation capable of owning, occupying or using property.
 - (e) **Person in Charge.** Any person, in actual or constructive possession of a property, including but not limited to an owner or occupant of a property under his or her dominion, ownership or control.
 - (f) **Person Associated With.** Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize, or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner thereof.

5.12.2 Violation.

- (a) Any property which is a chronic property is in violation of this Section of the Dayton Municipal Code and subject to its remedies.
- (b) Any person in charge who permits property to be a chronic nuisance property shall be in violation of this Section of the Dayton Municipal Code and subject to its remedies.

5.12.3 Enforcement and Remedies.

- (a) City Council may authorize the City Attorney to commence legal proceedings in a court of competent jurisdiction to enjoin or abate a chronic nuisance property and to seek closure, the imposition of civil penalties against any or all persons in charge thereof, and any other relief deemed appropriate.
- (b) In the event a court determines a property to be in violation of Dayton Municipal Code Section 5.12, the court shall order that the property be closed and secured against all access, use and occupancy for a period of not less than 6 months, nor more than 1 year. The person in charge of any

property determined to be in such violation is subject to a civil penalty of up to \$100 per day for each day the violation occurred on the property.

- (c) In addition to other relief ordered, a court may authorize the City to physically secure the property against all access, use or occupancy in the event that a person in charge fails to do so within the time specified by the court. In the event that the city is authorized to secure the property, all costs reasonably incurred by the City to physically secure the property shall be paid to the City by the person in charge and may be included in the City's money judgment. The court may in its discretion, award attorney fees to the prevailing party.

5.12.4 Burden of Proof; Affirmative Defenses.

- (a) In an action under Section 5.12 of the Dayton Municipal Code, the City shall have the initial burden of proof to show by a preponderance of the evidence that a violation under that Section has occurred.
- (b) It is a defense to an action under Section 5.12 that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become a chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is a chronic nuisance property.

5.13 Uniform Nuisance Abatement Procedure. *(Added by Ordinance #496, adopted and effective 4/7/97)*

Except as otherwise expressly provided, violations of this Chapter shall be subject to the abatement procedure described below:

5.13.1 Definitions:

- (a) **Enforcement Officer.** Unless otherwise stated in the Code, "Enforcement Officer" shall mean the City Manager, his/her designee, or a peace officer. *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
- (b) **Person.** Any natural person or persons, firm, partnership, association or corporation.
- (c) **Responsible Party.** The person responsible for curing or remedying a nuisance and includes:
 - (1) The owner of the property or the owner's manager or agent or other person in control of the property on behalf of the owner;
 - (2) The person occupying the property including bailee, lessee, tenant or other person having possession;
 - (3) The person who is alleged to have established, or allowed to continue the nuisance.

5.13.2 Abatement Notice

- (a) If the enforcement officer is satisfied that a nuisance as defined in this or any other ordinance of the City exists, he/she shall cause a notice to be posted on the premises or at the site of the nuisance directing the responsible party to abate the nuisance.
- (b) At the time of posting, the enforcement officer shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the responsible party at their last known address.
- (c) The notice to abate shall contain:
 - (1) A description of the real property on which the nuisance exists identified by street address and/or county tax lot number.
 - (2) A direction to abate the nuisance within ten (10) calendar days from the date of the notice.
 - (3) A description of the nuisance.
 - (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 responsible party or assessed against the property, or both.
 - (5) A statement that the responsible party may protest the order to abate by giving written notice to the enforcement officer within ten (10) calendar days from the date of the notice.
 - (6) A statement that failure to abate a nuisance may result in a court action.
- (d) Upon completion of the posting and/or mailing, the enforcement officer posting and mailing shall execute and file certificates stating the date and place of the mailing and/or posting respectively.
- (e) An error in the name or address of the responsible party shall not make the notice void, and in such a case the posted notice shall be sufficient.
- (f) Personal service on the responsible party, proved by certificate of the enforcement officer, may be used in lieu of the above process for posting and mailing.

5.13.3 Abatement by Responsible Party.

- (a) Within ten (10) days after the posting and mailing of the notice as provided in Section 5.13.2, a responsible party shall remove the nuisance or show that no nuisance exists.
- (b) A responsible party, protesting that no nuisance exists, shall file with the enforcement officer a written statement specifying the basis for protesting.

- (c) The statement shall be referred to City Council as a part of the Council's 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; and the Council shall determine whether or not a nuisance in fact exists; and the 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 responsible party shall, within ten (10) days after the Council determination, abate the nuisance.

5.13.4 Abatement by the City.

- (a) If, within the time allowed, the nuisance has not been abated by a responsible party, the enforcement officer may cause the nuisance to be abated.
- (b) The enforcement officer, city employees or contractors assisting the enforcement officer charged with abatement of the nuisance shall have the right at reasonable times to enter into and upon the property in accordance with law to investigate or cause the removal of a nuisance. *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
- (c) The enforcement officer shall keep an accurate record of the expense incurred by the City in physically abating the nuisance, and shall include therein a charge of 25 percent (25%) of the expense for administration overhead. *(Revised by Ordinance #596, 5/3/10 and effective 6/2/10)*
- (d) If abatement requires removal of personal property with salvage value, the personal property may be sold by the City and the proceeds applied toward the cost of the abatement.

5.13.5 Assessment of Costs.

- (a) The enforcement officer, by registered or certified mail, postage prepaid, or by personal service, shall forward to a responsible party a notice stating:
 - (1) The total cost of abatement and inspections, including the administrative overhead.
 - (2) That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty (30) calendar days from the date of the notice.
 - (3) That if the responsible party objects to the cost of the abatement as indicated, they may file a written notice of objection with the enforcement officer not more than ten (10) calendar days from the date of the notice.
 - (i) The objection shall be referred to Council as part of the Council's regular agenda at its next succeeding meeting

where it shall hear and determine the validity of the objection to the costs to be assessed.

- (b) If the costs of the abatement are not paid within thirty (30) days of the date of the notice, or a Council determination of the validity of any objection to the costs to be assessed, an assessment of the costs as stated or as determined by the Council shall be made by resolution and shall thereupon be entered in the docket of city liens; and upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.
- (c) The lien shall bear interest at the rate of twelve percent (12%) per annum. The interest shall commence from the date of the entry in the lien docket.
- (d) An error in the name of the responsible party shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property.

5.13.6 Abatement; Joint Responsibility. If there is more than one responsible party, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

5.13.7 Summary Abatement. The procedure provided by this ordinance is not exclusive, but is in addition to procedure provided by other ordinances; and an enforcement officer may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property.

5.13.8 Separate Violations.

- (a) Each day's violation of any provision of this Chapter of the Dayton Municipal Code constitutes a separate violation; and
- (b) The requirement to abate a nuisance is not a penalty for violating this ordinance, but is an additional remedy. The imposition of a civil violation forfeiture does not relieve a person of the duty to abate the nuisance.

5.13.9 Non-Exclusive Remedy. The procedures and remedies contained in this ordinance shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes or state law which are intended to alleviate ordinance violations or abate nuisances and the procedures set forth in this Chapter of the Dayton Municipal Code shall not be prerequisite for utilizing any of said alternative remedies.

5.14 Violations. Unless otherwise specified, any violation of any section of this Chapter of the Dayton Municipal Code is a Class C violation. *(Added by Ordinance #512, adopted 03/01/99 and effective 04/01/99)*