



CITY OF PORTLAND
ENVIRONMENTAL SERVICES



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March 15, 2010

TO: Paul L. Scarlett, Director
Bureau of Development Services

Dean Marriott, Director
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FROM: Ed Marihart (BDS), Paul Ketcham (BES), Mitch Bixby (BES),
and Tricia Sears (BPS)

RE: Adoption of Administrative Rules for the Nuisance Plant Required
Removal Program

Please find attached the administrative rules which describe the City's Nuisance Plant Required Removal Program for the public. This Program is jointly implemented by staff from the Bureau of Environmental Services and the Bureau of Development Services. The tasks described shall be implemented as funding allows. These rules describe implementation of new provisions that go into effect on July 1, 2010 (Ordinance No. 183534). The new provisions and the new program are implemented by existing staff.

We accept these rules to describe the tasks and duties of our staff in implementing and enforcement of the Nuisance Plant Required Removal Program.



Paul L. Scarlett, Director
Bureau of Development Services

3-15-10
Date



Dean Marriott, Director
Bureau of Environmental Services

4-14-10
Date

**Nuisance Plants Required Removal Program
Administrative Rules**

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These rules are presented in a Commentary and Regulations alternative page format. The intent is to provide informational items on the Explanatory Information page and limit the Regulatory Text page to the legal requirements of the program. .

Explanatory Information

Applicability

All of the plants on the City's Nuisance Plants List are considered invasive plants. However, some species are more aggressive than others. Several species are just beginning to emerge here and could be prevented from spreading if detected early. To help set management priorities, the City is assigning specific priority ranks to the plants on the Nuisance Plants List.

Rank "A" plants on the Nuisance Plants List are designated for their ability to spread rapidly and to cause public safety and environmental hazards. Rank "A" plants are specifically targeted for removal because they currently have limited distribution in natural areas and eradication will prevent the spread of these plants. Rank "B" plants are more abundant and widely spread than "A" plants; however, their distribution is currently limited to specific habitats or patches. Common nuisance plants, such as Himalayan blackberry and English ivy, are so abundant and widely distributed they would take a considerable amount of time and money to eradicate; therefore, they are rank "C" plants.

The City has identified a subset of the rank "A" plants on the Nuisance Plants List as plants that are such a concern that they must be eradicated if they are found on a property. In accordance with these administrative rules, property owners, whether private or public, whose property is found to contain plants with rank "A" on the Nuisance Plants List, Required Eradication List, shall receive notice to work with City staff to eradicate such plants from their property. It is possible that multiple eradication efforts may be needed for some plant species.

Rather than immediately involve citizens in an abatement process, the City will direct staff to provide resources and education to property owners to remove the plants. Bureau of Environmental Services (BES) staff will provide the resources and education to property owners. BES is responsible for implementing or ensuring implementation of these administrative rules except where the responsibilities of the Bureau of Development Services (BDS) are identified. Should funding become unavailable for either bureau, then implementation may become limited. An intergovernmental agreement provides funding details related to these administrative rules.

The City will only proceed with abatement on rank "A" species on the City's Nuisance Plants List, Required Eradication List, if the plants are also on the Oregon Department of Agriculture noxious weed list. See the City of Portland Nuisance Plants List, Required Eradication List for the plants with required eradication and, if necessary, abatement. These administrative rules apply to property within the City of Portland and within the unincorporated areas of Multnomah County per the intergovernmental agreement between the City of Portland and Multnomah County called the "Intergovernmental Agreement to Provide for the Coordinated Regulation and Management of Invasive Plants Between City of Portland and Multnomah County" which provides details related to funding and other responsibilities.

Regulatory Text

1. Applicability

Property owners within the greater Multnomah County area, whether private or public, with invasive plants listed as rank “A” on the City of Portland’s Nuisance Plants List, Required Eradication List are required to contact BES and arrange for immediate removal of those rank “A” listed species. Eradication efforts can be made by the property owner, City staff or private contractors.

2. Purpose

These administrative rules are one component of the City’s Invasive Plant Management Strategy that was adopted in November 2008. There are five invasive plant control priorities described in this Strategy that are used to direct the City’s invasive plant management efforts. There is limited funding for tackling this large problem.

These rules establish procedures, roles, and responsibilities for notification and assistance to property owners in eradicating specific invasive plants as authorized in Title 29. These provisions also establish an abatement process if property owners are unwilling to eradicate rank “A” species identified on the Nuisance Plants List, Required Eradication List.

- A. *Protection of the highest quality habitat.* By requiring removal of rank “A” plants on the Nuisance Plants List, Required Eradication List from public and private property, the City hopes to prevent invasive plants from escaping landscaped areas and encroaching upon public and private natural areas.
- B. *Early Detection and Rapid Response.* These administrative rules are founded predominantly on this principle; by regulating rank “A” species on the Nuisance Plants List, Required Eradication List, the City can eradicate these plants before they expand to become abundant and widely distributed. The proliferation of the plants makes eradication difficult, and requires an extensive amount of time and money.
- C. *Landowner participation and available funds.* The BES Early Detection and Rapid Response team relies on public assistance to help identify rank “A” species, so that the limited City funds can be directed to controlling these plants. The current City program offers to remove rank “A” plants for property owners, based on available funding. Educational information will be provided to the property owners.
- D. *Wildfire Risk Reduction.* Many of these invasive plants can create dense understories or kill off native plants, including trees, so that there is the potential for enhanced fire risk. Some plants contain oils or physical structures that are highly flammable.
- E. *Protecting Existing Green Infrastructure.* With the City’s increased use of vegetated facilities, tree planting, and riparian land acquisition, ensuring that invasive plants stay out of these systems is a priority. With limited City maintenance funds, invasive species must be managed on public and private land to protect our investment in public properties. This benefits all citizens.

Explanatory Information

Purpose

Invasive plants are the second largest threat to native biodiversity, behind habitat loss, and they are one of the primary factors that lead to a species listing under the Endangered Species Act (City of Portland Invasive Plants Strategy Report 2008). Invasive plants degrade water quality, reduce biodiversity, impair habitat, decrease tree populations and growth rates, increase the likelihood and spread of fire, decrease the ability of stormwater infiltration and increase soil erosion. Removing invasive species and planting native vegetation is critical for improvement and maintenance of watershed health. Fish, wildlife, and the citizens of Portland benefit from the management of invasive species.

Invasive plant management is a long-standing city-wide effort. In 1991, the City of Portland passed the ordinance to establish the *Portland Plant List*. The *Portland Plant List* included a list of native plants for the Portland metropolitan area. In recognition of the threat of invasive plants, the *Portland Plant List* also included a list of nuisance plants and a list of prohibited plants (invasive plants).

The City's bureaus have programs that conduct invasive plant removal, such as the BES Watershed Revegetation, the BES Early Detection and Rapid Response, and the Bureau of Parks & Recreation Protect the Best programs. In addition, the Bureau of Development Services implements the Portland Zoning Code; the Zoning Code contains requirements that prohibit the installation of invasive plants. The Invasive Plant Management Strategy, published in November 2008, further emphasizes the management of invasive plants as a city-wide priority.

The Invasive Plant Management Strategy outlines five management goals for the City:

1. Policy and Code Changes
2. Education and Outreach
3. Coordination
4. Assessment (inventory and control priorities)
5. Invasive Plant Control and Site Restoration.

The Invasive Plant Policy Review and Regulatory Improvement Project focuses on the first management goal: the policy and code changes. Assigning ranks to the plants on the Nuisance Plants List, and establishing provisions in the City codes that require removal of invasive plants and prohibit the planting of invasive plants, will improve early detection and rapid removal of invasive plants.

The priority ranks added to the City's Nuisance Plants List follow a framework similar to that used by the State of Oregon for ranking noxious weeds. The Oregon Department of Agriculture uses "A", "B", and "T" ranks to indicate the distribution and control priority for noxious weeds in Oregon. Under Oregon law, counties can set up weed control districts to manage high priority weed species. Two-thirds of Oregon counties have weed control districts and correspondingly, have noxious weed boards and noxious weed laws. Multnomah, Washington, and Clackamas Counties do not have weed control districts.

Regulatory Text

2. Purpose – continued

F. This program will help the City meet the following objectives:

- Protection and recovery of biological communities including fish listed under protections under the Endangered Species Act,
- Expanded and enhanced habitat (aquatic and terrestrial), protect existing sensitive habitats,
- Protection of water quality,
- Protection of public health and safety,
- Greater use of natural processes for managing stormwater – trees in particular,
- Cost savings, and
- Community livability.

3. Definitions

Eradication. Eradication is the removal of the entire nuisance plant – including the above ground portion of the plant, and the roots, shoots and seeds of the plant. The eradication provisions of these rules apply to those plants on the Nuisance Plants List, Required Eradication List.

Invasive. Species that spread at such a rate that they cause harm to human health, the environment and/or the economy. In natural areas, invasive plants are those species that left unchecked could displace native plants and become the dominant species in that vegetation layer. Invasive plants can halt successional processes by limiting the establishment and the growth patterns of native species

Nuisance Plants List. A portion of the City’s *Portland Plant List* that identifies undesirable species of plants that are often referred to as invasive species. These species may not be planted within the Environmental Overlay Zone, the Greenway Overlay Zone, and the Pleasant Valley Natural Resources Overlay Zone. These species may not be planted within City-required landscaped and mitigation areas. The Nuisance Plants List identifies the common name and botanical name for each species. The Required Eradication List is part of the Nuisance Plants List.

Plant Priority Ranks. Portland specific priority rankings of plants for removal and monitoring efforts. These ranks are assigned to plants on the Nuisance Plants List:

- A** – These species are known to be invasive. These species are known to occur but are not widely distributed in the region. Distribution is limited to a few known sites. They spread rapidly and are difficult to control once they become widespread.
- B** – These species are known to be invasive. These species are known to occur in the region. They are more abundant and widely distributed than “A” ranked plants; however the distribution is still limited to patches or specific habitats. These plants can spread rapidly and are difficult to control once they become widespread.

Explanatory Information

Purpose - continued

Cities are allowed to establish noxious weed boards as a special weed control district; however, no cities in Oregon have done so because it is a challenging endeavor. State law requires signatures from over half of the landowners within a district to establish a special weed control district. Noxious weed management laws in Oregon were created primarily for weed management in rural areas and will need to be revised to adequately manage invasive species in more urban settings.

These administrative rules are not related to a weed control district as defined by Oregon law. The administrative rules articulate a City process related to control and management of a specific set of invasive plants; those plants are listed on the Nuisance Plants List, Required Eradication List.

Controlling small populations of invasive plants before they become widespread is the most cost effective way to fight invasive species. The U.S. Congress Office of Technology Assessment reports that a dollar spent on early invasive species actions prevents \$17 spent in future control efforts (U.S. Congress, Office of Technology Assessment, 1993, Harmful Non-Indigenous Species in the United States, OTA-F-565 Washington DC).

Definitions

The invasive definition is based upon a definition from the Oregon Department of Agriculture, and has been modified by City staff.

The definitions of rank are established to help prioritize which species are most important to detect and eradicate. Definitions are based upon those used by the Oregon Department of Agriculture and by the 4-County Cooperative Weed Management Area (CWMA), with modifications by City staff. The Invasion Curve below provides examples of plants for ranks “A-C”.

The Portland metropolitan region, defined here as Clark, Multnomah, Washington, and Clackamas Counties, is used as the unit of evaluation for monitoring invasive presence, coordination, and educational activities. These four adjacent counties are a gateway for invasive species entrance to and exit from more urban habitats to recreation destinations and agricultural lands. In addition, the Port of Portland is a potential pathway for introduction of potentially invasive species from throughout the world.

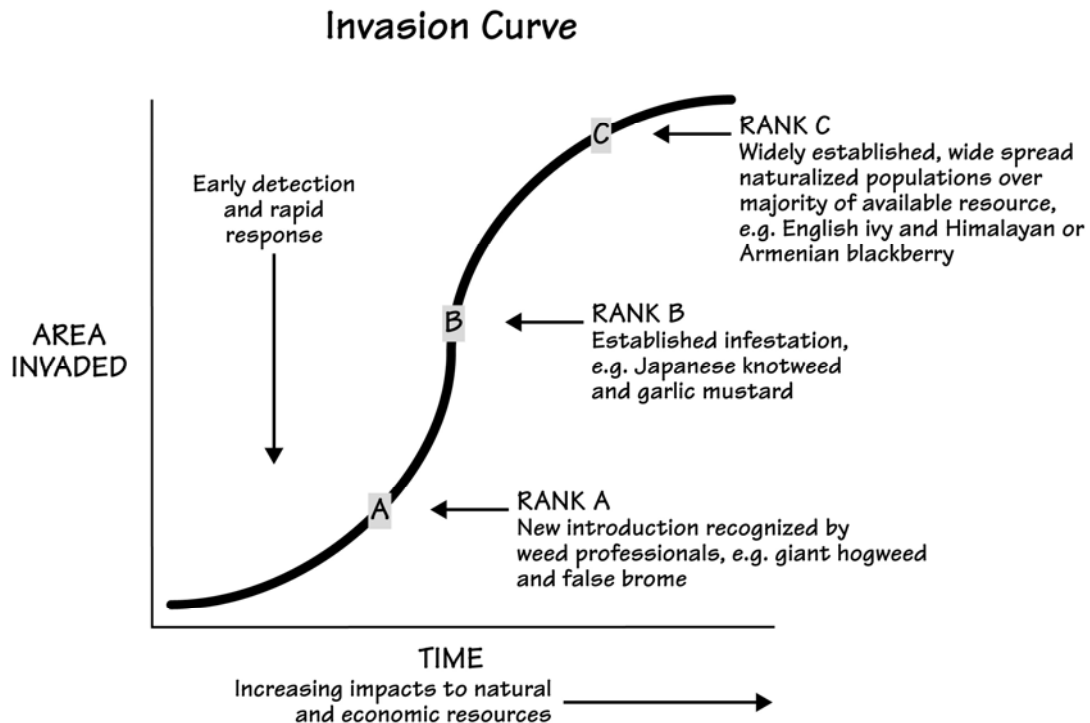
Removal of the plants is a key action. What constitutes removal of nuisance plants? Different methods of removal will be used; it may take several years of removal actions to completely eradicate the plant.

Regulatory Text

3. Definitions - continued

Plant Priority Ranks - continued

- C** – These species known to be invasive. These species are widely distributed and abundant throughout the region. Their distribution is already very extensive throughout natural areas and they are difficult control once they become widespread. These plants are considered ubiquitous.
- D** – These species are known to be less aggressive than “A”, “B”, and “C” ranked species. These species are known to occur in the region. These plants persist with native species and therefore have less impact on the system than the “A”, “B”, and “C” species.
- W** – Watch species. Species occurrence and distribution should be monitored for presence and/or to determine the level of invasiveness in the region.



Region. The region includes the four counties, and the associated cities, of Multnomah, Clackamas, Washington counties in Oregon, and Clark County in Washington. These entities are part of the 4-County Cooperative Weed Management Area (CWMA).

Nuisance Plant Removal. Removal entails actions such as the removal of: roots, the above ground portion of the plant, and the seeds of the plants such that existing non-nuisance and/or newly installed plants are able to grow and survive. The non-nuisance plants are maintained free of nuisance plants. The City’s nuisance plants are listed on the Nuisance Plants List.

Explanatory Information

Regulatory Authority

City Code Title 29, Property Maintenance Regulations, has been revised, with changes adopted concurrent with these rules, to grant the City authority to require the removal of the rank “A” species on the Nuisance Plants List, Required Eradication List from any property within the City. This code section was chosen with present and future needs in mind. Title 29 has existing language about weeds and the general upkeep of a property.

Washington’s state law is stricter than Oregon law because it stipulates that landowners are required to control for certain species on their property (RCA 17.10.140 Owner’s Duty to Control Spread of Noxious Weeds). In addition, cities are automatically included as part of a weed control district when a county in Washington establishes a weed control district. Ideally, a statewide Oregon law that mirrors Washington’s law would provide the structure needed to effectively manage invasive species on private land.

The City participates in the 4-County (Clackamas, Clark, Multnomah, and Washington) Cooperative Weed Management Area (CWMA). This is a collaborative weed management group that facilitates partnerships among public and private entities involved in invasive plant management. The CWMA exists to share information, inventory and assess invasive plants, conduct outreach to raise awareness, and sponsor effective and innovative invasive plant removal and restoration projects. City participation in this group has helped foster partnered invasive plant management and outreach projects. Regular meetings help the group formulate consistent invasive plant management priorities throughout the region.

Requirements

City staff is available to assist property owners with identification and eradication of rank “A” plants on the Nuisance Plants List, Required Eradication List. Property owners or tenants may self-identify plants or may receive notice from City staff who have identified rank “A” species. City staff may identify these plants during a land use review site visit, or a permit inspection. Citizens may also report sightings of invasive plants. Land use reviews and permits will be able to continue in their respective processes while the invasive plants are eradicated. Materials have been developed to aid in identification of the plants.

Because of the similarity of rank “A” species with some other more desirable plant species, property owners or tenants are encouraged to contact the City to arrange for a site visit by City staff to formally identify plant species. City site visits shall generally be by appointment during standard working hours. Owners are encouraged to be onsite during the visit to discuss eradication options. If the identification of a rank “A” species on the Nuisance Plants List, Required Eradication List has been made by a reliable source, and entry permission is granted without a separate site visit, City staff may eradicate at the time of the site visit.

Regulatory Text

4. Regulatory Authority

- A. *Noxious weed law.* Both Oregon and Washington have state noxious weed laws that establish a ranked classification system to identify plants with management priorities. The City of Portland has adopted a priority rank system and related code provisions.
- B. *City Code Title 29.* This portion of City Code requires the removal of rank “A” species of plants on the Nuisance Plants List, Required Eradication List found on any property. These are listed in Appendix D, City of Portland Nuisance Plants List, Required Eradication List. Specific requirements are described below in the “Requirements” section. There are also specific regulations in City’s Zoning Code in the following chapters: Landscaping and Screening, Environmental Overlay Zone, Greenway Overlay Zone, and the Pleasant Valley Natural Resources Overlay Zone. These provisions prohibit the planting of species on the Nuisance Plants List. In addition, the *Erosion Control Manual* and the *Stormwater Management Manual* include provisions that limit the use of species on the Nuisance Plants List.

5. Requirements

- A. *General Requirements.* These rules and City Code Title 29 require that any property identified as having a rank “A” species on the Nuisance Plants List, Required Eradication List must remove these plants within the time period on the initial notice. Any property owner identifying these species on their own must notify the City so the site can be added to the monitoring database.
- B. *Notice.* Property owners shall be notified of their duty to comply with these regulations as spelled out in Section VII of these rules and with notices similar to the one shown in Appendix B. Compliance dates shall be provided within the notices.
- C. *City Assistance.* The City shall provide a number of actions to assist property owners in permanently eradicating rank “A” species, as identified on the Nuisance Plants List, Required Eradication List from their sites:
 - 1) Plant Identification. The City has developed a number of educational materials to assist owners in identifying rank “A” species. Materials are available at the Development Services Center (1900 SW 4th Avenue, Portland, OR 97201), on the BDS website at www.portlandonline.com/bds/index.cfm?c=34154 and on the BES website at <http://www.portlandonline.com/bes/index.cfm?c=45696>. City staff is available to provide onsite verification of the presence of rank “A” species. An appointment will be set up for a site visit.
 - 2) Plant Removal. Property owners shall be given the option of removing rank “A” species as identified on the Nuisance Plants List, Required Eradication List on their own, or requesting City staff remove the plants. Property owners will need to make an appointment to have City staff assist them. City assistance will be provided on a first come first served basis and continue as long as the annual budget allows.

Explanatory Information

Requirements - continued

Removal of some of the rank “A” plants on the Nuisance Plants List, Required Eradication List can be a difficult, multi-phase process that may require a variety of techniques, including routine mechanical, manual, and chemical application, to fully eradicate the species. City staff responsible for eradication efforts shall follow the Portland Parks & Recreation Integrated Pest Management and BES Revegetation program protocols for plant removal. If chemical application is necessary, BES may hire a contractor or route the chemical application request to one of the following partners: the local Soil and Water Conservation District (SWCD)(East or West Multnomah), Clean Water Services (for sites within the Tualatin River watershed), Johnson Creek Watershed Council, Tryon Creek Watershed Council, and/or Columbia Slough Watershed Council. In addition, if BES has insufficient funding to pay for eradication efforts, both physical and chemical, a referral might be made to one of those partners to see if they can secure funding for eradication.

Due to limitations in Oregon Pesticide Licensing laws (ORS 634), the City cannot use chemical treatment on private property. The City has to hire a contractor or use other means of eradication.

Monitoring shall continue for up to five years to assure full plant eradication. Continued monitoring and maintenance will be part of the agreement between the BES staff and the property owner who is receiving the assistance. Reported sightings of plants, site visits, removal treatment and other site related information shall be retained in City records, most likely in a database, to assist with the City’s invasive species management strategy.

Following removal of the rank “A” species on the Nuisance Plants List, Required Eradication List the site should be re-vegetated with non-invasive plants to reduce the likelihood of future re-colonization of invasive species. Some of the areas, such as those within the Environmental Overlay Zone, must be re-vegetated with native plants. See the Zoning Code for information about areas that require the installation of native plants.

Regulatory Text

5.C Requirements - continued

- 3) Monitoring / Maintenance. Many of the rank “A” species on the Nuisance Plants List, Required Eradication List are difficult to remove. The plants need continued monitoring and multiple removal efforts to fully eradicate them from a site. Once a site is identified as having rank “A” plants, City staff will add the site to a tracking database. Monitoring shall continue for up to five years to assure full plant eradication. Continued monitoring and maintenance will be part of the agreement between BES and the property owner who is receiving the assistance.
 - a. Long Term Maintenance Plan. The City will work with the property owner to develop a long term strategy to keep invasive plants from re-establishing on the property. This long term plan may include re-vegetation of the newly cleared area to provide competition with new invasive seedlings.

D. *Entry Permission Form*. The City will require a signed permission form (Appendix C) to enter onto private property.

Explanatory Information

BES Response Strategy

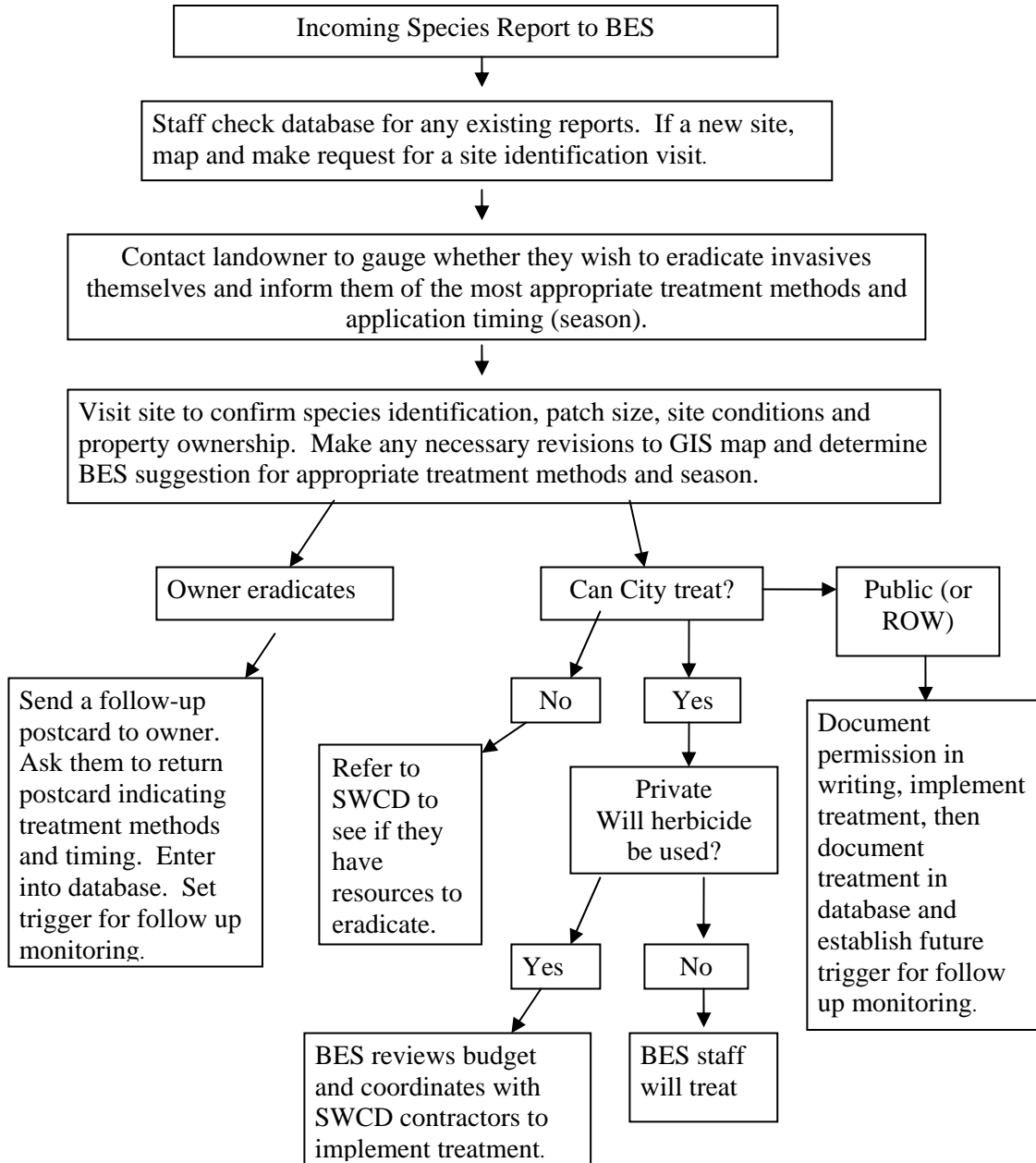
Figure 1 identifies the decision-making steps BES staff will undertake to establish an eradication plan for a property reported to have rank “A” species on the Nuisance Plants List, Required Eradication List.

Regulatory Text

6. BES Response Strategy

BES shall respond to notifications about or sightings of rank “A” species as laid out in Figure 1 below.

FIGURE 1 – BES Response Flow Chart



Explanatory Information

Public Notices

The City has developed a variety of program materials to assist property owners in self-identifying rank “A” species on the Nuisance Plants List, Required Eradication List and to provide guidance on alternative plants such as native plants and non-native, non-invasive plants. Additional materials will be developed. A sample of the existing materials includes the following:

Garden Smart Oregon

This document is about home gardening and offers both native and non-native, non-invasive plant alternatives to invasive plants.

Plant Profiles on the City’s web page

These website-based PDFs provide specific descriptions of: butterfly bush, clematis, English ivy, fennel, garlic mustard, Japanese knotweed, parrot feather, American pokeweed, purple loosestrife, tree of heaven and yellow flag iris. These fact sheets include a species description, as well as information on history, spread, control, and alternative plant species.

State of Oregon Department of Agriculture Online Plant Guides and Hotline

When the state receives a notice on its website of a potential invasive and noxious weed plant species of concern, they will forward that notice to BES staff. This website also contains a variety of educational materials on invasive plant identification and eradication methods. Call 1-866-INVADER to report suspected invasive plant locations. Reports to the 1-800-INVADER and the web site (Oregon invasives hotline) are routed back to BES staff at phone #503-823-2989. The most efficient way to report an invasive plant is to contact BES directly.

Reported Sighting Notice

In most cases, BES staff shall verify all reported sightings of rank “A” species on the Nuisance Plants List, Required Eradication List with a site visit to the property to confirm presence of rank “A” species. Only when the sighting is made by qualified City staff, a member of the 4-County Cooperative Weed Management Area, or other qualified person (e.g. SWCD staff, master gardener) will a confirmation site visit be deemed unnecessary. A site visit shall be made as an appointment with the property owner or tenant who responds to this notice. A sample notice is found in Appendix B.

Regulatory Text

7. Public Notices

- A. *Educational Materials.* The City, the 4-County Cooperative Weed Management Area (CWMA) and the State of Oregon provide a variety of materials to assist property owners in invasive species plant identification. These materials include:
- 1) Garden Smart Oregon. It includes descriptions, photos, and native and non-native, non-invasive plant alternatives for invasive plant species.
<http://www.portlandonline.com/bes/index.cfm?c=47570>
 - 2) BES Plant Profile and Eradication Support Materials.
 - a. Profiles for more common rank “A”, “B” and “C” species in Portland.
<http://www.portlandonline.com/bes/index.cfm?c=45749>
 - b. Other education materials in development.
- A. Oregon Department of Agriculture, Plant Division, Noxious Weed Control. General guidance information on identifying invasive plant species of concern:
<http://www.oregon.gov/ODA/PLANT/WEEDS/index.shtml>
- B. *Notification Hotlines.*
- 1) BES hotline. Property owners may contact BES staff at phone #503-823-2989.
 - 2) Oregon Online Hotline. The State of Oregon maintains a phone number at 1-800-INVADER, and an online reporting system for invasive species. This reporting form can be found at: <http://oregoninvasiveshotline.org/>.
- C. *Reported Sighting Notice.* When a rank “A” species on the Nuisance Plants List, Required Eradication List has been reported to be present on a property within the City of Portland and the area designated by the “Intergovernmental Agreement to Provide for the Coordinated Regulation and Management of Invasive Plants Between City of Portland and Multnomah County,” BES staff shall issue written notice to the property owner and offer an onsite visit with the property owner to confirm the presence of the suspect species. The property owner can delegate the site visit attendance to a property tenant if they so desire. See Appendix B for the Reported Sighting Notice form. See Appendix D for the City of Portland’s Nuisance Plants List, Required Eradication List.
- D. *Compliance Notice.* This notice shall identify which rank “A” plants are present on the property, note that these plants constitute a public nuisance, and identify the required actions and timelines for eradication efforts to be made on the property. The elements within this notice are negotiated between BES staff and the property owner, usually at the time of the Reported Sighting Notice visit. This notice also includes the means for the owner to appeal the City determination of nuisance or compliance requirements.
- E. *Escalating Enforcement Notices.* If there is continued non-compliance with City requirements to eradicate rank “A” species on the Nuisance Plants List, Required Eradication List, the property owner shall receive a variety of enforcement notices as described in Section 8.

Explanatory Information

TABLE 1: PUBLIC NOTICE SUMMARY

Type of Communication	Purpose	Bureau	Timeframe	Owner Response Due
Reported Sighting Notice	<ul style="list-style-type: none"> • Informs property owner of a report of a rank “A” plant* sighting on their property. • Requests a time be set for BES staff inspection to confirm presence of rank “A” plants*. • Offers to meet owner onsite at time of inspection. 	BES	Sent within 14 days from when BES receives the reported sighting.	Within 30 days of the date of the Reported Sighting Notice.
Compliance Notice	<ul style="list-style-type: none"> • Conveys City determination that rank “A” plants* constitute a nuisance. • Sets compliance timeline. • Sets required actions to be taken to remediate the nuisance. • Provides information to appeal City determination or compliance requirements. 	BES	Sent within 5 working days of site inspection.	As per notice – generally 30 days.
Enforcement Notice	<ul style="list-style-type: none"> • Sent if City determines eradication efforts required in Compliance Notice have yet to be made for rank “A” plants*. See City of Portland Nuisance Plants List, Required Eradication List. • Informs of days remaining before conformance deadline (30). 	BDS (Upon referral from BES)	Sent within 45 days of initial Compliance Notice.	30 days

*Rank “A” plants on the Nuisance Plants List, Required Eradication List.

Enforcement

The City’s Nuisance Plants Required Removal Program is designed to work with and support property owners in their efforts to remove invasive species. With the technical support and financial support elements, it is hoped that the majority of properties that are required to comply with these rules will comply without escalating enforcement. Due to the need for timely eradication efforts, the City must have an enforcement program established to take actions on property of the property owner is unable or refuses to do so.

Because of their ample experience with code compliance issues on private property, the Bureau of Development Services Neighborhood Inspections Section will be the lead team on resolving continuing compliance issues related to requirements of these rules and City Code Title 29. The enforcement elements described in these rules are modeled after the existing enforcement program in Title 29. These elements shall commence once BES staff have made the referral to BDS staff for non-compliant sites. BES will continue to provide assistance as needed during enforcement and abatement procedures. Nuisance abatement and/ or penalties may be established. Penalties are an undesirable, but potentially effective, tool toward gaining compliance.

Regulatory Text

8. Enforcement

The City's escalating enforcement process includes a variety of activities based on the authorities granted in Title 29 of the City Code. Failure to meet the eradication requirements of these administrative rules and Title 29 of City Code shall be considered a violation of those regulations. The City may use any or all of the following enforcement tools to gain compliance:

- A. *Notice of Violation.* If the property owner fails to respond to the Reported Sighting Notice, a Compliance Notice will be sent. If the property owner fails to take the actions within the mandated timelines on the BES Compliance Notice, and BES refers the situation to BDS, then BDS staff shall submit a formal Enforcement Notice. The Enforcement Notice shall set out the property owner's failure to comply and describe the escalating enforcement steps to achieving onsite abatement. It shall specify a timeline for response to accomplish onsite eradication efforts.

- B. *Case Evaluation and Final City Determination.* The City shall rely on the best professional judgment of its trained staff to evaluate compliance with eradication requirements. The City shall send a written Notice of Final Determination to all applicable parties after the decision is made. The notice shall provide a detailed description of the final determination and information about the process for filing an appeal to be heard by the City Code Hearing Officer.

- C. *Penalties.* The City reserves the right to initiate penalties against any property owner failing to comply with required eradication efforts or negotiating in bad faith with City staff. Penalties shall include monthly enforcement fees imposed by BDS staff to cover costs of processing enforcement cases.

- D. *Abatement.* The City has authority, in Chapter 29.60, to enter onto property and abate or otherwise remove the rank "A" plant on the Nuisance Plants List, Required Eradication List, which is a nuisance condition on a property. City staff will meet with the property owner and discuss specific site, financial, scheduling or general capacity to comply, and any other issues relevant to the site. The City is authorized to recover all costs associated with abating the nuisance on a property. These costs shall be billed to the property owner within 30 days from completion of the abatement. Failure to pay for those costs within the specified time frame may result in a lien on the property in accordance with the provisions of Chapter 29.70.

- E. *Fees.* The BDS Property Maintenance Regulations Fee Schedule is available online at <http://www.portlandonline.com/bds/index.cfm?c=41869>.

Explanatory Information

Enforcement - continued

The amount of the monthly enforcement fee shall be charged according to the Property Maintenance Regulations Fee Schedule as approved by the City Council. If all violations are not corrected within three months from the date of the initial compliance period, subsequent enforcement fees shall be twice the amount stated in the Property Maintenance Regulations Fee Schedule as approved by the City Council. Nuisances are abated as described in Chapter 29.20.

City Code grants the City regulatory authority to use a warrant to enter property to abate nuisances. It is the owner's obligation to notify tenants on the property. The City and affected property owners shall abide by the Code provisions in Section 29.60.060.

- The City and property owner may negotiate a schedule and group of site actions to gain compliance. The discussion may involve staff from BES and BDS.
- It shall be unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever such officer, employee, contractor, agent, or authorized representative of the City is engaged in the work of nuisance abatement.
- Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives shall be liable for any damage to or loss of the real property of any improvements, emblements, or personal property due to the enforcement against violations of these rules.

If a site requires abatement, BDS staff shall take the lead for obtaining the warrant to the property, while BES will take the lead for acquiring staff or contractors to complete the eradication work. An overhead charge of 40 percent, a recording fee and contractor costs, and charges from the auditor, shall be imposed on top of the labor and materials costs for the abatement activities on site for each violation.

Appeals

Because rank "A" plants on the Nuisance Plants List, Required Eradication List are considered a public health and safety nuisance, the requirement to eradicate these species is *not* appealable. Other aspects of the enforcement process (described in Section VIII Enforcement) may be appealed. The City's Invasive Plant Coordinator and/ or other relevant staff shall participate in the appeal process as needed.

Evidence. Property owners are encouraged to submit photos, maps, drawings or other materials that document the issues raised in the appeal. Property owners shall specify whether they desire to present the appeal by phone, in person, by email, or other written form. While there is no page limit to an appeal submittal, appellants are encouraged to make submittals as concise and relevant as possible. After receipt of the appeal, the City shall commence internal review of the issues raised and prepare a final determination on the topic. Appeals will be reviewed and heard as needed.

Property Owner Appeals. The property owner is given opportunity to negotiate alternative schedule and specific compliance actions required to eradicate rank "A" species on the Nuisance Plants List, Required Eradication List. A property owner may only appeal the notices identified in the "Right to Appeal" section of these administrative rules.

Regulatory Text

9. Appeals

A. *Right to Appeal.* Property owners are given the right to appeal City compliance determinations to the City Code Hearings Officer. Property owners may *only* appeal the following City determinations:

- 1) BES Compliance Notice. See “VII. Public Outreach or Notices.”
- 2) That eradication has been completed. The property owner must provide proof from a licensed qualified professional that the plants have been completely eradicated from the property. The requirement to remove rank “A” species on the Nuisance Plants List, Required Eradication List is *not* appealable.

A fee is charged for an appeal. An appeal is submitted as a written request to the BDS staff contact in the Final Determination Notice; the appeal is to the Hearings Officer as provided for in Chapter 22.10 of the City Code.

B. *Appeal Submittal.* Appeals shall be submitted to the BDS staff contact in the Neighborhood Inspections Section and must include the following items:

1. The name and contact information of the property or business owner filing the appeal and date of appeal submittal; and
2. The address of the property that is the subject of the appeal; and
3. The specific issue that is being appealed; and
4. Substantive documentation to support an error by BES in determining site compliance with these regulations.

C. *Actions with the City Code Hearings Officer.* Information about the proper procedure to work with BDS to file an appeal with the Code Hearings Officer shall be sent with the City’s Notice of Final Determination to the property owner. If a request for hearing is received by BDS, staff will forward a request to the Code Hearings Officer within 15 days of the date of when the request is received to BDS. The Code Hearings Officer shall schedule and hold a hearing pursuant on the City’s application which will include the Final Determination previously sent to the property owner.

Review of the final order of a Code Hearings Officer by any aggrieved party, including the City of Portland, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010-34.100.

APPENDICIES

APPENDIX A – Authorizing Ordinance

29.20.010 G. Nuisance Plants. Eradication, as defined in 29.10.020.V, is required of all plants identified on the Nuisance Plants List. The Director shall adopt administrative rules detailing implementation and enforcement of this provision.

29.20.010 G, H., I, and J will be relabeled H, I, J, and K.

29.10.020 V. Eradication. Eradication is the removal of the entire nuisance plant – including the above ground portion of the plant, and the roots, shoots and seeds of the plant. The eradication provisions apply to those plants on the Nuisance Plants List, Required Eradication List.

29.10.020 V. – YYY will be relabeled W-ZZZ.

APPENDICIES

APPENDIX B – Reported Sighting Notice Form



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REPORTING INVASIVE PLANT SIGHTING NOTICE

The City of Portland (the City) has received a report about a possible rank “A” plant on the Nuisance Plants List, Required Eradication List that may be on your property. The report states that ___(common plant name)_____ was seen on ___(portion of property)_____ part of your property. BES staff requests an appointment with you to meet onsite and confirm if ___ (species) _____ is indeed present on your property and discuss the potential methods of eradication. This letter is sent to you on _____ (date).

Title 29 of City Code requires that property owners immediately remove any rank “A” species found on their property. See the rank “A” species as designated on the Nuisance Plants List at _____web site_____. Rank “A” species are invasive plants that are particularly troublesome due to their rapid ability to spread, and in some cases, their public safety concerns. The responsibility to eradicate invasive plants rests not only on the landowner, but also on the local, state, and federal government. Some invasive plants can be controlled by timely pulling or cutting them, while others require herbicide treatment for one or more seasons. Early intervention can prevent the need for more costly and environmentally damaging control efforts in the future.

The City offers technical and financial assistance programs to help property owners remove rank “A” species. In some cases, City or contract staff may be able to remove species on your property. Prompt eradication is legally required, and is more cost effective.

Please contact me at 503-823-XXXX or by e-mail at XXX@bes.ci.portland.or.us to schedule a time to meet with you on your property. If you would prefer to have City staff verify the presence of the invasive plant species without your presence, we can arrange to make a site visit with proper entry permission from the property owner.

Thank you for your attention,

Name
Title

APPENDICIES

APPENDIX C – Eradication Entry Permission Form



**ENVIRONMENTAL SERVICES
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PERMIT OF ENTRY FOR INVASIVE PLANT CONTROL

The City of Portland (the City) has launched a program to educate landowners about the potential impacts of invasive plants and to implement control efforts. We have enclosed some information about the invasive plants that may be on your property. Please see the Nuisance Plants List for the full list of City-designated invasive plants.

The responsibility to eradicate invasive plants rests not only on the landowner, but also on the local, state, and federal government. Some invasive plants can be controlled by timely pulling or cutting them, while others require herbicide treatment for one or more seasons. In many cases, early intervention can prevent the need for more costly and environmentally damaging control efforts in the future.

Prior to working on your property, the City must secure your permission to enter. If you agree to allow the City and its contractors to enter upon your property to control invasive plants, please fill in the blanks below with your name, street address, county, signature and today’s date.

_____, (Owner) of the real property located at _____ in _____ County, does hereby grant a permit of entry to the City, its employees, agents, contractors and employees and subcontractors of its independent contractors, performing work on the above-described property to treat invasive plants. This permit shall be effective for five years from the date the Owner signs the Permit of Entry. The City is granted this permit of entry without prejudice to any property rights of the Owner.

Signature of Property Owner

Date

Please return to:
City of Portland, BES
Attn: Mitch Bixby
1120 SW 5th Avenue Room 1000
Portland, OR 97204

For questions about invasive plant control within the City of Portland, please contact Mitch Bixby at phone #503-823-2989.

APPENDICIES

APPENDIX D – City of Portland Nuisance Plants List, Required Eradication List

City of Portland Nuisance Plants List, Plants with Required Removal 1/12/2010

Scientific Name	Common Name	City Rank ¹	ODA Rank
A Ranked Plants			
<i>Acroptilon repens</i>	Russian knapweed	A	B
<i>Brachypodium sylvaticum</i>	False brome	A	B and T
<i>Carduus pycnocephalus and Carduus tenuiflorus</i>	Italian thistle or slender flowered thistle	A	B
<i>Cortaderia jubata</i>	Jubata grass	A	B
<i>Echium plantagineum</i>	Paterson's curse	A	A
<i>Heracleum mantegazzianum</i>	Giant hogweed	A	A
<i>Hieracium aurantiacum</i>	Orange hawkweed	A	A
<i>Hieracium pratense (H. cespitosum)</i>	Meadow hawkweed (formerly listed as Yellow hawkweed)	A	A
<i>Impatiens glandulifera</i>	Policemen's helmet	A	B
<i>Onopordum acanthium</i>	Scotch thistle	A	B
<i>Phragmites australis (introduced var. only)</i>	Common reed	A	A
<i>Pueraria lobata</i>	Kudzu	A	A
<i>Silybum marianum</i>	Blessed milk thistle	A	B
<i>Tamarix ramosissima</i>	Salt cedar	A	B and T
<i>Ulex europaeus</i>	Gorse	A	B

¹ City ranks (classifications) are defined as follows.

A- These species are known to be invasive. These species are known to occur but are not widely distributed in the region. Distribution is limited to a few sites. They spread rapidly and they are difficult to control once they become widespread.

B – These species are known to be invasive. These species are known to occur in the region. They are more abundant and widely distributed than A; however, the distribution is still limited to patches or specific habitats. Distribution is not as widespread as C plants. These species can spread rapidly and are difficult to control once they become widespread.

C – These species are known to be invasive. These species are widely distributed and abundant throughout the region. Their distribution is already very extensive throughout the natural areas and they are difficult to control once they become widespread. These plants are considered ubiquitous.

D- These species are known to be less aggressive than A, B, and C species. These species are known to occur in the region. These plants persist in the ecosystems with native species and therefore, have less impact on the system than the A, B, and C species.

W- Watch species. Species occurrence and distribution should be monitored for presence and/or to determine the level of invasiveness in the region.

Note: Resources for documentation/determination of level of invasiveness – 4 County CWMA list, Emerald Chapter NPSO list, TNC Global Compendium of Weeds, NatureServe Invasiveness ranking, noxious weed lists for Oregon, Washington, California, and Idaho, and documented natural area invasions. City of Portland staff discussion, with input from Metro, provided much of the information. City of Portland staff also had many conversations with the Oregon Department of Agriculture, Noxious Weed Control Program.

APPENDICIES

APPENDIX F – City of Portland Nuisance Abatement Flow Chart

Title 29 Nuisance Abatement Flow Chart

- Upon referral to the Bureau of Development Services (BDS) by citizen report or from City staff.

Complaint – BDS receives a complaint or referral regarding a particular property. Sometimes inspectors self initiate.



Inspection & Posting – Within a week after the complaint is received, an inspector visits the property. If any nuisance violations are found, the inspector posts a nuisance notice on the property in a conspicuous place. The notice lists the problems found by the inspector, that need to be addressed.



Notice to Remove Nuisance – A day or two after the property is posted, a Notice to Remove Nuisance is mailed to the property owner (and occupant if the property is not owner-occupied). The notice lists the problems and gives the property owner 15 days to get them corrected.



Re-check – After 15 days, the inspector checks the property to see if the problems have been corrected. If the problems remain, the inspector takes photographs at this time and issues a Notice of Work Order.



Notice of Work Order - This notice is mailed to the property owner (and occupant if necessary) within a few days of the re-check. This notice states that because the problems have not been corrected, a work order inspection will be performed in a week. A work order fee will be assessed and the work order process will continue.



Final Inspection - All properties are inspected one last time by the Code Specialist prior to issuance of a work order. Usually this check occurs a week after the Notice of Work Order is mailed.



Final Notice – Final notice mailed stating that the property is still in non-compliance, that enforcement will continue with the work order abatement process and that a work order inspection fee of \$300 has been incurred to the property owner.

See next page.

Flow chart 8/20/09 by Tricia Sears

APPENDICIES

APPENDIX F – City of Portland Nuisance Abatement Flow Chart

Title 29 Nuisance Abatement Flow Chart

Continued from previous page.

Search Warrant – If a property is occupied or vacant, a search warrant will be written, signed by a judge, and served by the Code Specialist at the time of abatement. Warrants are not usually necessary on public property or on vacant lots unless there is a "no trespass" sign visible and/or a locked gate and fence.



Work Order Issued – A work order is issued to a City contractor.



Work Done – The required work is done by the contractor under the supervision of the Code Specialist.



Return of Search Warrant – Written and returned to the court listing the items removed and abated, and their estimated quantities.



Work Order Returned - The contractor returns all photographs and paperwork to BDS within 10 working days from the date the work order was issued.



Post Work Inspection – The Code Specialist inspects the properties to ensure the work was done properly and completely by the contractor, if needed.



Payment & Billing – After inspecting, the Code Specialist Inspector computes and authorizes payment to the contractor. A Notice of Charges is mailed to the property owner. The property owner is billed for the nuisance abatement and the work order inspection fee, a civil penalty, an overhead charge of 40%, and a recording fee. A lien is placed on the property if the bill is not paid within 15 days of the Notice of Charges. Note that the Auditor adds on 10% to the bill if the lien is assessed.

Note – The City can grant extensions of time up to two weeks at any time throughout the process until a search warrant is received or a work order is issued, if progress is being made, or a request is made pursuant to ADA.

Flow chart 8/20/09 by Tricia Sears