

CITY OF VALDEZ, ALASKA

ORDINANCE NO. 19-02

AN ORDINANCE OF THE CITY OF VALDEZ, ALASKA AMENDING
CHAPTER 8.20 OF THE VALDEZ MUNICIPAL CODE RELATING TO
NUISANCES

WHEREAS, the following amendments to Chapter 8.20 of the Valdez Municipal Code establish regulations related to nuisances within the City of Valdez.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA that the following amendments are made to Chapter 8.20 of the Valdez Municipal Code:

Section 1. Chapter 8.20 of the Valdez Municipal Code is hereby amended to read as follows:

**Chapter 8.20
NUISANCES**

Sections:

- 8.20.010 Definitions
- 8.20.015 Inspection
- 8.20.020 Public Nuisances designated—Acts prohibited.
- 8.20.030 Enumerated—Acts prohibited in all zones.
- 8.20.040 Enumerated—Acts prohibited in all zones except heavy and special industrial.
- 8.20.050 Junk vehicles.
- 8.20.060 Noise.
- 8.20.070 Emission of dense smoke.
- 8.20.080 Escape of soot, cinders, etc.
- 8.20.090 Voluntary compliance agreements.
- 8.20.100 Abatement—Commencement of proceedings.
- 8.20.110 Abatement—Standards to be followed.
- 8.20.120 Abatement—Notice and order.
- 8.20.130 Abatement—Notice and order—Recordation.
- 8.20.140 Abatement—Notice and order—Extension of time limit.
- 8.20.150 Abatement—Notice and order—Posting.
- 8.20.160 Abatement—Enforcement of order—Generally.
- 8.20.170 Abatement—Enforcement of order—Procedure—Costs.
- 8.20.180 Abatement—Enforcement of order—Interference prohibited.
- 8.20.190 Abatement—Recovery of costs.
- 8.20.200 Abatement—Appeal.
- ~~8.20.210 Appeal to the planning and zoning commission.~~
- 8.20.220 Appeal to the board of appeals.~~adjustment.~~

- 8.20.230 Appeal to superior court.
- 8.20.240 Summary abatement in emergency.
- 8.20.250 Remedies.
- 8.20.300 Fine Schedule

8.20.010 Definitions

A. "Abandoned vehicle" means a motor vehicle left unattended, standing, parked upon or within ten (10) feet of the traveled portion of a public roadway, or a public right-of-way, for a period in excess of forty-eight (48) hours, upon private property without the consent of the owner in excess of twenty-four (24) hours, or upon other public property for more than thirty (30) days without the consent of the owner or person in charge of the property.

B. "Abatement official" shall mean the city manager, planning and zoning department director, fire chief, police chief, code enforcement officer or their designated representatives are authorized to enforce the provisions of this chapter.

C. "Attractive nuisance" shall mean a dangerous thing or condition that may foreseeably attract someone to come onto land, thereby causing a risk to their safety.

D. "Board of appeals" shall mean the Valdez City Council.

E. "Cinders," "dust," "fly ash," "noxious acids," "fumes" and "gases" as used shall mean all matter other than dense smoke, including smoke, cinders, dust and soot formed as the result of the combustion of fuels which are carried in the gas streams so as to reach the external air and which have not been completely consumed by the combustion process.

F. "dB(A)" shall mean a measure of sound pressure level in decibels on the A-weighted scale.

G. "Decibel meter" shall mean an instrument to measure decibels which meets or exceeds American National Standards Institute (ANSI) Section 1.4 or the latest approved revision thereof.

H. "Device" shall mean any mechanism which is intended to produce or which actually produces sound when operated or handled.

I. "Incidental expenses" shall mean expenses associated with nuisance abatement including, but not be limited to, the actual expenses and costs of the city in the preparation of notices, specifications, contracts, overhead and inspection of the work and the cost of printing and mailing required hereunder.

J. "Junk vehicle" means a motor vehicle that:

- a. Is in a condition which exhibits two (2) of the following elements: broken glass; missing wheels or tires; missing body panels or parts; missing drive train parts; or
- b. Is stripped, wrecked or otherwise inoperable due to mechanical failure.

- K. “Noise” shall mean any sound which exceeds the prescribed decibel levels at a time and location described in this section.

- L. “Nuisance” shall mean any violation of the city code including the specific prohibitions set forth in this chapter.

- M. “Responsible party” shall mean any person, persons, corporation, or other legal entity, tenant, or lessee using or occupying a premises that causes, allows, maintains, or permits a nuisance to exist on any property within the City of Valdez.

- N. “Sound-amplifying equipment” shall mean any machine or device for the amplification of the human voice, music or any other sound or noise.

8.20.015 Inspections.

- A. An abatement official may, upon presentation of credentials identifying the abatement official as a city employee, enter upon any affected property at any reasonable time to inspect the same or to perform any act or acts related to the performance of his or her enforcement duties, subject to the procedures below.

- B. Inspections may include or involve the taking of photographs, samples, measurements, surveys, or obtaining other physical evidence, and/or conferring with any person(s) present at the affected property or location, as permitted by law and consistent with legally recognized privacy rights.

- C. If an abatement official has reasonable cause to believe that a condition exists that poses an imminent or immediate threat of harm to persons or property, or to public health, welfare or safety, the abatement official may enter the affected property or location without prior notification to the owner or occupant, subject to privacy and personal property rights and any other applicable provisions of law, including the state and federal constitutions.

- D. In cases where the responsible party or owner of the property refuses to consent to an inspection and where the constitution of the United States or of the state so requires, the abatement officer shall obtain an administrative search warrant authorizing an inspection and exhibit the warrant to the person in charge of the premises before conducting the inspection. The abatement offices shall apply to the trial courts of the state to obtain an administrative search warrant. The application for an administrative search warrant shall state the name and address of the premises to be inspected, the

authority to conduct the inspection, the nature and extent of the inspection, and the facts and circumstances justifying the inspection.

8.20.020 Public Nuisances designated—Acts prohibited.

A. Public Nuisances shall include any violation of the city code including ~~but not be limited to~~ whatever is forbidden by any provision of this chapter. Abatement of nuisances in accordance with the provisions of this chapter is in addition to any other administrative, civil, or criminal remedy permitted by law.

B. It is unlawful and a minor offense punishable by a fine as set forth in the fine schedule provided in Section 8.20.240 to cause, allow, maintain, or permit any nuisance enumerated in this chapter. Violations of this chapter that require mandatory appearance are punishable by a fine of up to the maximum fine amount set out in section 1.08.010. Each day that a violation of this chapter continues shall constitute a separate offense. ~~for any person to commit, create or maintain any public nuisance enumerated in this chapter.~~ (Ord. 11-02 § 1 (part): Ord. 05-05 § 1: prior code § 16-1)

8.20.0320 Enumerated—Acts prohibited in all zones.

The following acts and conditions shall constitute a ~~public~~ nuisance in all zones:

A. Whatever injures or endangers the safety, health, comfort or repose of the public, offends public decency, interferes with, obstructs or renders dangerous any street, highway, navigable lake or stream, or in any way renders the public insecure in life or property;

B. Noise exceeding the prescribed ~~decibel~~ levels set forth in Section 8.20.050;

C. Disposing of any refuse, garbage, manure, waste or other materials except at refuse disposal sites which have been approved and are supervised by the state health officer, or city manager, and which are clearly marked for such purpose;

D. Dumping, abandoning, throwing, scattering or transporting anything in such manner as to cause the littering of any street, alley or public place, or of any private property not his/her own, or as to cause the obstruction of any ditch, drain or gutter, except as permitted in refuse disposal sites under subsection C of this section;

~~E. Knowingly or wantonly operating or causing to be operated any machine, device or apparatus of any kind whatsoever within the corporate limits of the city between the hours of ten a.m. and twelve midnight, the operation of which shall cause reasonably preventable electrical interference in the operation of any radio or television receiving set or with radio or television reception within the city, except that X-ray pictures, examinations or treatment may be made at any time if the machines or apparatus used therefor are properly equipped to avoid all unnecessary or reasonably preventable interference with such radio or television reception, and are not negligently operated;~~

EF. Any well, swimming pool or other dangerous excavation in the earth not completely covered, or guarded by a fence at least eight feet high of either solid panel

or heavy woven-wire construction or by other means of protection, including use of watchmen which shall be fully effective at all times, including night hours;

~~FG.~~ Buildings which are unoccupied and open to ingress and egress and which should be locked up, boarded up or otherwise secured from ingress or egress;

~~GH.~~ Unoccupied buildings in a rotten or warped condition;

~~HI.~~ Broken windows constituting hazardous conditions and inviting trespassers and malicious mischief;

~~IJ.~~ Overgrown vegetation causing detriment to neighboring properties or property values;

~~JK.~~ Dead trees, weeds or debris:

1. Constituting unsightly appearance, or
2. Dangerous to public safety and welfare, or
3. Detrimental to nearby property or property values;

~~KL.~~ Attractive nuisances ~~dangerous to children~~ including but not limited to attractive nuisances in the form of:

1. Abandoned and broken equipment, or
2. Hazardous pools, ponds and excavations, or
3. Neglected machinery, or
4. Abandoned refrigerators, or
5. Abandoned automobiles or cabinets; or

6. Unsafe structures or buildings as defined in Section 15.04.070 (G).

~~LM.~~ Broken or discarded furniture and household equipment in yard areas for unreasonable periods, seven days being prima facie evidence of an unreasonable period;

~~N.~~ Clotheslines in front yard areas;

~~O.~~ Neglect of premises:

1. To spite neighbors, or
2. To influence zone changes, or
3. To cause detrimental effect upon nearby property of property values;

MP. Property including but not limited to building exteriors which is maintained in such condition as to become so defective, unsightly or in such condition of deterioration or disrepair that such property causes appreciable diminution of the use, enjoyment, aesthetic or property values of surrounding property or is materially detrimental to nearby properties and improvements. This includes but is not limited to the keeping or disposing of or scattering over the property or premises of any of the following:

1. Lumber, junk, trash or debris, or
2. Abandoned, discarded or unused objects of equipment such as automobiles, trailers, vehicles, furniture, stoves, refrigerators, freezers, cans or containers, or
3. Stagnant water or excavations, or
4. ~~Any device, decoration, design, fence, structure, clothesline or vegetation which is unsightly by reason of its condition or its inappropriate location;~~

N.Q. Dumping, pumping, placing, throwing or discharging any oil, bilge waters, refuse, garbage, or debris including in ~~Valdez Small Boat Harbor or the waters of Port Valdez within the city;~~

~~R. Any discarded, abandoned, unattended or used refrigerator, icebox or similar container equipped with an airtight door or lid, snap locks or other locking device which cannot be released from the inside, in a location accessible to children, either outside any building or dwelling or within an unoccupied or abandoned building, dwelling or other structure, without first having removed the door, lid or locking device. This provision applies equally to the owner of any such refrigerator, icebox or similar container, and to the owner or occupant of the premises where the hazard is permitted to remain. (Ord. 14-07 § 1: Ord. 11-02 § 1 (part): Ord. 05-05 § 2: prior code § 16-2)~~

8.20.0430 Enumerated—Acts prohibited in all zones except heavy and special industrial.

The following acts and conditions shall constitute a public nuisance in all zoning districts unless expressly permitted therein ~~zones except industrial:~~

~~A. Trailers, campers, boats and other mobile equipment stored for unreasonable periods in unsheltered front yard areas, thirty days being prima facie evidence of an unreasonable period;~~

AB. Packing boxes and other debris stored in yards and visible from public streets for unreasonable periods, seven days being prima facie evidence of an unreasonable period. (Ord. 11-02 § 1 (part): Ord. 05-05 § 3: prior code § 16-3)

8.20.0540 Junk vehicles.

A. It is unlawful for any person to place any wrecked, junked or abandoned vehicle upon public property not set aside by law as a refuse disposal, or upon any private property, except licensed junk yards., ~~any wrecked, junked or abandoned vehicle.~~

B. It is unlawful for any owner, lessee, agent, tenant or occupant to allow or permit any wrecked, junked or abandoned vehicle to remain on any property owned or controlled by him, except licensed junk yards., ~~any wrecked, junked or abandoned vehicle.~~

C. Any violation of subsection A or B of this section shall constitute a public nuisance. The costs of abatement may be charged or assessed by the city council as provided by Section 8.20.150(B) against any or all of the following:

1. The vehicle;
2. The registered owner of the vehicle;
3. Any person who has acquired the right to possession of the vehicle from or through the registered owner;
4. Any person in violation of subsection A or B of this section;
5. The owner, lessee, agent, tenant or person in control of the property where the vehicle was situated at the time of the notice to abate.

D. As used in this section:

1. “Abandoned vehicle” means a motor vehicle left unattended, standing, parked upon or within ten (10) feet of the traveled portion of a public roadway, or a public right-of-way, for a period in excess of forty-eight (48) hours, upon private property without the consent of the owner in excess of twenty-four (24) hours, or upon other public property for more than thirty (30) days without the consent of the owner or person in charge of the property. ~~The term “abandoned” includes any vehicle which, at the time of the notice of abandonment, cannot be operated as a motor vehicle in compliance with the laws of the state because of mechanical failure or condition.~~

2. “Junk vehicle” means a motor vehicle that: ~~The term “vehicle” means any motor vehicle as defined in this code and includes any body or part of any such motor vehicle.~~

a. Is in a condition which exhibits two (2) of the following elements: broken glass; missing wheels or tires; missing body panels or parts; missing drive train parts; or

b. Is stripped, wrecked or otherwise inoperable due to mechanical failure.

E. A person having upon his premises an abandoned or junk vehicle which is in need only of reasonable repairs and is without available funds to obtain the required license or to make such repairs may apply to the city manager for a permit to keep the vehicle upon the premises. (Ord. 11-02 § 1 (part): prior code § 16-4)

8.20.0650 Noise.

A. Intent. It is the intent of this section to endeavor to provide citizens with an environment free from such excess sounds or noise as may jeopardize their health, welfare and safety, or degrade the quality of life.

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B. Definitions. For the purposes of this chapter:–

~~“dB(A)” shall mean a measure of sound pressure level in decibels on the A-weighted scale.–~~

~~“Decibel meter” shall mean an instrument to measure decibels which meets or exceeds American National Standards Institute (ANSI) Section 1.4 or the latest approved revision thereof.–~~

~~“Device” shall mean any mechanism which is intended to produce or which actually produces sound when operated or handled.–~~

~~“Noise” shall mean any sound which exceeds the prescribed decibel levels at a time and location described in this section.–~~

~~“Sound-amplifying equipment” shall mean any machine or device for the amplification of the human voice, music or any other sound or noise.–~~

BC. Noise in Residential Districts.

1. General Restriction. It shall be unlawful for any person to use, operate, or emit or permit to be used, operated or emitted any source of sound which produces or reproduces sound either stationary or mobile in such a manner so as to create any sound or noise which exceeds sixty dB(A) during the hours of seven a.m. until ten p.m. or which exceeds fifty dB(A) from ten p.m. until seven a.m. when measured at or within the boundary of the property on which the sound is received.

2. Responsibility for Creation of Noise. Any person creating any such sound or noise as described in this section and/or anyone permitting such a sound or noise to be created in, or emanate from, any premises under his care, custody and control shall be presumed responsible for any such sound or noise.

CD. Exceptions.

1. Emergency and Public Work. Noise or sound created in the performance of public service by governmental agencies or their contractors while performing snow removal services; or emergency work engaged in by persons for the public safety, health or welfare; or to restore property to a safe condition following a public emergency; or work to restore essential public services, including construction activities directly related to the abatement of any emergency, shall not be subject to the provisions of this section.

2. Noises from Authorized Activities. The prohibitions of this section shall not apply to air traffic, parades, cultural events, athletic games, fairs, or functions approved by the city.

3. Sirens, Horns and Whistles. The provisions of this section shall not apply to any siren, whistle, horn or bell used by emergency vehicles or civil defense or used by motor vehicles as warning devices to avoid collisions.

4. Bells or Chimes. The provisions of this section shall not apply to any bell or chimes, or any device for the production or reproduction of the sound thereof, which are associated with a clock or time-keeping device, church or school.
5. Burglar Alarms. The provisions of this section shall not apply to any burglar alarm or security device; provided, however, no burglar alarm or security device shall sound for more than fifteen minutes after being activated.
6. Construction Activity or Equipment. The provisions of this section shall not apply to any construction activity or equipment operated between the hours of seven a.m. and ten p.m.
7. Residential Power Tools and Equipment. The provisions of this section shall not apply to any residential power tools and equipment operated between the hours of seven a.m. and ten p.m.
8. Vessels. The provisions of this section shall not apply to the operation of any boat or vessel.
9. Motor Vehicles. The provisions of this section shall not apply to the normal and usual operation of motor vehicles unless prohibited by state law.
10. Residential/Commercial Snow Removal Activity or Equipment. Noise or sound created in the performance of residential/commercial snow removal by property owners or their contractors.

D.E. Noise on Public Streets Generally. It shall be unlawful for any person to use, operate, or permit to be used or operated in or on a parked or moving motor vehicle any sound-amplifying equipment producing sound that is clearly audible at twenty-five feet or more from the motor vehicle on any public street or right-of-way within city limits.

E.F. Temporary Waiver Permits. If the applicant can show to the city manager or his designee that a diligent investigation of available noise abatement techniques indicates that immediate compliance with the requirements of this chapter would be impractical or unreasonable, a permit to allow exception from the provisions contained in all or a portion of this chapter may be issued, with appropriate conditions to minimize the public detriment caused by such exceptions. Any such permit shall be of as short duration as possible, up to six months, but renewable upon a showing of good cause, and shall be conditioned by a schedule for compliance and details of methods therefor in appropriate cases. ~~Any person aggrieved with the decision of the city manager or his designee may appeal to the city council.~~ (Ord. 11-02 § 1 (part); Ord. 09-06 § 1; Ord. 05-05 § 4; prior code § 16-5)

8.20.0760 Emission of dense smoke.

A. ~~Prohibited—Exceptions.~~ It is unlawful for any person to permit the emission of any smoke from any source that constitutes a nuisance by exposing the public to health risks or interfering with the reasonable enjoyment of private or public property. ~~whatever of a density equal to or greater than that density described as No. 2 on the Ringlemann—~~

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~~Chart. The emission of any such dense smoke is declared to be a public nuisance, and may be summarily abated by the abatement official. This section shall not apply to:~~

B. Exceptions.

This section shall not apply to:

1. The emission of smoke during temporary maintenance activities for a reasonable amount of time so long as the responsible party has taken all reasonable efforts to minimize the omission of such smoke. ~~The circumstance when a firebox, furnace, boiler, locomotive or other fuel-consuming device is being cleaned out and a new fire is being built therein, in which event the smoke of a density greater than that described on the Ringlemann Chart shall be permitted for a period of not to exceed six minutes in any single period of sixty minutes;~~
2. Smoke from fires set by or permitted by any official if such fire is set or permission given in the performance of the official duties of such officer, and such fire in the opinion of such officer is necessary:
 - a. For the purpose of the prevention of a fire hazard which cannot be abated by any other means,
 - b. For the instruction of public employees in the methods of firefighting.

~~B. Ringlemann Chart.~~

1. ~~The Ringlemann Chart is a chart which is described in the U.S. Bureau of Mines Information Circular 6888, and on which are illustrated graduated shades of gray for use in estimating the light-obscuring smoke density.~~
2. ~~The Ringlemann number is the number appearing on the Ringlemann Chart described by the observer to the density of smoke emission.~~
3. ~~The use of the chart will be made by placing it at such distance from the observer so that the smoke appears as even shades of coloring or when no white spaces between the lines are visible. Measurements shall be taken at the point of greatest density, which will usually be at the point of emission. Comparison of the smoke and observation with the various shades of the chart will then indicate the density of the smoke. Observation distances shall be not less than one hundred feet nor more than one quarter mile from the smoke observed.~~
4. ~~Where the density or opacity of the smoke as observed falls between two consecutive Ringlemann numbers, the lower Ringlemann number shall be considered the density of the smoke observed. (Ord. 11-02 § 1 (part): prior code § 16-6)~~

8.20.0~~8~~70 **Escape of soot, cinders, etc.**

A. Dangers to Public Health.

1. It is unlawful for any person to permit or cause the escape of such quantities of soot, cinders, noxious acids, fumes and gases in such place or manner as to:
 - a. Be detrimental to any person or the public;
 - b. Endanger the health, comfort and safety of any such person or of the public;
 - c. Cause or have a tendency to cause injury or damage to property or business.
2. The escape of such matter is declared to be a public nuisance and may be summarily abated by the abatement official.

~~B. Definitions. "Cinders," "dust," "fly ash," "noxious acids," "fumes" and "gases" as used in this section shall be considered to be all matter other than dense smoke, including smoke, cinders, dust and soot formed as the result of the combustion of fuels which are carried in the gas streams so as to reach the external air and which have not been completely consumed by the combustion process. (Ord. 11-02 § 1 (part); prior code § 16-7)~~

8.20.090 Voluntary compliance agreements.

The abatement official may enter into a voluntary compliance agreement with a responsible party. The voluntary compliance agreement is a written, signed commitment by the responsible party to abate existing nuisances or code violations. The voluntary compliance agreement shall include the following:

- A. The name and address of the responsible party;
- B. The address or other identification of the location of the violation;
- C. A description of the violation and a reference to the applicable code provisions.
- D. A description of required abatement or corrective action and the date and time within by which compliance must be completed.
- E. An acknowledgment that if the city determines that the terms of the voluntary compliance agreement are not met, the city may impose any remedy authorized by this chapter or other applicable code section(s); and
- F. An acknowledgment that by entering into the voluntary compliance agreement, the responsible party admits that the conditions described in the voluntary compliance agreement existed and constituted a code violation.

8.20.100080 Abatement—Commencement of proceedings.

~~The city manager, community and economic development director, fire chief, police chief or their designated representatives are authorized to enforce the provisions of this chapter. When used in this chapter, "abatement official" shall include these officials or their designated representatives.~~

Whenever the abatement official has inspected any activity, condition or property and has found and determined that such activity, condition or property constitutes a public nuisance, the abatement official may ~~he shall~~ commence proceedings to have the public nuisance abated by rehabilitation, repair or other appropriate action. The procedures set forth in this chapter shall not in any manner limit or restrict the city from enforcing city ordinances or abating public nuisances in any other manner provided by law or by the common law including by citing the responsible party and imposing a fine as provided in 8.20.020. (Ord. 11-02 § 1 (part); Ord. 05-05 § 5: prior code § 16-8)

8.20.110090 Abatement—Standards to be followed.

The abatement official, and the board of appeals if an appeal is taken, shall order the means best calculated to abate wholly the nuisance with the least costs of abatement, and demolition shall not be ordered if repair or removal may accomplish the abatement. (Ord. 11-02 § 1 (part): prior code § 16-9)

8.20.120 Abatement—Notice and order.

A. Issuance—Contents. The abatement official shall issue a notice and order directly to the record owners of the affected property, or the person committing, creating or maintaining the public nuisance. The notice and order shall be approved as to form by the City Attorney and shall contain:

1. The street address and legal description sufficient for identification of the affected property;
2. A ~~The~~ statement that the abatement official has found the property affected with a public nuisance with a brief and concise description of the public nuisance as defined in this chapter;
3. A statement of the action required to be taken as determined by the abatement official to abate the public nuisance by rehabilitation, repair, demolition or other action sufficient to cause the nuisance to be wholly abated;
4. A statement advising that if any required abatement is not commenced or completed within the time specified, the abatement official may either:
 - a. Proceed to cause the necessary work to be done and charge the cost thereof against the property or its owner; or
 - b. As provided by AS 29.25.070, submit to the court an application for action to enjoin the violation. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction.
5. Statements advising:
 - a. That any person having record title or legal interests in the property may appeal from the notice and order by filing with the city clerk within fifteen days (unless such abatement will materially affect a building or structure permanently attached to real property, in which case thirty days shall be allowed) from the date of service of such

notice and order an appeal in writing in accordance with the appeal procedure as provided in Sections 8.20.180 through 8.20.210; and

b. Failure to appeal will constitute a waiver of all right to administrative hearing and determination of the order, and will result in the abatement official proceeding with the remedies provided in subsections (A)(4)(a) and (b) of this section.

B. Service of Notice and Order.

1. The notice and order and any amended or supplemental notice and order shall be served upon the record owner and posted on the property affected by the public nuisance, and one copy thereof shall be served on each of the following if known to the abatement official ~~or disclosed from official public records~~:

a. The holder of any mortgage or deed of trust or other lien or encumbrance of record;

b. The owner or holder of any lease of record;

c. The owner of any other estate or legal interest of record in or to the property affected by the public nuisance.

2. The failure of the abatement official to serve any person required to be served shall not invalidate any proceedings herein as to any other person duly served or relieve any such person from any duty or obligation imposed on him by the provisions of this section. No notice is required for abatement of a public nuisance occurring on the public streets and rights-of-way, city properties and parks, or for summary abatement when permitted.

C. Method of Service. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by registered or certified mail, postage prepaid, return receipt requested, to each such person at his address as it appears on the last equalized assessment roll of the city or as known to the abatement official. If no address of any such person so appears or is known to the abatement official, any copies of notice or order shall be so mailed addressed to such person, at the address of the property involved in these proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified or registered mail in the manner provided in this section shall be effective on the date of mailing.

D. Proof of Service. Proof of service of the notice and order shall be certified to at the time of the service by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned as acknowledgement of receipt by certified or registered mail, shall be affixed to the copy of the notice and order retained by the abatement official. (Ord. 11-02 § 1 (part): prior code § 16-10)

8.20.130 Abatement—Notice and order—Recordation.

A. If compliance is not had with the order within the time specified therein, and no appeals are properly and timely filed, the abatement official ~~may~~ shall have filed in the office of the Valdez recording district a certificate describing the property and certifying:

1. That the property is affected by a public nuisance;
2. That the owner and responsible party has been so notified.

B. Whenever the public nuisance has been abated on a property described in the certificate, the abatement official shall file a new certificate with the office of the Valdez recording district certifying that the public nuisance has been abated. (Ord. 11-02 § 1 (part): prior code § 16-11)

8.20.140 Abatement—Notice and order—Extension of time limit.

Upon receipt of an application from the person required to conform to the order and agreement in writing by such person that he will comply with the order if allowed additional time, the abatement official may, at his discretion, grant an extension of time within which to abate the public nuisance, if the abatement official determines that such an extension of time will not create or perpetuate a situation dangerous to life or property. The abatement official's authority to extend time is limited to the abatement of the public nuisance and will not in any way affect or extend the time to appeal his notice and order. (Ord. 11-02 § 1 (part): prior code § 16-12)

8.20.150 Abatement—Notice and order—Posting.

A. Required. Every notice and order of compliance shall, in addition to being served as provided in Section 8.20.100(B), be posted in a conspicuous place upon the affected property.

B. Compliance. No person shall remove or deface any such notice after it is posted until the required abatement has been completed. Any person violating this subsection shall be guilty of a minor offense misdemeanor. (Ord. 11-02 § 1 (part): prior code § 16-13)

8.20.160 Abatement—Enforcement of order—Generally.

A. Violation. After any order of the abatement official or the board of appeals ~~city council, acting as a board of appeals~~, shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order shall be guilty of a minor offense misdemeanor. Each day that a violation of this section continues shall constitute a separate offense punishable by a fine of up to the maximum fine set forth in Section 1.08.010.

B. Failure to Obey Order. If, after any order of the abatement official or the ~~city council acting as a board of appeals~~ has become final, any person to whom such order is directed shall fail, neglect or refuse to obey such order, the abatement official may:

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1. Cause such person to be prosecuted under subsection A of this section;
2. Institute any appropriate action to abate such public nuisance under Section 8.20.12000(A)(4)(a) and (b);
3. ~~Do both 1 and 2.~~

C. Failure to Commence Work. Whenever the required abatement is not commenced within fifteen or thirty days, as provided in Section 8.20.100(A)(5)(a), after the notice and order issued under this code becomes effective, the abatement official may, in addition to any other remedy herein provided, cause the public nuisance to be abated with the cost of such abatement to be paid and recovered in the manner and method provided in Section 8.20.170. (Ord. 11-02 § 1 (part): prior code § 16-14)

8.20.170 Abatement—Enforcement of order—Procedure—Costs.

A. Procedure. When any abatement of a public nuisance is to be done pursuant to Section 8.20.16040(C) of this chapter, the abatement official shall issue his order therefor to the director of public works or the director of capital facilities and the work shall be accomplished by city personnel or by private contract under the direction of such director.

~~B. Costs. The costs, including incidental expenses of abatement of such public nuisance, shall be a lien against the property involved or may be made a personal obligation to the property owner, whichever the city shall determine is appropriate. (Ord. 11-02 § 1 (part): prior code § 16-15)~~

8.20.180 Abatement—Enforcement of order—Interference prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city or with any persons who own or hold any estate or interest in the premises affected by the public nuisance which has been ordered abated, whenever such officer, employee, contractor or authorized representative of the city, or person having any interest or estate in the affected premises, is performing the necessary acts preliminary or incidental to such work authorized or directed pursuant to Section 8.20.140. (Ord. 11-02 § 1 (part): prior code § 16-16)

8.20.190 Abatement—Recovery of costs.

A. The abatement official shall keep an account of the costs, including incidental expenses, of abating each public nuisance, including each separate lot or parcel of land where the abatement is done, and shall render an itemized report in writing to the city council showing the costs of abatement and manner of abatement of each public nuisance, including any salvage value relating thereto.

B. Upon the completion of the abatement work, the abatement official shall prepare and file with the city clerk a report specifying the work done, itemizing the total cost of the work, the description of the property affected by the public nuisance and the names and addresses of the persons entitled to notice pursuant to Section 8.20.12000(B). Before the report is submitted to the city council, a copy of a report shall be posted for at Ordinance No. 19-02

least five days upon the affected premises, together with a notice of the time when the report shall be heard by the city council.

~~C. The term “incidental expenses” shall include, but not be limited to, the actual expenses and costs of the city in the preparation of notices, specifications, contracts, overhead and inspection of the work and the cost of printing and mailing required hereunder.~~

CD. The costs including incidental expenses of abatement of such nuisance, shall be a lien against the property involved or may be made a personal obligation to the property owner, whichever the city shall determine is appropriate. shall be recovered as provided in Section 8.20.150(B). All monies recovered for the costs of the abatement shall be paid into the general fund. (Ord. 11-02 § 1 (part); Ord. 96-22 § 1; prior code § 16-17)

8.20.200 Abatement—Appeal.

Any person entitled to service under Section 8.20.12000(B) may appeal from the notice and order or any action of the abatement official concerning abatement of a public nuisance in writing within the time limits set forth in Section 8.20.220. (Ord. 11-02 § 1 (part); Ord. 96-22 § 2; prior code § 16-18)

~~**8.20.190 Appeal to the planning and zoning commission.**~~

~~A.— Filing Limit. An appeal from the notice and order or action of the abatement official in enforcement of this title may be taken to the planning and zoning commission by any person entitled to service under Section 8.20.100(B). The written appeal must be filed within fifteen days (unless such abatement will materially affect a building or structure permanently attached to real property, in which case thirty days shall be allowed) of the notice and order. The appeal must be filed with the office of the city clerk.~~

~~B.— Report. A report concerning each case appealed to the planning and zoning commission shall be prepared by the abatement official and filed with the city clerk. Such report shall state the decision and recommendations of the commission together with reasons for the decision and recommendations. All data pertaining to the case shall accompany the report.~~

~~C.— Stay of Proceedings. The filing of an appeal shall stay all proceedings in the matter until a determination is made by the planning and zoning commission, unless the court issues an enforcement order based on a certificate of imminent peril to life or property. (Ord. 11-02 § 1 (part))~~

8.20.220 Appeal to the city council acting as the board of appeals. ~~board of adjustment.~~

The city council shall act as the board of appeals for an appeal of any action of decision of the abatement official.

A. Filing Limit. An appeal from any action or decision of the abatement official ~~planning and zoning commission~~ may be taken by any person or persons entitled to service under Section 8.20.1~~2000~~200(B). The appeal shall be in the form of a written statement, and state how the appellant will be affected or aggrieved by the action. The appeal must be filed within fifteen ~~ten~~ days of the date of the action or decision by the abatement official (unless such abatement will materially affect a building or structure permanently attached to real property, in which case thirty days shall be allowed) ~~planning and zoning commission~~. The notice of appeal must be filed with the city clerk.

B. Appeals Hearing. Upon a determination by the city clerk that an appeal is timely filed by a person entitled to service under 8.20.120(B) and the appeal pertains to the subject matter of the underlying action, the city clerk shall schedule an appeals hearing before the board of appeals no sooner than twenty days from the date of the appeal request. The appeals hearing may be scheduled during a regular or special city council meeting as deemed appropriate by the city clerk.

C. Notice of Hearing

1. Form of Notice. A notice of the date, time, and place of the appeals hearing before the board of appeals shall be served on the appellant and shall be titled, "NOTICE OF HEARING," and shall set forth the reasons why a nuisance was declared, the specific city code provisions violated, and the methods of abatement available.

2. Posting and service. The abatement officer, as designated by the city manager, shall cause the notice of hearing to be served upon the owner(s) of the affected premises, and shall cause a copy of the notice to be conspicuously posted on the premises. The notice shall be posted and served at least ten (10) days before the time set for the hearing. Proof of posting shall be made by declaration under penalty of perjury. The method of service of the notice shall be the same as specified in Section 8.20.120(B).

D. Report. A report concerning each case appealed to the board of appeals shall be prepared by the abatement official and filed with the city clerk. Such report shall state the decision and recommendations of the abatement official together with reasons for the decision and recommendations for abating the nuisance. All data and evidence pertaining to the case shall accompany the report.

E. Procedure for Hearing by Board of Appeals. An appeal before board of appeals shall be conducted in accordance with the following procedures:

1. Failure of Appellant to Appear. If an appellant fails to appear in person, the board of appeals may proceed with the hearing.

2. Oath to Be Administered. Anyone testifying before the board of appeals shall be administered an oath prior to giving testimony.

3. Record. The city clerk shall be ex officio clerk of the board of appeals and shall keep verbatim stenographic records or electronic recordings of the board's proceedings, showing the vote of each member on every question and all of the evidence presented.

4. Burden of Proof. The burden of proof rests with the appellant. The city shall make available to the appellant all reasonably pertinent documents requested for presentation of the appeal.

5. Rules of Evidence. The hearing of an appeal shall be conducted informally. The board of appeals shall not be restricted by the formal rules of evidence; however, the chair may exclude evidence irrelevant to the issues appealed. Hearsay evidence may be considered, provided there are adequate guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.

6. General Procedure. Each side shall have a total of no more than thirty minutes to present their case. Each side shall be responsible for dividing their thirty minutes between oral presentation, argument, testimony (including witness testimony), and rebuttal. The board may expand or limit the length of the hearing depending on its complexity, or take other action to expedite the proceedings.

7. Order of Presentation. The appellant shall present argument first. Following the appellant, the abatement officer shall present the city's argument. The appellant may, at the discretion of the chair, make rebuttal presentations directed solely to the issues raised by the abatement officer. The members of the board of appeals may ask questions through the chair of either the appellant or the abatement officer at any time during the hearing.

8. Witnesses and Exhibits. The appellant and the abatement officer may offer oral testimony of witnesses and documentary evidence during the hearing. All testimony before the board of appeals shall be under oath.

9. Decision of board of appeals. At the conclusion of the hearing, the board of appeals shall, based on the information received at the hearing, determine whether the premises, or any part thereof, constitutes a nuisance as defined in the City Code. If a majority of the entire board of appeals finds by a preponderance of the evidence that a nuisance does exist and that there is sufficient cause to rehabilitate, demolish or repair the property constituting the nuisance, the board of appeals issue a written decision setting forth its findings and, if a nuisance is found, ordering the owner or responsible party to abate the nuisance. The decision shall set forth the methods by which abatement may be achieved and deadlines by which the nuisance shall be abated by the owner or person having control or possession of the premises. A written decision of the board of appeals shall constitute a final determination on behalf of the City of Valdez subject to appeal to the superior court.

~~B. Report. A report concerning each case appealed to the board of adjustment shall be prepared by the planning and zoning commission and filed with the city clerk. Such~~

report shall state the decision and recommendations of the commission together with reasons for the decision and recommendations. All data pertaining to the case shall accompany the report.

F.G. Stay of Proceedings. The filing of an appeal shall stay all proceedings in the matter until a determination is made by the board of appeals adjustment, unless the board of appeals or a court issues an emergency enforcement order based on a certificate of imminent peril to life or property or otherwise. (Ord. 11-02 § 1 (part))

8.20.230 Appeal to superior court.

An appeal from any action, decision, ruling, judgment or order of the board of appeals adjustment may be taken by any person or persons entitled to service under Section 8.20.12000(B), or any officer, ~~commission~~ or board of the city, to the superior court by filing with the court, with a copy to the city clerk, within thirty days from the date of the action appealed from, a notice of appeal which shall specify the grounds of such appeal. Failure to file the notice of appeal in the manner and time specified shall forfeit any right to appeal. The filing of an appeal shall stay all proceedings in the matter until a determination is made by the court, unless the court issues an enforcement order based on a certificate of imminent peril to life or property. (Ord. 11-02 § 1 (part))

8.20.240 Summary abatement in emergency.

A. General Procedure. The abatement official may proceed with a summary abatement any public nuisance without notice where the abatement official determines that a nuisance is imminently dangerous to the health or safety of the occupants of the property or to the public. The abatement official may only pursue the level of abatement necessary to eliminate the immediacy of the hazard to the health and safety of the occupants or public. ~~in an emergency where the public safety, comfort or repose is seriously annoyed, injured or endangered to the point where immediate action is necessary and notice cannot be timely given. All other abatement proceedings, except the necessity and the manner and method of giving notice, shall apply to the nuisance summarily abated, including the recovery of the costs of the summary abatement.~~

B. Summary Abatement Powers. After taking reasonable measures to contact the responsible party regarding the existence of a nuisance that immediately threatens health or safety and attempting to secure immediate abatement action from the responsible party, the abatement official may exercise the following powers upon finding that summary abatement is appropriate to the extent necessary to protect the health and safety of the occupants or the public:

1. Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed; or
2. Post the premises as unsafe, substandard or dangerous; or
3. Board, fence or secure the building or site; or
4. Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public; or

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Redline indicates additions/strikeout indicates deletions

5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or

6. Take any other action as appropriate under the circumstances.

C. Post Abatement Notice. After the summary abatement is completed, the city shall serve the responsible parties with a notice that states:

1. The actions taken by the city and the reasons for the actions;

2. The right to contest the abatement by appealing within ten days of receiving the notice; and

3. A statement of the costs of the abatement and notice of the city's intent to collect.

D. Post Summary Abatement Appeals. If a summary abatement occurs in a manner that causes costs to accrue to the responsible party or materially impacts the responsible party's property rights, the responsible party may appeal the decision for a determination by the board of appeals regarding whether the summary abatement was required. The appeals procedures set forth in this chapter shall apply to a post summary abatement appeal. The city shall bear the burden to show the summary abatement was required by a preponderance of the evidence.

8.20.250 Remedies.

The remedies provided for in this chapter shall be cumulative and in addition to other remedies or procedures provided elsewhere in this code or by common law. In addition, a public nuisance may be abated by the city in a civil action. (Ord. 11-02 § 1 (part): prior code § 16-20. Formerly 8.20.200)

8.20.300 Fine Schedule

The penalty for violations of Chapter 8.20 shall be as reflected in the fine schedule set forth in this section. Court appearance is optional upon citation for a violation of those sections of Chapter 8.20 that appear in the fine schedule set out in Section 1.08.030 and as reflected in the fine schedule set forth in this section.

Code Section	OFFENSE DESCRIPTION	Court Appearance	Penalty/ Fine
8.20.015	Nuisances designated—Acts prohibited —first offense	Optional	\$100.00
8.20.015	Nuisances designated—Acts prohibited —second offense	Optional	\$250.00
8.20.015	Nuisances designated—Acts prohibited—third and subsequent	Optional	\$500.00
8.20.020	Enumerated—Acts Prohibited in all Zones—first offense	Optional	\$100.00
8.20.020	Enumerated—Acts Prohibited in all Zones—second offense	Optional	\$250.00
8.20.020	Enumerated—Acts Prohibited in all Zones—third and subsequent	Optional	\$500.00
8.20.030	Enumerated—Acts prohibited in all zones except heavy and special industrial—first offense	Optional	\$100.00

8.20.030	Enumerated—Acts prohibited in all zones except heavy and special industrial—second offense	Optional	\$250.00
8.20.030	Enumerated—Acts prohibited in all zones except heavy and special industrial—third and subsequent	Optional	\$500.00
8.20.040	Junk vehicles—first and subsequent	Optional	\$500.00
8.20.050	Noise—first offense	Optional	\$100.00
8.20.050	Noise—second offense	Optional	\$250.00
8.20.050	Noise—third and subsequent	Optional	\$500.00
8.20.060	Emission of dense smoke—first offense	Optional	\$100.00
8.20.060	Emission of dense smoke—second offense	Optional	\$250.00
8.20.060	Emission of dense smoke—third and subsequent	Optional	\$500.00
8.20.070	Escape of soot, cinders, etc.—first offense	Optional	\$100.00
8.20.070	Escape of soot, cinders, etc.—second offense	Optional	\$250.00
8.20.070	Escape of soot, cinders, etc.—third and subsequent	Optional	\$500.00

Section 2. This ordinance shall take effect immediately upon adoption by the Valdez City Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF VALDEZ, ALASKA, this _____ day of _____, 2019.

CITY OF VALDEZ, ALASKA

Jeremy O’Neil, Mayor

ATTEST:

Sheri L. Pierce, MMC, City Clerk

APPROVED AS TO FORM:

Jon Wakeland, City Attorney
Brena, Bell, & Clarkson, P.

First Reading:
Second Reading:
Adoption:
Ayes:
Noes:
Absent:
Abstain: