



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** July 1, 2019

FROM: Matthew Bronson, City Manager

PREPARED BY: David Hale, City Attorney
Bruce Buckingham, Community Development Director

SUBJECT: First Reading and Introduction of an Ordinance to Amend Grover Beach Municipal Code Article I (General Provisions) by Repealing Chapter 5 (Abatement of Nuisances) and Adding Chapter 5 (Abatement of Public Nuisances)

RECOMMENDATION

- 1) Conduct first reading, by title only, and introduce an Ordinance to amend Grover Beach Municipal Code, Article I (General Provisions) by repealing Chapter 5 (Abatement of Nuisances) and adding a new Chapter 5 (Abatement of Public Nuisances); and
 - 2) Schedule second reading and adoption of the Ordinance at the next regularly scheduled City Council meeting.
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BACKGROUND

The 2018-19 City Council Goals include both Major City Goals and Other Important Goals that incorporated the purpose and objective of City policies to improve public safety, meet long term infrastructure needs, strengthen the City's economic base by implementing City Master Plans and upgrading infrastructure, improve traffic safety and preserve and protect neighborhoods by proactively expanding the enforcement of our city codes. The Council approved the following Major and Important Goals that will be affected and influenced by the passage of the proposed public nuisance ordinance.

- *PUBLIC SAFETY.* Ensure a quality, contemporary public safety services (police, fire, emergency medical) by providing adequate resources to meet existing demands (e.g. staff, facilities, equipment, training); and seek ways to engage the community and local businesses in addressing public safety challenges including reducing vagrancy problems near commercial areas, neighborhoods and City parks. (Major City Goals)
- *"NEIGHBORHOOD PRESERVATION.* Preserve and protect neighborhoods by proactively expanding and enforcing the Code Enforcement Program. (Other Important Goals)

The City Attorney's Office along with City staff have been working closely together in the development of Grover Beach Municipal Code (GBMC) amendments that will promote and further the above goal objectives of the City through more comprehensive code enforcement policies and regulations. The City's Code currently defines the principal code enforcement regulations within Article 1, General Provisions, Chapters 1 through 5.

Within Article 1, the GBMC sets forth three predominate tools for staff and the City Attorney's Office defining the underlining authority of the municipal code. Chapter 2 establishes the penal or criminal function of the code allowing the City Attorney's Office to prosecute violations of the Code as a criminal offense either by infraction or in some cases by misdemeanor. Chapter 3 defines the rules of construction for implementation of the code. Chapter 4 enumerates those options for staff and the City Attorney's Office to enforce the GBMC by administrative citation or through a civil option. Chapter 5 defines what constitutes a public nuisance within the City and the options for both Staff and the City Attorney's Office to abate nuisances.

Staff and the City Attorney's Office have reviewed Article 1 of the Code and concluded that to achieve and accomplish the purposes and objectives of the Council's adopted Major and Important Goals, it is necessary to extensively modify and amend the entire Article 1 to bring the code up to date on current enforcement options and tools and for purposes of addressing current needs of our community which are not dealt with in the existing Code. The process is complex and will take some time to address all of the issues in Article 1. In light of current code cases the City is enforcing, it is necessary and important from a timing perspective to address the public nuisance ordinance, Chapter 5, now and to create a more comprehensive ordinance that addresses many of the code compliance issues that staff and the City Attorney are currently addressing.

On June 17, 2019 the Council reviewed and provided comments on a draft Public Nuisance Ordinance and staff and the City Attorney's Office has finalized the ordinance for the Council's consideration. Although the attached ordinance only covers Chapter 5, it is the intent of staff and the City Attorney's Office to update all of the Chapters within Article 1 in the near future. This is the first of a phased approach to updating Article 1. The potential benefits of updating the Public Nuisance Ordinance, Chapter 5, is enumerated as follows:

BENEFITS OF UPDATING CHAPTER 5 OF ARTICLE 1

- Chapter 5 was last amended in 1973, 46 years ago.
- The Code needs to be updated to be consistent with many state statutory changes that have been adopted since our Ordinance was codified;
- The definition of a public nuisance in Section 1501 is woefully superficial and inadequate to the current circumstances and potential code compliance issues that staff and the City Attorney are dealing with;
- Failure to update the definition of what is a public nuisance and to create a more comprehensive definition inhibits and potentially precludes City staff and the City Attorney from enforcing circumstances and events that potentially have public health and safety issue;
- The City needs a more comprehensive definition of public nuisance to assure the City Attorney's success in court when attempting to enforce against code violations that are not clearly defined as a public nuisance;
- The updated code expands the ability of the City to enforce against abandoned buildings, structures, facilities, equipment, and devices thereby including but not limited to leaking sewer and septic systems, graffiti, boarded up and abandoned buildings, and other similar circumstances;
- An expanded definition of what would be a code violation related to outdoor storage or maintenance that includes rubbish, garbage, junk, scrap metal, etc.
- Greater authority over dealing with overgrown landscaping or unmaintained landscaping that could create health and safety issues;

- Additional enforcement authority over property that contains, pools, hazardous conditions such as obstructions to public or pedestrian views while accessing rights-of-way, infestations of termites, or other vermin or rodents, etc.
- Enhanced definitions for inspection authority related to potential violations of the code;
- Defined abatement costs recovery that includes both City staff time and the City Attorney's Office.

The City Attorney's Office and staff believe these enhanced regulations will provide greater tools to deal with code enforcement issues, enhance the City's ability to deal with current cases being litigated, and strengthen the City's enforcement actions in the future to help achieve the objectives of the Council's adopted goals and policies for this fiscal year.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Conduct first reading, by title only, and introduce the Ordinance to amend Grover Beach Municipal Code, Article I (General Provisions) by repealing Chapter 5 (Abatement of Nuisances) and adding a new Chapter 5 (Abatement of Public Nuisances) and scheduling second reading and adoption of the Ordinance at the next regularly scheduled City Council meeting; or
2. Provide alternative direction to staff.

FISCAL IMPACT

There is no direct fiscal impact to the City from this agenda item though there would be higher property values and revenues through improved property appearance.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Public Nuisance Ordinance.

ORDINANCE 19-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH REPEALING CHAPTER 5 (ABATEMENT OF NUISANCES) OF ARTICLE I (GENERAL PROVISIONS) AND ADDING A NEW CHAPTER 5 (ABATEMENT OF PUBLIC NUISANCES) OF ARTICLE I.

WHEREAS, the City of Grover Beach (“City”) has the police power to protect the health, safety and welfare of the community, including the ability to protect and enhance the natural environment; and

WHEREAS, the City wishes to encourage the maintenance of well-kept properties and recognizes that property values and the general welfare of the community are founded in large part on the appearance, maintenance and safety of properties; and

WHEREAS, the existence of property in a condition constituting a nuisance as defined in this Code is injurious to the public health, safety and welfare of the residents of this City and such conditions contribute substantially and increasingly to the necessity for excessive expenditures for protection against hazards, diminution of property values, and the preservation of the public health and safety;

WHEREAS, public nuisances are those affecting the entire community, neighborhood or a considerable number of people. Under California law, local governments have standing to intercede and to abate a public nuisance. However, local governments do not have standing to abate a private nuisance. Remedies in the law are available to those affected by private nuisances. However, it is the City policy to assist and to facilitate resolution of private nuisance issues where possible and appropriate.

WHEREAS, the existence of public nuisances of the type designated and the abatement of them, is reasonably related to the proper exercise of the police power in protecting the health, safety and welfare of the public, and the exercise of that power by this City is authorized by the constitution of the state and applicable laws.

WHEREAS, unless uniform and expedient corrective measures are available to be undertaken to alleviate such conditions, the public health, safety and general welfare and the property values and social and economic standards of this community will be substantially depreciated. The abatement of such conditions will enhance the appearance and value of such properties and will improve the tax base of the City.

WHEREAS, it is in the public interest to establish a cost recovery procedure so that the abatement of a public nuisance is at the expense of the person(s) creating, causing, committing or maintaining the nuisance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Grover Beach as follows:

PART 1: The above recitals and findings are true and correct and incorporated herein by this reference.

PART 2: Chapter 5, Abatement of Nuisances, of Article I, General Provisions, is hereby repealed in total and a new Chapter 5, Abatement of Public Nuisances, of Article I, is added to the Grover Beach Municipal Code as follows:

CHAPTER 5 – ABATEMENT OF PUBLIC NUISANCES

Sec. 1500. Purpose.

This Chapter is adopted to declare what constitutes a public nuisance and to establish procedures to abate nuisances and to recover costs of such abatement. It is declared to be in the public interest to promote the health, safety and welfare of the residents of the City by providing a summary procedure for the abatement of nuisances, which abatement procedures shall be in addition to all other proceedings by this Code or otherwise by law.

Section 1501. Definitions.

Unless specifically defined in this section, words and phrases used in this Chapter shall be interpreted to give them the meaning in common usage and to give this Chapter its most reasonable application.

“Abandoned” (building, structure or property) means any property that is vacant and/or under a current notice of default, notice of trustee’s sale or that has been the subject of a foreclosure sale where the title was retained by the beneficiary of a deed of trust involved in the foreclosure, or that is transferred under a deed in lieu of foreclosure or sale.

“Abatement” means the demolition, removal, repair, maintenance, construction, reconstruction, replacement or reconditioning of structures, appliances or equipment; or the removal, transportation, disposal and treatment of waste and abandoned materials and equipment capable of harboring, breeding, or attracting rodents or insects or producing odors or blight.

“Attractive nuisance” means any building, condition, instrumentality or machine which is unsafe and unprotected and thereby dangerous to young children by reason of their inability to appreciate the peril which exists, and which may reasonably be expected to attract young children to the premises and risk injury by playing with, in, or on it. Attractive nuisances may include, but shall not be limited to: (1) abandoned and/or broken equipment or vehicles; (2) hazardous pools, ponds, culverts, excavations; (3) neglected machinery and (4) abandoned buildings.

“Building” means any structure, including, but not limited to, any house, garage, duplex, apartment, condominium, stock cooperative, mobilehome, or other residential, commercial or industrial structure or any portion thereof, which is designed, built, rented or leased to be occupied or otherwise is intended for supporting or sheltering any use or occupancy, and any commercial, industrial or other establishment, warehouse, kiosk, shed or other structures affixed to or upon real property, used for the purpose of conducting a business, storage or other activity.

“Construction material” means any discarded material from the building or destruction of structures, roads and bridges, including concrete, rocks, asphalt, plasterboard, wood and other related material.

“Enforcement officer” means the individuals designated within Article I of Chapter 2 of this Code, Sections 1203.2 and 1203.3, as amended.

“Garbage” means any putrescible animal, fish, fowl, food, fruit or vegetable matter resulting from the cultivation, preparation, storage, handling, decay or consumption of the substance.

“Hazardous substance” means any chemical compound, mixture, substance or article which is identified or listed by the United States Environmental Protection Agency or appropriate agency of the state of California as a “hazardous waste,” as defined in 40 C.F.R. Section 261.33, except that for the purposes of this Chapter, hazardous waste also shall include “household waste,” as defined in 40 C.F.R. 261.4(B)(1).

“Hearing officer” means the person appointed by the City Manager consistent with Section 1406 of this Chapter.

“Improved surface” means a ground surface covered or paved with concrete, asphalt, brick and mortar, stone and mortar, concrete pavers and mortar and/or such other material as has been approved for parking of vehicles in such a manner as is designed to properly support the gross weight of the class of vehicle parked, support all wheels of the vehicle and permanently prohibit both weed growth around and under the vehicle and leakage of oil, fuel and other fluids into the ground.

“Infestation” means the presence, within or contiguous to, a structure or premises of termites, insects, vermin rodents or other pests. If the actual presence of pests cannot be confirmed, the presence of fresh droppings, larvae, eggs, recent rodent holes or other such evidence may be used to identify a current infestation.

“Inoperable vehicle” means, but is not limited to, any vehicle, trailer, boat or recreational vehicle which cannot be legally operated on a public street because the vehicle lacks an engine, transmission, wheels, tires, doors, windshield or any other part or equipment necessary to operate the vehicle safely, or is not currently registered with the California Department of Motor Vehicles.

“Junk” means any cast-off, damaged, discarded, obsolete, salvaged, scrapped, unusable, worn-out or wrecked object, thing or material including, but not limited to, those composed in whole or in part of asphalt, brick, carbon, cement, plastic or other synthetic substance, fiber, glass, plaster, rubber, terra cotta, wool, cotton, cloth, canvas, wood, metal, sand, organic matter or other substance, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal, furniture or parts thereof, trimmings from plants or trees, cans, bottles and barrels.

“Odor” means any smell, scent or fragrance.

“Owner” means any person, agent, firm or corporation having legal or equitable interest in the property.

“Person” means an individual, partnership, corporation, association or organization, or agent of any of the foregoing.

“Premises” means any lot or parcel of land upon which a building is situated, including any portion thereof improved or unimproved, and adjacent streets, sidewalks, parkways and parking areas.

“Property” means any lot or parcel of land, including any alley, sidewalk, parkway or unimproved public easement.

“Refuse” means any putrescible and nonputrescible solid waste, except sewerage, whether combustible or noncombustible and includes garbage and rubbish.

“Responsible person” means the owner of record of real property, any occupant, agent, custodian, lessee, manager, user or interested holder in property or premises, including, but not limited to, a trustee or beneficiary who holds a deed of trust to abandoned property; or any other person determined to have caused, committed, or permitted a violation of this Code, or any other law, statute, regulation or rule regulating public nuisances.

“Right-of-way” means any area or parcel of property granted, deeded, dedicated to, or otherwise acquired by the City or the public at large for any public purpose including, but not limited to, roadways, alleys, streets, parkways, pedestrian ways, and sidewalks.

“Vacant” or “vacated” means real property not lawfully occupied by or with the consent of the owner or leaseholder of the property.

“Vehicle” means any device by which any person or property may be propelled, moved, or drawn upon a highway or upon water or through the air, excepting a device moved exclusively by human power.

“Weeds” is defined consistent with California Health and Safety Code Section 14875, as amended.

Sec. 1502. General Provisions.

- (A) The provisions of this Chapter are applicable to all property located within the City wherein any of the conditions, uses or activities hereafter specified are found to exist.
- (B) This Chapter shall not apply to any condition expressly allowed or authorized by federal or state law or any other provision of this Code.
- (C) The list of conditions, uses and activities declared to be public nuisances is not intended to be exclusive and additional conditions, uses or activities may be declared by the City Council by amendment of this Chapter or any other means authorized by law.
- (D) Violations of this Chapter shall be treated as strict liability offenses regardless of intent.

Sec. 1503 Declaration of Nuisances.

It is unlawful and is declared a nuisance for any responsible person in the City to maintain or allow another to maintain, or fail to maintain any of the following conditions:

- (A) Buildings, structures, facilities, equipment, devices or improvements:

(1) Construct, maintained or occupy in violation of any provision of any comprehensive or uniform building, plumbing, electrical, housing, mechanical or fire code as adopted by the City or enacted by the state of California and codified in the California State Codes or within the California Code of Regulations;

(2) Construct, maintained or occupy in violation of any provision of any Article of this Code, including, but not limited to, prohibited uses, setback violations, development standards and sign regulations;

(3) Which have been abandoned, vacated, boarded up, partially destroyed, or left in a state of partial construction or repair for a period exceeding one hundred and eighty (180) days, or and have become accessible to unauthorized persons including, but not limited to, juveniles, vagrants or persons engaged in illegal, hazardous, drug or gang activity;

(4) Which have become defective, unsightly, or in such a condition of deterioration or disrepair as the same may cause depreciation of the property values to surrounding properties;

(5) Upon which the condition of the exterior coating has become so deteriorated as to permit decay, excessive checking, cracking, dry rot, termite infestation, broken windows or warping;

(6) With graffiti or other words, lettering or drawings not otherwise permitted by the provisions of this Code, state or federal law on visible or exterior surfaces;

(7) Without a connection to a sewer disposal system or sanitary sewer if occupied or with any leaking seeping sewage;

(8) Without a connection to a permanent electrical service if occupied and such service is available within three hundred (300) feet of the occupied building or structure;

(9) Without hot water, running water, adequate heating, and electricity if occupied;

(10) Constructed in violation of any state or local law or regulation relating to the condition, use, occupancy or maintenance of buildings.

(B) Outdoor storage or maintenance of the following:

(1) Abandoned, damaged or broken equipment, instrumentality, machinery, household items or appliances;

(2) Refuse, rubbish, scrap metal, appliances, shopping carts, wood, plant cuttings, broken or discarded furniture or household equipment, junk, trash or debris, parts, cans, boxes or containers;

(3) Any hazardous substance or waste product, including, but not limited to, biological material, oil, gasoline, automotive fluids, and household chemicals not lawfully stored or which has been discharged, released, placed or deposited upon any premises or onto any public property;

(4) Construction materials, equipment or machinery that is visible from a public or private right-of-way in a residential zone;

(5) Any materials that are stored or stacked in a manner in which the materials could be discharged into a storm drain system.

(C) Landscaping, vegetation, or improved or unimproved property in any of the following conditions:

(1) Property, including any sidewalks and parkways adjacent thereto, containing weeds, dry grasses, dead trees, dead shrubs, or any other material which bears seeds of a wingy or downy nature or which by reason of their size, manner of growth or location, constitute a fire hazard or a threat to public health, or containing weeds, vegetation, grasses, trees or shrubs, including, but not limited to sagebrush, chaparral, and Russian Thistle (tumbleweed) which, when dry, will in reasonable probability constitute a fire hazard or be blown onto adjoining property by prevailing winds;

(2) Containing stagnant or standing water, refuse, rubbish, offal, excrement or other waste materials which emit an odor;

(3) Trees and shrubs containing dead or fallen limbs or branches which present a safety hazard;

(4) Trees or shrubs which are overgrown or contain limbs or branches that restrict, impede or obstruct the use of or obscure the visibility of pedestrians or drivers using the public rights-of-way, easements, sidewalks or roadways;

(5) Overgrown vegetation likely to harbor vermin, insects or rodents of any kind;

(6) Not conforming to any requirement set forth in any zoning or land use approval, permit, entitlement, contract or environmental document relating to the property.

(D) Vehicles stored, parked, used or maintained in any of the following manners:

(1) To allow or perform the maintenance, repair, restoration, painting, body work or dismantling of any vehicle, equipment or parts thereof on the exterior portion of any residential property. This prohibition shall not apply to work specifically authorized by state or local law or regulation, and shall not apply to minor repair or maintenance of vehicles which are registered to the person residing on the property and such repairs or maintenance are not conducted outside for longer than seventy-two (72) consecutive hours;

(2) With accumulations of debris, leaves, weeds or other materials in the areas around and under the vehicle;

(3) As residential living space or occupancy, including, but not limited to, sleeping, cooking, dining, or bathing;

(4) Inoperable, abandoned, wrecked, or dismantled vehicles or parts thereof not stored entirely within an enclosed building.

(E) Property containing any of the following:

(1) Wells, swimming pools, spas, ponds or excavations containing water or any other liquid in excess of twenty-four (24) inches in depth at any point and exceeding five thousand (5,000) gallons in capacity which are unfenced or otherwise unprotected with a barrier at least five (5) feet in height;

(2) Any device, equipment, instrument, vehicle, machinery or animal which creates a loud or unusual noise in violation of Chapter 1.01 of Article III of this Code;

(3) (4) Walkways, driveways, parking lots and other improved surfaces in a deteriorated or unsafe condition or with fading required striping or markings;

(5) An infestation of termites, insects, vermin, rodents or other pests;

(6) The display or placement upon any fence, wall, tree, bush or any other structure, or portion thereof, of any linens, rugs, fabrics, nylon, or any other item of clothing or similar items except upon a recognized clothes line facility that is visible from a public or private right-of-way;

(7) Any alteration to the alignment of a natural or developed drainage course, culvert, device, facility, improvement or system designed to convey stormwater runoff ("drainage system") or any drainage system which contains:

(a). Any blockage or damming which prevents the continuous and unimpeded flow of stormwater,

(b). Any vegetation not approved as part of the original design of the drainage system,

(c). An accumulation of sediment which alters the elevation of the natural, designated or approved flow of stormwater,

(d). Any junk, trash, debris, items or materials not approved as part of the original design of the drainage system, or

(e). Any modification to the original approved design of a drainage system that restricts, impedes or reduces the natural or designed flow of the drainage system;

(8) Any attractive nuisance;

(9) Any condition which creates a detriment or hazard to the public health, safety or general welfare as to constitute a public nuisance as defined by California Civil Code Section 3480, California Health and Safety Code Section 11570, California Penal Code Section 11225, or California Government Code Section 39561.

(10) Any violation of the Grover Beach Municipal Code.

Sec. 1504. Abatement.

All or any part of any real property, or building or structure located thereon, found to constitute a public nuisance as provided in this Chapter, shall be abated by rehabilitation, repair, removal or demolition pursuant to the procedures set forth in this Chapter.

Sec. 1505. Authorization for City Manager.

The City Manager is authorized to administer and enforce the provisions of this Chapter. The City Manager may appoint and authorize one or more members of the City staff to act as his or her designee to administer or enforce this Chapter. In the context of this Chapter, the phrase "City Manager" includes each and all persons designated by the City Manager to assist in the administration and enforcement of this Chapter, as limited by the terms of the delegation.

Sec. 1506. Authority to Inspect.

(A) Consistent with this Section, Enforcement officers are authorized to enter upon any property or premises within the City to ascertain whether or not a nuisance as defined in this Chapter exists, and to make any examination and surveys as may be necessary in the performance of their enforcement duties.

(B) Inspections may include the taking of measurements, photographs, samples or other physical evidence.

(C) All inspections will be made only after having been given consent to inspect from a responsible person or after having obtained an administrative inspection warrant pursuant to California Code of Civil Procedure Section 1822.50 et seq.

(D) Inspections of exterior conditions of property may be made from public property or from the private property of another with consent without obtaining a warrant or the consent of the occupant of the observed property.

Sec. 1507. Notification of Nuisance.

(A) When the City Manager or authorized representative thereof determines that any condition on property within the City constitutes a nuisance as declared in Section 1503 such person shall give written notice to abate to responsible person(s), as identified on public records or tax assessment rolls, ordering the abatement of said nuisance.

(B) The notice to abate shall contain the following information:

- (1) The name of the record owner of the property;
- (2) The date of the inspection;
- (3) The date of the violation(s);
- (4) The street address, assessor's parcel number or other definite description of the location where the violation(s) exist;
- (5) The code sections violated;
- (6) A description of the condition of the property creating the nuisance;
- (7) A reasonable time limit for correction based upon the nature of the nuisance;
- (8) A reference to the potential consequences for failure to abate the nuisance by the specified time period;

(9) An order prohibiting the continuation or repeated occurrence of the nuisance;

(10) The name and signature of the enforcement officer; and

(11) Notice of the right to appeal.

(C) Notice required by this Chapter may be served in any of the following manners:

(1) Personal service on the responsible person;

(2) Regular mail addressed to the responsible person, at the address shown on the last available tax assessment roll, or as otherwise known or posting in a conspicuous place on the premises or abutting the right-of-way;

(3) Insertion of a legal advertisement at least once a week for a period of two weeks in a newspaper of general circulation in the City. The newspaper advertisement shall be a general notice that property in the City has been posted and contain a general statement of the effect of such postings.

(D) Failure of any person to receive a copy of any notice issued pursuant to this Chapter shall not affect the validity of any proceedings or actions taken under this Chapter.

(E) Nothing in this Chapter shall be construed or interpreted to require the issuance of a notice to abate as a prerequisite to the issuance of an administrative citation or the filing of any civil action or criminal complaint.

Sec. 1508. Appeals.

Any person to whom a notice of abatement was given may file an appeal of the nuisance finding with the City Manager consistent with the procedures and regulations contained within Sections 1408 through 1413 of this Chapter.

Sec. 1509. Abatement by City.

If the nuisance is not completely abated by the owner, as directed, within the time set forth above, the City Manager may cause the same to be abated by City personnel or private contract, and entry upon the premises is expressly authorized for such persons. Consent must be obtained from a responsible person(s) prior to entering private property to perform an abatement, or an administrative inspection or abatement warrant must be obtained as required by law.

Sec. 1510. Emergency Abatement.

Notwithstanding any other provision of this Chapter, whenever the City Manager determines that any real property or any building, structure or condition thereon is dangerous or constitutes an immediate threat to public health or safety, the City Manager may, without being required to observe the provisions of this Chapter with reference to abatement procedures and notice, immediately and forthwith abate such public nuisance. Where such condition and the abatement are immediately required, the

City Manager shall prepare a statement of costs in respect thereto, and the provisions of Sections 1511 and 1512 shall apply.

Sec. 1511. Abatement Costs.

(A) Whenever any person creating, causing, committing or maintaining a public nuisance, as referred to in this Chapter or defined as a nuisance elsewhere in this Code, or other public nuisance, as defined under state law or other ordinance or regulation, has been given notice, by or on behalf of the City Attorney, enforcement officer, or by any other City officer, employee or policing agent authorized to give such notice, to abate such nuisance or cease and desist from continuing such nuisance or violation of law, and such person who was given notice fails, refuses or neglects to comply with the notice within the time specified therein, or if such a time is not specified, then within a time reasonably sufficient to enable such compliance, such noncomplying person shall be liable to the City for any and all costs and expenses to the City involved in thereafter abating the nuisance and in obtaining compliance with or enforcing the law as referred to or encompassed in the notice.

(B) Costs and expenses, as referred to in subsection A of this section may include, but are not limited to, any and all direct costs and expenses related to such things as personnel salaries and benefits, operational overhead, rent, interest, fees for experts or consultants, research fees, legal costs or expenses, including, but not limited to, procedures associated with collecting moneys due hereunder.

(C) In any judicial action, administrative proceeding, or special proceeding or action of any kind to abate a nuisance, the prevailing party shall be entitled to recovery of attorney's fees. The recovery of attorney's fees is limited solely to causes of action directly associated with the abatement of a public nuisance. In no action, administrative hearing, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Such attorney's fees shall be recoverable as costs of abatement.

(D) Upon the completion of any abatement pursuant to this Chapter, the City Manager shall cause a statement of the costs thereof to be prepared for submission to the City Council. The City manager shall set a time and place for the City Council to receive and consider the statement of costs, and shall serve upon the responsible person(s) a copy of the statement of costs and a notice of the time and place at which the City Council will receive and consider the statement of costs. Service shall be in the same manner as set forth in Section 1507.

(E) The costs of abatement of a nuisance, as confirmed by resolution of the City Council, shall constitute a special assessment against the property to which it relates, and after its recording, as thus made and confirmed, the same shall constitute a lien on the property in the amount of such assessment. After the confirmation of the statement, a copy thereof shall be recorded in the official records of San Luis Obispo County and shall be transmitted to the assessor and tax collector of the County of San Luis Obispo

by the City Clerk. Whereupon it shall be the duty of the assessor and tax collector to add the amount of such assessment, or assessments, to the next regular bills of taxes levied against the respective lot or parcel of land, and thereafter the amount shall be collected at the same time and in the same manner as ordinary real property taxes are collected, and shall be subject to the same penalties and the same procedure for foreclosure and sale in the case of delinquency as provided for ordinary real property taxes.

(F) At the time and place set for receiving and considering the statement of costs, the City Council shall hear and pass upon the statement together with any objections or protests raised by any of the persons liable to be assessed for the cost of abating the nuisance. Thereupon, the City Council may make any such revision, correction or modification to the statement of costs as it may deem appropriate, after which the statement as submitted, or as revised, corrected or modified, shall be confirmed by resolution. Such hearing may be continued from time to time. The decision of the City Council shall be final.

(G) The provisions of this section shall also apply to any responsible person who received a notice, as specified therein, and thereafter the nuisance or violation was abated, but such person subsequently allowed or was responsible for recurrence of the nuisance or violation.

(H) In any action or proceeding involving a violation of any provision of this Chapter, the City Attorney, in his or her sole discretion and as part of settlement negotiations, may reduce, eliminate or waive any fines, fees, penalties or interest incurred pursuant to this Chapter. Any determination or decision of the City Attorney in this regard shall be final and conclusive and shall not be subject to appeal.

(I) Moneys due to the City pursuant to this section may be recovered in an appropriate civil action. Alternatively, such liability may be enforced by special assessment proceedings against the parcel of land upon which the nuisance existed, which proceedings may be conducted in a manner substantively similar to proceedings described in Sections 39574, et seq. of the California Government Code relating to weed abatement assessments.

Sec. 1512. Alternatives.

Nothing in this Chapter shall be deemed to prevent the City from commencing a criminal action, civil action or other judicial or administrative proceeding to abate the alleged nuisance or to obtain any other appropriate remedy in addition to, as an alternative to, or in conjunction with the procedures authorized by this Chapter.

PART 3: If any section, subsection, subdivision, paragraph, sentence, or clause of this Ordinance or any part thereof is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection,

subdivision, paragraph, sentence, or clause thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, or clause be declared in violation of the law.

PART 4: Effective Date. This Ordinance shall not become effective and in full force and effect until 12:01 a.m. on the thirty first day after its final passage. However, within fifteen (15) days after adoption by the City Council, the Ordinance shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

INTRODUCED at a regular meeting of the City Council held _____ and PASSED, APPROVED, and ADOPTED by the City Council on _____, on the following roll call vote, to wit:

- AYES: Council Members –
- NOES: Council Members –
- ABSENT: Council Members –
- ABSTAIN: Council Members –

APPROVED:

Mayor Jeff Lee

ATTEST:

Wendi Sims, City Clerk

APPROVED AS TO FORM:

David P. Hale, City Attorney