

ORDINANCE #189

AN ORDINANCE OF THE TOWN OF CUSICK, WASHINGTON,
ESTABLISHING WHAT SHALL CONSTITUTE A PUBLIC
NUISANCE; PROVIDING A METHOD OF ABATEMENT, SETTING
FINES AND PENALTIES FOR VIOLATION.

WHEREAS, State law, RCW 35A.21.160 and RCW 35.23.440, vests the Town with authority to declare nuisances, to remove and abate nuisances at the expense of persons creating the same, and to levy liens against land or premises whereon nuisances exist so as to reimburse the town for costs of abatement; and WHEREAS, the Town Council finds that the existing Town Ordinances do not adequately cover nuisances;
NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF CUSICK, WASHINGTON, as follows:

Section 1. Purpose

The purpose of this ordinance is to designate what constitutes a Public Nuisance for the purposes of this ordinance, provide a means as authorized by statute for the abatement of the nuisance, thus improving health, welfare, and safety of the citizens of Cusick and improving the Town's neighborhood as authorized by RCW 46.55.240.

Section 2. Definitions.

For the purpose of this ordinance the following terms are hereby defined:

- (a) "Abate" means to remove, destroy or to otherwise remedy a condition by such means and in such manner as is necessary in the interests of the general health, safety and welfare of the community.
- (b) "Civil Violation" means a violation of a provision of this ordinance, for which a monetary penalty may be imposed under this ordinance. Each day in which a violation occurs or continues to exist is a separate violation.
- (c) "Premises" means any parcel of land, whether improved or not.
- (d) "Owner" means, in addition to the definition in NMC 1.04.010, any person owning property, as shown on the real property records of Pend Oreille County or on the last assessment role for taxes, and shall also mean any lessee, tenant, or other person having control or possession of the property.
- (e) "Nuisance" means every act unlawfully done and every omission to perform a duty, which act or omission does any of the following, shall constitute a public nuisance:
 - 1. Annoys, injures, or endangers the safety, health, or comfort or repose of the citizens of the Town; or
 - 2. Offends public decency; or
 - 3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a public park, street, alley, highway, or other public area; or sidewalks; or
 - 4. In any way renders any citizens of the Town insecure in life or use of property.
- (f) The following acts, in addition to any others in violation of subsection (e) of this section, shall constitute a public nuisance:
 - 1. Throwing, depositing, exposing, or causing to be disposed of, in any street or other public place within the town, any garbage, waste, refuse, litter, debris, or other offensive material unless the disposal of such items in such place is specifically authorized by law;
 - 2. Causing or allowing garbage, waste, refuse, litter, debris, or other offensive materials, to be collected or deposited, or to remain in any place in the Town, to the annoyance of any person, unless otherwise permitted by law;
 - 3. The depositing or burning or causing to be deposited or burned in any street, alley, or other public place which is open to travel, of any hay, straw, paper, wood, boards,

boxes, manure or other rubbish or material. All burning of refuse or other material in such manner as to cause or permit the smoke, ashes, soot, or gases arising from such burning to become discomforting or annoying, or to injure or endanger the health of any person or neighborhood; as allowed by the burning permits of Pend Oreille County air pollution control authority. Provided such burning doesn't violate this subdivision. Burning authorized by Pend Oreille County air pollution control authority or other regulator agency is permitted.

4. Any building in the Town which is or may hereafter become dangerous or hazardous to persons or property by reasons of fire, decay, deterioration, unsafe construction or by any other cause whatsoever and any building having the following defects shall be deemed nuisances:

a. Those which have been damaged by fire, wind, or other causes so as to have become dangerous to life, safety, morals, or the general health and welfare of the occupants or the people of the Town, or

5. Any refrigerator, icebox, or deep-freeze locker having a capacity of one and one-half cubic feet or more or any other container manufactured, custom-made or homemade designed for storage which is discharged, abandoned or left in any place accessible to children and which has not had the door or latching mechanism removed to prevent the latching or locking of the door;

6. Erecting, continuing, or using any building, room, property, or other place in the Town for the exercise of any trade, employment, or manufacture which results in offensive odors or other annoyances being released, and which annoys, injures, or is offensive or detrimental to the health of the individuals there employed or residing, or to the public;

7. Any building, house, room, or other structure or vehicle, maintained or used for the purpose of lewdness, assignation, or prostitution;

8. All houses, rooms, booths, or other structures used as a place of resort where disorderly persons are allowed to congregate, or in which drunkenness is carried on or permitted;

9. Any pit, basin, hole, or other excavation which is unguarded and dangerous to life, or has been abandoned or is no longer used for the purpose for which it was constructed, or is maintained contrary to law;

10. All obstructions to streets, rights-of-way, or other public ways in the Town, and all excavations in or under the same, which are by ordinance prohibited or which may be made without lawful permission, or which, having been made by lawful permission, are kept and maintained after the purpose thereof has been accomplished, or for an unreasonable length of time;

11. Erecting, maintaining, using, placing, depositing, leaving or permitting to be or remain in or upon, any private lot, building, structure, or premises, or in or upon any street, alley, sidewalk, park, parkway, or other public or private place in the Town, any one or more of, but not limited to, the following conditions or things:

(a) Any unsound, putrid, or unwholesome bone, meat, hides, skin, or the whole or parts of any dead animal or fish, or any unsound, putrid, or unwholesome substance; or the offal, garbage, or other offensive, dangerous, or other offensive parts of any animals; or any noxious, offensive, dangerous or otherwise injurious, chemicals or other materials such as oil, grease, poisons, explosives, radioactive materials, and other similar substances in such a manner as to be offensive or injurious to public health, or unpleasant or disagreeable to the adjacent residences or persons,

(b) Any cellar, vault, drain, sewer, or septic tank to become, from any cause, noxious, foul, offensive, or injurious to public health, or unpleasant or disagreeable to the adjacent residences or persons,

(c) Any noxious, foul, or putrid liquid or substance, or any liquid or substance likely to become noxious, foul, offensive, or putrid, to be discharged, placed, or thrown upon, or to flow from or out of, any premises into, or upon, any adjacent premises into, or upon, any adjacent premises, or any public street or alley, or to stand, remain, or be upon any premises.

12. All premises, buidings and vehicles whereon or wherein intoxicating liquor

is manufactured, sold, bartered exchanged, given away, furnished, disposed of, consumed, or permitted to be consumed, in violation of the laws of the State and the ordinances of the Town;

13. All vacant, unused, or unoccupied buildings and structures within the Town, which are allowed to become or remain open to entrance by unauthorized persons or the general public, because of broken, missing, or open doors, windows, or other openings, so that the same may be used by vagrants or other persons in a manner detrimental to the health and welfare of the inhabitants of the Town;

14. Any sign, poster or other advertising matter of any nature placed upon a telegraph, telephone or other poles, trees, sidewalks, streets, signs, traffic signs or other traffic control device or other structures or places within streets, alleys or other public places or rights-of-way;

15. All buildings, or parts thereof, vehicles, or other structures, wherein any gambling, as defined by RCW 9.46.020, may be found, except as licensed and within the scope of the license required under State law and by Chapter 3.60 of this code;

16. The depositing or allowing or irrigation or other water to run by any street, alley, or other public place, in such manner as to cause settling or damage to the street, alley, or other public place, or to cause annoyance, damage or hazard to any user of the street, alley, or other public place.

17. More than one inoperative vehicle per residential lot which has not been moved within a sixty-day period which is not screened or housed from sight will be deemed a public nuisance.

Section 3. Permitting - Maintaining

It is unlawful for any person, by himself or by his agents or employees, or as the agent or employee of another person, firm or corporation, to do, or permit to be done, upon any premises over which he has control; or to maintain, carry on, suffer, or allow, at any place or places mentioned in Section 9.48.050, any of the acts or things declared to be nuisances in this chapter; or to do or cause or permit, or suffer to be done, or to maintain, any act or thing which is detrimental or injurious to public health, or offensive to the senses, or contrary to public decency or morality.

If the owner or agency or any premises has actual or constructive knowledge of the maintenance on or in his premises of any nuisance, as defined in this chapter, he shall be deemed one of the persons in control of the premises.

Section 4. Notice to Abate Nuisance

Whenever the code enforcement officer, Town Marshall, Mayor or Mayor's designee finds that a nuisance exists, he shall cause to be served upon the property owner, as shown by the records of the county auditor; a written notice to abate the nuisance within a reasonable time after such notice. Such notice shall be sent to the property owner by certified mail.

Section 5. Contents of Notice to Abate.

The notice to abate shall contain:

- A. A description of what constitutes the nuisance;
- B. The location of the nuisance;
- C. A statement of the act or acts necessary to abate the nuisance;
- D. A reasonable time within which to complete the abatement;
- E. A statement that if the nuisance is not abated as directed and no request for hearing is made within the time prescribed, the town will abate it and assess the costs against the property owner;
- F. After the first notification of any further notifications to abate shall include a processing fee to be determined by resolution of the town council.

Section 6. Hearing.

A. Any person ordered to abate a nuisance may have a hearing with the officer ordering the abatement to determine whether a nuisance does exist. A request for a hearing must be made

in writing and delivered to the officer ordering the abatement within the time stated in the notice, or it will be conclusively presumed that a nuisance exists that must be abated as ordered.

B. At the conclusion of the hearing, the hearing officer shall render a written decision as to whether a nuisance exists. If he finds that a nuisance exists, he must order it abated within an additional time which must be reasonable under the circumstances. An appeal from this decision may be had by immediately filing a written notice with the hearing officer. This appeal will be heard before the town council at a time and place fixed by the town council. The findings of the town council shall be conclusive and, if a nuisance is found to exist, it shall be ordered abated within a time reasonable under the circumstances.

Section 7. Failure to Abate

If a person notified to abate a nuisance neglects or fails to abate as directed, the Town may perform the action required to abate, keeping an accurate account of the expenses incurred. An itemized expense account shall be certified and filed with the fiscal officer.

Section 8. Failure to Abate - Penalty.

Any person creating, keeping, or maintaining any nuisance, or permitting, allowing, or suffering any nuisance to be maintained, who neglects or fails to abate or remove the nuisance within twenty-four hours next after so creating, keeping or maintaining the nuisance, or permitting, allowing, or suffering the same to be maintained, shall, for each twenty-four hours thereafter during which the nuisance is continued, be guilty of a separate violation of maintaining a public nuisance.

Section 9. Abatement - Immediate.

Whenever any nuisance is within a public way or easement; or of such a character and so situated that it can be abated without the invasion or destruction or the prejudice of any right, and the further continuance is likely to result in expense to the Town or injury to any person or property, the Chief of Police or other proper officer of the Town may abate and remove the nuisance summarily.

Section 10. Abatement by Town - Safeguards.

In any case where a nuisance is to be abated by the Chief of Police or any other proper officer it shall be the duty of such officer to proceed with due care and without unnecessary destruction of property. He shall in all cases be authorized to employ such assistance and adopt such means as may be necessary to effect the entire abatement of the nuisance.

Section 11. Collection of Cost of Abatement.

The Town Treasurer shall send a statement by verified mail of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, he shall certify the costs and file a lien against the property. The lien will be released upon collection of the expenses incurred and the amount collected will be disbursed to the general fund of the Town.

Section 12. Violation - Penalties.

Failure to obey the Order of the Town Council or hearings committee issued pursuant to Section 6 under this Ordinance or to obey an order to abate a nuisance shall be a misdemeanor punishable by a One Thousand Dollar (\$1000.00) fine or ninety (90) days in jail or both fine and jail.

Section 13. Immunity

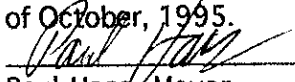
The Town of Cusick or authorized agents shall be immune from any and all civil liability for any action to enforce the provisions of this ordinance. It is not the purpose or intent of this Ordinance to create on the part of the Town or its agents any special duties or relationships with specific individuals. This ordinance has been enacted for the welfare of the public as a whole.

Section 14. Severability

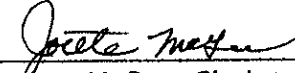
If any Section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is declared to be unconstitutional or invalid for any reason, such decision shall not effect the validity of the remaining portion of this ordinance.

Section 15. Effective Date.

This ordinance shall take effect and be in force from the date of passage, approval and publication as required by law. Passed by the Town Council of the Town of Cusick this 28th day of October, 1995.



Paul Haas, Mayor

Attest: 

Joette McGee, Clerk-treasurer