

ORDINANCE NO.: 2015-101

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina,
Chapter 8, Environmental Health and Sanitation, Article I, In General and Article II, Nuisances

BE IT ORDAINED by the Mayor and Council this 5th day of January, 2016, that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 8, Environmental Health and Sanitation, Article I, In General and Article II, Nuisances are amended to read as follows:

Article I. In General

Sec. 8-2. Filling stations and garages to be kept clean and sanitary.

Every person owning or operating a public filling station or public garage in the city shall keep the premises in and about such filling station or garage in a neat, clean and sanitary manner, and shall keep the sidewalks, walkways and driveways in and about such filling station or garage free from grease, oil, water or other substance. Such filling station or garage shall at all times be subject to the inspection of the Chief of Police or his designated representatives. The owner or operator of such filling station or garage shall promptly carry out the order of any such inspector with regard to the keeping of such station or garage.

Sec. 8-3. Outdoor placement of certain items prohibited.

(a) It shall be unlawful for the occupant or owner of any property within the city to allow any of the following items to remain on the property outside a dwelling or other enclosed structure for longer than 48 hours, in any location visible from streets or sidewalks adjacent to the property: Appliances, bedding, bottles, glass, cans, cardboard, upholstered furniture manufactured for indoor use only, household appliances, jars, lumber and building supply materials not related to an active permit and not neatly stacked, machine parts, motor vehicles parts, pallets, paper, plumbing fixtures, rags, scrap metal.

(b) For purposes of this section, the phrase "outside a dwelling or other enclosed structure" shall mean any location that is not within the interior of a dwelling or other enclosed structure. Porches, balconies, decks, carports or other similar structures, unless completely enclosed, shall be deemed to be outside a dwelling or other enclosed structure.

Article II. Nuisances

Section 8-31. Nuisance - definitions.

(a) *Definitions.* As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

Abate means repair, replace, remove, destroy or otherwise remedy the condition in question by such means, in such time, in such a manner and to such an extent as the enforcement officer or hearing committee shall determine to be in the best interest of the public, taking into account all facts and circumstances.

Business days means Monday at 9:00 am through Friday at 5:00 pm.

Citation means a charge or formal written accusation of violation of a municipal, state or federal law, regulation or ordinance, including any violations of the International Property Maintenance Code as adopted by the City of Columbia.

Conviction means a person has been found by a court of competent jurisdiction to have violated a municipal, state or federal law, regulation or ordinance, including any violations of the International Property Maintenance Code as adopted by the City of Columbia.

Delinquent arrearage means any funds or monies owed to the City of Columbia which were due to be paid on a date prior but have not been paid when due, provided, this shall not include arrearages which are the subject of a repayment plan or abatement agreement entered into with the City of Columbia.

Enforcement officer means a law enforcement officer, code enforcement official or city employee or official as may be designated in writing by the city manager or chief of police to enforce the provisions of this division.

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization.

Hearing board means the Property Maintenance Board of Appeals.

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Industrial wastes means all liquid and water-borne solid, liquid or gaseous wastes resulting from industrial manufacturing, food processing operation, processing any natural resource or mixture of such wastes with water or domestic sewage.

Notice means a written document informing the citizen of the nature of the violation.

Person means any landlord, property owner, manager, lessee, tenant, or individual, group, association, corporation, partnership, trust, estate or receiver having the capacity to sue or be sued.

Premises mean any building, lot parcel, real estate, or land or portion of land whether improved or unimproved, occupied or unoccupied, including adjacent parking.

Public nuisance means as determined by an enforcement officer based upon the facts and circumstances found after reasonable inquiry, investigation or upon citizen report, those conditions or events which constitute an unreasonable interference with rights of the public in general, and where, in a public place, or where the public congregates, or where the public is likely to come within the range of influence through the senses, a person unlawfully does an act or omits to perform a duty, which act or omission does any one or more of the following:

(1) Annoys, injures, subverts or endangers the public's order, economy, resources, safety, health, welfare, comfort, repose or offends public decency;

(2) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any waters or public places or way;

Structure means anything constructed, built or planted upon, any edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground.

(b) *Nuisances affecting public health.* The following are hereby declared to be nuisances affecting public health:

(1) All decayed or unwholesome food products or food waste not properly contained either inside or outside for more than 24 hours before pickup;

(2) Any violations of the smoking provisions of Article IV, Division 5 of this Chapter, provided, however, the remedies under that section are exclusive and remedies contained herein for nuisances are not available;

(3) All pools of stagnant water or vessels holding stagnant water in which mosquitoes can breed, excluding required retention ponds;

(4) Swimming pools which violate any of the requirements of section 5-1;

(5) Any violations of Chapter 4 as it relates to animal or animal waste;

(6) Any violation of the International Property Maintenance Code, as adopted by the City of Columbia, which related to sewage or leaks of sewage;

(7) Deliberate placement or discharge of into any part of a storm water drainage system of: untreated sewage, sewage solids, process wastewater, refuse, explosive or combustible liquid, solid or gas, oils, greases, industrial water or other polluted water except where a federal, state or local permit for connections, discharge or disposal has been obtained prior to the event; or waters or wastes containing toxic or poisonous wastes to constitute a hazard to humans, plants or animals or to cause corrosion, discoloration or deposition on real or personal property; or any solid or viscous substances in such quantities or of such size capable of causing obstruction to the flow in the storm water drainage system or other interference with the proper operation of the drainage system of the city.

(8) All structures in violation of the International Property Maintenance Code or Chapter 5 of this code, as adopted and all structures, for a period of 90 days, which remain unoccupied and boarded up, and whose exterior finish is destroyed, decayed, dilapidated or deteriorated in violation of the International Property Maintenance Code, as adopted.

(c) *Nuisances offending public decency, peace and order.* The following are hereby declared to be public nuisances affecting public decency, peace and order, whether such violations are of an intermittent, cyclical, continual, reoccurring or constant nature; and when the responsible party generates, enables, or contributes to the occurrence of the unlawful behavior by an absence or failure of property management policy or practice, absence or failure of control over the property, absence or failure of supervision of guests or invitees, absence or failure of security measures.

(1) Any structure, whether commercial or residential, where gambling devices, slot machines, punch boards and other such contrivances of similar character involving any elements of chance as a consideration or any type of gambling, bookmaking, wagering or betting is carried on, and all gambling equipment, except where such specific form of gambling is permitted by applicable law;

(2) Any structure, whether commercial or residential, operated as a bawdy house, house of assignation, place of prostitution or used and maintained for the commercial or criminal purposes of unlawful sexual activity in violation of federal, state or local law;

(3) Any structure, whether commercial or residential, where intoxicating liquors are manufactured, sold, bartered or given away in violation of federal, state or local law, or where intoxicating liquors kept for sale, barter or distribution in violation of federal, state or local law, and all liquors, bottles, kegs, pumps, bars and other property kept at and used for maintaining such a place; or where required safety plans are not in place, or where persistent violations of law occur under a failed or ineffective safety plan;

(4) Any structure, whether commercial or residential, where acts of sale, manufacture, possession or distribution of controlled substances occur in violation of federal, state and local law;

(5) Any structure, whether a commercial operation or a residential use, where violations against the federal, state or municipal laws occur with disproportionate frequency or intensity that they require an excessive public safety response cost. "Excessive public safety response" means:

(a) the reasonable deployment of five or more law enforcement officers to an emergency scene at any one time, or the reoccurring need for public safety or code personnel or emergency vehicles at the location when compared to the frequency or intensity of law or regulation enforcement required at other similarly situated structures;

(b) there have been more than 2 situations of unsafe traffic or crowd control issues which result in the request of emergency assistance or the need for law enforcement assistance from an emergency situation; provided, however, this does not include when traffic control or crowd control is requested in advance of a scheduled event pursuant to a city issued permit or prior discussions with law enforcement.

(c) There have been more than 6 citations, or search warrants executed, or a combination of the two, at that structure for any of the following behaviors during any twelve month period:

i. Violation of any state or local alcohol law;

ii. Violation of any federal, state or local narcotics law;

iii. Violation of any state or local gun law;

iv. Assaults; and/or

v. Crimes of violence against another person(s).

(6) Any overgrown, uninhabited, undeveloped or vacant land, lot or property not licensed or zoned for camping that has been identified by law enforcement as an area used by persons other than the owner as an area to inhabit or camp, or any overgrown, uninhabited, undeveloped or vacant land, lot or property used by persons as an area to flee or evade police upon approach, or used to avoid detection or investigation by law enforcement without regard to the time of day or night regarding such conduct, as identified by a citizen or police reported incident level of more than two times in a 60-day period.

(7) Reentry upon a specified public place, after being ejected and excluded from a public place as a result of conduct that placed themselves or others in potentially dangerous situations on public places by disobedience to safety rules, disorderly conduct or breaches of the peace. (See Article IV, Division 5 of this Chapter.)

(d) *Nuisances affecting public welfare and safety.* The following are hereby declared to be public nuisances affecting public welfare and safety:

(1) All trees, hedges, signs or other obstructions, or any portion of the same, so located on private property which prevent persons driving vehicles approaching an intersection of streets from having a clear safe view of traffic approaching such intersection;

(2) All trees, hedges, signs or other obstructions, or any portion of the same so located on private property which prevents the clear and unobstructed view of a fire hydrant, fire department connection or other fire protection device, or directional or identification signage pertaining to the above, from a public way;

(3) Any obstruction, erosion or depression which poses a potential hazard to vehicles or pedestrians using a right-of-way on private property where the public is invited or permitted to traverse for commercial purposes;

(4) All wires, strings, ropes or lighting contrivances over streets, alley or public grounds which are not authorized or permitted by the city or which are strung so that the lowest portion is less than 13½ feet above the surface of the ground;

(5) All explosives, flammable liquids and other dangerous substances stored in any manner, in any amount other than that manner or amount permitted by law;

(6) All hanging signs, awnings, canopies and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety or to be contrary to ordinance;

(7) Any motor vehicle that is unregistered, inoperable, derelict or abandoned on any highway or right-of-way, or other public or private property, unless such vehicle is stored inside of a completely enclosed permanent structure.

(8) Any tents, trailers, structures, cooking devices, appliance, chairs, tables, coolers or other objects used in impromptu, unpermitted or unmanaged outdoor events or gatherings in a required parking area or landscaped area of a business license holder, or the site of any short-term residential rental, unless that such outdoor events that are specifically permitted through legislative or administrative action, or sponsored by the business license holder in compliance with regulations governing such outdoor events.

(9) Reentry upon a specified public place, after being ejected and excluded from a public place as a result of conduct that placed themselves or others in potentially dangerous situations on public places by disobedience to safety rules, disorderly conduct or breaches of the peace. (See division 5 of this chapter and article).

(e) *Nuisances affecting public economy.* The following are hereby declared to be public nuisances affecting the public economy:

- (1) All structures bearing graffiti, to be abated by applicable law;
- (2) All businesses or commercial enterprises operating without a current and valid business license;
- (3) All premises that are found not in compliance with applicable licensing, landlord, zoning, land use laws and adopted codes;
- (4) Any delinquent arrearage of applicable city liens, taxes, fees, charges or assessments;
- (5) All premises which originate false fire or security alarms, as defined by sections 9-21 through 9-24 for fire alarms and sections 10-10 through 10-13 for security alarms.

Sec. 8-32. Other nuisances.

(a) The enumeration of specific nuisances in this division shall not be deemed to make lawful any other act or condition declared to be a nuisance by any other city ordinance, state law, federal law, or court decision.

(b) Any other violation which is considered a public nuisance by any other violation of the International Property Maintenance Code or the municipal ordinances of the City of Columbia is hereby included in this section by general reference.

Sec. 8-33. Reporting emergencies and emergency action.

(a) Any person who directly observes a nuisance posing an emergency threat to the public health or safety or to the environment shall immediately report the incident to the Columbia Police/Fire Communications Center and shall provide any information requested needed to investigate or abate the potential emergency. If any nuisance exists in such a condition so menacing to the public health, peace or safety that it is necessary that it be summarily abated, the city enforcement officer, after consultation with and concurrence from the city manager may proceed to abate the nuisance without a hearing.

(b) Whenever it is necessary to make an inspection to enforce any of the provisions of this article, or whenever the City Manager, the Chief of Police or his designee has reasonable cause to believe that there exists on or within any premises within the city any condition which would constitute a common nuisance, the Chief of Police or his designated inspector may enter such premises at all reasonable times to inspect the premises or to perform any duty imposed by this Code, provided that, if such premises are occupied, he shall first present proper credentials and request entry. If such premises are unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the premises and request entry. If such entry to either occupied or unoccupied premises is refused, the director of public services shall have recourse to every remedy provided by law to secure entry.

Sec. 8-34. Nuisances prohibited and unlawful.

No person shall create any public nuisance in the city, and no person shall by inaction permit a public nuisance to occur or continue on any real property under such person's control, whether by recorded or unrecorded instrument or permission. Nor shall any person permit a public nuisance to occur involving any personal property under such person's control.

Sec. 8-35. Institution of criminal process and penalty.

The declaration of the public nature of a nuisance must be made by the Chief of Police or the City Housing Officer or his designee. Enforcement of this chapter's provisions may be accomplished upon the institution of criminal process by way of uniform traffic ticket, municipal ordinance summons or warrant made only by a law enforcement officer or appropriate government official. Each day of violation constitutes a separate misdemeanor offense in accordance with section 1-5. In its discretion, the city may elect to use other applicable Code sections pertaining to remediation, abatement or offenses.

Sec. 8-36. Notice to clean up lot or premises.

Whenever it shall appear to the Chief of Police or the Housing Officer that there are lying within the city limits any lots or premises in a condition which shall constitute a present or potential hazard to the public health, the Chief of Police or the Housing Officer shall issue a written notice to the owner requiring him within a certain specified reasonable time to clear such premises or lot of all rank or uncultivated vegetable growth or briars, brush, grass, weeds, litter, offal, refuse, rubbish, trash, stagnant water or other matter deleterious to good health and public sanitation, as in the opinion of the issuing officer will abate such nuisance.

Sec. 8-37. Public abatement; notice, service.

(a) If a person fails or refuses to discharge the duty imposed by this section, the city may concurrently serve an administrative notice to abate a public nuisance upon the owner or occupant and demand that compliance must be achieved within the time specified in the notice.

(b) The city shall determine the individual, firm or corporation or lien holder who, from the records in the county tax assessor's office, appears to be the titled owner or lien holder of the property and cause a written notice of public nuisance to be served on such individual, firm or corporation or lien holder by:

(1) Personal service as attested to by affidavit of service; or by

(2) Copy mailed to such owner or lien holder at such place or address by United States certified mail return receipt requested; or

(3) The city shall cause a copy of the aforesaid notice to be posted at such structure, location or premises, which shall serve as notice to the public.

(c) The notice to abate the nuisance shall inform the person of the specific nuisance contained in this section, provide names, numbers and addresses for contact with the city; inform them of their rights to appeal and that, upon the day after the time specified in the notice, the city may abate the condition and assess an administrative fee and all public costs, including attorney's fees and costs as a lien against the property.

Sec. 8-38. Appeal procedures; hearing.

(a) *Appeal of finding of nuisance:* The responsible person, owner or occupant, or the lien holder of the property, may make a written demand to the Housing Official for a hearing on the question of whether a public nuisance in fact exists. This appeal stays the public abatement until such time as the matter is heard and decided by the hearing board. The appeal must be received by the Housing Official before the time specified in the notice. The appeal may be faxed or emailed to the manager. The written demand shall include a contact number, either phone or facsimile in order for the person to be informed of the hearing location, date and time. It shall not be a defense to the determination that a public nuisance exists that the property is boarded up or otherwise enclosed. The hearing board may amend or modify the notice to abate the public nuisance, or when appropriate under the facts presented, extend the time for compliance by the owner to such date as the majority of the appeals board may determine. The decisions of the board are final, and shall be delivered orally to the appellant on the date of the hearing, and then, if requested, written and mailed to the address provided.

(b) *Failure to appeal:* Failure to timely appeal constitutes a waiver of the right to appeal the existence of a public nuisance.

(c) *Appeal of assessment:* Further, in those instances where the nuisance has been abated by the city after the required notice, the owner or occupant of the property who has been served with a notice of assessment pursuant to this article may make a written demand to the manager for a hearing to review the cost of the abatement. This appeal stays the attachment of the lien until such time as the matter is heard and decided by the hearing board. The appeal of the assessment must be received by the manager within five business days of the appellant's receipt of the notice of assessment. The written demand shall include a contact number, either phone or facsimile in order for the person to be informed of the hearing location, date and time. In an appeal of the assessment of costs, no testimony shall be permitted on the issue of the existence of the public nuisance. The decisions of the board are final, and shall be delivered orally to the appellant on the date of the hearing, and then, if requested, written and mailed to the address provided.

(d) *Failure to appeal assessment:* Failure to timely appeal constitutes a waiver of the right to appeal the assessment of costs.

(e) *Notice of the hearing:* By way of the contact numbers provided in the written demand, the manager shall orally advise the owner of the location, date and time of the hearing. Notice of the hearing must be provided at least two business days prior to the hearing, excluding city recognized holidays and weekends.

(f) *Time and manner of hearings:* The hearings as allowed under this section shall be held as soon as practical but in any event no later than 10 business days after receipt of the appeal, excluding city recognized holidays and weekends. The hearing shall not be conducted under the strict rules of evidence, but the board can have formal rules of procedure. The enforcement officer shall present the facts and circumstances that resulted in a conclusion that a public nuisance existed. The owner, occupant or lien holder, or their agents, representatives or attorneys shall be given the opportunity to present evidence to the appeals board in the course of the hearing, and shall have the right of cross examination of the enforcement officer. When the nuisance has been abated by the city and the person has appealed the assessment of the administrative fee and actual costs, the hearing board shall have discretion to waive the administrative fee or the public cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the hearing board finds that justice and equity require such waiver or that any of the following did not conform to the provisions of this article:

- (1) The notice to remove the nuisance;
- (2) The work performed in abating the nuisance;
- (3) The itemized computation of charges and costs of abatement alleged to be owed by the owner of the property to the City.

Sec. 8-39. Liability for costs.

In the event of refusal or neglect of a person to cause such nuisance to be abated in the manner and within the time provided herein, it shall be reported to the manager. The manager may, in a reasonable and prudent manner, direct the expenditure of public resources to abate the nuisance condition. Fee and costs shall be established by ordinance. The cost of abatement shall include an administrative assessment, title search costs, lien filing costs and any attorney's fees and costs made necessary when the public is compelled to collect through legal process, in addition to the actual cost of labor and materials expended in public abatement. The person shall be served with a notice of assessment within seven days of the completion of the abatement. The notice of assessment shall include the administrative fee and a statement of public cost, attested to by affidavit, and shall be issued and served upon the person responsible for payment who shall make payment within 30 days of the date of service. Upon the expiration of the 30-day period, if the amount has not been paid in full or contested before the manager, the manager may cause a lien in that amount to be filed with the county clerk of court and with the finance director of the city. The lien shall be of record in the county courthouse and the office of the finance director in the book of liens, until paid or recovered, or otherwise released. Collection of the lien by way of foreclosure may be instituted by the city attorney on behalf of the city.

Sec. 8-40. Institution of Administrative Remedy and Penalty

(a) *Revocation of licenses or permits for public nuisance:* For any person or entity which holds or owns a license or permit issued by the City of Columbia, a determination of the public nature of a public nuisance must be made by the Chief of Police or must be made by the Director of Business Licenses for any public nuisance under section 8-31(e). Upon such a finding, in addition to any other relief under these ordinances or applicable law, enforcement of this chapter's provisions may be accomplished upon the revocation of any license or permit issued by the City of Columbia by way of a Notice of Revocation to be served on the License Holder, his/her designee or a person of suitable age and discretion who lives or works at the subject location.

(b) *Operating without a license or permit:* Each day a person operates without a license beginning on the next business day after receiving the notice of revocation, constitutes a separate misdemeanor offense, in accordance with section 1-5. In its discretion, the city may elect to use other applicable Code sections pertaining to remediation, abatement or offenses.

(c) *Review of finding of nuisance:* The responsible person, owner or occupant, or the lien holder of the property, may make a written demand to the City Manager for a hearing on the question of whether a public nuisance in fact exists. This review does not stay the revocation of the license or permit, but a hearing will be scheduled with the City Manager as soon as possible. The review must be received by the manager before the time specified in the notice. The review may be faxed or emailed to the manager. The written demand shall include an address and a contact number, either phone or facsimile, in order for the person to be informed of the hearing location, date and time. The City Manager may amend or modify the Notice of Revocation, or when appropriate under the facts presented, extend the time for compliance by the owner to such date as the City Manager may determine. The decisions of the City Manager are final, and shall be delivered in written form within 10 days and mailed to the address provided.

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(d) *City Manager's Decision*: Any appeal of the City Manager's administrative decision is final and reviewable by the Circuit Court in the same procedure and manner as state licensing appeals under Section 1-23-380, Code of Laws of South Carolina, as amended from time to time, incorporated herein by express reference.

Sec. 8-41. Severability.

The provisions of this article are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts, or provisions of this article. It is hereby declared that the intent of the council is that this article would have been adopted as if such illegal, invalid, or unconstitutional section, sentence, clause, part, or provision had not been included herein.

Requested by:

City Manager _____



Mayor

Approved by:




City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Public Hearing: 12/15/2015
Introduced: 12/15/2015
Final Reading: 1/5/2016