

**Subject: Nuisance Legislation Package
 Ordinance Nos. 1517, 1518, &
 1519**

Proposed Council Action:

These Ordinances are on for First Reading. No action requested. Unless directed otherwise, these three ordinances will be brought back on February 19th for Second Reading and Adoption.

Dept. Origin: Code Enforcement Office

**Prepared by: Jennifer Robertson,
 City Attorney's Office**

For Agenda of: February 5, 2019

**Exhibits: Ordinance Nos. 1517,
 1518, & 1519**

Initial & Date

Concurred by Mayor: _____

Approved by City Planner: _____

Approved as to form by City Atty: JSR/1-29-19

Approved by Finance Director: _____

Approved by Department Head: _____

INFORMATION / BACKGROUND

A recent issue with regard to code enforcement has arisen which caused the Code Enforcement Officer to review the City's nuisance code. The nuisance code (Chapter 9.03 RMC) was adopted in 1968 and with the exception of one small change in 1980, has not been updated since. The Code Enforcement Officer requested the City Attorney's office review and update the code. In doing so, the City Attorney is recommending a package of legislation to address nuisances in the City. These are described below:

1. Ordinance 1517 – Update to Chapter 9.03 Nuisance Code.

This ordinance which will fully replace the current Chapter 9.03 incorporates current state law to describe nuisances, including providing definitions (section 9.03.010), outlining prohibited conduct (9.03.020), and identifying types of "public nuisances" (9.03.030). The Ordinance also provides for joint liability by property owners and renters or responsible parties (9.03.040). The Ordinance also provides for chronic criminal nuisances (9.03.050) which allows the city to take enforcement action against properties with chronic criminal activity. The Ordinance is enforced through either the code enforcement procedures in Chapter 12.40 RMC, through a criminal complaint, or through the civil infraction process contained in Chapter 9.22 RMC.

2. Ordinance 1518 – New Chapter 9.05 "Junk Vehicles".

State law allows cities to take enforcement action against junk vehicles which are stored on private property. Most cities have junk vehicle codes, but Ruston did not. Junk vehicles are defined by state law¹ as follows:

¹ RCW 46.55.010(5).

A vehicle meeting at least three (3) of the following requirements:

1. Is three (3) years old or older;
2. Is extensively damaged, such damage including, but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor or transmission;
3. Is apparently inoperable;
4. Has an approximate fair market value equal only to the approximate value of the scrap in it.

This definition is adopted in RMC 9.05.020. There are exemptions to this definition. RMC 9.05.040. Vehicles meeting this definition are declared a public nuisance (9.05.030) and the City may require their removal. RMC 9.05.050. This code is enforced using the code enforcement procedures in Chapter 12.40 RMC, filing a criminal citation or issuing a civil infraction (Ch. 9.22 RMC).

3. Ordinance 1519 – New Chapter 9.09 – Litter Control.

While the City has provisions regarding how solid waste is to be stored for pick up, etc. in Title 6, it does not have a general litter code. A new chapter 9.09 RMC provides for additional tools for enforcement for litter in public places, parks, private property, etc. The chapter prohibits littering in public places (9.09.030) and requires litter to be placed into receptacles (9.09.040). The ordinance also prohibits littering in parks (9.09.050) or in lakes, ponds, streams, fountains, etc. (9.09.060). The ordinance provides a tool for enforcement against trucks that are causing litter (9.09.070) and for litter thrown from vehicles (9.09.080). This ordinance prohibits sweeping litter into gutters and requires merchants to keep their sidewalks free of litter. (9.09.090). The ordinance also prohibits keeping litter on private property. (9.09.100). Finally, the chapter also prohibits the posting of notices on public facilities. (RMC 9.09.110). This chapter is enforced using the code enforcement procedures in Chapter 12.40 RMC, filing a criminal citation or issuing a civil infraction (Ch. 9.22 RMC).

FISCAL CONSIDERATION

None.

RECOMMENDATION / MOTION

These Ordinances are on for First Reading. No action requested. Unless directed otherwise, these three ordinances will be brought back on February 19th for Second Reading and Adoption.

ORDINANCE NO. 1517

AN ORDINANCE OF THE CITY OF RUSTON, RELATING TO NUISANCES, UPDATING THE CITY'S NUISANCE CHAPTER 9.03 BY REPEALING AND REPLACING THE SAME, ADOPTING NEW SECTIONS 9.03.010 (DEFINITIONS), 9.03.030 (PROHIBITED CONDUCT), 9.03.030 (TYPES OF PUBLIC NUISANCES), 9.03.040 (JOINT AND SEVERAL LIABILITY), 9.03.050 (NOTIFICATION TO NONRESIDENT OWNER OF CRIMINAL CONDUCT), 9.03.060 (AUTHORIZED ACT NOT A PUBLIC NUISANCE), AND 9.03.070 (VIOLATION-PENALTY), INCORPORATING THE CODE ENFORCEMENT PROCEDURES CONTAINED IN CHAPTER 12.40 RMC FOR USE IN ENFORCEMENT OF NUISANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the presence of public nuisances has a detrimental effect on the health safety and welfare of the community; and

WHEREAS, the City initially adopted a code on nuisances in 1968; and

WHEREAS, that code was last amended in 1980; and

WHEREAS, the City's code enforcement officer has recommended that the nuisance code be brought current and that other codes relating to junk vehicles and litter also be adopted; and

WHEREAS, this ordinance provides an up-to-date chapter on nuisances and enforcement actions against the same; and

WHEREAS, the City Council finds that it is in the public interest to update the nuisance ordinance for use in cleaning up the City and removing nuisances and enforcing its codes; and

WHEREAS, on February 7, 2019, the City Council held first reading of this ordinance; and

WHEREAS, on February 21, 2019, the City Council held the second reading of this Ordinance and adopted this Ordinance during its regular meeting; **NOW, THEREFORE**

THE CITY COUNCIL OF THE CITY OF RUSTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 9.03 RMC is hereby repealed and replaced with the following new

Chapter 9.03 RMC:

Chapter 9.03

PUBLIC NUISANCES

Sections:

- 9.03.010 Definitions.
- 9.03.020 Prohibited conduct.
- 9.03.030 Types of public nuisances.
- 9.03.040 Joint and several liability.
- 9.03.050 Notification to nonresident owner of criminal conduct.
- 9.03.060 Authorized act not a public nuisance.
- 9.03.070 Violation – Penalty.

State law reference(s) – Nuisances, RCW 7.48; RCW 9.66.010 et seq.; public health authority, RCW 35A.70.070; abandoned or unclaimed property, RCW 63.32.010 et seq.; disposition of certain unclaimed property, RCW 63.21.010 et seq.; local health departments, RCW 70.05.010 et seq.; mosquito control, RCW 70.22.010 et seq.

9.03.010 Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

a. *Abate* means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes violation of this chapter by such means and in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety, and welfare of the community.

b. *Building materials* means and includes lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint, and similar materials.

c. *Chronic criminal nuisance* means any premises at which three (3) or more instances of criminal conduct occurs within a one (1) year period when such criminal conduct is committed by the person who either owns, occupies, leases, or rents the premises, or who is an invitee, licensee, or guest of the person who owns, occupies, leases, or rents the premises.

d. *Criminal conduct* shall mean any criminal act that is defined by the city of Ruston, the state of Washington, or the United States as a misdemeanor, gross misdemeanor, felony, or crime, or which is otherwise punishable by a sentence in a correctional facility, jail, or prison. Gang or gang-related activity, as those terms are defined by RCW 59.18.030, shall also be considered criminal conduct. The term shall also include the seizure and/or forfeiture of real or personal property pursuant to RCW 69.50.505 or a similar federal statute. Criminal conduct engaged in by any person who either owns, occupies, leases, or rents the premises, or who is an invitee, licensee, or guest of the person who owns, occupies, leases, or rents the premises, shall be deemed to have occurred on the premises even if such event does not conclude on the

premises; provided, that such criminal event originates or starts on the premises and is concluded within one hundred (100) feet of the premises.

1. *Criminal conduct excluded from definition.* For the purposes of this chapter, criminal conduct shall not include conduct wherein:

(a). The person who owns, occupies, leases, or rents the premises, or who is an invitee, licensee, or guest of the person who owns, occupies, leases, or rents the premises was the victim of the criminal conduct; or

(b). The person who owns, occupies, leases, or rents the premises, or who is an invitee, licensee, or guest of the person who owns, occupies, leases, or rents the premises contacted the police to report the criminal conduct.

2. *Establishing existence of criminal conduct.* In establishing the existence of criminal conduct on the premises, the city shall have the burden of establishing an instance of criminal conduct by a preponderance of the evidence. The entry of a certified order of judgment and sentence, or other certified court document that establishes a conviction or the entry of a deferred prosecution or sentence, or any certified document maintained by the court that contains an entry of a finding of guilt, an admission to the commission of the criminal conduct, an admission to the facts that would establish the commission of the criminal conduct, or an acknowledgment that there are sufficient facts to prove the instance of criminal conduct, shall be sufficient proof of the occurrence of the criminal conduct; provided, that an absence of such court document(s) shall not prohibit the city from establishing that an instance of criminal conduct occurred. Police reports and other documentary evidence shall be admissible as evidence of criminal conduct; provided, that such reports are certified pursuant to RCW 9A.72.085.

e. *Director* means the director of the department in charge of code enforcement or his or her designee or any designated alternate who is empowered by ordinance or by the mayor to enforce this chapter including assigned code enforcement officials.

f. *Graffiti* means any unauthorized inscription, word, figure, picture, graphics, or design that is sprayed, painted, posted, pasted, drawn, or otherwise affixed to or upon any surface of public or private property. Signs regulated by Chapter 25.09 RMC shall not constitute graffiti under this chapter.

g. *Owner* means one (1) or more persons, jointly or severally, in whom is vested all or any part of the legal title to the premises, or all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or a part of such premises.

h. *Person* means any individual, firm, association, partnership, corporation, or any other entity, public or private.

i. *Person responsible for the violation* specifically includes any person in actual or constructive possession of the premises, including but not limited to an owner, lessee, tenant, or occupant of the premises.

j. *Premises* means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved, including adjacent sidewalks, public rights-of-way, and parking strips and any lake, river, stream, drainage way, or wetland.

9.03.020 Prohibited conduct.

It is a violation of this chapter for any person to permit, create, maintain, or allow, upon any premises, any of the acts or things declared in RMC 9.03.030 to be a public nuisance.

9.03.030 Types of public nuisances.

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance, subjecting the person responsible for the violation to the penalties provided for in RMC 9.03.050:

1. The existence of any trash, dirt, filth, the carcass of any animal, manure or rubbish, accumulation of yard trimmings, excluding properly maintained yard compost, or other matter which is offensive to a reasonable person; except for such yard debris that is properly contained and concealed as not to affect the health, safety, or depreciation of adjoining property for the purpose of composting.
2. Erecting, maintaining, using, placing, depositing, leaving, or permitting to be or remain in or upon any premises, which may be viewed or smelled from without the premises, or in or upon any street, alley, sidewalk, park, parkway, or other public or private place in the city, any one (1) or more of the following disorderly, disturbing, unsanitary, fly-producing, rat-harboring, disease-causing places, conditions, or things:
 - a. Any putrid, unhealthy, or unwholesome bones, meat, hides, skins, the whole or any part of any dead animal, fish, or fowl, or waste parts of fish, vegetable, or animal matter in any quantity; but nothing herein shall prevent the temporary retention of waste in approved covered receptacles; or
 - b. Any privies, vaults, cesspools, open containers of stagnant water, sumps, pits, or like places which are not securely protected from flies and rats, or which are malodorous; or
 - c. An accumulation of material including but not limited to bottles, cans, glass, plastic, ashes, scrap metal, wire bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster, litter, rags, empty barrels, boxes, crates, packing cases, mattresses, bedding, packing hay, straw, or other packing material or building materials on any premises which is not properly stored or neatly piled or is offensive to a reasonable person or in which flies or rats may breed or multiply; or
 - d. Accumulation of any litter, garbage, trash, refuse, and/or rubbish; or
 - e. The keeping, using, or maintaining of any pen, stable, lot, place, or premises in which any hog, cattle, or fowl may be confined or kept in such a manner as to be nauseous, foul, or offensive.
3. The existence of any fence or other structure on private property abutting or fronting upon any public street, sidewalk, or place which is in a sagging, leaning, fallen, decayed, or other dilapidated or unsafe condition.

4. The existence of wrecked or disassembled trailers, house trailers, boats, tractors, or other vehicle, appliance, or machinery of any kind, or any major parts thereof.
5. The existence on any premises of any abandoned or unused well, pit, shaft, cistern, or storage tank without first demolishing or removing from the premises such storage tank, or securely closing and barring any entrance or trapdoor thereto or without filling any well, pit, shaft, or cistern or capping the same with sufficient security to prevent access thereto.
6. The existence in a place accessible to children of any attractive nuisance dangerous to children, including but not limited to any abandoned, broken, or neglected equipment, machinery, refrigerator, freezer, or other large appliance.
7. Dense smoke, noxious fumes, gas, and soot, or cinders, in unreasonable quantities.
8. All snow and ice not removed from public sidewalks within a reasonable time after the snow and ice have ceased to be deposited thereon.
9. All trees, hedges, billboards, fences, or other obstructions which prevent persons from having a clear view of traffic approaching an intersection from cross streets in sufficient time to bring a motor vehicle driven at a legal speed to a full stop before the intersection is reached.
10. Any use of property abutting on a public street or sidewalk or any use of a public street or sidewalk which causes large crowds of people to gather, obstructing traffic and the free use of the streets or sidewalks. This subsection shall not apply to events, programs, or parades authorized by the city under a special events permit.
11. Any poisonous or harmful substance which is reasonably accessible to persons or to animals.
12. The keeping or harboring of any animal which by frequent or habitual howling, yelping, barking, or the making of other noises, or the keeping or harboring of any fowl which by frequent habitual crowing or the making of other noises shall annoy or disturb a neighborhood or any considerable number of persons.
13. Every building or unit within a building used for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance as defined in Chapter 69.50 RCW, legend drug as defined in Chapter 69.41 RCW, or imitation controlled substance as defined in Chapter 69.52 RCW, and every building or unit within a building wherein or upon which such acts take place.
14. Soils contaminated by dangerous waste, hazardous substances, or hazardous wastes as those terms are defined in RCW 70.105.010.
15. The existence of graffiti on public property or on private property where the graffiti is visible from any vantage point located on public property, a railway, or any property open for business to the public.
16. Maintaining, conducting, promoting, facilitating, permitting, or allowing a chronic criminal nuisance.

9.03.040 Joint and several liability.

A public nuisance is actionable against the person responsible for the violation, as that term is defined in RMC 9.03.010(i), in accordance with RMC 9.03.070. Responsibility for a public nuisance under this chapter is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for a violation.

9.03.050 Notification to nonresident owner of criminal conduct.

If criminal conduct occurs on the premises that may create a chronic criminal nuisance, and the owner of the premises does not reasonably appear to the city to reside therein, the police department may cause notice to be sent to the premises' owner advising the owner of the occurrence of criminal conduct. Notice sent to the owner should set forth the date of the occurrence, the location of the occurrence, the nature of the occurrence, and the name of the person who engaged in the occurrence. Notice may be sent whenever the police department has reasonable grounds to believe that criminal conduct has occurred on the premises. Notice may be sent by first class mail, postage prepaid, to the last known address of the owner.

9.03.060 Authorized act not a public nuisance.

No act which is done or maintained under the express authority of a statute or ordinance can be deemed a public nuisance.

9.03.070 Violation – Penalty.

a. *Civil code enforcement action.* Any violation of any provision of this chapter constitutes a civil violation under Chapter 12.40 RMC for which a monetary penalty may be assessed and abatement may be required as provided therein.

b. *Criminal offense.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of the Ruston City Code may be charged criminally, pursuant to RMC 12.40.080(b).

c. *Civil infraction.* In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter may be issued a class 1 civil infraction pursuant to RCW 7.80.120, as currently enacted or hereafter amended or under Chapter 9.22 RMC.

d. *Abatement proceedings.* As an alternative to any other penalty provided in this chapter, abatement proceedings may be instituted under Title 7 RCW.

e. *Repeat violation or failure to abate – Criminal misdemeanor charge – Chronic criminal nuisance.* For the purpose of filing criminal charges under RMC 12.40.080(b) for a subsequent violation after a prior violation is deemed committed, the subsequent violation for a chronic criminal nuisance must occur within 180 days from the date the prior violation was deemed committed. For a chronic criminal nuisance, a subsequent violation is a single occurrence of criminal conduct.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should

be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 21st day of February, 2019.

APPROVED by the Mayor this 21st day of February, 2019.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Jennifer S. Robertson

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: 1517