

## CHAPTER 21

### NUISANCE ABATEMENT

#### ADMINISTRATION

**21.005 Definitions.** As used in BCC Chapter 21:

- (1) **"Discarded Vehicle"** means any vehicle which does not have a lawfully affixed unexpired license plate or is inoperative, wrecked, dismantled or partially dismantled, abandoned or junked. A "discarded vehicle" is a form of "solid waste". This definition does not apply to licensed auto wrecking yards.
- (2) **"Dispose or Disposal"** means accumulation, storage, collection, transportation and disposal of solid wastes.
- (3) **"Health Administrator"** means the Benton County Health Administrator or member of the Benton County Health Department having authority delegated by the Health Administrator to act on the Administrator's behalf for purposes of BCC Chapter 21.
- (4) **"Putrescible material"** means organic materials that can decompose and which may give rise to foul smelling, offensive products.
- (5) **"Regulations"** means regulations promulgated by the Board pursuant to BCC Chapter 21.
- (6) **"Solid Waste"** means all putrescible and nonputrescible wastes whether in solid or liquid form, except liquid-carried industrial wastes or sewage or sewage hauled as an incidental part of a septic tank or cesspool cleaning service, but including garbage, rubbish, paper and cardboard, ashes, sewage sludge, street refuse, industrial wastes, swill, demolition and construction wastes, discarded vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, dead animals and other waste.
- (7) **"Vehicle"** means any device by which any person or property may be transported upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.
- (8) **"Waste"** means material no longer directly usable by the source and which is to be disposed of or is resource recovered by another person. The fact that source materials have value and may be resource recovered or reconditioned or resold, does not exempt such materials from the definition of "waste". [Ord. 1A, adopted March 31, 1971; Ord. 85-0002; Ord. 86-031]

**21.010 Administration.** The Health Administrator, under the supervision of the Board, shall be responsible for the administration and enforcement of BCC Chapter 21. In order to carry out the duties imposed by BCC Chapter 21, the Health Administrator shall have authority to administer oaths, certify to all official acts, subpoena and require the attendance of witnesses at public hearings before the Board, require production of relevant documents at public hearings, swear

witnesses, take testimony of any person by deposition, and enter or authorize personnel to enter upon the premises of any person regulated by BCC Chapter 21 at reasonable times to facilitate, enforce or determine compliance with BCC Chapter 21 and applicable regulations promulgated by the Board. This enforcement power shall include the ability to take photographs of the alleged violations. [Ord. 1A, adopted March 31, 1971; Ord. 85-0002; Ord. 86-031]

## **SOLID WASTE VIOLATION**

### **21.105 Solid Waste Accumulation Prohibited.**

(1) Except as provided in subsection (2) of this section, no person shall store, collect, maintain or display on private property solid waste or waste that is offensive or hazardous to the health and safety of the public or which creates offensive odors or a condition of unsightliness. Storage, collection maintenance or display of solid wastes or wastes in violation of this subsection shall be considered a public nuisance which may be abated as provided in BCC 21. In addition, enforcement of this Ordinance may be pursued under Chapter 26 of the Benton County Code.

(2) BCC Chapter 21 does not apply to:

- (a) Areas within the city limits of incorporated cities.
- (b) Disposal sites franchised or permitted by Benton County.
- (c) Agricultural operations and growing or harvesting of crops and the raising of fowls or animals. [Ord. 1A, adopted March 31, 1971; Ord. 85-0002; Ord. 86-031; Ord. 99-0147]

### **21.110 Investigation of Violations.**

(1) The Benton County Health Administrator may, and, upon the written complaint of any person, shall make an investigation to determine whether the storage, collection, maintenance or display of waste or solid wastes by a person is in violation of BCC Chapter 21. The Health Administrator may request the assistance of the Benton County Sheriff in conducting preliminary investigations pursuant to this section.

(2) If the Health Administrator finds reasonable cause to believe a public nuisance exists, the Administrator shall promptly give written notice of this finding to the Board and to the alleged violator. [Ord. 1A, adopted March 31, 1971; Ord. 85-0002; Ord. 86-031]

### **21.115 Public Hearing.**

(1) Upon receipt of notice from the Health Administrator, the Board may order that a notice be issued and served upon the owner or occupant of the premises where the nuisance is alleged to exist, requiring that person to appear before the Board at the time and place stated in the notice and show cause why a nuisance should not be declared to be existing on the premises. The date set for the hearing shall be not less than 15 or more than 40 days from the date of the notice, unless the Board finds that there is an immediate and serious hazard to the health and safety of the public.

(2) The purpose of the Board hearing shall be to determine whether a nuisance as defined in BCC 21.105 exists. The Health Administrator shall report his findings. The person served with notice shall be permitted to cross-examine the Health Administrator or to present evidence or to make a statement on his or her own behalf. Any interested person, public agency or public body who requests the opportunity shall be heard, subject to the right of persons served with notice to cross-examine. [Ord. 1A, adopted March 31, 1971; Ord. 85-0002; Ord. 86-031]

**21.120 Declaration of Nuisance.** If the Board finds evidence of violation of BCC 21.105, it may declare the existence of a public nuisance by order and may order a suit to be brought in the name of the County to institute injunction, abatement or any other proceeding provided by law to prevent temporarily or permanently the existence of the nuisance. [Ord. 1A, adopted March 31, 1971; Ord. 85-0002]

## REMEDIES

### **21.205 Institution of Legal Proceedings.**

(1) Following entry of the Board Order declaring a Public Nuisance, the County Counsel shall institute a proceeding for enforcement of BCC Chapter 21 in the Circuit Court of the State of Oregon for Benton County. The proceedings shall be instituted in accordance with the Oregon Rules of Civil Procedure and the Oregon Rules of Evidence relating to civil actions. [Ord. 86-031]

**21.210 Injunction; Abatement.** The Court may enjoin the defendant to comply with the Ordinance or may empower the County to abate the nuisance by removing from the subject premises all solid waste or the waste found to be the cause of the nuisance, or, in the case of unsightly solid waste, by permitting the County to additionally or in the alternative abate the nuisance by fencing or other screening. [Ord. 86-031]

**21.215 Summary Abatement.** Following the public hearing as authorized by BCC 21.115, if the Board of Commissioners determine that the case is an urgent one and the health and safety of the public is in imminent danger, the Board may order summary abatement of the nuisance. Such order shall empower the County to immediately abate the nuisance on its own action. [Ord. 86-031]

### **21.220 Abatement Costs; Immunity from Trespass.**

(1) All abatement costs incurred by the County pursuant to BCC 21.210 or 21.215 shall be paid by the person found by the Board to be responsible for the creation or maintenance of the nuisance and shall be a lien upon the subject premises which may be foreclosed pursuant to state law.

(2) The County or its agent shall not be liable for any trespass to, or conversion of, any real or personal property reasonably occurring in removing or otherwise abating the solid waste, pursuant to 21.210 or 21.215. [Ord. 1A, adopted March 31, 1971; Ord. 85-0002; Ord. 86-031]

**21.225 Penalties.** The provisions of this section are in addition to and not in lieu of any other remedy available at law. [Ord. 1A, adopted March 31, 1971; Ord. 85-0002; Ord. 86-031]