

Chapter 7.40 Nuisance Abatement

§ 7.40.005 Definitions.

For the purpose of this chapter, the definitions set forth in Chapter 7.35, Section 7.35.005 apply.

§ 7.40.010 Abatement.

A. The owner and the occupant of any property where a public nuisance is located shall be jointly and severally responsible for abating the public nuisance and for all costs associated with the abatement. The cost of abatement of the public nuisance and related administrative costs shall include without limitation costs associated with: inspection; investigation; boundary determination and measurement; staff time; processing; clerical and associated acts; attorney services; and costs to repair and eliminate all substandard conditions. If such public nuisance has not been abated within the time prescribed by this chapter, the city council may authorize the abatement, including without limitation the removal or destruction of the nuisance, as hereafter provided.

B. The prevailing party in any action, administrative proceeding or special procedure to abate a public nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual actions or proceedings wherein the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

C. The city may collect the costs and attorneys' fees associated with the abatement by any or all of the following methods: agreement; settlement; civil compromise; filing a cost bill in a civil action; recording a nuisance abatement lien against the property where the nuisance is or was located; or imposing a special assessment against the property where the nuisance is or was located.

§ 7.40.015 Procedure.

Except for code violations and other nuisances per se, the city shall comply with the following process to declare a public nuisance:

A. Resolution. City council shall adopt a preliminary resolution declaring that a public nuisance exists. If the nuisance is located at or upon a specified location, the resolution shall identify the property by street address and lot and

block number. The resolution may include any number of separate or contiguous streets, sidewalks, or parcels of private property.

B. Notice of Violation. The city shall notify the owner and occupant by serving a written Notice to Abate a Public Nuisance in a form approved by the city attorney.

C. Service of Notice. Notice shall be provided at least 5 days prior to the time scheduled for a hearing. Notice may be given in any of the following ways:

1. Posted Notice. At least one posted notice shall be conspicuously affixed on or in front of the property per every 50 feet of street frontage. The caption of the "Notice to Abate" shall be in letters at least 1 inch in height.

2. Notice By Mail. Mailed notice shall be sent by registered or certified mail, postage prepaid, to each person to whom the property is assessed in the last equalized assessment roll and to the occupant of the property.

3. Notice by Personal Delivery. Personally delivered notice shall be made by leaving the notice at the residence of the occupant and the residence or place of business of the owner, between the hours of 8:00 a.m. and 6:00 p.m., with a person of not less than 18 years of age.

D. Hearing. At the time stated in the notice, the hearing officer shall consider the testimony of any interested person and any relevant evidence. Formal rules of evidence do not apply. The hearing officer may continue the hearing.

E. Decision of Hearing Officer. The hearing officer shall make a finding as to whether a public nuisance exists on the subject property. The hearing officer shall file a report of such decision with the city council. If the hearing officer determines that a public nuisance exists, the hearing officer shall order that such nuisance be abated within a specified time.

F. Notice and Appeal of Hearing Officer's Decision. The owner and occupant of the property shall be notified in writing of the hearing officer's decision within 3 days of the hearing. If the hearing officer finds that a public nuisance exists, the notice shall include an Order to Abate and applicable appeal provisions. The owner or the occupant may file an appeal with the city clerk within 10 days of the date of the notice. If no appeal is filed within such 10 day period, the hearing officer's decision shall be final.

G. Notice and Hearing of Appeal. Notice of the city council hearing on the appeal shall be posted on the subject property. The city council shall

consider the testimony of any interested person and any relevant evidence. Formal rules of evidence do not apply. The city council may continue the hearing.

H. Decision of City Council. The city council shall make a finding as to whether a public nuisance exists. The city shall provide notice to the owner and occupant of the city council's decision within 3 days of the close of the hearing. If the city council finds that a public nuisance exists, the notice shall include an Order to Abate. The decision of the city council shall be final.

§7.40.020. Additional Procedure For Removing Abandoned Vehicles.

(Ord No. 1577)

A. Removal of Abandoned Vehicles. Pursuant to California Vehicle Code Section 22660, the City hereby establishes the procedure for the abatement and removal of abandoned, wrecked, dismantled or inoperative vehicles or parts declared to be a public nuisance pursuant to this Municipal Code. The provisions of California Vehicle Code Sections 22660 and 22661 are hereby adopted by this reference. In the case of any conflict between the provisions of this section and the provisions of Sections 22660 and 22661, the provisions of Sections 22660 and 22661 shall prevail. Neither the City nor its contractor shall be liable for damage caused to the vehicle or part thereof by removal pursuant to this section.

B. Recovery of Costs of Administration and Removal. Pursuant to Section 7.40.010 of this Chapter, the City may recover all costs associated with the abatement of the public nuisance and the removal of the vehicle or part thereof.

C. Exceptions. A vehicle or any part thereof (individually or collectively "vehicle") shall not be removed pursuant to this chapter if such vehicle is:

1. Completely enclosed within a building in a lawful manner where it is not visible from the street, highway or other public or private property; or

2. Stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer or junkyard. This exception does not authorize the maintenance of a public or private nuisance.

D. 10 Day Notice of Intention to Abate and Remove Vehicle.

1. The City shall mail, by certified mail, a notice of intention to abate and remove the vehicle at least 10 days prior to any proposed abatement or removal, to the owner of the real property ("property owner") as shown on the

last equalized assessment roll and to the last registered and legal owner of record of the vehicle ("vehicle owner") unless the vehicle is in such condition that identification numbers are not available to determine ownership.

2. The notice of intention shall state that the property owner or vehicle owner has 10 days after the mailing of such notice or at the time of signing a release pursuant to subsection E1, to request a hearing. The property owner does not have to appear at the hearing if it submits a sworn written statement, supported by reasons, denying responsibility for the presence of the vehicle on the property. If no request or written statement is received within such 10 days, the City may take all necessary steps to remove the vehicle.

3. No notice of intention is required by this section if the property owner and the vehicle owner have signed releases authorizing removal and waiving further interest in the vehicle.

E. Low Value Vehicles.

1. A notice of intention is not required for a vehicle valued at less than \$200 by a person specified in Vehicle Code Section 22855 ("low value vehicle") if the property owner has signed a release authorizing removal and waiving further interest in the vehicle, and the vehicle is:

a. located on a parcel that is either zoned for agriculture use or does not contain any residential structure;

b. inoperable due to the absence of a motor, transmission, or wheels and incapable of being towed, and

c. determined by the City to be a public nuisance presenting an immediate threat to public health or safety.

2. Prior to final disposition under Vehicle Code Section 22662 of a low value vehicle for which evidence of registration was recovered pursuant to Section H, the City shall provide notice to the registered and legal owners of the vehicle of the City's intent to dispose of the vehicle. If the vehicle is not claimed and removed from a location specified in Vehicle Code Section 22662 within 12 days after the notice is mailed, final disposition may proceed.

F. Hearing.

1. Either the property owner or the owner of the vehicle may request a hearing before the city council or its designee within 10 days after the mailing of the notice of intention. If a hearing is not requested within this period, the vehicle may be removed.

2. At the hearing, the property owner, the owner of the vehicle, or both, may submit evidence, both oral and written, objecting to the abatement or removal. The property owner may appear at the hearing in person or present a sworn written statement denying responsibility for the presence of the vehicle on his or her property and the reasons for the property owner's denial. If such a statement is submitted within the 10-day appeals period, it shall be construed as a request for hearing that does not require the presence of the owner submitting the request.

G. City Determination. At the conclusion of the hearing, the City shall determine whether the vehicle is a nuisance and should be abated; and whether the vehicle shall be removed. If it is determined at the hearing that the vehicle was placed on the real property without the consent of the property owner and that the property owner has not subsequently acquiesced in its presence, then the City will not assess costs of administration or removal of the vehicle against the real property or otherwise attempt to collect such costs from the property owner.

H. Notice to DMV. Within five days after the City or any agent thereof removes any vehicle or any part thereof pursuant to this chapter, the City shall give the Department of Motor Vehicles notice of such removal. Such notice shall identify the vehicle or part thereof and any evidence of registration available, including registration certificates, certificates of title and license plates.

I. Reconstruction of Abandoned Vehicles. A vehicle that has been removed pursuant to this chapter shall not be reconstructed or made operable unless it qualifies for either a horseless carriage license plate or an historical vehicle license plate, pursuant to Vehicle Code Section 5004.

§ 7.40.025 Compliance.

The owner or occupant of the subject property shall comply with an Order to Abate within the time specified by the hearing officer or, if the hearing officer's decision was appealed, the time specified by the city council. Notwithstanding compliance with an Order to Abate, the owner and the occupant of the property described in the notice shall in all events be jointly and severally liable to the city for any and all costs associated with the abatement.

§ 7.40.030 Failure to Comply; Abatement by City or Private Contractor.

In addition to any criminal penalties imposed, failure to comply with an Order to Abate within the time specified may result in abatement by the city and the costs thereof assessed against the property as hereinafter provided. The city council may award a contract to abate the public nuisance to a private contractor. The city may obtain an abatement warrant or any other authorization required by law to authorize city or private contractor employees to enter upon private property to

abate a nuisance. The director of public works/city engineer or the private contractor shall keep an account and submit the itemized written report for each separate parcel of land to the city council for confirmation.

§ 7.40.035 Cost Report – Posting.

A copy of the itemized written report showing any costs associated with the abatement shall be posted for at least 3 days prior to its submission to the city council on or near the city council's chamber door. The report shall indicate the time and date of submission.

§ 7.40.040 Cost Report – Hearing.

The city council shall hear any objections of the parties who may be assessed for the city's costs. Formal rules of evidence shall not apply at such hearing. The city council may modify the report. The city council shall then confirm the report, as may be modified, by resolution. The decision of the city council shall be final.

§ 7.40.045 Special Assessment and Lien.

Costs of abatement shall constitute a special assessment against that parcel and after the assessment is confirmed shall be a lien on the parcel.

§ 7.40.050 Collection of Costs.

A. After confirmation of the report, the assessment shall be collected in any of the following ways:

1. The owner or occupant of the property described in the notice may pay the amount due on the abatement to the director of public works/city engineer after the confirmation of the report and until 10 days before a copy of such report is given to the county assessor and tax collector, or, if certified copies were filed with the county auditor, until August 1st following the confirmation of the report.

2. The county tax collector may collect the assessments by issuing separate bills and receipts for the assessments, or the amount of the assessment may be added to the next regular tax bill levied against the parcel for ordinary municipal purposes and be collected therewith at the time and in the manner as ordinary municipal taxes, subject to the same penalties and procedures of foreclosure and sale for delinquencies.

B. Notwithstanding the preceding, the city council may direct that the assessment be collected in successive annual installments at the time and in the manner of property taxes. Such installments shall be subject to the same penalties and procedures for foreclosure and sale for delinquencies applicable to

property taxes. An assessment payment made in installments may include interest on the unpaid balance at a rate to be determined by the city council.

§ 7.40.055 Refunds.

The city council may order a refund of all or part of the nuisance abatement assessment if it finds that all or part of the assessment had been erroneously levied. An assessment or part thereof shall not be refunded unless a claim is filed with the city clerk on or before 6 months after the assessment became due and payable. Any claim shall be verified by the person who paid the assessment, or by such person's guardian, executor, or administrator.

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