

CITY ORDINANCE NO. 4852

AN ORDINANCE OF THE CITY OF LEWISTON AMENDING THE TITLE OF CHAPTER 43 OF THE LEWISTON CITY CODE TO "PUBLIC NUISANCES;" AMENDING ARTICLE I OF CHAPTER 43 ("GENERAL"); AMENDING SECTION 43-11 ("PURPOSE, DECLARED PUBLIC NUISANCE; SCOPE") RELATED TO INOPERABLE VEHICLES; AMENDING SECTION 43-13 ("ORDER AND OPPORTUNITY TO CURE VIOLATION") RELATED TO INOPERABLE VEHICLES; REPEALING ARTICLE III OF CHAPTER 17 ("WEEDS"); ENACTING ARTICLE III OF CHAPTER 43 ("WEEDS"); ENACTING ARTICLE IV OF CHAPTER 43 ("PUBLIC NUISANCES IN RIGHTS-OF-WAY"); AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF LEWISTON, IDAHO:

SECTION 1: The title of Chapter 43 of the Lewiston City Code is hereby amended as follows:

Chapter 43
Public Nuisances

SECTION 2: Lewiston City Code Chapter 43, Article I is hereby amended as follows:

Article I.
General

Sec. 43-1. Definitions.

As used in this chapter, the following terms shall have the meanings set forth in this section:

City means the city of Lewiston, Idaho.

Code enforcement officer means a city of Lewiston code enforcement officer or designee.

Enclosed building means a structure having a roof supported by walls on all sides extending from foundation to roof and constructed of materials recognized and approved by the International Building Code, as adopted by the city, for building construction purposes, and where not more than ten (10) percent of any such wall is see-through.

Inoperable vehicle means a vehicle that: (1) is missing any part that is essential for movement; (2) has a broken or defective part that is essential for movement; (3) cannot be safely operated under its own power; and/or (4) cannot be legally operated on a public street, such as not having valid license plates and registration.

Noxious weed means any vegetation designated by the Director of the Idaho State Department of Agriculture as a noxious weed pursuant to Title 22, Chapter 24 of the Idaho Code.

Ornamental grass means grass planted primarily for its decorative value or for screening purposes.

Public nuisance means the same as defined in Title 52, Chapter 1 of the Idaho Code.

Recreational vehicle means the same as defined in section 37-3 of this code.

Right-of-way means the same as defined in chapter 31 of this code.

Street means the same as defined in section 31-2 of this code.

Support Services Commander means the Lewiston Police Department's Support Services Commander or designee.

Tree means any plant materials commonly referred to as trees that at maturity would exceed a height of more than thirty (30) inches.

Vegetation means any plant materials, including, but not limited to, those commonly referred to as grass, weeds, volunteer shrubs, volunteer trees, shrubs, and trees.

Vehicle means the same as defined in Title 49, Chapter 1 of the Idaho Code. ~~a device designed to move or transport persons and/or objects under its power, including, but not limited to, an automobile, truck, motorcycle, boat, recreational vehicle, four wheeler, and snowmobile.~~

Sec. 43-2. Penalty for violation.

~~An owner, occupant, or person in control of property found to be in violation of this chapter shall be deemed to have committed a misdemeanor, subject to a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment in the Nez Perce County jail for not more than six (6) months, or both.~~

~~Each day that the property remains in violation of this chapter shall constitute a separate offense.~~

Sec. 43-2. Appeal of order to cure.

(a) Appeal requirements. A person aggrieved by an order to cure issued by a code enforcement officer pursuant to this chapter may appeal such notice to the support services commander by filing a written notice of appeal with the Lewiston Police Department on a form prescribed by the Lewiston Police Department within ten (10) calendar days of receipt of such order to cure. The notice of appeal shall specify the grounds for appeal. If a notice of appeal is not filed within ten (10) calendar days of receipt of an order to cure, then the code enforcement officer's order, as set forth in the order to cure, shall be final.

(b) Stay. A timely-filed notice of appeal shall stay enforcement of the code enforcement officer's order to cure until the appeal is heard and a final decision is rendered.

(c) Notice of appeal hearing. The support services commander shall hold a hearing on a timely-filed appeal within ten (10) calendar days of receipt of the notice of appeal. Written notice of such hearing shall be provided to the appellant at least forty-eight (48) hours prior to such hearing. Notice shall be deemed delivered: (1) immediately if hand-delivered, or (2) twenty-four (24) hours after posting such notice on the subject property in a conspicuous place.

(d) Appeal hearing. The appellant shall have the right to be represented by legal counsel at the hearing and rebut any evidence that is submitted. The formal rules of evidence shall not apply. The support services commander's review shall be de novo. The support services commander may affirm, modify, or reverse the code enforcement officer's order to cure. The support services commander shall issue a written decision within seven (7) calendar days after the hearing, and such decision shall be final. Such written decision shall include the following information:

(1) The reasons supporting the support services commander's decision;

(2) The date of the support services commander's decision; and

(3) If the support services commander affirms or modifies the code enforcement officer's order to cure, then a deadline by which to comply with such order.

(e) Service of decision. The support services commander's decision shall be provided to the appellant by: (1) personal delivery, (2) mailing to the last known address of the appellant, or (3) posting such decision on the subject property in a conspicuous place.

Sec. 43-3. Failure to comply.

If an owner, occupant, or person in control of property found to be in violation of this chapter fails to comply with an order to cure issued pursuant to this chapter or a decision or order issued by the support services commander, then the city may issue a citation and/or abate the public nuisance, as set forth herein.

(1) Citations and fines. Any owner, occupant, or person in control of property found to be in violation of this chapter who fails to comply with an order to cure issued pursuant to this chapter or a decision issued by the support services commander may be cited and fined for the violation as follows:

a. Inoperable Vehicle Storage. An owner, occupant, or person in control of property found to be in violation of article II of this chapter ("Inoperable Vehicle Storage") shall be deemed to have committed a civil infraction and shall be subject to a fine of three hundred dollars (\$300.00). Each day that the property remains in violation of this chapter shall constitute a separate offense.

b. Weeds. An owner, occupant, or person in control of property found to be in violation of article III of this chapter ("Weeds") shall be deemed to have committed a civil infraction and shall be subject to a fine of one hundred dollars (\$100.00). A second conviction under article III by the same owner, occupant, or person in control of such property within a period of twelve (12) months of the first conviction shall be a civil infraction punishable by a fine of two hundred dollars (\$200.00). A third conviction under article III by the same owner, occupant, or person in control of such property within a period of twelve (12) months of the first conviction shall be a civil infraction punishable by a fine of three hundred dollars (\$300.00). Each day that the property remains in violation of this article shall constitute a separate offense.

c. Public nuisances in rights-of-way. A person found to be in violation of article IV of this chapter ("Public Nuisances in Rights-of-Way") shall be deemed to have committed a civil infraction and shall be subject to a fine of three hundred dollars (\$300.00). Each day that a violation occurs or continues shall constitute a separate offense.

(2) Abatement by city. If an owner, occupant, or person in control of a property found to be in violation of this chapter fails to comply with an order to cure issued pursuant to this chapter or a decision by the support services commander, then the city may prevent, remove, and/or abate the public nuisance pursuant to Idaho Code § 50-334.

a. Recovery of abatement costs. Pursuant to Idaho Code §§ 50-334 and 50-1008, if the city causes a public nuisance to be prevented, removed, and/or abated, then, within thirty (30) calendar days of such action, the city shall mail to the property owner a billing statement requiring payment to the city for the actual cost of prevention, removal, and/or abatement of the public nuisance plus an administrative fee. Such administrative fee shall be set by resolution of the Lewiston city council.

Such billing statement shall state: (1) the address and parcel number of the subject property; (2) the date of prevention, removal, and/or abatement of a public nuisance; (3) the amount of prevention, removal, and/or abatement costs, including the administrative fee; and (4) a statement informing the property owner that if such costs and fee are not paid in full within thirty (30) calendar days of mailing of the billing statement, then the city may attempt to recover such costs and fee through city bill collection procedures and/or levy a special assessment against the subject property pursuant to Idaho Code §§ 50-334 and 50-1008.

b. Nonpayment of abatement costs. If full payment of such costs and administrative fee is not made to the city within thirty (30) calendar days of mailing of the billing statement, then the city may:

1. Attempt to recover such amount through city bill collection procedures; and/or

2. Levy a special assessment against the subject property pursuant to Idaho Code §§ 50-334 and 50-1008 and/or any subsequently adopted or otherwise applicable laws. If full payment to the city is not made within thirty (30) calendar days after mailing of the billing statement, then such special assessment may be declared delinquent and certified to the tax collector of Nez Perce County by the city clerk not later than August 1st of each year. Upon such certification, such special assessment shall be placed upon the tax roll and collected in the same manner and subject to the same penalties as other city taxes.

Sec. 43-4. Storage and disposition of personal property removed by City through abatement procedures.

(a) Property to be stored. Personal property, excluding vehicles, that is removed by City through abatement procedures pursuant to this chapter, shall be stored and disposed of as follows:

(1) Notice. At the time of abatement, the code enforcement officer shall provide the owner, occupant, or person in control of the property from which the personal property was removed—or, if the personal property is removed from the right-of-way, the owner, occupant, or person in control of the property adjacent to the right-of-way—a written notice, which notice shall include:

a. A description of the personal property removed;

b. The city code provision under which the personal property was removed and information regarding the process to request a post-storage hearing;

c. The time and date that the personal property was removed;

d. The name of the code enforcement officer or other authorized person who removed the personal property;

e. The location at which the personal property is being stored;

f. The process and deadline by which to claim the personal property or to authorize disposal of the personal property;

g. Storage fees; if any; and

h. The telephone number and address where further information can be obtained.

Such notice shall be served in the same manner as the related order to cure is served.

(2) Storage. The personal property shall be stored in a place of safety, and reasonable efforts shall be made to secure and prevent damage to the personal property. Fees for storage may be adopted by resolution of the city council.

(3) Inspection. The personal property shall be made available for physical inspection by the legal owner, authorized agent of the legal owner, or insurance representative during regular business hours of the city.

(4) Post-storage hearing. Whenever personal property is stored in accordance with this chapter, the legal owners of the property or their agents may request a post-storage hearing to determine the validity of the storage. In order to receive a post-storage hearing, the owners, or their agents, must request the hearing in writing within ten (10) days of the date of the notice. Any such hearing shall be conducted by the support services commander within seven (7) calendar days of the receipt of the request. Failure of either the legal owner, or their agent, to request or to attend a scheduled hearing shall satisfy the post-storage hearing requirement as to that person. For items to be released to their legal owner, the legal owner shall provide proof of ownership or sign an affidavit of ownership before the release of the property.

(5) Disposal. Items abated and stored in accordance with this chapter shall be held for thirty (30) calendar days after notice is served. If the legal owner is not found within thirty (30) calendar days of notice being served, the City shall dispose of the items in accordance with applicable laws and policies.

Sec. 43-5. Public nuisance abatement reserve.

There is hereby created and established a special reserve to be known and designated as the public nuisance abatement reserve for the purpose of providing equipment and materials for city abatement of declared public nuisances. This reserve shall be funded with the following revenue collected by the city pursuant to this chapter: abatement costs, administrative fees, and court fines.

Secs. 43-6– 43-10. Reserved.

SECTION 3: Section 43-11 of the Lewiston City Code is hereby amended as follows:

Sec. 43-11. Purpose; ~~Declared~~ declared public nuisance; ~~purpose~~; scope.

(a) Purpose. The purpose of this article is to provide reasonable options for storage of inoperable vehicles and parts thereof to minimize their exposure to the public and

impact on surrounding properties, thereby helping to protect the public health, safety, and general welfare of the residents and property owners of the city.

(b) ~~(a)~~ Declared public nuisance. The city hereby declares that the accumulation and storage of inoperable ~~inoperative~~ vehicles and parts thereof on private or public property within the city is a public nuisance that creates conditions tending to: (1) reduce property values, (2) promote blight and/or deterioration, (3) attract rodents and insects, and (4) create public health and safety concerns, such as leaking fluids, broken glass, and rusty parts.

~~(b) Purpose.~~ The purpose of this article is to provide reasonable options for storage of inoperable vehicles and parts thereof to minimize their exposure to the public and impact on surrounding properties, thereby helping to protect the public health, safety, and general welfare of the residents and property owners of the city.

(c) Scope. This article shall not apply to inoperable vehicles in rights-of-way. Inoperable vehicles in rights-of-way shall be subject to the laws set forth in Title 49, Chapter 18 of the Idaho Code.

SECTION 4: Section 43-13 of the Lewiston City Code is hereby amended as follows:

Sec. 43-13. Abatement of violation. Order and opportunity to cure violation.

~~Notice to abate~~ (a) Order to cure inoperable vehicle storage violation(s). Upon a determination by the code enforcement officer that a violation of section 43-12 of this article has occurred, the code enforcement officer shall serve ~~notice~~ an order on the owner, occupant, and/or person in control of said property describing the violation and requiring the owner, occupant, and/or person in control of said property to ~~abate~~ cure the violation by removing the inoperable vehicle(s) and/or parts thereof from the property or complying with the storage requirements set forth in section 43-12 of this article within ~~fourteen (14) calendar days from the date such notice is delivered, with more time allowed as deemed necessary by the code enforcement officer~~ the time deemed necessary and appropriate by the code enforcement officer.

(b) Service of order. Service of such ~~notice~~ order to cure an inoperable vehicle storage violation shall be made by: (1) personal delivery, ~~and such notice which~~ shall be deemed received ~~delivered~~ immediately; (2) posting such ~~notice~~ order on the subject property, ~~which posting may be made by placing a door hanger in a conspicuous place on the property, and such notice which~~ shall be deemed received ~~delivered~~ twenty-four (24) hours after posting; or (3) mailing such ~~notice~~ order via certified mail to the last known address of the owner, occupant, or person in control of the subject property, ~~and such notice which~~ shall be deemed received ~~delivered~~ seventy-two (72) hours after depositing the same in the U.S. mail.

(c) Appeal; penalties. An order to cure shall be appealable to the support services commander, as set forth in section 43-2 of this chapter. The penalty for violation of this article shall be as set forth in section 43-3 of this chapter.

~~If the violation is not abated within fourteen (14) calendar days from the date such notice is delivered, and if such notice did not include mailed notice to the property owner, then the code enforcement officer shall mail an additional notice to the property owner, via certified mail to the property owner's last known address, describing the violation and requiring the property owner to abate the violation by removing the inoperable vehicle(s) and/or parts thereof from the property or complying with the storage requirements set forth in section 43-12 of this article within fourteen (14) calendar days from the date such notice is delivered. Such notice shall be deemed delivered seventy-two (72) hours after depositing the same in the U.S. mail.~~

~~(b) *Failure to comply.* If the owner, occupant, or person in control of the property fails to comply with such notice to abate, then the city may abate the violation pursuant to applicable law and/or the code enforcement officer may issue citation(s) pursuant to section 43-2 of this chapter.~~

Secs. 43-14 – 43-20. Reserved.

SECTION 5: Lewiston City Code Chapter 17, Article III (“Weeds”) is hereby repealed in its entirety.

SECTION 6: Lewiston City Code Chapter 43, Article III is hereby enacted as follows:

**Article III.
Weeds**

Sec. 43-21. Purpose; declared public nuisance.

(a) *Purpose.* The purpose of this article is to protect the public health, safety, and general welfare of the residents and property owners of the city. Overgrown and uncontrolled vegetation causes blight in neighborhoods and provides refuge for vermin and insects.

(b) *Declared public nuisance.* The city hereby declares any violation of the provisions set forth in section 43-22 of this article to be a public nuisance.

Sec. 43-22. Weed regulations.

No owner, occupant, or person in control of a property within the city shall:

(1) Allow or permit grass and/or weeds, excluding ornamental grass, to grow more than twelve (12) inches in height upon such property or upon any areas adjacent to such property, from the edge of the adjacent street paving, centerline of adjacent alley travelways, or centerline of adjacent undeveloped right-of-way.

(2) Allow or permit any vegetation or tree growth to overhang below nine (9) feet above the right-of-way area, from the edge of the travelway to the property line of the adjacent property, or rest upon the sidewalk and/or sidewalk space adjacent to such property so as to interfere in any manner with the full, free, and unobstructed use of such sidewalk or sidewalk space.

(3) Allow or permit any vegetation growth within the right-of-way, from the edge of the travelway to the property line of the adjacent property, that would obstruct the clear vision area, as defined in Chapter 31 of this code, of an intersection, driveway, or other area as determined by the public works director or designee. This subsection shall not apply to trees placed on the right-of-way and maintained pursuant to the urban forestry program and/or pursuant to the authority of the public works director.

(4) Allow or permit any vegetation or tree growth to overhang below fourteen (14) feet above any public travelway designated for motor vehicle traffic. Measurements shall be determined from the centerline elevation of the adjacent travelway.

(5) Allow or permit any vegetation upon such property or upon any areas adjacent to such property, from the edge of the adjacent street paving, centerline of adjacent alley travelways, or centerline of adjacent undeveloped right-of-way, to the extent that it creates a fire hazard as determined by the Lewiston fire department.

(6) Allow or permit any tree infested with disease or insects to remain standing without application of proper treatment(s) to correct and/or eliminate the disease or infestation. If said tree is determined by the city forester to be dying or dead, the tree shall be removed within ten (10) days after receipt of written order from the code enforcement officer or designee.

Sec. 43-23. Order and opportunity to cure violation.

(a) *Order to cure weed violation.* Upon a determination by the code enforcement officer that a violation of section 43-22 of this article has occurred, the code enforcement officer shall serve an order upon the owner, occupant, and/or person in control of said property describing the violation and requiring the owner, occupant, and/or person in control of said property to cure the violation within ten (10) calendar days from the date such order is received, except that the code enforcement officer may require the violation to be cured immediately if a fire hazard exists.

(b) *Service of order.* Service of an order to cure a weed violation shall be made by: (1) personal delivery, which shall be deemed received immediately; (2) posting such order on the subject property in a conspicuous place, which shall be deemed received twenty-four (24) hours after posting; or (3) mailing such order via certified mail to the last known address of the owner, occupant, or person in control of the property, which shall be deemed received seventy-two (72) hours after depositing the same in the U.S. mail.

(c) *Appeal; penalties.* An order to cure shall be appealable to the support services commander, as set forth in section 43-2 of this chapter. The penalty for violation of this article shall be as set forth in section 43-3 of this chapter.

Sec. 43-24. Noxious weeds.

The code enforcement officer may notify Nez Perce County of the presence of any noxious weeds within the city.

Secs. 43-25 – 43-30. Reserved.

SECTION 7: Lewiston City Code Chapter 43, Article IV is hereby enacted as follows:

Article IV.

Public Nuisances in Rights-of-Way

Sec. 43-31. Purpose; declared public nuisance; scope.

(a) *Purpose.* The purpose of this article is to protect the public health, safety, and general welfare of users of rights-of-way. Placing debris and property in the right-of-way interferes with the proper flow of traffic, maintenance of public utilities and roadways, and line-of-sight for pedestrians and motor vehicles. Building on or disturbing the right-of-way without proper approval and permitting can lead to roadway deterioration and damage.

(b) *Declared public nuisance.* The city hereby declares any violation of the provisions set forth in section 43-32 of this article to be a public nuisance.

(c) *Scope.* This article shall not apply to vehicles in rights-of-way. Vehicles in rights-of-way shall be subject to the laws set forth in Title 49, Chapter 18 of the Idaho Code.

Sec. 43-32. Right-of-way nuisance regulations.

(a) *Obstructing the right-of-way.* No person shall place, leave, or deposit, or cause to be placed, left, or deposited, debris, materials, personal property, earth, rubbish, garbage, rock, or other material on any right-of-way without a permit or approval issued pursuant to this code.

(b) *Building and digging in right-of-way.* No person shall place or build structures upon, or dig up, break, excavate, tunnel, undermine, fill in, or disturb any right-of-way without a permit or approval issued pursuant to chapter 31 of this code. Additionally, no person shall cause to be placed or cause to be built structures upon, or cause to be dug up, broke, excavated, tunneled, undermined, filled in, or disturbed any right-of-way without a permit or approval issued pursuant to chapter 31 of this code.

Sec. 43-33. Order and opportunity to cure violation.

(a) *Order to cure right-of-way nuisance violation.* Upon a determination by the code enforcement officer that a violation of section 43-32 of this article has occurred, the code enforcement officer shall serve an order upon the person who is alleged to have committed such violation describing the violation and requiring such person to cure the violation within ten (10) calendar days from the date such order is received, except that the code enforcement officer may require the violation to be cured immediately if a fire hazard exists, there is imminent danger to the public, or an obstruction prevents the repair or maintenance of the right of way.

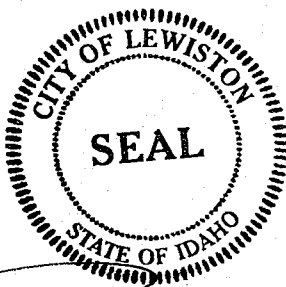
(b) *Service of order.* Service of an order to cure a right-of-way violation shall be made by: (1) personal delivery, which shall be deemed received immediately; (2) posting such order on the subject property in a conspicuous place, which shall be deemed received twenty-four (24) hours after posting; or (3) mailing such order via certified mail to the last known address of the owner, occupant, or person in control of the property, which shall be deemed received seventy-two (72) hours after depositing the same in the U.S. mail.

(c) *Appeal; penalties.* An order to cure shall be appealable to the support services commander, as set forth in section 43-2 of this chapter. The penalty for violation of this article is set forth in section 43-3 of this chapter.

Secs. 43-34 – 43-40. Reserved.

SECTION 8: This ordinance shall take effect and be in full force from and after its passage and publication.

PASSED this 14th day of November 2022.



CITY OF LEWISTON

By: _____

Daniel G. Johnson, Mayor

ATTEST:

Kari J. Ravencroft
Kari J. Ravencroft, City Clerk



CITY COUNCIL MEETING AGENDA ITEM HISTORY/COMMENTARY

ITEM TITLE Ordinance No. 4852: Public Nuisances, Including Weeds	AGENDA NO. _____ AGENDA DATE: 10/24/22 CONSENT: ACTIVE: X	1ST READING <u> X </u> 2ND READING _____ 3RD/ADOPTION _____
ORIGINATING SOURCE Kayla Hermann, City Attorney Date: 10/10/22	FUNDING CERTIFICATION (IF APPLICABLE) Date: _____	
DIVISION MANAGER REVIEW (if applicable) Date: _____	DEPARTMENT MANAGER REVIEW (If applicable) Date: _____	
RECOMMENDED FOR COUNCIL ACTION	MAYOR Date: _____	
ITEM HISTORY (PREVIOUS COUNCIL REVIEWS, ACTION RELATED TO THIS ITEM, OTHER PERTINENT HISTORY) Council previously reviewed proposed Ordinance No. 4852 during the September 6, 2022 work session.		
ITEM COMMENTARY (BACKGROUND, DISCUSSION, KEY POINTS, RECOMMENDATIONS, ETC.) Please identify any or all impacts this proposed action would have on the City budget and/or personnel resources. Proposed Ordinance No. 4852 primarily does the following: <ul style="list-style-type: none"> -Amends the title of Chapter 43 of the Lewiston City Code from "Nuisances" to "Public Nuisances." -Amends Article I of Chapter 43 ("General") to provide for general provisions that apply to all articles in Chapter 43. Note that, under the new Section 43-3, a violation constitutes a civil infraction (not a misdemeanor) that subjects the person to a fine. -Amends Sections 43-11 and 43-13 related to inoperable vehicles. -Repeals Article III of Chapter 17 ("Weeds") so that such provisions can be moved to Chapter 43. -Enacts Article III of Chapter 43 ("Weeds"). 		

Subject
Date
Page 2

- Enacts Article IV of Chapter 43 ("Public Nuisances in Rights-of-Way").
- Enacts Article V of Chapter 43 ("Miscellaneous Public Nuisances").

ACTION PROPOSED

Staff recommends approval of the first reading of Ordinance No. 4852 on October 24, 2022.

CITY OF LEWISTON
SUMMARY OF ORDINANCE NO. 4852

ORDINANCE NO. 4852: AN ORDINANCE OF THE CITY OF LEWISTON AMENDING THE TITLE OF CHAPTER 43 OF THE LEWISTON CITY CODE TO "PUBLIC NUISANCES;" AMENDING ARTICLE I OF CHAPTER 43 ("GENERAL"); AMENDING SECTION 43-11 ("PURPOSE, DECLARED PUBLIC NUISANCE; SCOPE") RELATED TO INOPERABLE VEHICLES; AMENDING SECTION 43-13 ("ORDER AND OPPORTUNITY TO CURE VIOLATION") RELATED TO INOPERABLE VEHICLES; REPEALING ARTICLE III OF CHAPTER 17 ("WEEDS"); ENACTING ARTICLE III OF CHAPTER 43 ("WEEDS"); ENACTING ARTICLE IV OF CHAPTER 43 ("PUBLIC NUISANCES IN RIGHTS-OF-WAY"); AND PROVIDING AN EFFECTIVE DATE.

Section 1 amends the title of Chapter 43 to "Public Nuisances." Section 2 amends Article I of Chapter 43 related to general provisions, including amendments to definitions and the addition of provisions related to appealing an order to cure and failure to comply with an order to cure. Section 3 amends Lewiston City Code § 43-11 related to inoperable vehicles. Section 4 amends Lewiston City Code § 43-13 related to an order to cure an inoperable vehicle storage violation, the appeal process, and penalties. Section 5 repeals Article III of Chapter 17 titled "Weeds." Section 6 enacts Article III of Chapter 43 related to weeds. Section 7 enacts Article IV of Chapter 43 related to public nuisances in rights-of-way. Section 8 provides an effective date.

As required by Idaho Code § 50-901A, the following excerpts from Ordinance No. 4852 are required to be published in full:

Sec. 43-2. Penalty for violation.

~~An owner, occupant, or person in control of property found to be in violation of this chapter shall be deemed to have committed a misdemeanor, subject to a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment in the Nez Perce County jail for not more than six (6) months, or both.~~

~~Each day that the property remains in violation of this chapter shall constitute a separate offense.~~

Sec. 43-3. Failure to comply.

If an owner, occupant, or person in control of property found to be in violation of this chapter fails to comply with an order to cure issued pursuant to this chapter or a decision or order issued by the support services commander, then the city may issue a citation and/or abate the public nuisance, as set forth herein.

(1) Citations and fines. Any owner, occupant, or person in control of property found to be in violation of this chapter who fails to comply with an order to cure issued pursuant to this chapter or a decision issued by the support services commander may be cited and fined for the violation as follows:

a. Inoperable Vehicle Storage. An owner, occupant, or person in control of property found to be in violation of article II of this chapter ("Inoperable Vehicle Storage") shall be deemed to have committed a civil infraction and shall be subject to a fine of three hundred dollars (\$300.00). Each day that the property remains in violation of this chapter shall constitute a separate offense.

b. Weeds. An owner, occupant, or person in control of property found to be in violation of article III of this chapter ("Weeds") shall be deemed to have committed a civil infraction and shall be subject to a fine of one hundred dollars (\$100.00). A second conviction under article III by the same owner, occupant, or person in control of such property within a period of twelve (12) months of the first conviction shall be a civil infraction punishable by a fine of two hundred dollars (\$200.00). A third conviction under article III by the same owner, occupant, or person in control of such property within a period of twelve (12) months of the first conviction shall be a civil infraction punishable by a fine of three hundred dollars (\$300.00). Each day that the property remains in violation of this article shall constitute a separate offense.

c. Public nuisances in rights-of-way. A person found to be in violation of article IV of this chapter ("Public Nuisances in Rights-of-Way") shall be deemed to have committed a civil infraction and shall be subject to a fine of three hundred dollars (\$300.00). Each day that a violation occurs or continues shall constitute a separate offense.

(2) Abatement by city. If an owner, occupant, or person in control of a property found to be in violation of this chapter fails to comply with an order to cure issued pursuant to this chapter or a decision by the support services commander, then the city may prevent, remove, and/or abate the public nuisance pursuant to Idaho Code § 50-334.

a. Recovery of abatement costs. Pursuant to Idaho Code §§ 50-334 and 50-1008, if the city causes a public nuisance to be prevented, removed, and/or abated, then, within thirty (30) calendar days of such action, the city shall mail to the property owner a billing statement requiring payment to the city for the actual cost of prevention, removal, and/or abatement of the public nuisance plus an administrative fee. Such administrative fee shall be set by resolution of the Lewiston city council.

Such billing statement shall state: (1) the address and parcel number of the subject property; (2) the date of prevention, removal, and/or abatement of a public nuisance; (3) the amount of prevention, removal, and/or abatement costs, including the administrative fee; and (4) a statement informing the property owner that if such costs and fee are not paid in full within thirty (30) calendar days of mailing of the billing statement, then the city may attempt to recover such costs and fee through city bill collection procedures and/or levy a special assessment against the subject property pursuant to Idaho Code §§ 50-334 and 50-1008.

b. Nonpayment of abatement costs. If full payment of such costs and administrative fee is not made to the city within thirty (30) calendar days of mailing of the billing statement, then the city may:

1. Attempt to recover such amount through city bill collection procedures; and/or
2. Levy a special assessment against the subject property

pursuant to Idaho Code §§ 50-334 and 50-1008 and/or any subsequently adopted or otherwise applicable laws. If full payment to the city is not made within thirty (30) calendar days after mailing of the billing statement, then such special assessment may be declared delinquent and certified to the tax collector of Nez Perce County by the city clerk not later than August 1st of each year. Upon such certification, such special assessment shall be placed upon the tax roll and collected in the same manner and subject to the same penalties as other city taxes.

Sec. 43-13. Abatement of violation. Order and opportunity to cure violation.

...
(c) Appeal; penalties. An order to cure shall be appealable to the support services commander, as set forth in section 43-2 of this chapter. The penalty for violation of this article shall be as set forth in section 43-3 of this chapter.

Sec. 43-23. Order and opportunity to cure violation.

...
(c) *Appeal; penalties.* An order to cure shall be appealable to the support services commander, as set forth in section 43-2 of this chapter. The penalty for violation of this article shall be as set forth in section 43-3 of this chapter.

Sec. 43-33. Order and opportunity to cure violation.

...
(c) *Appeal; penalties.* An order to cure shall be appealable to the support services commander, as set forth in section 43-2 of this chapter. The penalty for violation of this article is set forth in section 43-3 of this chapter.

Ordinance No. 4852 is effective upon passage and publication.

CITY OF LEWISTON

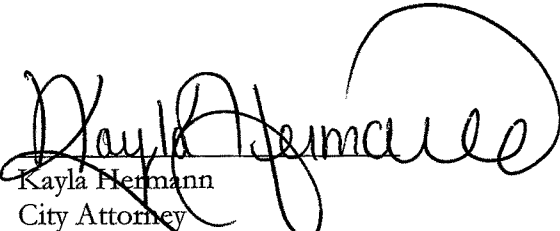
By: Daniel G. Johnson
Mayor

Attest: Kari Ravencroft
City Clerk

The full text of this ordinance is available at the City Clerk's office, Lewiston City Hall, 1134 F Street, Lewiston, during regular business hours.

I, KAYLA HERMANN, City Attorney, reviewed the foregoing Summary of Ordinance No. 4852. The summary is true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A.

Dated this 15th day of November 2022.


Kayla Hermann
City Attorney