

ORDINANCE 20-295

AN ORDINANCE AMENDING CHAPTER 93 OF THE LAKESIDE MUNICIPAL CODE

WHEREAS, Chapter 93 of the Lakeside Municipal Code concerns nuisances; and

WHEREAS, the City Council finds that appeals of administrative enforcement of Chapter 93 should be within the jurisdiction of the Lakeside Municipal Court.

NOW THEREFORE, THE CITY OF LAKESIDE ORDAINS AS FOLLOWS:

Section 1. Section 93.01(B) is modified to read:

(B) The nuisances described in this chapter are considered to be nuisances affecting the public and shall be abated pursuant to § 93.07. In addition to the abatement costs, which may be charged against the property as described herein, persons responsible may also be charged with an offense or fine.

Section 2. Section 93.05(B)(3) is amended to read:

(3) Abatement of vehicles located on private property, which constitute a nuisance under this section shall be done in accordance with §93.07 of this chapter.

Section 3. Section 93.05(C)(3) is amended to read:

(3) In the event the person responsible has not voluntarily complied by removing the vehicle from the private property or the public right-of-way or storing the vehicle within an enclosed structure or underneath an approved coverage device, the city staff person in charge of enforcement shall institute abatement proceedings pursuant to Section 93.07 of this chapter. If authorized by the Municipal Judge to impound the abandoned vehicle, the city staff person shall mail notice to the registered owner of the vehicle and to any lessor or security interest holders as shown in the Motor Vehicle Department records, and to the person responsible for creating the nuisance, if that person is not the registered owner of the vehicle and the city has been able to identify that person, that the vehicle has been impounded. The notice shall be sent by certified mail return receipt requested, and be mailed within 48 hours of the impoundment. The notice shall include the following information.

- (a) The location where the vehicle will be stored;
- (b) That the vehicle and its contents are subject to a lien for payment of storage and towing charges and an administrative fee of \$150.00 or 15 percent of those expenses, and the vehicle and its contents will be sold if those charges and administrative fee are not paid;
- (c) The vehicle will not be released until the owner provides proof that the vehicle is currently licensed and registered, that the nuisance conditions will not be resumed, and all towing and storage fees and the administrative fee have been paid, and the city has authorized the release of the vehicle in writing.

Section 4. Section 93.06 Non-Enumerated Nuisances is modified to read as follows:

The acts, conditions or objects specifically enumerated and defined in §§ 93.02 through 93.05 are declared public nuisances and may be abated by the procedures set forth in § 93.07. In addition to the nuisances specifically enumerated in this chapter, every other thing, substance or act that is determined by the Council to be injurious or detrimental to the public health, safety or welfare of the city is declared a nuisance and may be abated as provided in this chapter.

Section 5. Section 93.07 Abatement Procedure of the Lakeside Municipal Code is replaced with the following:

(A) *Investigation of Complaints.* The City Manager/Recorder shall investigate or cause to be investigated all complaints reporting the existence of a public nuisance as defined in this Code. In the absence of a complaint received from the public, the City Manager/Recorder may initiate a complaint on his/her own observation.

(B) *Notice.* The City Manager/Recorder shall deliver or cause to be delivered a Notice of Violation to the person or persons responsible for maintaining the public nuisance. Such delivery shall be in-person or by Certified/Return Receive US Mail, or both. Said Notice of Violation shall contain the following information:

- (1) The location of the violation identified by street address and Assessor's Parcel Number.
- (2) The name of the responsible party or parties, including the property owner as recorded in the most recent County records.
- (3) The specific Code section alleged to be violated.
- (4) A description of the conditions which constitute the violation.
- (5) A description of the action that must be taken to resolve the violation.
- (6) The date upon which the complaint was received.
- (7) The date upon which the violation was observed by the City Manager/Recorder.
- (8) A date by which the violation must be corrected.
- (9) A warning that failure to abate the violation may result in further action.
- (10) The General Penalty provision as contained in this Code.
- (11) Instructions to the responsible party for contacting the City Manager/Recorder.

(C) *Abatement.* The City Manager/Recorder shall work with the responsible party to secure abatement of the violation, and may extend the compliance deadline for progress shown.

(D) *Notice to Appear.* In the event that the responsible party fails to complete the abatement of the nuisance within the specified time, the CMR shall issue a Notice to Appear directing the responsible parties to appear in Lakeside Municipal Court. The Notice to Appear shall contain all of the information in #2 above and shall also contain:

- (1) A date upon which the responsible parties are required to appear.

(2) A statement that Failure to Appear could result in additional monetary penalties and a default judgement in favor of the City.

(E) *Arraignment.* On the date specified in the Notice to Appear, the Lakeside Municipal Judge shall conduct an arraignment of the responsible parties on the alleged violations. Responsible parties shall be given the option of entering a plea of “No contest” or “Not Guilty.”

(1) In the event of a No Contest plea, the Judge may:

- (a) Act on the matter by allowing the responsible party additional time for compliance.
- (b) Schedule a new court date for progress review.
- (c) Levy a fine.
- (d) Issue an Order of Abatement

(2) In the event of a Not Guilty plea, the Judge shall:

- (a) Set the matter for trial.
- (b) Advise all parties of the trial procedure, including their right to call and cross examine witnesses, and to present evidence, and their right to retain their own legal counsel.

(3) If the parties agree, trials may be conducted on the same date as the arraignment.

(F) *Trial.*

(1) At the trial, the City must prove the existence of the nuisance by a preponderance of the evidence. The trial shall be limited to admissible evidence. The Judge shall prescribe the procedures for the conduct of the trial.

(2) After due consideration of the evidence and arguments, the Judge shall determine whether a nuisance has been established. If the nuisance has not been established, an order dismissing the same shall be entered. When the determination is that the nuisance has been established, an appropriate order shall be entered into the records.

(a) In the event of a Guilty verdict, the Judge may:

- (i) Levy a fine.
- (ii) Issue an Order of Abatement whereby the nuisance is ordered to be abated by the City, the cost of such abatement to be recovered through a lien against the property.
- (iii) Issue a warrant authorizing the entry of City officers and/or contractors onto the subject property to accomplish the abatement.

(b) A copy of the Order of Abatement shall be delivered to the person named in the order personally or by US Certified Return–Receipt mail, or to their attorney or record.

(c) The determination by the Judge shall be in writing and shall contain findings of fact and conclusions of law. The determination shall be issued within 30 days of the conclusion of the trial and shall be final. The Judge’s decision may be appealed to the Circuit Court with proper jurisdiction through the writ of review process.

(G) *Order of Abatement.* The officer charged with abatement of the nuisance shall only have the right to enter into or upon the property with the owner’s permission or in accordance with the law. If the owner refuses, the officer may not enter a dwelling or abate a nuisance not affecting public health or safety until a warrant has been issued by the Municipal Judge allowing entry. Where a nuisance affecting public health or safety has been found to exist, the officer may enter the property to abate the nuisance.

(1) The City Manager/Recorder shall keep an accurate record of the expense incurred by the City in physically abating the nuisance and shall include a charge of \$150.00 or 15 percent of those expenses, whichever is greater, for administrative overhead.

(2) The City Manager/Recorder shall forward or cause to be forwarded to the responsible party, by Registered or Certified US Mail, a notice stating:

(a) The total cost of abatement, including the administrative costs overhead.

(b) The cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(c) That the cost of abatement will be temporarily entered in the city’s lien docket.

(d) That if that person responsible objects to the cost of the abatement as indicated, he/she may file a notice of objection with the CMR not more than ten (10) days from the date of the notice. If an objection is received on or before the expiration of ten (10) days after the notice was served, the CMR shall consider the objection and make a final determination regarding the cost to be assessed. The final determination may be appealed to the Municipal Judge.

(e) Final abatement costs shall be entered as a lien in the docket of the city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance/violation was removed or abated. The lien shall be enforced and shall bear interest at the statutory rate. The interest shall commence to run from the date of the entry of the lien in the lien docket. An error in the name of the person responsible shall not void the assessment, nor

will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

Section 6. Sections 93.08 through 93.12 of the Lakeside Municipal Code are deleted.

Section 7. Section 93.99 Penalty of the Lakeside Municipal Code is deleted and replaced with the following:

The procedure provided by this chapter is not exclusive, but is in addition to procedures provided by other ordinances.

(A) *Generally.* Any person in violation of any provision of this chapter shall, upon conviction thereof, be imposed a fine not to exceed the amount of \$750 per violation.

(B) *Separate violations.* Each day's violation of a provision of this chapter constitutes a separate offense.

Section 8. Effective Date. This Ordinance will become effective 30 days after its passage by the City Council and approval by the Mayor.

PASSED BY THE LAKESIDE CITY COUNCIL THIS September 10, 2020.

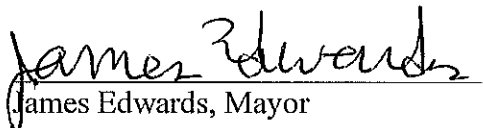
Ayes: 7
Nays: 0

ATTESTED:



Loree Pryce, Acting City Recorder/Manager

APPROVED:



James Edwards, Mayor

