

AGENDA ITEM SUMMARY

DATE: 7/27/2009

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Hailey Ordinance No. 1031 - *Nuisance Ordinance*

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Following the Council's review of this ordinance at your July 13 meeting, I have revised the ordinance to include suggestions from the Mayor and Council and from department heads. A memo explains the significant revisions.

If you have any questions, please contact me. Thanks.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Casele # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	___
___ Safety Committee	___ P & Z Commission	___ Police	___
___ Streets	___ Public Works, Parks	___ Mayor	___

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Conduct a public hearing, and if appropriate, make a motion to approve Ordinance No. 1031 and to conduct a first reading of the ordinance.

FOLLOW-UP REMARKS:

MEMORANDUM

TO: Mayor Rick Davis and Hailey City Council Members

FROM: Ned C. Williamson

DATE: August 10, 2009

RE: Nuisance Ordinance

I have been asked to review our Nuisance Ordinance. Sometime ago, Hailey pursued a criminal action against a property owner under our present Nuisance Ordinance. The magistrate orally opined that the language in our ordinance was vague. In particular, the court was referring to a clause that prohibited waste matter which was "unsightly and interferes with the reasonable enjoyment of property by neighbors." This language is similar to the state law which regulates nuisances.

I am suggesting that Hailey adopt language that prohibits nuisances as generally defined by state law, but include very specific examples of enumerated nuisances. I believe this approach will address the court's concerns. This approach is also used by other cities in Idaho and throughout the United States. I have incorporated and modified examples from numerous other cities.

The Council reviewed a draft of this ordinance at the July 13 meeting. I have revised the ordinance to include your suggestions. The revisions include the following:

1. A street tree definition was added.
2. Deletion of "offensive" in the section 8.04.030(2).
3. Consolidation of the vacant building language.
4. Added permissive language about the city's obligation to pursue an abatement of a nuisance.
5. Added a provision that made a nuisance an unlawful act. This provision allows Hailey to pursue a criminal action.
6. Increased the criminal penalty to a \$1000 fine and 6 months in jail.

At the July 13 meeting, the Council asked for further staff review. I have again circulated a draft of this ordinance among department heads and have incorporated some of their suggestions. The primary suggestions from the department heads include the following:

1. Limit when an incomplete building can be declared a nuisance. Section 8.04.030(3) now only addresses an incomplete exterior, not an incomplete interior.
2. Building materials may now be stored during the duration of a building permit. *See Section 8.04.030(9)*. Before, we limited the storage of building materials to 6 months.

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3. The specific examples constituting nuisances for noxious weeds, trees and water flows were eliminated because staff felt it would be better to address these matters under existing law.
4. The language in 8.04.030(12) was modified to address only larger items. This modification would allow lawn furniture.
5. Language was added to show that other codes, such as the building, fire and zoning codes, may also be used to enforce. I added specific language that would recognize a citizen's right of private enforcement against an offending party. *See Section 8.04.090.*

Overall, the department heads have several concerns. For example, there is a concern about the cost of enforcement. Several department heads feel that the complaints may be numerous and that individuals will enlist the city to enforce private disputes. It has been my experience that enforcement is time intensive. Staff will have to develop internal procedures on handling complaints. In addition, there is a concern about the cost of compliance to the City. At a minimum, the River Street property will need to be addressed. There is also a concern about the cost of compliance for the general public, particularly in these economic times. .

If you have any questions, please contact me. Thank you.

HAILEY ORDINANCE NO. 1031

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, REPEALING CHAPTERS 8.04 AND 8.08 OF THE HAILEY MUNICIPAL CODE, AND REPLACING CHAPTER 8.04 OF THE HAILEY MUNICIPAL CODE TO PROVIDE A PURPOSE SECTION, TO PROVIDE DEFINITIONS, TO ENUMERATE SPECIFIC NUISANCES, TO ESTABLISH A NUISANCE ABATEMENT NOTICE, TO REQUIRE ABATEMENT OF A NUISANCE, TO PROVIDE AN APPEAL PROCESS, TO ALLOW THE COLLECTION OF ABATEMENT COSTS BY THE CITY, TO ESTABLISH PROHIBITED ACTS, AND TO PROVIDE A PENALTY PROVISION FOR VIOLATIONS OF CHAPTER 8.04 OF THE HAILEY MUNICIPAL CODE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Hailey has previously adopted Chapter 8.08 of the Hailey Municipal Code, which regulates the public nuisances;

WHEREAS, in order to promote the health, safety and welfare of the general public, the Mayor and the City Council of the City of Hailey desire to amend Title 8 of the Hailey Municipal Code by repealing Chapter 8.08 and replacing it with a new Chapter 8.04, to provide for regulation of public nuisances;

WHEREAS, the City of Hailey also desires to amend Chapter 8.08 of the Hailey Municipal Code to provide for a procedure to abate public nuisances; and

WHEREAS, the City of Hailey also desires to consolidate the Chapters 8.04 and 8.08 into a new Chapter 8.04.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Chapters 8.04 and 8.08 of the Hailey Municipal Code are hereby repealed in their entirety and replaced with a new Chapter 8.04, as follows:

Chapter 8.04

HEALTH AND SAFETY

Sections:

8.04.010	Purpose
8.04.020	Definitions
8.04.030	Nuisances Enumerated
8.04.040	Nuisance Abatement Notice
8.04.050	Abatement Required
8.04.060	Appeal
8.04.070	Abatement by City—Costs
8.04.080	Prohibited Acts

8.04.090 Violation—Penalty

8.04.010 Purpose. It is the purpose of this chapter to promote the public health, safety and general welfare by regulating public nuisances within the city, by providing for the abatement of such nuisances, by prohibiting those conditions that create health or safety hazards, by prohibiting those conditions which interfere with the enjoyment of public or private property, by controlling the deposit and burning of litter, and by prohibiting littering.

8.04.020 Definitions. For purposes of this Chapter 8.04, the following capitalized words and phrases shall apply as defined herein:

“Building Materials” shall mean and include lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint and similar materials.

“Junk” shall mean all appliances or parts thereof, all parts of motor vehicles, tires, all iron or other metal, plastics, glass, paper, cardboard, rubber, lumber, wood (excepting stacked firewood), mattresses, disabled trailers or parts thereof, all of which meet one of the following requirements:

- (a) Are discarded;
- (b) Are unusable;
- (c) Are broken; or
- (d) Have not been used for their primary and original purpose for a period of six months.

“Garbage” includes all putrescible waste, except sewage and body waste, including waste from accumulated animal food or vegetable matter, and including waste that attends the preparation, use, cooking, dealing in or storing meat, fish, fowl, fruit and vegetables that shall include all of such wastes or accumulations of vegetable matter of residences, restaurants, hotels and places where food is prepared for human consumption. Garbage shall not include recognized industrial by-products.

“Garbage Container” shall mean any and all containers and cans used for the storage and/or collection of waste, Refuse, Garbage and/or Rubbish.

“Nuisance” shall be considered a public nuisance and shall mean any condition or use of property which a) injures or endangers the comfort, health or safety of others, b) is indecent, or offensive to the senses, c) obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, stream, canal, or basin, or any public park, square, street, alley, sidewalk or highway, or d) is enumerated to be a Nuisance by Section 8.04.030 of the Hailey Municipal Code, or by any other state or federal law.

“Owner” and “Occupant,” wherever used in this chapter, may be used interchangeably, and shall mean every person in possession, charge or in control of any dwelling, flat, roominghouse, or any eating place, shop, place of business, manufacturing or business establishment where Garbage or other Refuse is created or accumulated.

“Refuse” shall mean solid wastes, including Garbage and Rubbish.

“Rubbish” shall mean Refuse other than Garbage, tin cans, bottles, leaves, weeds and cuttings from trees, lawns, shrubs, and gardens or other waste materials produced in the normal course of doing business, or everyday living. Rubbish shall not include recognizable industrial by-products.

“Street Tree” shall mean any tree, shrub, or other woody vegetation on lands within City of Hailey street rights-of-way.

“Waste” means unwanted solid, liquid, or gaseous materials.

8.04.030 Nuisances Enumerated. Without limitation of the generality of the definition of Nuisance, the following acts, omissions, conditions and things are declared to be and constitute a Nuisance:

- (1) Storing or accumulating, or permitting the storage or accumulation, of Junk on any premises where the Junk is exposed to view from any public place.
- (2) The accumulation, or permitting the accumulation of, tin cans, bottles, trash, litter, Waste or Refuse of any nature on any premises, or any dangerous accumulation of weeds, trash, dirt, filth, waste shrubs, lawn or yard trimmings, except in Garbage Containers maintained for regular collection. Regularly maintained compost piles shall not be considered a Nuisance.
- (3) Permitting the existence of i) any dilapidated, abandoned or partially destroyed building or structure, or ii) any unused building or structure which is not properly secured from entry, or failing to materially complete the exterior of any building or structure commenced and left unfinished for a period of six (6) months or more.
- (4) Storing, or permitting to be stored, any toxic, radioactive, caustic, flammable, explosive or other dangerous or hazardous substances, except when stored in compliance with the requirements of all regulatory agencies having jurisdiction.
- (5) Permitting the existence of any putrid, unsound or unwholesome bones, meat, hides or skins, or the whole or any part of any dead animal, fish or fowl.
- (6) Privies, vaults, cesspools, sumps, pits, excavations or like places which are not securely protected, or which are foul or malodorous.
- (7) Leaving or permitting to remain outside of any dwelling, building, or other structure, or within any unoccupied or abandoned building, dwelling, or other structure, under the control of any person, and in a place accessible to the public, any abandoned, unattended or discarded icebox, freezer, refrigerator or other container which has an airtight door or lid, snap lock or other locking device which may not be released from the inside, without first removing such door or lid, snap lock or other locking device from such icebox, freezer, refrigerator or container.
- (8) Any unguarded or abandoned pit, well or hole dangerous to life or of more than two feet (2') in depth on any unenclosed lot, without substantial covering, protection or fencing.
- (9) The accumulation, or permitting the accumulation, of Building Materials or objects of any nature where the same endangers property or safety, or constitutes a fire hazard, or where the Building Materials are exposed to view from any public place before or after the duration of a valid building permit.
- (10) The existence of any fence or other structure or thing on private property abutting or fronting upon any public street, sidewalk or place which is in a sagging, leaning, fallen,

decayed or otherwise dilapidated or unsafe condition.

(11) The existence or maintenance on any premises of a storage area, junkyard or dumping ground for the wrecking or disassembling of automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind, or for the storing or leaving of worn out, wrecked, inoperative or abandoned automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind or of any major parts thereof; provided, however that an automobile wrecking yard or other junkyard, or storage area for machinery or equipment where the same are permitted by the city zoning regulations or where the same are being used by contractors or builders or by other persons during the construction of a project at the site is not a Nuisance.

(12) Visible vehicle tires not mounted on a vehicle, vehicle bodies or parts, bed mattresses or springs, water heaters or other large household appliances.

(13) Animal manure in any quantity which is not securely protected from insects and the elements, or which is kept or handled in violation of any other ordinance of the city; provided, however, animal manure may be used on a property in such a manner and for such purposes as are compatible with customary methods of good husbandry.

(14) Any loud and unnecessary noises, as enumerated in Section 9.04.030 of the Hailey Municipal Code, as amended.

(15) All other uses or structures which are declared to be Nuisances by city ordinance, or building, fire or life safety codes.

8.04.040 Nuisance Abatement Notice.

A. If it is determined that a Nuisance exists on any lot, place or area, or any street, sidewalk or public right-of-way abutting the same, the city shall cause a notice to be issued to abate such Nuisance. Such notice shall contain a description of the property in terms reasonably sufficient to identify the location of the Nuisance, describe the Nuisance in terms reasonably sufficient to identify the same, direct abatement of the Nuisance, and specify the penalty provisions and appeal process as herein provided.

B. The abatement notice may be served in the following manner:

1. By personal service on the Owner of the lot, place or area, if the Owner lives within the city, and by personal service on the Occupant or person in charge or control of the property, if such person can be identified; or,

2. If the Owner does not live within the city, by registered mail to the Owner at the address shown on the last available assessment roll, or as otherwise known, and, by personal service on the Occupant or person in charge or control of the property, if such person can be identified; or

3. Should the Owner not be known or have an available address, the posting at a conspicuous place on the land, on abutting public right-of-way, and the publication of an advertisement at least once a week, for a period of two weeks, in a newspaper of general circulation, and by personal service on the Occupant or person in charge or control of the property, if such person can be identified. The newspaper advertisement shall be a general notice that the property has been posted and shall contain a general statement of the effect of such posting.

8.04.050 Abatement Required. It shall be the duty of the Owner, or person occupying or controlling any lot, place or area in the city which has been declared a Nuisance as provided herein, within fifteen (15) days of posting, mailing or personal service of the Nuisance abatement notice to remove the Nuisance. Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance, the city may cause legal action to be taken.

8.04.060 Appeal. Within fifteen (15) days from the date of posting, mailing or personal service of the required Nuisance abatement notice to the Owner or person occupying or controlling such lots or areas affected, such Owner or persons may appeal to the city council. Such appeals shall be in writing and shall be filed with the city clerk. At the time of filing an appeal, the appellant shall pay a fee for the appeal as established by resolution. At the regular meeting of the city council, not less than ten (10) days nor more than thirty (30) days thereafter, the city council shall proceed to hear and pass upon such appeal and the decision of the city council thereupon shall be final and conclusive.

8.04.070 Abatement by City – Costs. Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance within the time specified herein, the city may proceed with the removal work specified in the notice for removal of the Nuisance, and the cost of the work shall be paid by the Owner or Occupant or other person in control of the property. The expenses of removal by the city of any Nuisance found under the provisions of this chapter shall constitute a lien upon the property. The city may, at its option, institute a civil action for the removal and the abatement of such Nuisance, or may institute a criminal action under this Chapter 8.04.

8.04.080 Prohibited Acts.

A. It is unlawful for an Owner or Occupant to fail, neglect or refuse to remove a Nuisance from a property within the City of Hailey within the time set forth in an abatement notice served upon the Owner or Occupant in accordance with Section 8.04.040(B), above.

B. It is unlawful for any person to throw or deposit, or cause to be thrown or deposited upon any public street, alley, highway, ground, sidewalk, or any private vacant lot within the City of Hailey, any Refuse or Waste.

C. It is unlawful for any person to burn or cause to be burned on any public street or alley within the City of Hailey any Refuse or Waste.

C. It is unlawful for any person to dump, deposit or place any Garbage, Refuse, Waste or Rubbish on private property or in any Garbage Container within the City of Hailey without the authorization of the Owner or Occupant.

8.04.090 Violation–Penalty. Any person who violates any provision of this Chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars (\$1000.00) or imprisoned in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment. The rights and remedies provided by this ordinance are cumulative and the use of any one right or remedy shall not preclude the City of Hailey from pursuing any or all other remedies the city may have by law, statute, ordinance or otherwise. This ordinance does not preclude the right of a private party to seek private enforcement of this

ordinance against a party violating this Ordinance, but does not provide any private right of enforcement against the city for failure to enforce the provisions of this ordinance.

Section 2. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

**PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED
BY THE MAYOR THIS ___ DAY OF _____, 2009.**

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

