

Council Information:

Introduced by: City Manager Healy  
Introduced: July 11, 2006  
Public Hearing: July 25, 2006  
Action: Adopted  
Vote: Unanimous

Yes:	No:
Pippel	
Erbey	
Wood	
Hanson	
Combs	

CITY OF PALMER, ALASKA

ORDINANCE NO. 06-016

AN ORDINANCE AMENDING PALMER MUNICIPAL CODE CHAPTER 8.38 (NUISANCE – JUNK, LITTER AND UNSIGHTLY PREMISES); SPECIFICALLY TO REPEAL REFERENCES TO THE CLEAN CITY HEARING BOARD AND ENACTING LANGUAGE AUTHORIZING CODE VIOLATION CITATIONS

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Chapter 8.38 is hereby amended to read as follows (new language is underlined and deleted language is stricken out):

**Chapter 8.38**

**NUISANCE – JUNK, LITTER AND UNSIGHTLY PREMISES**

**8.38.010 Definitions.**

As used in this chapter, the following words are defined in this section:

~~“Board” means the clean city hearing board.~~

“Junk” means any worn-out, wrecked, scrapped, partially or fully dismantled or discarded tangible material, combination of materials or items that cannot without further alteration and reconditioning be used for their original purposes, including but not limited to appliances, building material, chemicals, equipment, furniture, machinery, metal, rags, rubber, paper, plastics and wood.

“Litter” means all improperly discarded waste material, including but not limited to convenience food, beverage and other product packages or containers constructed of

steel, aluminum, glass, paper, plastic and other natural and synthetic material, thrown or deposited on the lands and waters within the boundaries of the city.

“Occupant” means the person in possession of the real property on which the junk or litter is located. “Occupant” includes tenant and lessee.

“Owner” means the owner of the real property on which the junk or litter is located, or the agent of the owner.

~~“Respondent” includes an owner or an occupant or both who receives a formal notice under PMC 8.38.060.~~

“Unightly premises” means property including but not limited to building exteriors maintained in such condition as to become so defective or unsightly or in such condition of deterioration or disrepair that the property causes appreciable diminution of the property values of surrounding property or is materially detrimental to proximal properties and improvements is a public nuisance. This includes but is not limited to the keeping or disposing of or the scattering over the property or premises of any lumber, junk, trash or debris; abandoned, discarded or unused objects or equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers; stagnant water or excavations; or any device, decoration, design, fence, structure, clothesline or vegetation that is unsightly by reason of its condition or its inappropriate location.

“Zoning Administrator” means the person or the designee authorized by the city manager to enforce this ordinance.

#### **8.38.020 Owner and occupant to maintain premises.**

- A. The owner and the occupant of any private property in the city shall at all times maintain the premises free from significant accumulations of junk and litter; provided, however, that this section shall not prohibit the storage of junk or litter in authorized private receptacles for collection, or the storage of junk that is not visible to the public at large. A significant accumulation of junk or litter on any private property in the city contrary to this section is deemed to be a public nuisance.
- B. The owner and the occupant of any private property in the city shall at all times maintain the property in a manner so that the property does not constitute an unsightly premises.
- C. This chapter does not apply to property zoned industrial.

#### **8.38.030 Initiation of action.**

A city resident may initiate action under this chapter by filing a written signed statement with the ~~city manager or designee~~ zoning administrator complaining about junk, litter, or an unsightly premises on private property in the city. The ~~city manager or designee~~ zoning administrator may initiate action even without a complaint.

#### **8.38.040 Initial inspection and report.**

Upon receiving a duly filed complaint, the ~~city manager or designee~~ zoning administrator will inspect the property ~~complained of~~ in a reasonable time. ~~The city manager or designee will~~ and make a written report of the findings of the inspection. When practicable, photographs of the premises will be attached to the report. The reports are to be maintained for at least one year.

**8.38.050 Initial contact with owner and/or occupant.**

Unless the ~~city manager or designee~~ zoning administrator finds that health and safety considerations require prompt abatement of junk, litter, or an unsightly premises, the ~~city manager or designee~~ zoning administrator may, ~~but need not~~, contact the owner and/or occupant informally, either verbally or in writing or both, and inform the owner and/or occupant that the property appears to contain junk, litter or be an unsightly premises, that such may violate city ordinance, and that the city requests the junk, litter, or unsightly premises be removed or otherwise brought into ~~eede~~ compliance within a reasonable time, normally not to exceed 15 days.

**8.38.060 Formal Final Notice to abate violation.**

- A. After the ~~city manager or designee~~ zoning administrator has made a written report of the findings of the inspection and determined, ~~in the city manager's or designee's considered judgment~~, that there is a violation of this chapter, the ~~city manager or designee~~ zoning administrator shall provide ~~formal~~ Final Notice to abate the violation.
- B. Formal Final Notice.
1. The ~~city manager or designee~~ zoning administrator is authorized to notify either ~~or both~~ the owner and/or the occupant of property regarding a violation of this chapter.
  2. Notice to the owner may be provided at the owner's last known address as shown on the Matanuska-Susitna Borough assessment rolls for the city. Notice to the occupant may be provided by serving any adult residing on the premises. Notice to either the owner or occupant may be made in any other reasonable manner to assure due process is met.
  3. The notice shall state the following:
    - a. The name of the owner and/or occupant;
    - b. The property description;
    - c. ~~Specify the~~ The specific type and location of the junk or litter on the property or describe what makes the premises unsightly;
    - d. The ~~respondent~~ owner and/or occupant of the property notice is to ~~do both of the following~~:
      - i. ~~To properly dispose of junk or litter located on the property or to cure the unsightliness of the premises (as may be applicable) within 30 days of receipt of the notice; and.~~
      - ii. ~~To deliver to the city manager or designee a writing signed written document by the respondent stating that the junk or litter has been properly disposed of and the unsightliness cured (as may be applicable) and that the property is no longer in violation of this chapter;~~
    - e. ~~That~~ If the junk or litter is not properly disposed of or the unsightliness cured (as may be applicable) within such 30 days after receipt of the Final Notice, or if the owner or occupant has not delivered a written signed statement to the city manager or designee that the junk or litter has been properly disposed of and the unsightliness cured (as may be applicable) and that the property is no longer in violation - the respondent is subject to an initial civil penalty of \$200.00 plus an additional \$25.00 per day for each day of continued violation

~~for which formal notice was provided for a period of not to exceed 90 days following the 30-day clean-up period; the property owner and/or occupant is subject to the enforcement procedures as stated in PMC 1.08.011 or 1.08.013. The zoning administrator may issue a ticket or obtain city council approval to commence a lawsuit requesting a remedy allowed under PMC 1.08.013 or at law.~~

- ~~f. The notice shall state that the findings, decision, and directive, and civil penalty shall be final unless the respondent notifies the city manager or designee within 15 days of receipt of the notice that the respondent contests the formal notice, in which case a hearing regarding final notice will be held.~~

#### **8.38.070 Response to formal notice.**

- ~~A. If the respondent does not duly contest the formal notice, then the respondent must properly dispose of the junk or litter and cure the unsightliness and notify the city manager or designee of such action no later than 30 days following the receipt of the notice.~~
- ~~B. If the respondent contests the formal notice, then the respondent must notify the city manager or designee of the respondent's opposition to the formal notice within 15 days of receipt of the notice, in which case a hearing will be held. The respondent or respondent's attorney must attend the hearing regarding the respondent's alleged violation of this chapter or the respondent's rights are waived.~~
- ~~C. If the respondent duly complies with subsection (B) of this section, the duty under the formal notice to properly dispose of junk or litter and to cure the unsightliness is automatically stayed pending the outcome of the hearing.~~
- ~~D. Within 15 days after respondent duly complies with subsection (B) of this section and at least 10 days before the hearing, the city shall mail a copy of this chapter to respondent.~~

#### **8.38.075 Remedies.**

- ~~A. If the junk or litter is not properly disposed of or the unsightliness cured within 30 days after receipt of the Final Notice, the property owner and/or occupant is subject to the enforcement procedures as stated in PMC 1.08.011 or 1.08.013.~~
- ~~B. After first confirmation and documentation (including photography) that the condition of the property has not changed sufficiently to comply with the terms of the Final Notice, the zoning administrator may issue a ticket.~~
- ~~C. In circumstances where appropriate, given the magnitude of the offense or continuous noncompliance including without limitation offenders who fail to comply with the Final Notice even after conviction, or repeat offenders, the zoning administrator may obtain city council approval to commence a lawsuit requesting a remedy allowed under PMC 1.08.013 or at law.~~

#### **8.38.080 Hearing procedure.**

- ~~A. If a hearing is duly requested as provided in PMC 8.38.070(B), it will normally occur no more than 30 days after the city manager or designee's receipt of respondent's opposition to the formal notice. The respondent shall be provided with not less than five days' advance notice of the hearing date, time, and place.~~

- ~~B. The hearing shall be held in public before the board and recorded. Minutes shall be kept.~~
- ~~C. The case shall be presented first by the city manager or designee, who may testify. The respondent shall then present the respondent's side of the case and may testify. Each party may present witnesses and other evidence. All testimony shall be under oath. Each party, the city manager or designee, and the board may cross-examine witnesses. The hearing shall be informal and technical rules of evidence shall not apply, but the parties shall confine their presentations to the evidence or arguments directly relating to possible violations of this chapter.~~
- ~~D. The city manager or designee must prove a violation of this chapter by a preponderance of the evidence.~~
- ~~E. The parties, the city manager or designee, and the board may be represented by counsel.~~
- ~~F. In the hearing, the board will consider relevant information and issues, including but not limited to the following:
 
  - ~~1. Whether the respondent is an owner or occupant of the real property;~~
  - ~~2. Whether the material to be disposed of is "junk" or "litter" as defined by this code;~~
  - ~~3. If the violation alleged pertains to junk and/or litter, whether there is a significant accumulation of junk or litter on the property; and if the violation alleged pertains to unsightly premises, whether each provision of that definition has been met;~~
  - ~~4. Whether the material or condition is visible to the public at large;~~
  - ~~5. The financial and physical ability of the respondent to dispose of the junk or litter or to cure the unsightliness (as may be applicable);~~
  - ~~6. Various options to dispose of the junk or litter and to cure the unsightliness (as may be applicable); and~~
  - ~~7. The reasonable time to bring the property into compliance with this chapter.~~~~

### **8.38.090 Hearing decision.**

- ~~A. If no respondent or attorney therefor appears for the hearing, respondent's right to the hearing and to appeal shall be deemed to be waived. Upon such nonappearance, the board shall uphold the decision of the city manager or designee unless in its considered judgment the board wishes to decrease any requirement or civil penalty levied by the city manager or designee or to extend any time limit. The board may not increase the severity of any decision of the city manager or designee.~~
- ~~B. At the conclusion of the hearing with the respondent, the board may orally state its decision regarding any violation of this chapter. No later than 15 days following conclusion of the hearing, the board shall issue a written decision. The board is not required to make formal findings of fact and conclusions of law, but must clearly state the reasons for the decision and indicate the evidence relied upon. A copy of the board's written decision shall be provided to the respondent.~~
- ~~C. The board may order the respondent (owner or occupant or both) to properly dispose of the junk or litter or to cure the unsightliness of the property (as may be applicable) and to notify the city manager or designee in a written signed statement that the property is no longer in violation of this chapter, within a certain time limit. If the respondent(s) should fail to comply with the board's order in the time allowed, then~~

~~respondent(s) is subject to an initial civil penalty of \$200.00 plus an additional \$25.00 per day for each day of continued violation found by the board for a period of not to exceed 90 days following the clean-up period allowed by the board. If there is more than one respondent, then each respondent is jointly and severally subject to the civil penalty; provided, that the city cannot collect more than the \$200.00 and the \$25.00 per day for any parcel of real property in violation of this chapter.~~

~~D. The board's decision shall state that it is a final order and that the respondent has 30 days to appeal to court.~~

### **8.38.100 Appeal.**

~~The board's decision is final unless the respondent, within 30 days of receipt of a copy of the decision, files an appeal of the decision in the State Superior Court in Palmer in accordance with the applicable court rules governing appeals of decisions of administrative agencies~~

### **8.38.110 Enforcement of decisions and orders.**

~~A. The city may institute appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce any final order or decision of the city manager or designee or board, including but not limited to an action to obtain judgment for any civil penalty imposed by a final order or decision of the city manager or designee or board.~~

~~B. The city may also serve and file with the court a motion requesting entry of judgment by the court. That motion shall be accompanied by a supporting affidavit based on personal knowledge which establishes defendants' failure to comply with a final order or decision of the city manager or designee or board, that such order has not been stayed, and that defendants have been notified of their right to respond to the motion. No later than 20 days after service of the motion, defendants shall file with the court an answering affidavit. If the answering affidavit states that the order or decision under this chapter has been obeyed or otherwise offers a defense to the action, the court shall set a hearing to hear and decide the matter. If defendants fail to file an answering affidavit in conformity with this subsection, the court without hearing shall enter judgment against defendants for the relief sought. In addition to injunctive relief if requested, the judgment shall include the amount of civil penalties and costs payable under the court's order.~~

~~C. Enforcement of this chapter and response to violations through the administrative hearing process shall be cumulative with any other rights or remedies of the city. Failure to pursue administrative enforcement does not waive any other authorized enforcement method. Pursuit of administrative enforcement does not preclude other legal remedies, including injunctive proceedings where available, in any court of competent jurisdiction.~~

### **8.38.120 Board established.**

~~A. The board is hereby created. Each member shall be a resident of the city. The board shall be composed of either three or five members as the council may decide from time to time, and one alternate. The council's decision as to the size of the board shall not reduce the term of a board member. The regular terms shall be for three years. If~~

~~there are three members, one member's initial term shall expire each year. If there are five members, one member's initial term shall expire the first year, and two members' initial terms will expire each of the next two years. The alternate member's regular term will be for three years, but the initial term will expire the first year under a five-member board or at the end of the third year under a three member board.~~

- ~~B. The principal members shall elect annually a chairperson and vice chairperson.~~
- ~~C. The board may establish rules of procedure that are not inconsistent with this chapter. Board meetings will be open to the public and taped, and minutes shall be kept.~~

**8.38.130 Conflict of interest.**

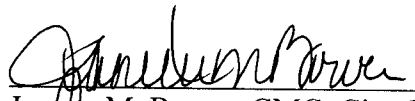
- ~~A. A board member may not hear a case in which the member has a conflict of interest.~~
- ~~B. A board member will be deemed to have a conflict of interest concerning a proceeding if:
 
  - ~~1. The board member or a member of the member's immediate family has a measurable financial interest in any property affected by the proceeding; or~~
  - ~~2. The board member or a member of the member's immediate family could foreseeably profit in any material way through resolution of the matters before the board.~~~~
- ~~C. For this section, "immediate family" means a board member's grandparents, parents, children, grandchildren, siblings, spouse, spouse's children, spouses of children, and a regular member of the board member's household.~~

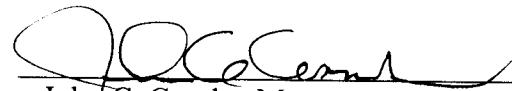
**8.38.140 Ex parte contacts prohibited.**

- ~~A. Board members while acting in their quasi-judicial capacity shall be impartial in all matters. A board member shall not receive or otherwise engage in ex parte communications regarding the matter with the city manager or designee, alleged violator, or other party adversely affected by the matter before the board renders its decision.~~
- ~~B. In the event of ex parte communication, each board member receiving such communication shall disclose the existence and nature of the communication on the record prior to the board's decision and shall not consider any information contained in that communication. If the member believes that he or she cannot decide the matter solely on the record, the member shall recuse him or herself and not participate further in the matter upon reaching such belief. In addition, the remaining board members may take action requiring the disclosing member to refrain from participating further in the matter at any time after the disclosure if such remaining board members determine that the disclosing member cannot reasonably be expected to decide the matter solely on the record. Board members shall attempt to prevent ex parte communications.~~

Section 4. Effective Date. Ordinance No. 06-016 shall take effect upon adoption by the City of Palmer City Council.

Passed and approved this 25<sup>th</sup> day of July, 2006.

  
Janette M. Bower, CMC, City Clerk

  
John C. Combs, Mayor