

Chapter 9 PUBLIC NUISANCE

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4-9-1: SHORT TITLE:

This chapter shall be known as the *VALLEY COUNTY PUBLIC NUISANCE ORDINANCE*.

4-9-2: AUTHORITY AND PURPOSE:

This chapter is enacted pursuant to authority conferred by article 12, section 2, Idaho constitution, and sections 31-714, 31-801 and 31-828, Idaho Code. Its purpose is to provide for, and further, the health, safety and welfare of the public by providing a procedure for abating public nuisances which can create traffic safety hazards, fire hazards, health hazards including those caused by rodent infestation and/or insects, and other problems which may have a harmful effect upon the health, safety and welfare of the public, including eyesores that may affect neighboring property values. Nothing in this chapter shall be interpreted to allow or encourage circumvention of the foreclosure statutes of the state of Idaho.

4-9-3: DEFINITIONS:

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

ABANDONED: A property that is vacant and unmaintained.

ACCESSIBLE: A property or structure that unauthorized persons may gain access or entry to through a compromised/breached/unsecure gate, door, fence, wall, window, or other point of entry.

ADMINISTRATOR: Valley County Planning and Zoning Administrator.

COMMISSION: Valley County Planning and Zoning Commission.

DAYS: Consecutive calendar days.

EVIDENCE OF OCCUPANCY: Any condition visible from the exterior that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is legally occupied. Such conditions include, but are not limited to, secured/locked structures; active utility services; the absence of overgrown and/or dead vegetation; the absence of an accumulation of newspapers, circulars, fliers and/or mail; the absence of an accumulation of trash, junk and/or debris; the presence of window coverings such as curtains, blinds and/or shutters; the presence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, passersby, delivery agents, or government employees that the property is legally occupied; or actual contact with occupants.

EVIDENCE OF VACANCY: Any condition visible from the exterior that on its own or combined with other conditions present would lead a reasonable person to believe that the property is vacant. Such conditions include, but are not limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, fliers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk and/or debris; the absence of window coverings such as curtains, blinds and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, passersby, delivery agents, or government employees that the property is vacant.

INSPECTION: A physical investigation at a property to obtain evidence of occupancy or vacancy and/or to verify compliance with this chapter and any other applicable code or law.

NEIGHBORHOOD STANDARD: Those conditions that are present on a simple majority of properties within a one-half ($1/2$) mile radius of the subject property. A property that is the subject of a neighborhood standard comparison, or any other abandoned property within the one-half ($1/2$) mile radius, shall not be counted toward the simple majority.

NUISANCE REVIEW COMMITTEE: A group of five (5) citizens chosen by the Valley County Planning and Zoning Commission to visit sites to evaluate and document the alleged violation that the Administrator has noticed as a public nuisance and that has been appealed to the Commission. The committee cannot be more than one (1) Commission member who shall act as the Chairman of the Nuisance Review Committee. The committee shall be an established group that is re-affirmed at the same time that officers are elected each January. A quorum of three (3) must be present to do any site visits and reviews.

OWNER: Any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property, or a property that has been acquired by the beneficial interest at trustee's sale.

PROPERTY: Any unimproved or improved real property, or portion thereof, situated in

unincorporated Valley County.

PUBLIC NUISANCE: A condition or use of property which is harmful or injurious to, or creates a danger of harm or injury to the health, safety, or welfare of the neighborhood, community, or members of the public, or which is so offensive to the senses or such an obstruction of the free use of property as to interfere with the comfortable enjoyment of life and property by the neighborhood, community, or members of the public. The term is further defined so as to include, by way of example, but not limited to, the following:

- A. A condition or use of premises or property which creates a fire hazard or any traffic or safety hazard to members of the public.
- B. A condition or use of premises or property which creates a health hazard by permitting, allowing, or fostering the harboring and nesting of rodents, vermin and/or insects, or which creates any other type of health hazard to members of the public.
- C. A condition or use of premises or property, visible from the public right-of-way or neighboring property, which allows the open storage, deposit, or scattering of scrap lumber or wood, waste petroleum products, scrap or waste paper, trash, garbage, junk, boxes or debris of any type. This shall not include firewood used by residents to heat their homes.
- D. A condition or use of premises or property, visible from the public right-of-way or neighboring property, which allows the open storage, deposit, or scattering of scrap, abandoned, discarded, or unused objects such as furniture, stoves, refrigerators, freezers, cans, containers, tires, tools, or mechanical parts.
- E. A condition or use of premises or property, visible from the public right-of-way or neighboring property, which allows the open storage, deposit, or scattering of dismantled, wrecked, junked, scrapped, discarded and unlicensed or non-operable vehicles provided that no public nuisance shall exist under this subsection unless three (3) or more vehicles not in operating condition remain standing on the property for more than thirty (30) calendar days.
- F. A condition or use of premises or property, visible from the public right-of-way or neighboring property, which allows the open storage, deposit, or scattering of dismantled, wrecked, junked, scrapped, discarded and unlicensed trailers, mobile homes or machinery for more than thirty (30) calendar days.
- G. Shall not be a condition that is caused by an on-going bona fide agricultural use.

SECURING: Such measures as may be directed to the record owner by the administrator, county treasurer, or his or her designee, or the Valley County Sheriff or his or her designee so that the property is not accessible to unauthorized persons, including, but not limited to, the repairing of fences and walls, chaining/padlocking of gates, the repair or boarding of

door, window and/or other openings. Boarding shall be completed to a minimum of the current HUD securing standards at the time the boarding is completed or required. Locking includes measures that require a key, keycard, tool or special knowledge to open or gain access.

TENANT: Any person, co-partnership, association, or corporation legally occupying a property with an executed lease/rental agreement with the property owner, or the owner's designated property manager.

VACANT: A building/structure that is not occupied.

WEEDS: Undesirable or objectionable and non-useful plant growth but shall not include noxious weeds as defined by Idaho Code, section 22-2402(15), as amended.

4-9-4: PUBLIC NUISANCE DECLARED UNLAWFUL:

It is unlawful for any person to create, cause, maintain or knowingly allow to exist for more than twenty (20) calendar days a public nuisance on any premises or real property which the person owns, rents, leases, occupies, manages or has charge or possession of.

A. Liability Of Successive Owners For Continuing Nuisance: Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

4-9-5: ENFORCEMENT PROCEDURES:

When a public nuisance is suspected within Valley County the administrator or their designated code enforcement personnel shall be responsible for the investigation of complaints, and the administration and enforcement of the provisions of this chapter, and shall establish a process for the investigation and filing of complaints.

A. Investigation of Complaints: The administrator or his/her designated code enforcement personnel shall decide after an investigation of a complaint either filed with or initiated by the Planning and Zoning department, if there is reasonable cause to believe that a public nuisance exists. If there is no such reasonable cause, the complainant shall be advised. If there is such reasonable cause, the following procedures will apply:

- 1.** A written notice that a public nuisance exists shall be served upon the owner and the occupant or person in charge of the possession of the premises or property on which the nuisance is found. Such service shall be by personal service or by certified USPS mail directed to the last known address of the owner, occupant or person in charge of possession. If written notice cannot be served personally or by mail, on the owner, occupant or person in charge of the possession of the premises or property on which the nuisance is found, the notice shall be posted by being affixed to a building or other place on the premises or property so conspicuous that any person occupying, possessing or using the premises or property can be reasonably expected to see it.

2. The written notice referred to in subsection A1 of this section shall describe the nuisance, advise that the nuisance must be abated within twenty (20) days from the date of the notice, advise that civil proceedings and/or criminal proceedings may be initiated if the nuisance is not abated, advise that costs of court proceedings and the nuisance abatement may be assessed against the owner, occupant or person in charge of the possession of the premises or property; and, advise that the administrator's determination can be appealed to the Planning and Zoning Commission in accordance with 9-5H-12 of the Valley County Code. If the administrator's decision is appealed, prior to being heard by the Commission, the Nuisance Review Committee shall visit the property.

4-9-6: ABATEMENT:

A. Responsibility: It shall be the duty of the owner and/or tenant or person in possession and control of any property, building, or premises whereon any nuisance exists, as determined by the Commission or failure to appeal enforcement procedures in a timely manner, to remove, abate or destroy the same without delay.

B. Notice To Abate:

1. Written Notice; Service: The Valley County administrator or other duly authorized representative shall notify in writing the owner of any such property, place or area within the county, or the agent of such owner, or the person in possession and control of such property to abate the nuisance indicated in the notice; provided that such written notice shall be served personally on the owner, lessee, agent, or person in possession and control, or by certified USPS mail, addressed to said owner or agent of said owner or the person in possession and control of such property at his last known address. If written notice cannot be served personally or by mail on the owner, agent or person in possession or control of such property on which the nuisance is found, the notice shall be posted by being affixed to a building or other place on the premises or property so conspicuous that any person occupying, possessing or using the premises or property can be reasonably expected to see it. The written notice shall describe the nuisance, advise that the nuisance must be abated within twenty (20) days from the date of the notice, advise that civil proceedings and/or criminal proceedings may be initiated if the nuisance is not abated, advise that costs of court proceedings and the nuisance abatement may be assessed against the owner, or occupant of the premises or property.

2. Failure To Comply: Providing further, that upon failure, neglect or refusal of any such owner, or agent of such owner, or person in possession and control to abate the listed nuisance within twenty (20) days after the date of such notice or in the event that notice served by USPS mail is returned to the county by the post office as unable to make delivery thereof, the county is hereby authorized and empowered to abate the nuisance and remove it at the expense of the property owner.

C. Abatement By County: Whenever a nuisance exists which cannot be abated or removed because the person who is responsible therefor cannot be found, or when the party who

is responsible for the nuisance has, on at least one occasion failed and/or refused to abate or remove said nuisance, any duly authorized representative of the county shall be empowered to take steps necessary to remove, abate, or destroy the same, or cause the same to be done by abatement action with the courts against said responsible party.

D. Failure To Comply After Abatement By County:

1. **Costs Assessed:** Whenever the county has paid for the abatement of the nuisance or has used its own employees and equipment for the abatement of a nuisance as set forth in this chapter, the actual costs thereof, any additional fines/penalties established by the county commissioners, plus interest at the statutory rate applicable to civil judgments, from the date of completion of the work, shall be charged to the owner of such property. The property owner, agent or person shall have thirty (30) days to pay the cost of abatement.
2. **Recording Of Lien Or Certification Of Charges:** If the property owner, agent or person in possession and control of such property has not paid the cost of abatement, an authorized representative of the county may or shall, at its option: a) cause such lien to be recorded in the county recorder's office in the manner provided by law for mechanic's and materialmen's liens, or b) certify such charges to the proper county officer for collection in the manner provided by law for the collection of taxes and assessments, and duly recorded.

4-9-7: MAINTENANCE REQUIREMENTS:

- A. The exterior of a vacant/abandoned property shall be, in comparison to the neighborhood standard, kept free of trash, junk, debris, building materials, any accumulation of newspapers, circulars, fliers, notices, except those required by federal, state or local law, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- B. The property shall be maintained free of graffiti, tagging or similar markings by removal, or painting over with an exterior grade paint that matches the color of the exterior of the structure.
- C. Adherence to this section does not relieve the property owner/responsible party of any obligations set forth in any covenants, conditions and restrictions and/or homeowners' association rules and regulations which may apply to the property.

**D. Compliance with this section shall follow procedures listed in section 4-9-5:
ENFORCEMENT PROCEDURES.**

4-9-8: SECURITY REQUIREMENTS:

Vacant/abandoned property subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

Secure manner includes, but is not limited to, the closure and locking of windows, doors (walk-through, sliding and garage), gates and any other openings of such size that leave it accessible. In the case of broken windows, securing means the reglazing or boarding of the window. Locking includes measures that require a key, key card, tool or special knowledge to open or gain access.

4-9-9: PENALTIES:

Failure to abate a nuisance listed in section [4-9-3](#) of this chapter within the county jurisdiction after reasonable notice to the property owner, or tenant responsible for maintaining or allowing the nuisance shall be a misdemeanor and shall be subject to the penalties described in Idaho Code section [18-113](#), as amended. Failure to abate said nuisance from day to day shall constitute a separate offense for each day.

4-9-10: ADDITIONAL AUTHORITY:

In addition to the enforcement remedies established in this chapter, the administrator of development services or his or her designee shall have the authority to require the owner/tenant of any property affected by this chapter to implement additional maintenance and/or security measures including, but not limited to, securing any/all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to arrest the condition of the property.

4-9-11: APPEALS:

Any person aggrieved by any of the requirements of this chapter may appeal insofar as such appeal is allowed in Section [9-5H-12](#).

4-9-12: INTERFERENCE WITH AUTHORIZED PERSON:

A. Interference Prohibited: It shall be unlawful, and shall be a misdemeanor to interfere with the administrator or his/her designee or designees or any law enforcement officer in the performance of duties connected with enforcement of this chapter. Such interference shall include, but not be limited to, removal of notices posted on the property pursuant to this chapter or impediment or harassment of the authorized person in the performance of their duties under this chapter.

B. Violation; Penalty: Violation of this section is a misdemeanor and shall be punishable as provided in Idaho Code section [18-113](#) as amended.