

**ORDINANCE NO. 1625**

**AN ORDINANCE REPEALING ORDINANCE NO. 1578 ENACTED IN 1998, AS CODIFIED IN CHAPTER 8.12 OF THE KETTLE FALLS MUNICIPAL CODE, TITLED “PROVISIONS ON JUNK, REFUSE, WEEDS and NOXIOUS ODORS”; AND ENACTING A NEW NUISANCE ORDINANCE, DEFINING TERMS USED THEREIN, DECLARING PUBLIC NUISANCES, PROHIBITING CONDUCT THAT CONSTITUTES A NUISANCE, PROVIDING NOTICE AND ABATEMENT PROCEDURES, ESTABLISHING PENALTIES FOR VIOLATORS.**

**WHEREAS,** The City of Kettle Falls has determined that the general health, safety and welfare of its citizens is best addressed by procedures for dealing with public nuisances,

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KETTLE FALLS ORDAINS AS FOLLOWS:**

1. Ordinance No. 1578, as codified in Chapter 8.12 of the Kettle Falls Municipal Code (KFMC) is repealed,
2. A new nuisance ordinance is hereby adopted, to provide as follows:

**NUISANCES**

Section One:	Definitions.
Section Two:	Public nuisances designated.
Section Three:	Snow and ice removal.
Section Four:	Prohibited conduct.
Section Five:	Voluntary correction.
Section Six:	Abatement – Notice.
Section Seven:	Abatement – Owner action.
Section Eight:	Abatement – City action.
Section Nine:	Abatement – Right of appeal.
Section Ten:	Summary Abatement.
Section Eleven:	Violation – Penalty.
Section Twelve:	Remedies not exclusive.
Section Thirteen:	Severability.
Section Fourteen:	New chapter.
Section Fifteen:	Effect.

Section One: Definitions. The words and phrases used in this chapter, unless the context otherwise indicates, shall have the following meanings:

“Abate” means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the enforcement officer determines is necessary in the interest of the general health, safety and welfare of the community.

“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.

“Enforcement officer” means a uniformed police officer or the mayor’s designated appointee.

“Premises” means any building, lot, parcel, real estate, land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

“Property” means any object of value that a person may lawfully acquire and hold.

“Public nuisance” means a thing, act, omission to act, occupation, or use of property which:

- A. annoys, injures or endangers the comfort, repose, health or safety of the public; or
- B. offends public decency; or
- C. unlawfully interferes with, obstructs, or renders dangerous for passage any stream, channel, public park, square, street, alley, highway or sidewalk; or
- D. in any way renders the public insecure in life or use of property.

“Responsible person” means any agent, lessee, renter, owner or other person occupying or having charge or control of any premises.

Section Two: Nuisances designated. Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance:

- A. All noxious weeds as defined at RCW 17.10.080 and .090 or as amended and other rank growth upon public or private property which shall be permitted to go to seed and contaminate adjacent or other properties or create a fire hazard;
- B. Any dead, diseased or dying tree that may constitute a danger to street trees, streets or pedestrians;
- C. Any tree, shrub or foliage which may destroy, impair, interfere with or restrict streets, sidewalks, sewers, utilities, vehicle or pedestrian traffic or other public improvements;
- D. Vines or climbing plants growing into or over any street tree, or any public hydrant or pole in such a way as to obscure the view thereof or impair the access thereto;
- E. Any building in the city which is or may hereafter become dangerous or hazardous to persons or property for any cause whatsoever, and any building which for any reason constitutes an imminent fire risk;
- F. Accumulation of materials or objects when the same endangers property, safety or constitutes a fire hazard;
- G. Any attractive nuisance which may prove detrimental to any person, whether in or on a building, or upon an unoccupied lot, which is left in any place exposed to adults or children. This includes, but is not limited to, unused or abandoned refrigerators, freezers or other large appliances or equipment or parts thereof; abandoned motor vehicles; any

- structurally unsound or unsafe fence or edifice, or unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; and any lumber, trash, debris or vegetation which may prove a hazard to minors. An abandoned or unused well, cistern or storage tank shall not be a nuisance if secured by closing and barring any entrance or trap door thereto or capping the same with sufficient security to prevent access thereto by children;
- H. The keeping or allowing to be or remain in any building, yard, enclosure, alley, street, avenue, park, public or private place within the city limits, of any unsound, putrid or unwholesome substance, bones, meat, hides, skin, or any part of any dead animal or fish, or the offal, garbage or other offensive parts of any animal;
- I. No person shall post, stick, stamp, paint or otherwise affix, or cause the same to be done by any person, any notice, placard, bill, card, poster, advertisement or other paper or device, to or upon any sidewalk, crosswalk, curb or curbstone, or any other portion or part of any public way or public place, or any lamp post, light, power, telephone, traffic control device or telegraph pole, or any hydrant, box or fixture of the fire alarm or police communications system, or other public structure or building, or on any private wall, fence, building or other private property without the written consent of the owner or person in control thereof;
- J. The keeping or harboring of any dog or other animal which by frequent or habitual howling, yelping, barking or the making of other noises or frequent habitual crowing or the making of other noises or the permitting of any animal to run at large which defiles, injures, or destroys lawns, gardens, trees or shrubbery or shall annoy or disturb any person or neighborhood. Any violation of this subsection is established if the person disturbed is either an animal control officer (including Kettle Falls police officers), or an individual residing within three hundred feet (300') of the place where the animal is harbored (exclusive of public right of way). Any such animal is declared to be a nuisance and may be seized and impounded if the disturbance reoccurs after the responsible person has received three (3) warnings in six months from the enforcement officer. The animal may only be reclaimed by the responsible person by complying with Chapter 6.04 of the Kettle Falls Municipal Code;
- K. 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 otherwise dilapidated or unsafe condition;
- L. Unless otherwise permitted by the chapter titled "Abandoned Vehicles," a storage area, junk yard or dumping ground for storage, wrecking or disassembling of automobiles, trucks, trailers, house trailers, boats, tractors or other motor vehicles or mechanical appliances;
- M. Dumping, depositing, placing or leaving any garbage, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any river, creek, stream or watercourse, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any river, stream, creek or watercourse, PROVIDED, this section shall not apply to any person who has secured the appropriate permit or authorization from a governmental agency for specified activity at or near a watercourse;

- N. The depositing or burning or causing to be deposited or burned any material or substance in any street, alley or other public place which is open to travel unless specifically authorized by the terms of a burning permit issued by the city;
- O. Any act that unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a public park, street, alley, highway, sidewalk or any other designated thoroughfare;
- P. Graffiti on the exterior of any building, fence, or other structure in any front yard, side yard or vacant lot;
- Q. Utility trailers and unmounted camper or recreational vehicles located in the front yard of a residence. They may be located in the driveway or behind the front building line of the property on either side of the building on a maintained surface without violating this chapter.

Section Three: Snow and ice removal. Any responsible person or owner shall, during the winter season and during the time snow remains on the ground, by twelve noon on every day after a snowfall, clear the sidewalk or sidewalks adjacent to or in front of commercial or retail properties from snow and ice and shall keep them as such during the day, and when removing such snow or ice, so scatter the same over the adjacent street so as not to block, obstruct or interfere with travel thereon, or fill up the gutter adjoining the sidewalk and prevent drainage of the streets. A violation of this section is deemed a public nuisance subject to summary abatement as hereafter set forth.

Section Four: Prohibited conduct. It shall be unlawful for any responsible person or owner to create, permit, maintain, suffer, carry on or allow, upon any premises, any of the acts or things declared by this ordinance to be a public nuisance.

Section Five: Voluntary correction.

A. This section applies whenever the enforcement officer determines that a public nuisance is occurring.

B. The enforcement officer shall pursue a reasonable attempt to secure voluntary correction by contacting the person responsible for public nuisance and, where responsible for the public nuisance and, where possible, explaining the public nuisance and requesting correction.

C. A voluntary correction agreement may be entered into between the person responsible for the public nuisance and the City, acting through the enforcement officer.

1. The voluntary correction agreement is a contract between the City and the person responsible for the public nuisance under which such person agrees to abate the public nuisance within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

- a. The name and address of the person responsible for the public nuisance;
- b. The street address or a description sufficient for publication of the building, structure, premises or land upon or within which the public nuisance is occurring;
- c. A description of the public nuisance;

d. The necessary corrective action to be taken, and a date or time by which correction must be completed;

e. An agreement by the person responsible for the public nuisance that the City may inspect the premises as may be necessary to determine compliance with the voluntary correction;

f. An agreement by the person responsible for the public nuisance that the City may abate the public nuisance and recover its costs and expenses and a monetary penalty pursuant to this chapter from the person responsible for the public nuisance if terms of the voluntary correction agreement are not met; and

g. An agreement that by entering into the voluntary correction agreement the person responsible for the nuisance waives the right to an administrative appeal of the public nuisance and/or the required corrective action.

2. Upon entering into a voluntary correction agreement, the person responsible for the public nuisance waives the right to an appeal of the enforcement officer's finding of public nuisance and the required corrective action as provided at Section Ten herein.

3. The City shall have the right to inspect the subject property to determine compliance with the terms of the voluntary correction agreement.

4. An extension of the time limit for correction of a modification of the required corrective action may be granted by the enforcement officer if the person responsible for the public nuisance has shown due diligence and/or substantial progress in abating the public nuisance, but unforeseen circumstances render abatement under the original conditions unattainable within the time limit for correction.

5. The City may abate the public nuisance in accordance with Section Nine if the terms of the voluntary correction agreement are not met or, if applicable, in accordance with Section Eleven.

6. If the terms of the voluntary correction agreement are not met, the person responsible for the public nuisance shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with Section Twelve, plus all costs and expenses of abatement as set forth at Section Eleven.

Section Six: Notice. Upon finding that a public nuisance exists, the enforcement officer shall take such action as is reasonably necessary to cause the nuisance to be abated. If the person responsible for the nuisance fails to abate the same within the time determined and as directed by the enforcement officer pursuant to the preceding sections, the enforcement officer shall either personally deliver or mail to the owner and occupant or resident of the premises, by certified mail, return receipt requested, a written notice of the nuisance, directing that the nuisance be abated within such time as the notice shall specify, as determined by the enforcement officer, according to the nature and extent of the nuisance, not to exceed ten (10) days after the notice is given. The notice shall be substantially in the following form:

NOTICE TO ABATE UNSAFE OR UNLAWFUL CONDITION

(Name and address of person notified.)

As owner, agent, lessee or other person occupying or having charge or control of the building, lot or premises at \_\_\_\_\_

\_\_\_\_\_ you are hereby notified that the undersigned pursuant to Ordinance No. 1625 of the City of Kettle Falls has determined that there exists upon or adjoining said premises the following condition contrary to the provisions of subsection \_\_\_\_\_ of said ordinance.

You are hereby notified to abate the condition to the satisfaction of the undersigned within ten (10) days of the date of this notice. If you do not abate such condition within ten (10) days the city will abate the condition at your expense. You have the right to a ten (10) day extension.

Abatement is to be accomplished in the following manner:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
(Name of Enforcement Officer)

YOU HAVE THE RIGHT TO APPEAL THE FINDING THAT A NUISANCE EXISTS AND/OR THE METHOD OF ABATEMENT ORDERED BY MAILING OR DELIVERING TO THE CITY CLERK WITHIN SEVEN (7) DAYS OF THE DATE THE APPEAL FORM ATTACHED HERETO.

Section Seven: Abatement – Owner action. If and when an owner or other responsible person shall undertake to abate any condition described in this ordinance, whether by order of the enforcement officer or otherwise, all needful and legal conditions pertinent to the abatement may be imposed by the enforcement officer. Nothing in this ordinance shall relieve any owner or other responsible person from the obligation of obtaining any required permit to do any work incidental to the abatement.

Section Eight: Abatement – City Action. In all cases where the enforcement officer has determined to proceed with abatement and no appeal has been taken, the city shall acquire jurisdiction to abate the condition at the owner’s expense ten (10) days after the date the notice to abate is mailed or delivered as herein provided. Upon the abatement of the condition or any

portion thereof by the city, all the expenses thereof shall constitute a civil debt owing to the city jointly and severally by such of the persons who have been given notice as herein provided. The debt shall be collectible in the same manner as any other civil debt owing to the city.

Section Nine: Abatement – Right of appeal. Any person notified of the existence of a condition specified in this chapter as a nuisance shall have the right to appeal to the council of the city. Such appeal shall be taken by mailing or personally delivering to the city clerk, within seven (7) calendar days after notice has been given or mailed as provided in Section Six, a written statement setting forth fully the grounds for appeal. The council shall hear the appeal at its next scheduled meeting or as soon thereafter as the Mayor may direct, but in no event more than thirty (30) days from the date notice of appeal is given. Notice of the scheduled appeal hearing shall be mailed, postage prepaid, to the appellant(s) at their last known address at least five days prior to the date of the hearing. Further action of the abatement as specified in the original notice shall be stayed pending the decision of the council, as will any monetary penalties as set forth at Section Eleven. The ruling on the appeal shall be final and conclusive.

Section Ten: Summary abatement. Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, the enforcement officer shall have the authority to summarily and without notice abate the same without having attempted to secure voluntary correction. The expenses of such abatement shall become a civil debt against the owner or other responsible party and be collected as provided in Section Eight. The phrases “costs and expenses” or “the expenses of abatement” or the word “expenses” as used herein includes, but is not limited to:

1. Personnel costs, both direct and indirect, including attorneys fees and costs;
2. Costs incurred in documenting the violation;
3. Hauling, storage and disposal expenses;
4. Actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and
5. The costs of any required printing and mailing.

Section Eleven: Civil penalty. The monetary penalty for each day or part thereof the public nuisance is permitted to continue after the date set for abatement by the enforcement officer shall be as follows:

1. First day: \$100.00
2. Second day: \$200.00
3. Third day: \$300.00
4. Fourth day: \$400.00
5. Each additional day beyond four days: \$500.00 per day.

Payment of the monetary penalty pursuant to this chapter does not relieve the person to whom the notice of abatement was issued of the duty to correct the public nuisance.

The monetary penalty constitutes a personal obligation of the person to whom the notice of abatement is issued. Any monetary penalty assessed must be paid to the City within ten (10) calendar days from the date set by the enforcement officer for abatement of the nuisance. The City attorney or his/her designee is authorized to take appropriate action to collect the monetary penalty, plus reasonable attorney's fees and costs of suit incurred in collecting the monetary penalty.

Section Twelve: Obstruction-Criminal Penalty. Any person who knowingly obstructs, impedes or interferes with the City or its agents, or with the person responsible for the abatement in the performance of this section, is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (1,000.00), or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

Section Thirteen: Remedies not exclusive. The remedies prescribed in this ordinance are in addition to all other remedies provided or authorized by law.

Section Fourteen: Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court, such decision shall not affect the validity of the remaining portions hereof. The city council hereby declares that it would have approved this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional.

Section Fifteen: Effect. This ordinance shall take effect five (5) days after passage and publication of a summary hereof.

PASSED by the City Council and approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
RAY SMITH, MAYOR

Attest:

\_\_\_\_\_  
RAENA L. SKAGGS, CLERK/TREASURER

Approved as to form:

\_\_\_\_\_  
PATRICK A. MONASMITH, CITY ATTORNEY

Introduced:

Passed:

Published: