MEMORANDUM

TO: Mayor Jim Fairchild and Council Members

FROM: Jerry Wyatt, Pro Tem City Manager

DATE: October 8, 2007

SUBJECT: Nuisance at 1070 Monmouth Cutoff Road

RECOMMENDED ACTION: Request that the Council determine whether a nuisance exists on the property. If the City Council determines that a nuisance exists on the property, a notice of abatement is required to be issued to the person responsible. Nuisance abatement procedures are set forth in DCC 5.610 through 5.620, copies of which are enclosed for your information, as well as the City Attorney report.

BACKGROUND: Pursuant to Section 5.610 of the Dallas City Code (DCC), notice was given that the during a regularly scheduled public meeting of the council, the council shall make a determination as to whether a nuisance exists at 1070 Monmouth Cutoff Road, Dallas, Oregon 97338. The grounds on which a nuisance is alleged to exist includes violation of DCC 5.540 (Nuisances Affecting Public Health), 5.556 (Scattering Rubbish), 5.582 (Junk), 5.584 (Inoperable Motor Vehicles and Recreational Vehicles) and 5.600 (Unenumerated Nuisances).

DALLAS CITY CODE REFERENCE:

5.600 Unenumerated Nuisances.

(1) The acts, conditions or objects specifically enumerated and defined in sections 5.520 to 5.584 are declared public nuisances and may be abated by the procedures set forth in sections 5.610 to 5.640.

(2) In addition to the nuisances specifically enumerated in sections 5.520 to 5.584, every other thing, substance, or act that is determined by the council to be injurious or detrimental to the public health, safety, or welfare of the city is declared a nuisance and may be abated as provided in sections 5.610 to 5.640.

5.610 Notice of Nuisance Determination.

At least five days prior to the meeting at which the nuisance determination described in section 5.612(1) is made, the city manager shall notify the person responsible of the time and place of the meeting. For the purposes of this section, notice is sufficient if it is:

(1) Mailed to the last known address of the person responsible; or

(2) Posted at the site of the property involved.

5.612 Notice to Abate.

(1) On determination by the council that a nuisance exists, the council shall cause a notice to be posted on the premises or at the site of the nuisance, directing the person responsible to abate the nuisance.

(2) At the time of posting, the city manager shall cause a copy of the notice to be forwarded by registered or certified mail to the person responsible at the person's last known address.

(3) The notice to abate shall contain:

(a) A description of the real property, by street address or otherwise, on which the nuisance exists.

(b) **A direction to abate the nuisance within 10 days from the date of the notice.**

(c) **A description of the nuisance.**

(d) **A statement that, unless the nuisance is removed, the city may abate the nuisance and the cost of abatement will be charged to the person responsible.**

(e) A statement that failure to abate a nuisance may warrant imposition of a fine or jail sentence.

(f) **A statement that the person responsible may protest the order to abate by giving notice to the city manager within 10 days from the date of the notice.**

(g) A statement that the cost of abatement may be assessed to and become a lien on the property.

(4) Upon completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the mailing and posting.

(5) An error in the name or address of the person responsible shall not make the notice void, and in such case the posted notice shall be sufficient.

5.614 Abatement by the Person Responsible.

(1) **Within 10 days after the posting and mailing of notice as provided in section 5.612, the person responsible shall remove the nuisance or file a protest, as described in subsection (2).**

(2) **A person responsible, protesting that no nuisance exists, shall file a written statement that specifies the basis for the protest with the city manager.**

(3) The statement shall be referred to the council as a part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the council. The council shall determine whether a nuisance in fact exists, and the determination shall be entered in the official minutes of the council. Council determination shall be required only in cases where a written statement has been filed as provided.

(4) **If the council determines that a nuisance in fact exists, the person responsible shall abate the nuisance within 10 days after the council determination.**

5.616 Joint Responsibility.

If more than one person is a person responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

5.618 Abatement by the City.

(1) If the nuisance has not been abated by the person responsible within the time allowed, the council may cause the nuisance to be abated.

(2) The officer charged with abatement of the nuisance shall have the right to enter into or upon property at reasonable times to investigate or cause the removal of a nuisance.

(3) The city manager shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include a charge equal to 20 percent of those expenses for administrative costs.

5.620 Assessment of Costs.

(1) The city manager shall forward to the person responsible, by registered or certified mail, a notice stating:

(a) The total cost of abatement, including the administrative costs.

(b) That the costs as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(c) That if the person responsible objects to the cost of the abatement as indicated, a notice of objection may be filed with the city manager not more than 10 days from the date of the notice.

(2) No later than 30 days after the date of the notice, the council, in the regular course of business, shall hear and make a decision on the objections to the costs assessed.

(3) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs, as stated or as decided by the council, shall be made by resolution and

shall be entered in the docket of city liens. When the entry is made, it shall constitute a lien on the property from which the nuisance was removed or abated.

(4) The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the current statutory interest rate. The interest shall begin to run from the date of entry of the lien in the lien docket.

(5) An error in the name of the person responsible or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid lien against the property.

General

5.640 Summary Abatement.

The procedure provided in sections 5.610 to 5.640 is not exclusive, but is in addition to procedure provided by other code provisions and ordinances. The chief of the fire department, a law enforcement officer, or any other city official may proceed summarily to abate a health or other nuisance that unmistakably exists and that imminently endangers human life or property.

5.642 Penalties.

(1) A violation of a provision of sections 5.500 to 5.600 is a Class C misdemeanor.

(2) The abatement of a nuisance is not a penalty for violation of sections 5.500 to 5.600, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance.

MEMORANDUM

To: Dallas City Council
Mayor Jim Fairchild

From: Anthony James – Assistant City Attorney

Date: October 5, 2007

RE: Nuisance – 1070 Monmouth Cutoff Road

Nuisance Violations

Mr. David R. Leifheit is owner and occupant of the property located at 1070 Monmouth Cutoff Road, Dallas, Oregon. Mr. Leifheit is storing multiple inoperable vehicles in different states of decay, piles of junk and rubbish, and other hazards on his property, which is a violation of Dallas City Code (DCC) Sections 5.556, 5.582, and 5.584.

Also, Mr. Leifheit's property, as shown in exhibit 19, abuts Ash Creek which is a year-round stream with drainage into Rickreall Creek. Mr. Leifheit's storage of the above nuisances in proximity of a body of water creates the risk of harmful fluids and other substances making their way into the watershed in violation of DCC Section 5.540.

Background

On July 31, 2006, Mr. Leifheit was investigated by the Dallas Code Enforcement Officer for violation of the DCC. At that time the City documented the numerous violations of nuisance ordinance, as shown in exhibits 13 through 18. The City Attorney's Office prosecuted Mr. Liefheit in Municipal Court under the DCC 5.584, and he was found guilty of multiple counts of inoperable vehicle on December 29, 2006.

On January 10, 2007, the City Attorney's Office sent a letter to Mr. Leifheit's legal counsel, Mr. Stan Butterfield, with the following offer of resolution:

1. All additional inoperable vehicles be removed from the property in 60 days and in exchange;
2. The City Attorney's Office would recommend to the Municipal Court to take the removal into consideration when sentencing Mr. Leifheit on any additional charges; and
3. The City Attorney's Office would not pursue any additional charges for nuisance violations in regard to the vehicles which were taken off of the property.

After the City's offer had expired without response, Mr. Leifheit began to build a fence around the property to block the property from public view. Mr. Leifheit did not attempt to remove any vehicles from the property. While Mr. Leifheit was successful in blocking some of the angles of public view, the vehicles are still visible from off the premises of his property.

On May 1, 2007, the City Attorney's Office and the Dallas Police Department executed a search warrant for the property. On the property over 30 vehicles were found in different states of disrepair, as well as piles of debris and other nuisances, shown in exhibits 1 through 12.

Subsequently, Mr. Leifheit was charged with 14 counts of inoperable vehicle in Dallas Municipal Court. These new charges stemmed from additional vehicles on the property which had not been cataloged by Code Enforcement previously. Mr. Leifheit has pled not guilty to the allegations and is currently waiting jury trial.

At this time the property located at 1070 Monmouth Cutoff Road continues to have inoperable vehicles, junk, rubbish, and other nuisances on the property.

Authorities

The City Attorney's office is of the opinion that Mr. Leifheit has violated, and is presently in violation of, the following provisions of the Dallas City Code:

5.540 Nuisances Affecting Public Health.

No person shall cause or permit the following:

[. . .]

(2) Accumulations of debris, rubbish, manure, and other refuse that are not removed within a reasonable time and that affect the health of the city.

[. . .]

(4) Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

5.556 Scattering Rubbish.

No person shall deposit, on public or private property, rubbish, trash, debris, refuse, or any substance that would mar the appearance, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal, or vehicle traveling on a public way.

5.582 Junk.

(1) No person shall, for more than seven days, keep junk outdoors on a street, lot, or premises or in a building that is not wholly or entirely enclosed except for doors used for ingress and egress.

(2) The term “junk,” as used in this section, includes all old motor vehicle parts, old machinery, old machinery parts, old appliances or appliance parts, old iron or other metal, glass, paper, lumber, wood, or other waste or discarded material.

(3) This section does not apply to junk kept in a licensed junk yard or automobile wrecking house.

5.584 Inoperable Motor Vehicles and Recreational Vehicles.

(1) No person shall permit any inoperable motor vehicle, motor home, utility trailer, house or vacation trailer, boat, camper, or canopy, or any parts thereof, on property owned or controlled by that person to be exposed to public view for longer than is reasonably necessary to dispose of it, and in no event for longer than seven days unless it is in connection with a business dealing with junk vehicles lawfully conducted within the city.

(2) The term “inoperable motor vehicle,” and “inoperable recreational vehicle,” as used in this section, means a vehicle that is:

(a) Inoperative;

(b) Wrecked;

(c) Partially or totally dismantled;

(d) Has no current registration or license plates, when such are required for the vehicle; or

(e) In violation of three or more applicable provisions of ORS Chapters 815 and 816, regarding required motor vehicle equipment.

(3) For the purpose of this section, an inoperable vehicle or inoperable recreational vehicle shall not be considered to be exposed to public view if:

(a) The vehicle is entirely covered with a cover that is specifically designed, constructed and intended solely for the covering of a vehicle and the vehicle is parked on a paved or graveled driveway or storage pad; or

(b) All or any portion of the vehicle, or its cover, is not visible from outside the boundary lines of the property upon which it is parked.

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Office of the City Manager

October 5, 2007

Mr. David Leifheit
1070 Monmouth Cutoff Road
Dallas, Oregon 97338

RE: NOTICE -
HEARING REGARDING NUISANCE AT 1070 MONMOUTH CUTOFF RD.

Dear Mr. Leifheit:

Pursuant to Section 5.610 of the Dallas City Code (DCC), notice is hereby given that the Dallas City Council, on October 15, 2007 at 7:45 p.m., during a regularly scheduled public meeting of the council, shall make a determination as to whether a nuisance exists at 1070 Monmouth Cutoff Road, Dallas, Oregon 97338. The grounds on which a nuisance is alleged to exist includes violation of DCC 5.540 (Nuisances Affecting Public Health), 5.556 (Scattering Rubbish), 5.582 (Junk), 5.584 (Inoperable Motor Vehicles and Recreational Vehicles) and 5.600 (Unenumerated Nuisances).

This notice is provided to you as the "person responsible" within the meaning of DCC 5.500.

If the City Council determines that a nuisance exists on the property, it may cause a notice of abatement to be issued. Nuisance abatement procedures are set forth in DCC 5.610 through 5.620, copies of which are enclosed for your information.

Yours very truly,

Jerry Wyatt
Pro Tem Dallas City Manager

Enclosures

cc: Mr. Lane Shetterly - Dallas City Attorney
Mr. Stan Butterfield (w/enc)