

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 9.04 OF THE ASHLAND MUNICIPAL CODE TO DECLARE PROHIBITED FLAMMABLE PLANTS A NUISANCE.

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~lined through~~** and additions are **underlined**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

WHEREAS, the City of Ashland has determined that it is in the best interest of its residents, business and visitors to encourage fire resistant vegetation when it comes to landscape design; and

WHEREAS, the City of Ashland has determined that the prohibition of highly flammable plants from being newly planted within General Fuel Modification Areas within the City of Ashland, supports the following City Comprehensive Plan Environmental Resources Goal: “Protect Life, property and environmental resources in Ashland’s suburban/wildland interface area from the devastating effects of wildfire. Lessen the possibility of wildfire spreading to the Ashland watershed from the urban/wildland interface area”, and

WHEREAS, the City of Ashland has determined that implementation of this ordinance will assist in preparing the City to be more resilient to climate change impacts, including wildfire, as expressed in the 2017 Climate Energy Action Plan, and

WHEREAS, the City Council of the City of Ashland, following the close of the public hearing and record, deliberated and conducted first and second readings approving adoption of the Ordinance in accordance with Article 10 of the Ashland City Charter; and

WHEREAS, the City Council of the City of Ashland has determined that in order to protect and benefit the health, safety and welfare of existing and future residents of the City, it is necessary to amend the Ashland Municipal Code Health and Sanitation ordinance in the manner proposed, that an adequate factual base exists for the amendments, the amendments are consistent with the comprehensive plan and that such amendments are fully supported by the record of this proceeding.

THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.04 [Weeds and Noxious Vegetation] of the Ashland Municipal Code is hereby amended as follows:

9.04.002 Purpose

The purpose of this chapter is to reduce the risk of damage to property and persons by fire due to weeds, and to reduce hazards to public health, agriculture, recreation, and wildlife by controlling the growth of weeds and noxious vegetation. Ashland Fire and Rescue and the City's Code Compliance Officers intend to prioritize enforcement and abatement under this chapter based upon the degree of fire risk or other hazard caused by the violation and the availability of resources. (Ord. 3009, added, 04/20/2010)

9.04.005 Definitions

- A. Code Compliance Officer: all individuals designated as such pursuant to AMC 1.08.005, including specifically the Fire Chief.
- B. Fire Chief: the City of Ashland Fire Chief or his/her authorized designee.
- C. Fire hazard: a written determination from the Fire Chief that the quality, condition, and/or location of vegetation creates a risk of fire.
- D. Noxious vegetation: all vegetation listed on the noxious weed list promulgated by the Oregon Department of Agriculture's Plant Division.
- E. Owner: owner of real property, agent of the owner, and/or occupant of any lot or parcel of land. In the case of property subject to foreclosure as a result of bankruptcy or default of the legal owner, the City may deem the "Owner" to be the person, other than the legal owner, who has a primary lien, security, or mortgage interest in possession or control of the property or who is the deed of trust beneficiary of the property.

F. Prohibited Flammable Plants: all vegetation listed on the Prohibited Flammable Plan List as approved by Resolution of the City Council.

~~F.~~ **G.** Summer season: between May 15 and September 30 of any year, or the end of fire season as declared by the Oregon Department of Forestry, whichever is later.

~~G.~~ **H.** Weed:

- 1. Vegetation, grass, shrubbery, and round wood that is less than 1/4 inch in diameter and more than four inches (4") high, and
- 2. Vegetation that is a:
 - a. Health hazard, such as providing harborage for vermin;
 - b. Fire hazard due to the quantity and/or location; or
 - c. Traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous

9.04.010 Weeds Declared Nuisance

The growth or maintenance of weeds upon lots and parcels of land, and abutting rights-of-way in the City during the summer season, or at any other time of year when deemed a fire, health or traffic hazard, is declared to be a nuisance.

9.04.011 Prohibited Flammable Plants Declared Nuisance

The planting of species identified on the Prohibited Flammable Plant List within a General Fuel Modification Area in the City is declared to be a nuisance.

9.04.012 Noxious Vegetation Declared Nuisance

The growth or maintenance of noxious vegetation upon lots and parcels of land, and abutting rights-of-way in the City at any time is declared to be a nuisance.

9.04.015 Exemptions to Nuisance

- A. The term “weed” does not include vegetation that constitutes an agricultural crop or decorative residential landscaping, unless that vegetation is a fire, health, or traffic hazard.
- B. It shall not be a violation of this chapter for property owners to maintain wetland or upland native vegetation in its natural state either on their property or in common areas when required to do so pursuant to the requirements of state law, city ordinance or land use approval. Nothing herein prohibits a property owner from preserving native vegetation in its natural state in excess of the requirements of state law or city ordinance, provided the owner prepares and implements a management plan for maintenance of the natural area and said plan is approved and on file with the community development department.
- C. It shall not be a violation of this chapter for property owners to maintain Prohibited Flammable Plants which were established prior to the effective date of this ordinance on their property or in common areas, unless the plants are subject to removal through implementation of an approved Fuel Prevention and Control Plan or General Fuel Modification Area on file with the community development department.**

9.04.020 Responsibility of Owner - Removal of Weeds

The owner of any lot or parcel of land within the limits of the City of Ashland shall cut and/or remove weeds growing thereon, and on adjacent and abutting rights-of-way, between May 15th and June 15th of each year. It shall be the duty of an owner to continue to cut and remove the weeds throughout the summer season, or any other time of year when deemed a fire, health, or traffic hazard.

9.04.022 Responsibility of Owner - Prohibited Flammable Plants

The owner of any lot or parcel of land within the limits of the City of Ashland shall not permit species identified on the Prohibited Flammable Plant List to be newly planted on their property within a General Fuel Modification Area as defined in Chapter 18.3.10.100.B. It shall be the duty of an owner to cut down and remove any new seedlings and volunteer plants of listed prohibited flammable plants as often as needed to prevent them from posing an increased fire hazard.

9.04.024 Responsibility of Owner - Removal of Noxious Vegetation

The owner of any lot or parcel of land within the limits of the City of Ashland shall not permit noxious vegetation to grow upon their property and on adjacent and abutting rights-of-way. It shall be the duty of an owner to cut down or to destroy and remove all noxious vegetation as often as needed to prevent it from becoming a fire, health or traffic hazard, from becoming unsightly, or maturing, spreading, and going to seed.

9.04.028 Abatement Process

The Uniform Abatement Process set forth in chapter AMC 2.31 shall apply to nuisances identified in this Chapter and may be used to abate continuing violations.

Notwithstanding any other AMC provisions, a code compliance officer may order the minimum abatement necessary to abate a fire, health or traffic hazard, (e.g. creation of an adequate fire break to protect adjacent property from fire exposure). Abatement of the nuisance shall not prohibit the City from seeking any other remedy or sanction provided by law.

9.04.030 Violation Penalty

Any person who violates any provision of this Chapter is subject to Section 1.08.020 of the Ashland Municipal Code. Any violation of this section is a Class I violation.

9.04.040 Notice to Abate – Contents

In case of failure or neglect of any such agent, owner or occupant to cut weeds and grass and shrubbery as herein provided, the City Recorder shall cause to be served on such agent, owner, and/or occupant a notice, describing the property with convenient certainty by its legal description or by the street number of the house, requiring such owner or agent and/or occupant to cut said weeds, grass, and shrubbery within ten (10) days from the service thereof, or that the City will require the same to be done, and the cost thereof charged as a lien against said property.

9.04.050 Notice to Abate – Service – Removal by City – Lien

Such notice shall be served upon such owner, agent, and/or occupant in person if found upon said premises or within the City, and in case said owner, agent, and/or occupant

cannot be found in person within the City after reasonable diligence and inquiry, such notice shall be posted in a conspicuous place upon said premises, and a copy thereof mailed to the last known post office address of such owner, agent, or occupant, if any such address is known, and return of service shall be filed with the Recorder; and if at the end of ten (10) days from the giving of such notice, such owner, agent, and/or occupant, has failed and neglected to cut and remove such vegetation, the Fire Chief shall cause the same to be done and shall file with the Council a verified itemized statement of the expenditure occasioned thereby, and the Recorder shall cause notice to be served upon the owner, agent, or occupant in the manner hereinbefore described, such statement will be considered and determined by the Council and a lien declared upon the property involved, the time of which meeting shall be specified in the notice, more than ten (10) days from the giving of the same, and the Council shall at such meeting hear any objections to such statement, and by ordinance determine the correctness of the same, and declare such corrected amount a lien upon the property benefitted and instruct the Recorder to enter the same upon the City docket of liens in the same manner and with the same effect that street improvement liens and sewer liens are entered, and said lien shall have the same force and effect as such street improvement and sewer liens, and shall be certified to the county assessor in the same manner.

SECTION 2. A Prohibited Flammable Plant List shall be maintained by the City of Ashland and approved by Resolution of the City Council.

SECTION 3. Savings. Notwithstanding this amendment, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 5. Codification. Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 3-5) need not be codified and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X,
Section 2(C) of the City Charter on the ___th day of _____, 2018,
and duly PASSED and ADOPTED this ___th day of _____, 2018,

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ___ day of _____, 2018,.

John Stromberg, Mayor

Reviewed as to form:

David H. Lohman, City Attorney