

8153

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 61

An Ordinance declaring the maintenance of open pits without adequate safeguards to the public to constitute a public nuisance and providing for abatement and penalties.

Multnomah County ordains as follows:

Section 1. DEFINITIONS

(a) As used in this ordinance, unless the context provides otherwise:

- (1) "ADEQUATE SAFEGUARD" means the degree of protection which is afforded by such systems as a chain-link fence not less than eight (8) feet in height, or six (6) feet surmounted by three (3) strands of barbed wire. Such safeguard may include plantings, walls or other means and may include access gates having the same protective characteristics if securely closed and locked during nonoperating hours. Fences shall comply with the applicable codes and ordinances of Multnomah County.
- (2) "BOARD" means Board of County Commissioners for Multnomah County.
- (3) "BUILDING OFFICIAL" means the duly appointed Planning Director of Multnomah County or his authorized representative.
- (4) "OPEN PIT" means that part of an excavation created by the removal of material having a depth exceeding ten (10) feet below adjacent natural ground, with a side slope steeper than two to one, whether containing water or not.
- (5) "OPEN PIT NUISANCE" means the maintenance, whether operational or not, of an open pit without adequate safeguard.
- (6) "OWNER" means a person as defined in this section having legal title to real property in Multnomah County outside of incorporated cities.
- (7) "PERSON" means any natural person, association, partnership, firm or corporation.

- (8) "PERSON IN CHARGE OF PROPERTY" means an agent, occupant, lessee, contract purchaser, or person other than owner, having possession or control of real property as defined in this section.

Section 2. POLICY

To protect the health, safety, and welfare of the people to Multnomah County, the Board has determined the necessity of providing a program for adequate safeguarding of open pit nuisances which constitute a hazard or menace to the public health and safety. This Ordinance shall be liberally construed for the accomplishment of this purpose.

Section 3. PROHIBITED ACTIVITIES

It shall be unlawful for any owner or person in charge of property in Multnomah County outside of incorporated cities to maintain an open pit without adequate safeguard. The maintenance of such property is declared to be an open pit nuisance.

Section 4. ADMINISTRATION AND ENFORCEMENT

The Planning Department under the supervision of the Board shall be responsible for the administration and enforcement of this Ordinance.

Section 5. RULES AND REGULATIONS

The Board may promulgate reasonable rules and regulations pertaining to the administration of this Ordinance.

Section 6. INSPECTIONS

The Building Official or his authorized representative shall conduct such inspections as he deems necessary to insure compliance with all provisions of this Ordinance and shall have right of entry at any reasonable hour to investigate complaints and to insure abatement of open pit nuisances as provided in this Ordinance.

Section 7. NOTICE

(a) The Building Official shall, if he has cause to find that an alleged open pit nuisance exists, provide forthwith written notice to the owner and person in charge of the property of the existence of the alleged nuisance, and shall demand that said alleged nuisance be abated within fifteen (15) days from the date of said written notice. Said notice shall describe with reasonable certainty the property, the nature of the alleged nuisance, and the action necessary to abate the alleged nuisance.

(b) The Chairman of the Board may order immediate abatement if he finds that the alleged nuisance poses an extreme hazard to the public health or safety.

Section 8. RIGHT OF HEARING

(a) The person in charge of the property, and/or the owner receiving a notice of abatement of an alleged open pit nuisance may request a hearing before the Board by filing a written request therefor with the Board within five (5) days from the date of said notice of abatement. Abatement action under Section 7(a) shall be suspended upon the filing of such written request.

(b) The Board shall, upon receipt of written request for hearing, set a time and place for hearing upon its order, which shall not be more than ten (10) days from the date of filing of said request for hearing, and shall so notify in writing the person requesting hearing. Persons deemed by the Board to be interested, shall also be notified. The owner or person in charge of the property may present evidence before the Board pertinent to the alleged nuisance and its abatement. The Building Official shall also appear and present evidence pertinent to the alleged nuisance and its abatement. Failure of the person requesting hearing to appear at the hearing shall constitute a waiver of the right to a hearing.

(c) The Board shall, after the hearing, enter an order containing its findings as to whether the alleged open pit nuisance does in fact exist, and may confirm or extend the time in which the nuisance is to be abated.

Section 9. ABATEMENT BY MULTNOMAH COUNTY

(a) If the nuisance has not been abated by the owner or person in charge of the property within the time allowed by this ordinance, the Board may, at the request of the Building Official, cause the nuisance to be abated. Accurate records shall be kept of the total expense incurred by the County to abate the nuisance. A billing for the amount of said costs shall be forwarded by registered mail to the owner or person in charge of the property for full payment. Said payment shall be made to the Department of Administrative Services, Multnomah County Courthouse, Portland, Oregon 97204, in not less than thirty (30) days from the date of registered mail.

(b) If the owner or person in charge objects to the cost of abatement he may file a written protest with the Board within a period not to exceed ten (10) days from the date of notice of the amount of said cost of abatement. The

Board shall set a time and place for hearing the objection, notify the objector of said time and place, and make its determination based upon evidence presented at said hearing. The Board's order of determination shall be final and binding.

(c) The Board shall file a lien against the property when the practice constituting the nuisance was found to exist, when:

- (1) Payment has not been made as provided in Section 9(a) or
- (2) When payment has not been made within fifteen (15) days of the order of the Board as provided in Section 9(b).

Section 10. PENALTIES

(a) Any owner or person in charge of property who is found to be maintaining an open pit nuisance or allowing an open pit nuisance to exist on his property in violation of this ordinance shall be punished by a fine of not more than \$500.00 and/or imprisonment in the county jail for not more than six (6) months.

(b) The provisions of this section are in addition to and not in lieu of other procedures and remedies provided by this ordinance or state law.

Section 11. CONFORMANCE WITH LAW

This Ordinance shall in no way be a substitute for nor eliminate the necessity of conforming with any and all state laws, rules and regulations, and other county ordinances which are now or may be in the future in effect which relate to the public health or safety.

Section 12. SEPARABILITY

If any section, sub-section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

DATE OF PASSAGE: September 11, 1977

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By M. James Stearns
Chairman

APPROVED AS TO FORM:

Charles S. Evans
CHARLES S. EVANS
County Counsel
Multnomah County, Oregon
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