

ORDINANCE NO. 686

AN ORDINANCE PROVIDING FOR THE CONTROL OF INSECT PESTS, DECLARING INSECT PESTS A NUISANCE, ESTABLISHING PROCEDURES, AND PROVIDING PENALTIES.

WHEREAS, the City of Stayton recognizes and finds that regulation of insect pests is a matter of City concern, and that regulation thereof is in the interest of protecting the public health, safety, and welfare of the citizens of the City;

WHEREAS, it is the intent and purpose of this Ordinance to prevent the build-up and spread of insect pests from tree to tree and to other vegetation, particularly from areas not properly treated, or from areas untreated or abandoned, to residential areas; to offer alternative control measures; to encourage property owners to implement control measures; and to recoup expenses incurred by the City of Stayton in treatment of pests due to noncooperation or non-action of property owners, or any tenant, occupant, lessee, or person in possession of subject property. This Ordinance shall be known as the "City of Stayton Pest Control Ordinance;"

NOW, THEREFORE, THE CITY OF STAYTON, ordains as follows:

SECTION 1: STAYTON CITY CODE TITLE 8., "Health and Safety," is hereby amended to read:

8.16.710 INSECT PESTS

1. No owner or person in charge of property shall fail to control insect pests on host plants or host trees on his property.
2. The term "insect pests" as used in this Section means the strawberry root weevil, *Otiorhynchus ovatus L.*, and all other weevils in the species *Otiorhynchus*.
3. The term "host plants and host trees" as used in this Ordinance shall include all conifer trees and ornamental shrubs including rhododendrons, azaleas and camelias and any other plant or shrub designated by the Oregon Department of Agriculture or the Oregon State University Extension Service upon or around which root weevils live, feed, or reproduce.

8.16.720 PEST CONTROL OFFICER

The chief of police shall appoint a pest control officer, who shall enforce the provisions of this ordinance. The pest control officer shall work under the direction of and be responsible to the chief of police.

8.16.730

CONTROL METHODS

Insect pests on all host plants and host trees, including but not limited to host plants and host trees on commercial or semi-commercial tree farms, orchards, private residential property, public property, and abandoned property within the control area shall be controlled by the following control methods:

1. Control by Spraying: Host plants and host trees shall, subject to Subsection 3 below, be sprayed by the owner or person in possession thereof by using the agricultural chemicals or pesticide formulations at the rate, at the times, and in the manner recommended by Oregon State University (whether by its own publications, approval of other publications, or otherwise) or the Oregon Department of Agriculture.
2. Control by Removal of Host Plants or Trees: If control spraying is not possible or practicable, the pest control officer may, by written order delivered or mailed to the owner or the person in possession of property, direct that the host plants or host trees be removed and/or destroyed.

The only approved method for removal and destruction of host plants or host trees is as follows:

- a. Digging out of trees or plants and their complete root structures;
  - b. Cutting down the trees or plants and thereafter treating the remaining stump and root systems thereof with an effective chemical to prevent their regrowth or resprouting.
3. Other Methods of Control: As necessary or at the request of a property owner or possessor, the pest control officer may authorize other methods of control as deemed effective by qualified experts such as the Oregon Department of Agriculture or Oregon State University.

8.16.740

CONTROL OFFICER RIGHT OF ACCESS

In order to determine whether the provisions of this Ordinance have been complied with by the persons obligated to do so, the Control Officer or his designee may inspect any field, orchard, private residential property, public property, or abandoned property within the control area at reasonable times and shall not be subject, civilly or criminally, to liability for trespass.

8.16.750

**PROHIBITIONS**

It shall be a violation of this Ordinance for any owner or possessor of public or private property to fail to control insect pests on host plants or host trees on his property as required by this Ordinance.

8.16.760

**REMEDIES AND ENFORCEMENT**

1. **Abatement of Nuisance:** Violation of this Ordinance shall be considered to be a public nuisance which may be abated as provided in this Subsection.
  - a. The City of Stayton Pest Control Officer, or his designee, may, and upon the written complaint of any person shall, make an investigation to determine whether a violation of this Ordinance exists;
  - b. If after investigation the pest control officer finds that there is reasonable cause to believe that a public nuisance exists, he shall forward written notice to the City Council;
  - c. The City Council may order that a notice be issued and served upon the owner, tenant, occupant, or person in possession of the premises where the nuisance is alleged to exist, requiring such person to appear before the Council at the time and place stated in the notice to show cause why a nuisance should not be declared to be existing on the premises. If an owner, tenant, or person in possession of the premises cannot be found within the City for service of notice, the notice can be served by certified mail, return receipt requested, addressed to the owner of the property as his name and address appear on the Marion County tax records;
  - d. At the time and place described in the said notice, the Council shall conduct a public hearing on the existence of the alleged nuisance, and if the Council finds that a nuisance exists, it shall declare the existence of a nuisance by order entered in its journal, and shall order a suit to be brought in the name of the City for its abatement in Municipal Court;
  - e. Where a writ of abatement is issued pursuant to Subsection d. of this section, the City may enter onto the subject premises to abate the nuisance by treating the host plants or host trees. The most effective and practical method as approved by the pest control officer shall be used. Where such removal is performed by the City, the City shall not be liable for any trespass or conversion as to any real or personal property and the costs of abatement may be collected from the person served in accordance with Subsection c. of this Section, or may be collected as a lien against such property.

2. **Criminal Enforcement and Penalties:** In addition to any other remedy provided therein, any individual, firm, or corporation, whether as principal, agent, or employee who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be guilty of an offense punishable by a fine of not more than \$500. Any individual, firm, or corporation, whether as principal, agent, or employee who has been convicted of a violation of this Ordinance and who is found by a court to have been formally convicted of a violation of this Ordinance within the two years preceding the date of the alleged violation may be punished by a fine of up to \$1,000. The penalties described in this section shall be in addition to any other fees or charges collectible under other provisions of this Ordinance.

It shall be the responsibility of the police chief to enforce the provisions of this Ordinance as set forth in this subsection.

The Municipal Court for the City of Stayton and the District Court of the State of Oregon for the County of Marion shall have concurrent jurisdiction over complaints issued pursuant to this subsection.

3. **Other Remedies:** In addition to any remedies provided herein, the City Council may institute proceedings under ORS Chapter 203. injunction, mandamus, abatement, or any other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove any activity or use of real or personal property which it has reasonable cause to believe does or will violate this Ordinance.

#### 8.16.770 EXEMPTION

There shall be an exemption from the provisions of this Ordinance for the conducting of accepted scientific experiments by Oregon State University or its designee on test plots.

Should any such experiments cause complaints, the pest control officer shall contact Oregon State University, who shall take action to alleviate the complaint.

#### SECTION 2: SEVERABILITY

Should any article, section, subsection, paragraph, sentence, clause, or phrase of this Ordinance be declared invalid, such declaration shall not affect the validity of any other article, section, subsection, paragraph, sentence, clause, or phrase; and if this Ordinance or any portion thereof should be held to be invalid on one ground but valid on another, it shall be construed that the valid ground is the one upon which said Ordinance or such portion thereof was enacted.

PASSED BY THE COMMON COUNCIL THIS 4th day of February 1991.

SIGNED BY THE MAYOR this 5th day of February 1991.

Willmer Van Vleet 2-5-91  
WILLMER VAN VLEET, Mayor Date

ATTEST

D.W.K. 2-5-91  
DAVID W. KINNEY, City Administrator Date

APPROVED AS TO FORM:

David A. Rhoten 2/8/91  
DAVID A. RHOTEN, City Attorney Date