

Chapter 5

PUBLIC PROTECTION

OFFENSES

5.010 Drinking in Certain Public Places.

(1) It is unlawful for any person to drink or consume any alcoholic liquor or have in their possession any bottle, can or other receptacle containing any alcoholic liquor which has been opened, or a seal broken, or the contents of which have been partially removed, while in or upon any public street, alley, public boat landing, docks, parks and other attendant facilities, school grounds or municipal buildings (including the community center and city hall). However, the city council or its designee may permit the service and consumption of alcoholic liquors in any public place or within designated municipal buildings on such terms and conditions as the council may provide. Nothing in this section shall be deemed to prohibit drinking of alcoholic liquor in any establishment wherein the same may be sold for on-premises consumption under the laws of the state, or when a permit has been granted by the city council.

(2) Drinking in certain public places is a violation and is punishable by a fine of not more than \$500. *[Amended by Ord 499 on Sep 10, 1998]*

5.015 Interfering in Emergencies.

(1) Whenever a threat to the public health or safety is created by any fire, explosion, accident, cave-in, or similar emergency, catastrophe or disaster, or by riot, presence of an armed person, hostage being held, or other disturbance, an officer of the police department may restrict or deny access to the area where such threat exists, for the duration of the threat, when the presence of a person in the area would constitute a danger

to themselves, or when the officer reasonably believes that the presence of the person would substantially interfere with the performance of the police or other emergency services. Any person refusing to obey the direction of an officer who has denied or restricted access to the area where a threat exists may be found guilty of interfering in emergencies.

(2) Interfering in emergencies is a Class C misdemeanor.

5.020 Discharge of Weapons.

(1) No person other than a peace officer shall fire or discharge a gun or other weapon, including spring or air actuated pellet guns, air guns, BB guns, or other weapons which propel a projectile by use of gunpowder or other explosive or jet or rocket propulsion.

(2) No person may shoot a slingshot, bow and arrow or an instrument of any similar type or throw a dagger, spear, stiletto or an instrument of any other type.

(3) The provisions of this section shall not be construed to prohibit the firing or discharging of a weapon by any person in defense or protection of his property, person or family or at firing ranges approved in writing by the city administrator.

5.025 Fireworks. The following sections of the Oregon Fireworks Law are adopted by reference and made a part of sections 5.000 to 5.110: ORS 480.110, 480.120, 480.130, 480.140(1), 480.150 and 480.170.

5.030 Violating Privacy of Another. No person other than a peace officer performing a lawful duty shall enter upon land or into a building used in whole or in part as a dwelling not his own without permission of

the owner or person entitled to possession thereof, and while so trespassing look through or attempt to look through a window, door or transom of the dwelling or that part of the building used as a dwelling with the intent to violate the privacy of any other person.

5.035 Children Confined in Vehicles.

(1) No person who has under his control or guidance a child under eight years of age shall lock or confine, or leave the child unattended, or permit the child to be locked or confined, or left unattended in a vehicle for a period of time longer than fifteen consecutive minutes.

(2) It is lawful and the duty of a policeman or other peace officer finding a child confined in violation of the terms of this section, to enter the vehicle and remove the child, using such force as is reasonably necessary to effect an entrance to the vehicle where the child may be confined in order to remove the child.

5.040 Endangering Welfare of Minor.

(1) No person shall:

(a) Knowingly sell, or cause to be sold, tobacco in any form to a person under eighteen years of age;

(b) Employ a person under eighteen years of age in or about a card room, poolroom, billiard parlor, or in any establishment at which any alcoholic liquor is sold for on premises consumption.

(2) No person shall solicit, aid, abet, or cause a person under eighteen years of age to:

(a) Violate a law of the United States, or a state, or to violate a city or county ordinance;

(b) Run away or conceal himself from a person or institution having lawful custody of the minor.

5.045 Places of Amusement.

(1) No person under eighteen years of age shall enter, visit, or loiter in or about a public card room, poolroom, or billiard parlor.

(2) No person operating or assisting in the operation of a public card room, poolroom, or billiard parlor shall permit a person under 18 years of age to engage in a game of cards, pool, billiards, dice, or games of chance, for amusement or otherwise.

(3) This section shall not apply to playing billiards in a recreational facility. As used in this section, "recreational facility" means an area, enclosure or room in which facilities are offered to the public to play billiards or pool for amusement only, and;

(a) Is clean, adequately supervised, adequately lighted and ventilated.

(b) No alcoholic liquor is sold or consumed.

(c) Where access does not require passing through a room where alcoholic liquor is sold or consumed.

5.050 Providing Liquor to Person Under Twenty-one. ORS 471.410(2) and (3) are adopted by this reference and made a part of sections 5.000 to 5.110.

5.055 Purchase or Possession of Liquor by Person Under Twenty-one. ORS 471.430 is adopted by this reference and made a part of sections 5.000 to 5.110.

5.060 Providing Premises for the Consumption of Alcohol by Minors Prohibited. No person who owns or is in control of premises shall knowingly allow a minor to consume alcoholic liquor on the premises except as provided in section 5.050. Violation of this section is punishable as a Class A infraction.

5.065 Obstructing Governmental Administration.

(1) No person shall intentionally obstruct, impair or hinder the administration of law or other governmental function by means of intimidation, force or physical interference or obstacle.

(2) This section shall not apply to the obstruction of unlawful governmental action or interference with the making of an arrest.

5.070 Tampering With Public Records.

No person shall, without lawful authority, knowingly destroy, mutilate, conceal, remove, make a false entry in or falsely alter any public record.

5.075 False Reports.

(1) No person shall knowingly initiate a false alarm or report which is transmitted to a fire department or law enforcement agency or other organization that deals with emergencies involving danger to life or property.

(2) No person shall knowingly make or file with the police department, with the City Administrator, or his designee, or with the city attorney or a police officer engaged in his official duties a false or fictitious name, address or date of birth or a false, misleading or unfounded statement or report concerning the violation or alleged violation of a city ordinance or the commission or alleged commission of a crime.

(a) A person who violates this provision of the Lafayette code commits an unclassified misdemeanor.

5.080 Police and Fire Communications.

No person shall operate any generator or electromagnetic wave or cause a disturbance of such magnitude as to interfere with the proper functioning of any police or fire department radio communication system.

5.085 Failure to Appear on Citation; Duty of Guardian/Parent to Appear.

(1) A defendant commits a Lafayette code unclassified misdemeanor in addition to any violations defined by Oregon Revised Statutes by failing to appear in municipal court as he/she is cited.

(2) In the event a minor, as that term is defined by Section 5.150, is cited into Lafayette Municipal Court for violation of Section(s) 5.150 and/or 5.165 of the Lafayette Municipal Code and/or for violation of ORS 814.485 (1997), the parent or legal guardian of said minor shall be required to accompany and appear with said minor at the time and place stated on the citation. Notice of this requirement shall be sent by the city to the parent or guardian along with a copy of the citation that was given to the minor for the violation. In the event either the parent and/or minor fails to appear at the time set out on the citation, both may be cited into municipal court for violation of subsection (1). *[Amended by Ord 500 on Oct 22, 1998]*

5.095 Soliciting to Violate Code. No person shall solicit, employ or engage another, or confederate with another to violate a provision of sections 5.000 to 5.110.

5.100 Attempt to Commit Offense. A person who attempts to commit any of the offenses mentioned in sections 5.000 to 5.110 or any other ordinance of the city, but who for any reason is prevented from consummating such act, shall be deemed guilty of an offense.

5.105 Indecent Conduct.

(1) It is unlawful for any person to masturbate, urinate, defecate or copulate in a public place or premises open to the public, or in a place visible from a public place or premises open to the public.

(2) Violation of this section shall be a Class A infraction.

5.110 Possession of Marijuana. Any person who knowingly or intentionally is in unlawful possession of less than one avoirdupois ounce of the dried leaves, stems and/or flowers of the plant Cannabis family Moraceae is guilty of a violation, punishable by a fine of not less than \$500 and not more than \$1,000.

DRUG PARAPHERNALIA

5.120 Definitions. As used in sections 5.120 to 5.140, the following words and phrases shall have the meanings ascribed to them in this section:

Controlled substance. A drug or its immediate precursor classified in Schedules I thru V under the Federal Controlled Substances Act, 21 U.S.C., sections 811 to 812, as modified under ORS 475.035.

Deliver or delivery. The actual, constructive, or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

Drug paraphernalia. All equipment, products, and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act of Oregon. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use, in manufacturing, compounding, converting, producing,

processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules balloons, envelopes and other containers used intended for use or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed specifically for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body; such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent

screens, hashish heads, or punctured metal bowls;

- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;
- (e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (f) Miniature cocaine spoons, and cocaine vials;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bongs;
- (m) Ice pipes or chillers;
- (n) The provisions of

sections 5.120-5.140 do not apply to persons registered under the provisions of ORS 475.125 or to persons specified as exempt from registration under provisions of that statute.

Marijuana. All parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

5.125 Factors to be Considered. In determining whether an object is drug paraphernalia, a court or other authority

should consider, in addition to all other logical relevant factors, the following:

- (1) Statements by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of any one in control of the object, under any municipal, state, or federal law relating to any controlled substance;
- (3) The proximity of the object in time and space, to a direct violation of this ordinance or the Uniform Controlled Substance Act of Oregon;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances to the object;
- (6) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object, to deliver it to persons whom he knows intend to use the object to facilitate a violation of municipal or state law; the innocence of an owner, or of anyone in control of the object, as to a violation of this law or state law shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community;

(14) Expert testimony concerning its use.

5.130 Offenses and Penalties.

(1) Possession of Drug Paraphernalia. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) Manufacture or Delivery of Drug Paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(3) Advertisement of Drug Paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(4) Penalty.

(a) Violation of subsection 1 or 2 of this section shall be a Class A violation. Violation of subsection 3 of this section shall be a Class B violation. Citations shall be issued and court procedures followed consistent with ORS 153.030 to 153.121.

(b) Whenever violation of this section occurs in a public place within 1,000 feet of real property

comprising a park, as defined in LMC 5.550, or a public or private elementary, vocational or secondary school attended primarily by minors, the offense shall be a violation punishable by a fine of not less than \$1,000.

5.135 Nuisance.

(1) Drug paraphernalia are public nuisances. Any police officer shall summarily seize any such paraphernalia and it shall be held subject to the order of municipal court as to its disposition.

(2) Whenever it appears to the court that drug paraphernalia has been possessed in violation of this ordinance, the court shall order the governing law enforcement agency to destroy the paraphernalia.

5.140 Severability. If any provision of the ordinance codified in this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Amended by Ord 606 on March 11, 2010)

CURFEW FOR MINORS

5.150 Hours of Curfew.

(1) No minor between the ages of fifteen and eighteen years shall be in or upon any street, park or other public place between the hours of 11:00 p.m. and 6:00 a.m. and no minor under the age of fifteen shall be upon any street, park or other public place between the hours of 10:00 p.m. and 6:00 a.m., unless:

(a) The minor is accompanied by a parent, guardian or other person twenty-one years of age or over and authorized by the parent or by law to

have such care and custody of the minor.

(b) The minor is engaged in a school activity or lawful employment that makes it necessary to be in or upon the street, park or other public place during the hours specified in this section.

(c) The minor is emancipated under ORS 109.550 to 109.565.

(2) For minors under the age of fifteen, the curfew is between 10:00 p.m. and 6:00 a.m. seven days a week. For minors between the ages of fifteen and eighteen, the curfew is between 11:00 p.m. and 6:00 a.m. seven days a week.

5.155 Parental Responsibility. No parent, guardian or person having the care and custody of a minor under the age of eighteen years shall allow such minor to be in or upon any street, highway, park, alley or other public place, except between the hours specified in section 5.150 and except as otherwise provided in that section. Violation of this section shall be deemed to be a Class A infraction.

5.160 Custody of Minors Violating Curfew. Any minor who violates section 5.150 shall be taken into custody as provided in ORS 419.569 and may be subjected to further proceedings as provided in ORS 419.472 through 419.597, 419.800 through 419.839 and 419.990(2).

5.165 Daytime Curfew for Minors

(1) No person between the ages of 7 and 18 years and who has not completed the twelfth grade shall be in or upon any street, highway, park, alley or other public place as defined in ORS 161.015(10)(1997) during regular school hours except while attending school unless:

(a) The minor is accompanied by a parent, guardian, or other person 18 years of age or over and authorized

by the parent or by law to have care and custody of the minor;

(b) The minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during regular school hours and is authorized by the minor's parent, guardian, or other person having the legal care and custody of the minor;

(c) The minor is lawfully emancipated pursuant to ORS 419B.550 to 419B.558; or

(d) The minor is authorized and approved to be away from school as provided in ORS 339.030 and 339.065, but is not suspended or expelled.

(e) These exemptions extend to those who are home schooled as that term is defined by Oregon Revised Statutes.

(2) For purposes of this section, regular school hours are those hours for the full time school which the child would attend in the school district in which the child resides, on any day for which school is in session, unless such day is scheduled vacation or holiday observed by the school.

(a) A child being home schooled shall comply with the regular hours and schedule established by the home school.

5.170 Parental Responsibility. No parent, guardian or person having the care and custody of a minor under the age of 18 years shall allow such minor to be in or upon any street, highway, park, alley or other public place between the hours specified in subsection 5.160 or 5.165, except as otherwise provided herein.

5.175 Remedy. Any minor who violates any provision of sections 5.160 or 5.165 may be taken into custody consistent with the

provisions of ORS 419C.080, 419C.085 or 419C.088 (1997).

PROHIBITED TOUCHING

5.200 Designated. A person commits the offense of prohibited touching if:

(1) He engages in or agrees to engage in sexual contact in return for a fee; or

(2) He pays or offers or agrees to pay a fee to engage in sexual contact.

(3) As used in subsections (1) and (2) of this section, "sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

5.205 Promoting Prohibited Touching. A person commits the offense of promoting prohibited touching if, with intent to promote prohibited touching, he knowingly:

(1) Owns, controls, manages, supervises or otherwise maintains a place or enterprise where prohibited touching takes place; or

(2) Induces or causes a person to engage in prohibited touching or remain in a place where prohibited touching takes place; or

(3) Receives or agrees to receive money or other property, other than compensation for personally rendered prohibited touching services, pursuant to an agreement or understanding that the money or other property is derived from a prohibited touching activity; or

(4) Engages in any conduct that institutes, aids or facilitates an enterprise of prohibited touching.

5.210 Nudity in Massage.

(1) As used in this section, the following words shall have the meanings given to them in this section:

(a) Massage. Pressure on, friction against, stroking and kneading the body by manual or mechanical means, and gymnastics, with or without appliances such as vibrators, infrared heat, sunlamps and external baths for the purpose of maintaining good physical condition.

(b) Massage business. The operation of an establishment where massage is given.

(c) Nudity. Uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernible turgid state. For the purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

(d) Practice of massage. The performance of massage for compensation, either as the owner of or as an employee, in a massage business.

(2) A person commits the offense of nudity in massage if:

(a) He appears in a state of nudity while engaged in the practice of massage; or

(b) He, as a principal, agent, officer or employee of a massage business, appears in a state of nudity in any portion of a massage establishment where massage is given or where there is any patron of the establishment; or

(c) He, as a principal, agent, officer or employee of a massage business, causes, permits, aids or

abets any violation of this section by any agent or employee of the massage business.

5.215 Nuisances Declared. Any places where prohibited touching, promoting prohibited touching or nudity in massage is conducted or carried on as described in sections 5.200 to 5.210 is declared a nuisance and may be enjoined and abated as described in section 5.220.

5.220 Nuisance-Suit in Equity. Whenever a nuisance exists under section 5.215, the city attorney may maintain a suit in equity in the name of the city perpetually enjoining such nuisance and for its abatement. Such suit may be brought regardless of whether any individuals have been convicted under the provisions of sections 1.205 to 1.255.

DOGS

5.250 Definitions. As used in sections 5.250 to 5.340, the following words and phrases shall have the meanings ascribed to them in this section:

Owner of property. Any person who has legal or equitable interest in said real property or who has a possessory interest therein, or who resides on the property, or is a guest of any person who owns, rents, or leases said property.

Running at large. Off or outside the premises belonging to the person having the control, custody, or possession of the dog, while the dog is not under the complete control of such person by means of an adequate leash, or is within a vehicle of such person. As used herein, "leash" means a physical restraint and does not include any non-physical means of restraint such as voice control. *[Amended by Ord 499 on Sep 10, 1998]*

Keeping a dog. Owning, harboring, caring for, exercising control over, or knowingly permitting any dog to remain on the premises occupied by the person.

Dangerous dog. Any dog which bites any human being, dog, cat or livestock, or which chronically demonstrates menacing behavior toward human beings, dogs, cats or livestock. For purposes of this section, "menacing behavior" shall include, but not be limited to, bearing of teeth, charging at a victim, growling in a threatening manner or approaching a victim within ten feet while barking.

Permit. For purposes of sections 5.250 to 5.340, conduct by the keeper of a dog which is intentional, deliberate, careless, inadvertent or negligent.

5.255 Enforcement. It shall be the duty of the city administrator, the code enforcement officer, or any other designated police officer, or the dog control officer of the city or county to enforce the provisions of sections 5.250 to 5.340.

5.260 Violations. It shall be a violation for a keeper of any dog to:

(1) Permit any such dog to run at large, as defined in section 5.250, upon any public street, highway or public place, or upon private property owned by a person or persons other than the keeper of the dog within the corporate limits of the city.

(2) Permit a dog to chase a vehicle or person.

(3) Permit a dog to scatter garbage.

(4) Permit a dog to damage or destroy property of persons other than the keeper of the dog.

(5) Permit any dog to cause unreasonable annoyance, alarm or noise disturbance at any time of the day or night by repeated barking, whining, howling or other like sounds which may be heard beyond the boundary of the keeper's property.

(6) Keep a dangerous dog. It shall be an affirmative defense that a dog bites, attacks, or menaces a trespasser on the property of its keeper or anyone wrongfully assaulting that dog or its keeper.

(7) To leave a dog unattended for more than 24 consecutive hours without adequate food, water, shelter, care or supervision. Shelter shall include a structure or other means of protection from the weather and injury.

(8) Physically mistreat any dog, either by deliberate abuse or neglect to furnish adequate care, including medical attention.

5.265 Removal of Animal Wastes. Any person in physical possession and control of a dog shall remove excrement or other solid waste deposited by the dog in any area not designed to receive such wastes, including but not limited to public areas such as streets, sidewalks, parking strips, public parks and any private property owned by a person or persons other than the person in physical possession and control of the dog within the corporate limits of the city.

5.270 Rabies Inoculation Required. All dogs must be inoculated against rabies, unless specifically exempted by rule of the State of Oregon Health Division or State Department of Agriculture. Rabies certificates shall be current through November of the current year.

5.275 Licensing. Every person keeping a dog which has a set of permanent canine teeth shall, comply with the licensing requirements of Yamhill County. The keeper of the licensed dog shall attach the license tag issued for the dog to a collar, which collar shall be worn by the dog at all times when not in the immediate possession of the keeper of the dog.

5.285 Impounding. Any police officer, the City's code enforcement officer, or the dog

control officer of the county is authorized to impound any dog found running at large as defined in section 5.250 or that is found to be unlicensed.

5.290 Seizing Certain Dogs. A dog found biting a person or which has bitten any person may be summarily seized by any person and promptly delivered to any police officer or the dog control officer for impounding. Impoundment of the dog may be allowed in the keeper's home if the person is bitten on a part of the body below the neck.

5.295 Destroying Certain Dogs. A dog which is rabid shall be destroyed. Any person may summarily kill a rabid dog.

5.310 Finders of Lost Dogs. A person who finds a dog within the city limits may surrender the animal to the county or retain its possession subject to surrender upon demand of a dog control officer or the keeper of the dog.

5.315 Interference with Officers. It is unlawful for any person to interfere in any way with any police officer, the City's code enforcement officer, or any dog control officer engaged in seizing or impounding any dog under authority of sections 5.250 to 5.340.

5.320 Injured or Sick Dogs.

(1) The member of the police department, the City's code enforcement officer, or the dog control officer who impounds any dog in the city which is in need of medical attention, may, at their discretion, authorize the necessary medical attention, or have the dog humanely killed.

(2) The police officer, code enforcement officer, or dog control officer shall make a diligent effort to locate the keeper of a dog in need of medical attention before authorizing such medical attention or disposal of said dog.

(3) Should the police officer, code enforcement officer, or dog control officer authorize the necessary medical attention, the keeper of the dog shall be liable for the costs of the medical treatment rendered to the animal.

5.325 Duties of a Driver of Motor Vehicle.

(1) Any person operating a motor vehicle upon premises open to the public who runs over, strikes, injures, maims or kills any dog shall:

- (a) Immediately stop;
- (b) Make a reasonable effort to determine the nature of the injuries;
- (c) Render reasonable aid to the dog, if injured;
- (d) Make due and diligent inquiry to determine and notify the keeper of the dog;
- (e) Notify the city of the injury or death, if unable to contact the keeper.

(2) The requirements of this section for a driver to stop and attend to an injured dog depend upon the specific traffic hazards existing at the time of the accident.

5.330 Poisonous Food. No person shall knowingly place food of any description containing poisonous or other injurious ingredients in any area reasonably likely to be accessible to animals other than rodents.

5.335 Kennels Prohibited. It is unlawful for dog kennels to exist or operate in any area of the city other than areas which are zoned for such a use. For purposes of this section, any property where more than four dogs are kept, whether such animals are kept as personal property of the property owner or as a business venture, is deemed to be a kennel. A person may have more than four dogs and not be deemed a kennel, if one of the dogs is a female with a litter under the age of six months.

5.340 Penalties.

(1) Any person convicted of a violation of section 5.315 or section 5.330 shall be subject to a fine not to exceed \$1,000.

(2) Any person convicted of a violation of section 5.325 shall be subject to a fine not to exceed \$250.

(3) Any person convicted of a violation of subsections (1) through (6) of section 5.260 shall be subject to a fine not to exceed \$500; and the court, in its discretion, may also order the removal of the dog from the city of Lafayette, restitution for damages or any other remedy within the power of the court. Further, for violation of section 5.260(6), the court may order destruction of the dog involved. Destruction of a dog may be ordered if:

- (a) A dog, whether or not confined, causes the serious injury or death of any person; or
- (b) A dog, while at large, kills any domestic animal;
- (c) A dog engages in or is found to have been trained to engage in exhibitions of fighting; or
- (d) A dog repeats behavior such as aggressively biting or causing physical injury to any person or domestic animal.

(4) Except as where otherwise provided, any person convicted of a violation of any provisions of sections 5.250 to 5.335 shall be subject to a fine not to exceed \$500. Each day's violation of a provision of sections 5.250 to 5.335 constitutes a separate offense.

NUISANCES

5.400 Definitions. For purposes of sections 5.400 to 5.530, except where the context indicates otherwise, the following terms shall have the meanings given to them in this section:

Offensive. A condition that impacts the appearance of an area and offends the surrounding neighbors, or is a fire or health hazard. This definition applies to the word "offends."

Person in charge of property. An agent, occupant, lessee, contract purchaser, or person other than the owner, having possession or control of the property.

Public place. A building, place, or accommodation, whether publicly or privately owned, open and available to the general public.

Surrounding neighbors. Any people of separate residences of property adjacent to, contiguous with or directly across the street from the offending property or condition.

Fowl. Chickens, pigeons, ducks, turkeys, geese, or other domestic fowl.

Livestock. Any horse, mule, burro, dairy or beef animal, goat, sheep, swine, or rabbit, regardless of age.

[Amended by Ordinance 587 on June 8, 2006]

5.405 Animals--Communicable Disease. No person may permit an animal or bird owned or controlled by him to be at large within the city if the animal or bird is afflicted with a communicable disease.

5.410 Dangerous Animals. No person may permit his wild or domesticated dangerous animal to run at large.

5.415 Livestock and Poultry.

(1) No person may maintain a pigsty, slaughterhouse or tannery, or permit livestock or fowl owned by him to run at large or to create a noise or odor that offends surrounding neighbors within the city. This section shall not apply to cats, dogs or other household pets.

(2) Livestock, poultry and other animals and fowl running at large in the city shall be taken up and impounded by a police officer and disposed of in accordance with the

procedure provided by ordinance for the disposition of abandoned vehicles.

(a) Livestock, poultry, and other animals and fowl running at large in the city shall be taken up and disposed of at the discretion of the City.

(3) No person shall keep or maintain livestock or fowl within the City. Livestock or fowl being lawfully kept within the City at the time of this code amendment shall continue to be allowed as long as no violations of LMC sections 5.405 to 5.425 or LMC section 5.485 have been adjudicated and found to be valid. At such time, the livestock and fowl must be removed from the premises.

[Amended by Ordinance 587 on June 8, 2006]

5.420 Removal of Carcasses. No person may permit any fowl or animal carcass owned by him or under his control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of such carcass.

5.422 Removal of Graffiti. No person shall allow graffiti placed on property owned by him or under his control that is visible to the public to remain for a period of time longer than 30 days. The 30 day time period begins once City Hall is notified of the existence of the graffiti and written notice to remove graffiti is provided to the owner or person in control of the property. If the graffiti is not removed within the 30 day time period, then the property owner or person in control of the property will be subject to a Class D violation and/or abatement process as outlined in this Chapter.

[Added by Ordinance 598 on May 14, 2009]

5.425 Nuisances Affecting Public Health. No owner or person in charge of property may permit or cause a nuisance affecting

public health. The following are nuisances affecting public health, and may be abated as provided in sections 5.400 to 5.530:

(1) Privies. An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Department of Environmental Quality regulations;

(2) Debris on Private Property. Accumulations of debris, rubbish, manure and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city;

(3) Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests;

(4) Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes, or other substances placed in or near such water in a manner that will cause harmful material to pollute the water;

(5) Food. Decayed or unwholesome food which is offered for human consumption;

(6) Odor. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition;

(7) Surface Drainage. Drainage of liquid wastes from private premises;

(8) Attractive Nuisances. No owner or person in charge of property may permit any condition (such as pits) or accumulation of items (such as vehicles, equipment, and lumber) which is likely to be inviting or alluring to children and which could cause injury to them. This section shall not apply to authorized construction if reasonable safeguards are maintained.

5.430 Abandoned Iceboxes. No person may leave in a place accessible to children an abandoned, unattended or discarded icebox, refrigerator or similar container which has an airtight door with a snap lock, lock, or other mechanism which may not be released for

opening from the inside, without first removing such lock or door from such icebox, refrigerator or similar container.

5.435 Scattering Rubbish. No person may throw, dump or deposit upon public or private property an injurious or offensive substance or any kind of rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench, detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.

5.440 Junk.

(1) "Junk," as used in this section, means and shall include used motors and motor parts, abandoned or unusable motor vehicles including trucks, tractors, trailers, parts removed from vehicles, household appliances, scrap iron, tin, plastic, glass and paper.

(2) It is determined and declared that the keeping of any junk out of doors on any street, lot or premises within the city, or in a building that is not wholly or entirely enclosed except doors for use for ingress and egress, is a nuisance and is unlawful.

(3) It is unlawful for any owner or person in charge of property to keep or allow to be kept any junk out of doors on any street, or on any lot or premises within the city, or in a building that is not wholly or entirely enclosed except doors used for ingress and egress.

(4) The provisions of this section shall not apply to junk kept in a duly licensed junkyard or automobile wrecking house.

5.445 Maintaining Inoperable Vehicles on Private Property Prohibited.

(1) It is unlawful for any person to maintain any inoperable vehicle on private property for a period of time in excess of one month.

(2) For the purposes of this section, "inoperable vehicle" means any vehicle which

has no current state vehicle license or which cannot be moved without being either repaired or dismantled or which is no longer safely usable for the purposes for which it was manufactured. This definition shall not include any vehicle kept in a building when not in use or any vehicles kept on the premises of a business lawfully engaged in wrecking, junking or repair of vehicles.

(3) Any owner of an inoperable vehicle or any person maintaining such a vehicle on premises under his control for a period of time in excess of one month shall be liable to abatement proceedings by the city as maintaining a public nuisance.

[Amended by Ordinance 587 on June 8, 2006]

5.450 Logs, Firewood and Building Materials.

(1) Logs may be stored on the property for a period not to exceed sixty days if said storage pile is not otherwise a public nuisance pursuant to section 5.425.

(2) Firewood. Firewood may be stored outdoors on any property so long as it is neatly stacked and is not a public nuisance pursuant to section 5.425, nor offensive to the surrounding neighbors.

(3) Building Material. Building material, including lumber, pipe, roofing material or other material required for an in-progress construction project, may be stored in a manner not offensive to surrounding neighbors for a period of time not to exceed 90 days from the start of the project. Permits may be issued for longer periods if the size of the project requires it, there is a valid building permit for the project, and the project is under active construction.

5.455 Garbage. All garbage shall be contained in a closed container stored in a manner not offensive to surrounding neighbors. Other trash and debris shall be removed within ten days from the date of deposit, except that leaves and trimmings

may be stored in a manner not offensive to surrounding neighbors and which does not constitute a fire hazard.

5.460 Blocking Public Right-of-Way Prohibited. None of the items mentioned in sections 5.400 to 5.530 shall be placed in the public right-of-way without a permit from the city.

5.465 Trees.

(1) No owner or person in charge of property that abuts any street or sidewalk may permit trees or bushes on his/her property to interfere with street or sidewalk traffic. It shall be the duty of an owner or person in charge of property that abuts a street or sidewalk to keep all trees and bushes on his/her premises and on the adjoining parking strip trimmed to a height of not less than 7 1/2 feet above the sidewalk level, and over the street area at an elevation of not less than 11 feet above the street level. However, on any street designated as an arterial or one-way street, and where parking has been prohibited, limbs of trees shall be pruned to a height of not less than 14 feet above the street level.

(2) No owner or person in charge of property may allow to stand any dead or decaying tree that is a hazard to the public or to persons or property on or near the property.

5.470 Noxious Vegetation. No owner or person in charge of property shall permit noxious vegetation upon public or private property.

(1) The term "noxious vegetation" does not include vegetation that constitutes an agricultural crop, unless that vegetation is a fire hazard, a health hazard or a traffic hazard. The term "noxious vegetation" does not include vegetation that is part of the natural topographic condition of city or state parks and greenway areas.

(2) The term "noxious vegetation" includes:

(a) Weeds and grass more than ten inches high on any part of the property, between May 15th and October 15th of any year, and not within the exceptions stated in subsection (1);

(b) Poison oak, poison ivy or similar vegetation;

(c) Dead trees, dead bushes, stumps and any other thing likely to cause a fire;

(d) Vegetation that is a fire hazard, as determined by the Fire Chief;

(e) Blackberry bushes that extend into a public thoroughfare or across a property line;

(f) Vegetation that is a health hazard;

(g) Vegetation that is a health hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous;

(h) Trees, bushes, weeds, grass or debris on property, or on the adjoining street or public right-of-way, which interfere with street or sidewalk traffic. This includes:

i. Trees and bushes on the property and on the adjoining right-of-way which are not trimmed to a height of not less than 7 1/2 feet above the sidewalk level, over the street area at an elevation of not less than 11 feet above the street level and to a height of not less than 14 feet above the street level on any street designated as an arterial or one-way street, and where parking has been prohibited.

ii. Hedges, shrubs, etc., which are not trimmed to allow a minimum of three feet

of horizontal clearance between the edge of pavement and the hedges, shrubs, or other vegetation.

[Amended by Ord. 586 on May 11, 2006]

5.475 Drainage.

(1) No owner or person in charge of any building or structure may suffer or permit rainwater, ice or snow to fall from such building or structure onto a street or public sidewalk, or to flow across such sidewalk.

(2) The owner or person in charge of property shall install and maintain in a proper state of repair adequate drainpipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across or upon the sidewalk.

5.480 Radio and Television Interference.

(1) No person may operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception; provided, that the radio or television receiver interfered with is of good engineering design.

(2) This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission.

5.485 Unnecessary Noise.

(1) No person may make, assist in making, continue or cause to be made any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others.

(2) Loud, disturbing and unnecessary noises in violation of this section include but are not limited to the following:

(a) The keeping of any bird or animal which by causing frequent or long-continued noise shall disturb the

comfort and repose of any person in the vicinity;

(b) The attaching of a bell to an animal or allowing a bell to remain on an animal;

(c) The use of a motor vehicle, motorcycle, or motorized vehicle, whether or not designated for use on public roads at any time or under any conditions of grade, load, acceleration, deceleration, movement, at rest, whether or not in repair or operated in such a manner as to create loud or unnecessary grating, grinding, rattling, motor winding, squealing, screeching, or other tire noise or any other unnecessary noise;

(d) The sounding of a horn or signaling device on a vehicle on a street, public place or private place, except as a necessary warning of danger;

(e) The use of a mechanical device operated by compressed air, steam, or otherwise, unless the noise thereby created is effectively muffled;

(f) Any excavation or the construction, erection, repair alteration or demolition of a building or structure other than between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday, or between the hours of 9 a.m. and 6 p.m. on Saturday and Sunday. Exceptions may be granted by the city administrator in cases of urgent necessity in the interest of the public welfare and safety, by permit for a period not to exceed 10 days. Such permit may be renewed for periods of five days while such emergency continues to exist. Exceptions may also be granted by the city council, by application before or during the progress of the work, upon a determination by the council that the public health, safety and welfare will

not be impaired and that loss or inconvenience would result to any person unless such exception were granted.

(g) The use of a gong or siren upon a vehicle, other than police, fire or other emergency vehicle;

(h) The creation of excessive noise on a street adjacent to a school, institution of learning, church or court of justice, while the same are in use, or on a street adjacent to a hospital, nursing home or other institution for the care of the sick or infirm, which unreasonably interferes with the operation of such institution or disturbs or unduly annoys patients;

(i) The discharge in the open air of the exhaust of a steam engine, internal combustion engine, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke;

(j) The use or operation of an automatic or electric piano, phonograph, radio, television, loudspeaker, or any instrument for sound producing or any sound-amplifying device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance.

i. Upon application to the council, permits may be granted to responsible persons or organizations for the broadcast or amplification of programs of music, news, speeches or general entertainment as a part of a national, state or city event, public festivals, or outstanding events of a noncommercial nature. The broadcast or amplification shall not be

audible for a distance of more than 1,000 feet from the instrument, speaker or amplifier, and in no event shall a permit be granted where any obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result;

(k) i. The making of a noise by mechanical, electric or electronic device for the purpose of advertising goods or attracting patronage is allowed on public rights-of-way when:

(aa) The seller possesses a valid city business license;

(bb) The seller is operating within the hours of 9:00 AM and 8:00 PM;

(cc) The seller is operating on residential streets in such a fashion as to not place persons at risk of injury when responding to his/her vehicle.

(ii) The sound produced by the device must not duplicate or otherwise simulate any vehicle warning device such as a horn, alarm or back-up alarm. The sound level must be regulated such that it does not become a nuisance to the community.

(l) The conducting, operating or maintaining of a garage within 100 feet of a private residence, apartment, rooming house or hotel, in such manner as to cause loud or disturbing noises to be emitted there-from between the hours of 11:00 p.m. and 7:00 a.m.

5.490 Notices and Advertisements.

(1) No person may affix or cause any sign, placard, bill, advertisement or poster to be affixed upon real or personal property, including motor vehicles, or public or private property, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regulating the use of and the location of signs and advertising.

(2) No person, either as principal or agent, may scatter, or cause any signs, placards, advertisements or other similar material to be scattered on public property.

5.495 Infractions--Public Nuisance Declaration--Abatement.

(1) The acts, conditions or objects specifically enumerated and defined in sections 5.405 to 5.490 are declared to be violations and public nuisances, and such acts, conditions or objects as a public nuisance may be abated by any of the procedures set forth in sections 5.400 to 5.530.

(2) In addition to those nuisances specifically enumerated within sections 5.400 to 5.530, every other thing, substance or act which is determined by the council to be injurious or detrimental to the public health, safety or welfare of the city is declared to be a nuisance and may be abated as provided in sections 5.400 to 5.530.

[Amended by Ordinance 587 on June 8, 2006]

5.500 Notice--Posting and Mailing—Contents.

(1) Upon determination by the city administrator that a nuisance exists as defined in sections 5.400 to 5.530, a notice shall be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance.

(2) At the time of posting, the city administrator shall cause a copy of such notice to be forwarded by registered or certified mail, postage prepaid, to the owner and the person in charge of the property at the last known address of such owner or other person.

(3) The notice to abate shall contain:

(a) A description of the real property by street address or otherwise, on which such nuisance exists;

(b) A direction to abate the nuisance within ten days from the date of the notice;

(c) A description of the nuisance;

(d) A statement that unless such nuisance is removed, the city may abate the nuisance and the cost of abatement shall be a lien against the property;

(e) A statement that the owner or other person in charge of the property may protest the abatement by giving notice to the city administrator within ten days from the date of the notice.

(4) Upon completion of the posting and mailing, the person posting and mailing the notice shall execute and file a certificate stating the date and place of such mailing and posting.

(5) An error in the name or address of the owner or person in charge of the property or the use of a name other than that of the owner or other person shall not make the notice void and in such a case the posted notice shall be sufficient.

5.505 Abatement--By Owner.

(1) Within ten days after the posting and mailing of the notice as provided in section 5.500, the owner or person in charge of the property shall remove the nuisance or show that no nuisance exists.

(2) The owner or person in charge protesting that no nuisance exists shall file with the city administrator a written statement which shall specify the basis for so protesting.

(3) The statement shall be referred to the council as a part of the council's regular agenda at the next succeeding meeting. At the time set for consideration of the abatement, the owner or other person may appear and be heard by the council, and the council shall thereupon determine whether or not a nuisance in fact exists and such determination shall be entered in the official minutes of the council. Council determination shall be required only in those cases where a written statement has been filed as provided.

(4) If the council determines that a nuisance does in fact exist, the owner or other person shall, within ten days after such council determination, abate such nuisance.

(5) If the owner files no such written statement with the city administrator within the time allowed, a nuisance shall be deemed to exist and the city may proceed to abate said nuisance and file a lien against the property for said costs by the methods set forth in sections 5.510 to 5.525.

5.510 Abatement--By City.

(1) If, within the time allowed, the nuisance has not been abated by the owner or person in charge of the property, the council or City Administrator may cause the nuisance to be abated.

(2) The city officer charged with abatement of such nuisance shall have the right at reasonable times to enter into or upon property to investigate or cause the removal of a nuisance. However, before entering upon private property, the city officer shall obtain the consent of an occupant or a warrant of the municipal court authorizing entry for the purpose of inspection or removal, except when an emergency exists.

(3) No warrant shall be issued under the terms of sections 5.400 to 5.530 until an affidavit has been filed with the municipal

court, showing probable cause for entry into or upon private property, by stating the purpose and extent of the proposed inspection, citing sections 5.400 to 5.530 as the basis for the entry into or upon private property, whether it is an inspection or removal instituted by complaint, and other specific or general information concerning the nuisance in question.

(4) No person shall interfere with or attempt to prevent a city officer from entering upon private premises and inspecting or removing any nuisance when an emergency exists or the city officer exhibits a warrant authorizing entry.

(5) The city administrator shall keep an accurate record of the expense incurred by the city in abating the nuisance and shall include therein any charges for administrative overhead.

[Amended by Ordinance 587 on June 8, 2006]

5.515 Abatement--Assessment of Costs.

(1) The City Administrator, or their designee, by registered or certified mail, postage prepaid, shall forward to the owner a notice stating:

(a) The total cost of abatement, including an administrative overhead charge of \$200;

(b) That 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 if the owner objects to the cost of the abatement as indicated, he may file a written notice of objection with the City Administrator not more than ten days from the date of the notice.

(2) If the City Administrator receives a written notice of objection from the owner prior to the expiration of ten days after the date of the notice, the Council in the regular

course of business shall hear the objections and determine the costs to be assessed.

(3) If a written objection is not filed timely by the owner, the owner must pay the costs as stated in the assessment within thirty days from the date of the notice.

(4) If a written objection is filed timely by the owner, the owner must pay the costs as determined by the council within thirty days from the date the Council determines the costs.

(5) If the costs of the abatement are not paid timely as stated above, the costs thereupon shall be entered in the docket of city liens and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.

(6) The lien shall bear interest at the rate of nine percent per year. Such interest shall commence to run from the date of the entry of the lien in the lien docket.

(7) An error in the name of the owner 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.

[Amended by Ordinance 587 on June 8, 2006 and Ordinance 594 on December 13, 2007]

5.520 Liability. The city shall not be liable to any person for any loss or injury to person or property growing out of any casualty or accident happening to such person or property on account of a property owner, lessee or occupant of property who fails or neglects to promptly comply with the duties imposed by this section. The city shall be exempt from all liability, including but not limited to common-law liability that it might otherwise incur to an injured party as a result of the city's negligent failure to abate a nuisance. If any property owner, lessee or occupant, by his or her failure or neglect to perform any duty required of him or her by the terms of this section, contributes in causing injury or damages, they shall reimburse the city for all damages or injury it has sustained or has been

compelled to pay in such case, including but not limited to reasonable attorney fees for the defense of the same, and such payments as may be enforced in any court having jurisdiction.

5.525 Summary Abatement. The procedure provided by sections 5.400 to 5.530 is not exclusive but is in addition to procedure and remedies provided by this, or any other ordinances, and the health officer, the chief of the fire department, the code enforcement officer, or a police officer may proceed summarily to abate a health or other nuisance which unmistakably exists and from which there is imminent danger to human life or property.

5.530 Separate Violations.

(1) Each day's violation of a provision of sections 5.400 to 5.530 constitutes a separate offense.

(2) The abatement of a nuisance is not a penalty for violating sections 5.400 to 5.530 but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance.

GRAFFITI

5.540 Graffiti Implements-Definitions.

(1) Aerosol Painter Container. Any aerosol container adapted or made for spraying paint;

(2) Etching Device. A glass cutter, awl, or any device capable of scratching or etching the surface of any structure or personal property;

(3) Felt Tip Marker. Any indelible marker or similar implement with a tip which, at its broadest width is greater than one-fourth inch;

(4) Graffiti Stick. A device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure, and

upon application, leaving a mark at least one-fourth of an inch in width.

5.545 Possession of Graffiti Implement.

Graffiti is any unauthorized painting, writing, drawing, carving or inscription which can be seen from any public right-of-way, sidewalk, alley or park and which damages, defaces or destroys any real or personal property through the use of paint, spray paint, indelible marker, ink, knives, or any similar method, regardless of the content of the message delivered or nature of the material used in the commission of the act. No person may possess, with the intent to unlawfully apply graffiti on any real or personal property of another, any "graffiti implement". Unlawful possession of a graffiti implement is a Class A infraction. A violation of the provisions of this section is a Class A infraction.

5.546 Placing Graffiti Prohibited. It shall be a class A infraction for any person to place graffiti on public or private property within the City.

PARKS AND RECREATIONAL FACILITIES RULES AND REGULATIONS

5.550 Definitions. For purposes of this Ordinance, "Park" shall mean any publicly owned real property under the jurisdiction of the City, whether or not located within the corporate limits of the City, and designated for park or recreational purposes.

5.555 General Rules.

(1) **Park Hours.** All Parks shall open at sunrise and close one hour after sunset, unless otherwise specifically authorized by the City. Unless otherwise authorized by the City Administrator or designee, no person shall use or occupy a

Park at a time other than the hours during which it is open.

(2) **Indecent, Disorderly or Disruptive Conduct.**

(a) No person shall engage in act of sexual intercourse, deviate sexual intercourse, or sexual contact, as such terms are defined by ORS 163.305, in any Park, or in any place visible from a Park.

(b) No person shall masturbate, urinate, defecate, or engage in a display of nudity in any Park, or in a place visible from a Park. For purposes of this Ordinance, "nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. Nothing in this provision shall be interpreted as prohibiting the breast-feeding of a child in public, pursuant to ORS 109.001. [*Amended by Ord 551 on October 24, 2002*]

(c) No person shall cause, or attempt to cause, any public disturbance or unauthorized demonstration in any Park. For purposes of this Ordinance, public disturbance shall include, but shall not be limited to, disorderly conduct as defined in ORS 166.025; intimidation as defined in ORS 166.155; and harassment as defined by ORS 166.065.

(3) **Excessive Noise.** No person shall create noise or operate a noise-producing device, address system or instrument in a manner that is reasonably likely to disturb others in the peaceful enjoyment of a Park, recreation area, or park program.

(4) **Dangerous Devices.** No person shall possess a loaded firearm on any Park property unless permitted or authorized to do so by law. With the exception of law enforcement or military personnel acting in their official capacity, no person shall use,

possess, or discharge any explosive device, firearm or other weapon, fireworks, or any other device or substance that could cause harm to persons or property within or near any Park. "Weapons" shall include, but shall not be limited to, B-B guns, air guns, slingshots, or other devices primarily designed for the purpose of projecting a projectile.

(5) **Prohibited Sports Equipment.** No person shall throw or propel any discuss, shot-put, javelin, golf ball, arrow, boomerang, or other object that could cause physical harm to persons or property. Baseball shall be limited to areas specifically identified by the City for such purpose.

(6) **Use of Property and Materials.** No person shall deface, destroy, damage, or remove any City facility, amenity, or other improvement, or cause excessive waste of any City-provided materials or supplies. Park benches, picnic tables, and other equipment shall be used only for the purposes for which they are intended. Any equipment moved for legitimate use shall be replaced by the user in its original location.

(7) **Garbage and Litter.** No person shall deposit, dump, place, or leave any rubbish, garbage, litter or refuse of any type in any Park, except in receptacles provided for such purposes.

(8) **Alcohol.** No person shall possess, distribute or sell in any Park any alcoholic beverage, except as authorized by proper State and City permits. The City may require a certificate of insurance for such an activity. Use or possession of alcohol by anyone under the age of 21 is prohibited. [*Amended by Ord 551 on October 24, 2002*]

(9) **Vehicles.**

(a) Unless by special permit of the City, no person shall operate a motor vehicle, except a City maintenance vehicle, within any Park except on roadways and parking areas specifically designated for this purpose.

(b) No person shall operate a vehicle carelessly or at an excessive speed, or in such a manner as to endanger the rights or safety of others.

(c) No motor vehicle shall be parked within a Park at times outside the posted hours for Park use without written permission of the City Administrator or designee.

(d) No motor vehicle shall be washed or repaired in a Park.

(10) Bicycles, Skateboards, and Fuel-Powered Devices.

(a) Bicycles and skateboards may be operated in a Park only on paths or other areas posted for such use. Bicycles and skateboards shall yield to pedestrians, and shall not be operated in a manner that could be unsafe to any Park user or damaging to Park property or equipment.

(b) No person shall operate, or permit to be operated, any gasoline or fuel-powered model airplane, toy automobile, or motor-driven cart or other toy vehicle in any City Park, without authorization of the City Administrator or designee.

(11) Natural Resources. No person shall pick, cut, remove or mutilate any vegetation, mineral or other natural resource in any Park, except by written authorization of the City Administrator or designee. Digging in any Park is prohibited. Use of metal detectors shall be limited to locating objects on top of the ground.

(12) Wild Animals. Except as authorized by the City, no person shall pursue, hunt, trap, molest, harm, capture or remove any wild bird or animal in a Park.

(13) Domestic Animals. Unless otherwise specifically authorized by the City, any domestic animal brought into a Park shall be kept on a leash and under the control of its owner at all times. Owners are responsible for removing animal waste. Horses are prohibited in any Park, except on marked

trails designated for equestrian use, or on public streets or parking lots.

(14) Fire. Open flames and charcoal briquettes are prohibited in all Parks and recreation areas, except in areas specifically dedicated for this purpose, or by written permission of the City Administrator or designee. Fires must be fully extinguished by the person igniting the fire before such person leaves the immediate area of the fire.

(15) Camping. Except with written authorization of the City Administrator or designee, no person shall camp overnight in any Park, nor erect any tent or other portable structure within any park.

(16) Sales, Solicitations, and Distribution of Materials. Unless authorized by the City Administrator or designee in writing, no person shall sell or expose for sale any merchandise, article, or thing; or solicit any collection, donation, or charge; or distribute materials or literature in any Park.

5.560 Enforcement and Penalties.

(1) Authorization to Enforce.

(a) Any peace officer or authorized City personnel may refuse to permit any person to enter a Park facility or program, or require any person to leave a Park facility or program. Any person directed to leave shall leave immediately. Any person who refuses to leave any Park property, event or program after being asked to do so is a trespasser, and may be arrested and prosecuted for the crime of criminal trespass in the second degree.

(b) The City Administrator, designated City personnel, and all peace officers of the State of Oregon may enforce this Ordinance, and are authorized to issue a citation as provided by Oregon law to any person who violates any provision of this Ordinance.

(c) It shall be a violation of this Ordinance to interfere with its enforcement.

(2) Exclusion.

(a) In addition to other penalties provided for in this Ordinance, any other City or County ordinance, or under the laws of the State of Oregon, any peace officer or designated City employee may exclude from all or part of any park facility or program any person who violates any provision of this Ordinance, any other City or County ordinance, or any state law in the course of using any Park, recreation area or facility, or while participating in any Park program or event. An exclusion may be delivered verbally or by citation by a peace officer, and/or verbally by a designated City employee, followed by a notice from the City Administrator establishing the length of the exclusion for a period of time not to exceed one year.

(b) During the stated period of exclusion, any person excluded under this Section may not enter or remain upon any Park facility, or participate in any Park program or event, from which the person is excluded. Any excluded person who enters or remains upon any part of the Park or facility from which the person has been excluded is a trespasser, and may be arrested and prosecuted for the crime of criminal trespass in the second degree.

(c) The written notice described in Section 5.560 (2) (a) above shall be signed by the City Administrator and given or mailed to the excluded person. The notice shall specify the reason for the exclusion, the places and duration of the exclusion, and the consequences for failure to comply with the notice. The exclusion shall commence immediately upon delivery of the notice to the excluded person.

(d) Within 10 days after the commencement date provided in the written notice of exclusion, an excluded person may appeal in writing to the City Administrator. The notice of appeal shall request a review of the exclusion notice, and request either a hearing or a review without a hearing. The

appeal also must include a statement setting forth the reason(s) that the exclusion is invalid or improper. The City Administrator shall render a decision not later than 10 days after receipt of the appeal, unless a hearing is requested.

(e) If in the written notice of appeal the excluded person requests a hearing, the City Administrator shall conduct a hearing within 10 days of receipt of the appeal. A final decision shall be rendered within 10 days after the hearing.

(f) At any time during the exclusion, an excluded person may petition in writing to the City Administrator for a temporary waiver of the exclusion.

5.565 Penalties.

(1) In addition to the penalty of exclusion, and any other penalty imposed by City or County ordinance or state law, an individual who violates this Ordinance may be subject to the following penalties:

(a) Violation of subsections (2), (4), (5), (6), (8), (9) (b), (12), or (14) or Section 5.550, or Section 5.560 (1) (c), is a Class A violation, punishable upon conviction by a fine not to exceed \$600.

(b) Violation of subsections (3), (7), (9) (a), (9) (c), (9) (d), (10), (11), (13), (15), or (16) of Section 5.555 is a Class B violation, punishable by a fine not to exceed \$300.

(c) Violation of Section 5.555(1) is a Class C violation, punishable by a fine not to exceed \$150.

[Amended by Ord 549 on September 12, 2002] [Amended by Ord 551 on October 24, 2002]

FIRE HAZARDS

5.600 Combustible Vegetation Prohibited.

It is unlawful for the owner or occupant of any property or premises within the city to allow or permit any vegetation

which has dried out to the extent of becoming readily combustible to remain on said property when such dry and combustible vegetation lies within one hundred feet of any building or structure.

5.605 Vegetation Defined. Vegetation. As used in sections 5.600 to 5.615, means any growth which, when allowed to dry normally during the summer and fall dry season becomes combustible and thereby becomes a fire hazard. This shall include but not be limited to: grass, weeds, vines, brush, scrub trees, and landscape plantings, should they be allowed to go unattended to the point of becoming a fire hazard.

5.610 Fire Chief Determination--Notice. Upon the determination of the fire chief that a fire hazard exists, and upon written notification to the owner and the occupant of the premises that such fire hazard does exist, it shall be required that the owner or occupant cut and remove all vegetation lying within 100 feet of any building or structure whether such building or structure lies on the property of the owner or occupant or on the property of another. Such vegetation shall be kept clean and free from said premises throughout the dry seasons of the year.

5.615 Removal by City. In the event that the owner or occupant of the premises fails or refuses to cut and remove such vegetation within five days of notification to do so, or in the event the owner or occupant cannot be located, the city may cause such clearing and removal of vegetation to be done and assess the cost thereof as a lien against the property.

5.620 Outdoor Burning.

(1) No outdoor burning shall occur within the city of Lafayette unless in compliance with Oregon Revised Statutes and the rules and regulations established by the Oregon State Department of Environmental Quality.

(2) The city of Lafayette fire chief and/or the code enforcement officer shall enforce said rules and regulations.

(3) The first violation of the no burning rule shall be a Class "C" infraction. Subsequent violations within a 12 month period shall be a Class "A" infraction.

EXPLOSIVES

5.650 Purpose. It is the intention of the city council that sections 5.650 to 5.725 shall supplement and shall be uniformly interpreted with the laws and regulations of the United States and the state, so far as possible, to avoid an undue burden on commerce.

5.655 Definitions. As used in sections 5.650 to 5.725, except where the context clearly indicates a different meaning, the following words mean:

Explosives. Chemical compounds, mixtures, or devices, the primary or common purpose of which is to function by explosion with substantially instantaneous release of gas or heat, including but not limited to Class A and Class B explosives as classified by the Interstate Commerce Commission, nitro-carbonitrates and fireworks as defined by ORS 480.110, but excluding dangerous articles such as flammable liquids, flammable solids, compressed flammable or nonflammable gases, oxidizing material, corrosive liquids, poisonous liquids or gases, radioactive materials, and small arms ammunition. The Interstate Commerce Commission classifies explosives as follows:

(1) Class A: Explosives having detonating or otherwise maximum hazard such as dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, more than 50 pounds of black powder, blasting caps, and detonating primers. *[Amended by Ord 499 on Sep 10, 1998]*

(2) Class B: Explosives having flammable hazard, such as propellant explosives (including some smokeless powders), photographic flash powders, and some special fireworks;

(3) Class C: Explosives including certain types of manufactured articles which contain Class A or Class B explosives, or both, as components but in restricted quantities, such as small arms ammunition, common fireworks, cordeau detonant, and explosive rivets.

5.660 Applicability.

(1) Except as sections 5.650 to 5.725 may conflict with the regulations, laws and Constitution of the United States and the state, it shall apply to the interstate and intrastate commerce.

(2) Sections 5.650 to 5.725 shall not apply to:

- (a) The armed forces of the United States or the militia of any state.
- (b) The use of explosives.

5.665 Storage--Permit Required. No person may store any explosives unless a permit is first obtained from the city council. A revocable permit valid for one year may be issued by the city council.

5.670 Storage--Application for Permit. Written application for a permit or for renewal of a permit to store explosives shall be made to the city administrator on forms provided by the city. The application shall be accompanied by a permit fee in an amount to be set by resolution of the city council, which shall be returned to the applicant if the application is denied. The city administrator shall refer the application to the city council at the next regular council meeting.

5.675 Storage--Consideration of Application. The council may either grant or deny the application for a permit, taking into consideration:

(1) The congestion of persons, the type of buildings, the volume of vehicular traffic, and the topography in the vicinity of the storage area;

(2) The condition and construction of the structure or magazine used or to be used for storage of explosives and the applicable fire zone regulations;

(3) The adequacy of water supply in the storage area;

(4) "The American Table of Distances for Storage of Explosives," published by the Institute of Makers of Explosives, September 30, 1955;

(5) Any other factors relevant to public safety.

5.680 Issuance of Storage Permit. In granting a permit, the council may limit the quantity of explosives which may be stored by the applicant and may prescribe in the permit the terms and conditions the council considers necessary for the protection of the public from the dangers of explosion. The city administrator shall issue the permit as directed by the council.

5.685 Overnight Storage Limitations. No permit may be granted to store or keep over 50 pounds of explosives or over 500 blasting caps any place within the city between the hours of 6:00 p.m. and 7:00 a.m. of the following day.

5.690 Revocation of Permit. The council may revoke a permit if:

(1) Conditions considered in granting the permit change at the storage area or in the vicinity and the public is endangered by the storage of explosives as authorized by the permit;

(2) The permittee is convicted of a violation of sections 5.650 to 5.725;

(3) The permittee is convicted for violation of federal or state laws or regulations relating to safety in storing and transporting explosives.

5.695 Hearing on Denial or Revocation of Permit. Before denying or revoking a permit, the council shall give written notice of its proposed action to the applicant or permittee. If, within ten days after the date of such notice, a hearing is requested by the applicant or permittee, the council shall fix a time within the next 30 days in which it shall hear the objections of the applicant or permittee to the denial or revocation of the permit. Thereafter the decision of the council shall be final.

5.700 Inspections. It shall be the duty of the fire chief to enforce the provisions of sections 5.650 to 5.725 relating to storage, and he shall regularly inspect buildings where explosives are stored to determine whether storage practices conform to the provisions of sections 5.650 to 5.725 and the limitations imposed by the permit.

5.705 Transportation--General Applicability. Every motor vehicle transporting explosives shall be operated in compliance with sections 5.650 to 5.725 unless federal or state laws and regulations impose a greater affirmative obligation or a greater restraint, or unless compliance would prevent full compliance with federal or state laws or regulations by persons subject thereto.

5.710 Transportation--Operation of the Vehicle. Persons shall operate motor vehicles transporting explosives with the highest degree of care to decrease the probability of danger to life and property in the following manner:

(1) The vehicle shall be driven only upon Highway 212 and Highway 43 passing through the city, except when delivering or receiving explosives off said highways, in which event the vehicle shall be driven upon a route prearranged with the chief of police to avoid, whenever possible, congested streets, heavy traffic, bus routes, viaducts, dangerous crossings, and any dwellings, buildings, or places where persons work, congregate, or assemble;

(2) Except when passing, the vehicle shall be kept at least 300 feet behind other motor vehicles transporting explosives moving in the same direction;

(3) The vehicle shall not be driven near fires of any kind burning on or near a street until passage can be made safely.

5.715 Transportation--Competent Person to Attend Vehicle. When transporting explosives the vehicle shall be attended by a competent person whose primary duty is to attend the vehicle. Such person shall be within sight of and in close proximity to the vehicle and shall have on his person the appropriate keys for starting the vehicle. Vehicles are deemed unattended when left in care of a person on duty in the regular course of another business such as service station attendants, motel operators, or merchant patrolmen. The police are authorized to move unattended vehicles to a safe place, and to enter premises at any time to remove an unattended vehicle loaded with explosives.

5.720 Transportation—Parking and Stopping Restricted.

(1) Except as provided in this section, no person may park a vehicle loaded with explosives in the city for any purpose, and no person may stop such a vehicle for any reason except momentarily to comply with moving traffic laws.

(2) A person may park an attended vehicle for the sole purpose of, and while physically engaged in, loading or unloading

explosives from the vehicle, or changing drivers.

(3) No person may refuel a vehicle within the city except in extreme emergency and then only with enough fuel to enable it to proceed to the first refueling point beyond the city. The engine of the vehicle shall be stopped during refueling.

5.725 Transportation--Disabled Vehicles.

(1) If a vehicle transporting explosives is disabled, the driver shall immediately cause notice to be given to the police and fire departments.

(2) The fire chief shall determine whether or not the vehicle may be moved, and where it may be repaired when loaded.

(3) If the disabled vehicle is moved when loaded with explosives, it shall be moved with a police escort to a location where repairs can be made without endangering life or property.

(4) If transfer of the explosives is imperative, persons making the transfer shall employ adequate safety measures under the supervision of the fire and police departments.

BLASTING

5.750 Permit Required. It is unlawful for any person, company, or corporation, without first having received a permit from the city administrator as hereafter provided for, to explode or cause to be exploded any gunpowder, dynamite, giant powder, nitroglycerin, or other explosive for the purpose of blasting out rock, gravel, earth, or other substance within the corporate limits of the city.

5.755 Permit Affidavit. The city administrator shall have power and authority to issue a permit for blasting but before so doing shall require the person, company, or corporation to whom the permit is to be issued to make application in the form of

affidavit and containing the following information:

(1) The name and address of the person, company, or corporation applying for said permit, and the name and address of the blaster or of the person who will actually supervise the blasting;

(2) Location where it is desired to use the explosives;

(3) The maximum quantity and kind of explosives to be used at one time and the length of time over which the blasting will continue;

(4) The experience and qualifications of the blaster or person who will supervise the blasting operation;

(5) Facts sufficient to establish the financial responsibility of any individual bondsman or the bonding company who will provide the bond as hereinafter provided for.

5.760 Insurance Requirements. The city administrator, before issuing a permit for blasting, shall require the person, company, or corporation to whom the permit is issued to execute and deliver a certificate of liability insurance to include X,C,U coverage in a form to be approved by the city in an amount not less than \$1,000,000, or in such additional amount as may be reasonable under all of the circumstances then existing. Said certificate of insurance shall state on its face that the underlying liability insurance policy includes coverage for indemnification of the city, its officers, agents, and employees and the owners of all property within said city from loss or damage that might result from such blasting and coverage to indemnify, hold harmless, and defend the city, its officers, agents, and employees in and from any cost, attorney's fees or judgments incurred or rendered in any and all suits or actions brought against it as a result in whole or in part from said blasting. The certificate shall also state that the insurance company must give the city a minimum of ten days' notice of cancellation of the required liability insurance

coverage. The city administrator shall have the power and authority to limit the force of the explosions to be made and if it is deemed to be in the public interest, after examining the information contained in the application for a blasting permit and after examining all of the pertinent circumstances surrounding the proposed blasting, may then refuse to issue such permit.

5.765 Revocation of Permit. The city administrator shall have the power to revoke any permit heretofore or hereafter issued under the provisions hereof for failure to comply with any of the provisions of sections 5.750 to 5.785, or for any other reasonable cause.

5.770 Revocation or Denial of Permit--Hearing. Any person, company, or corporation who makes application for a permit to blast under the terms of sections 5.750 to 5.785 and whose application is denied by the city administrator, or whose permit is revoked by the city administrator under the terms hereof may, within ten days thereafter, file notice of appeal to the city council with the city administrator, and the city council shall, within 30 days thereafter, grant a hearing to the appealing party. On appeal, the city council shall have the same power and authority hereunder as the city administrator.

5.775 Nonliability of City. By the passage of the ordinance codified in sections 5.750 to 5.785 or the issuance of any permit hereunder, the city assumes no responsibility for any damage caused by the person, company, or corporation blasting with the said city.

5.780 General Regulations. All persons blasting in the city pursuant to the permit duly issued by the city administrator or otherwise

shall, as a minimum precaution, comply with the following regulations:

(1) Blasting operations shall not be conducted within the city limits between the hours of 4:00 p.m. and 7:00 a.m., nor at any time on a Sunday or legal holiday.

(2) No person shall handle explosives in connection with blasting operations who is not the person named in the application for permit, either as the blaster or supervisor, except for persons under the direct supervision of said supervisor.

(3) No person shall handle explosives while under the influence of intoxicating liquors or narcotics.

(4) Persons authorized to prepare explosive charges or conduct blasting operations shall use every reasonable precaution to insure the safety of the general public and workmen.

(5) When blasting is done in congested areas or in close proximity to a structure, railway, or highway, the blast shall be covered before firing with a mat constructed so that it is capable of preventing fragments from being thrown.

(6) At least three minutes before firing a blast, warning of a blast shall be given by causing a competent man carrying a red flag to be stationed at a reasonable distance from the blast, at each avenue of approach or point of danger.

(7) Electric blasting caps only shall be used as the detonating agent for blasting operations in congested districts, or on highways, or adjacent to highways open to traffic.

(8) No person shall attempt to use dynamite that is frozen.

(9) When blasting caps are used they shall be securely attached to the safety fuse with a standard cap crimper. All priming shall be done at least 50 feet from any magazine.

(10) Blasting caps shall be inserted in the explosives only as required for each round of blasting.

(11) Blasting caps shall not be inserted in the explosives first without first making a hole in the cartridge with a sharpened stick or standard cap crimper.

(12) All drill holes shall be sufficiently large to freely admit the insertion of the cartridges of explosives.

(13) Tamping shall be done only with wooden rods without metal parts.

(14) Holes shall be stemmed with earth or sand. Rock chips, gravel, or similar material shall not be used for tamping the bore holes. No holes shall be loaded except those to be fired at the next round of blasting. After charging, all remaining explosives shall be immediately returned to a safe storage magazine.

(15) Drilling shall not be started until all remaining butts of old holes are examined with a wooden stick for exploded charges, and if any are found, same shall be refired before work proceeds.

(16) No person shall be allowed to deepen drill holes which have contained explosives.

(17) Explosives shall not be extracted from a hole that has once been charged or has misfired unless it is impossible to detonate the unexploded charge by insertion of a fresh additional primer or by drilling a hole in close proximity and at a safe distance from the unexploded charge.

(18) If there are any misfires while using cap and fuse, all persons shall remain away from the charge for at least two hours. If electric blasting caps are used and a misfire occurs, this waiting period may be reduced to 30 minutes. Misfires shall be handled under the direction of the person in charge of the blasting and all wires shall be carefully traced and search made for unexploded charges.

(19) Blasters, when testing circuit to charged holes, shall use sufficient lead-in wires to be at a safe distance and shall use only approved type of testers. No tests of circuits in charged holes shall be made until all persons are at a safe distance.

(20) The blaster shall cause a sufficient warning to be sounded and shall cause all persons to retreat to a safe shelter before he sets off blast and shall also see that none return until he reports it safe for them to do so.

(21) Only the person making wire connections in electrical firing shall fire the shot. All connections should be made from bore hole back to firing machine, and the lead-in wires connected to the blasting machine only when the charge is to be fired.

(22) Empty boxes which have previously contained high explosives shall not be used for any purpose, but shall be destroyed by burning in the open air.

(23) No person shall smoke while handling explosives or in the vicinity thereof.

(24) No open flame lamp or light shall be used in the vicinity of explosives.

(25) Containers of explosives shall not be opened in any magazine, or within 50 feet of any magazine. In opening containers, wooden wedges and either wood, fiber, or rubber mallets shall be used. No metal tools except brass shall be used for opening any containers of explosives.

5.785 Application Fee. All applications for permits to blast under the provision of sections 5.750 to 5.785 shall be made in writing and filed with the city administrator and shall be accompanied by an application fee in an amount to be set by resolution of the city council.