

National City Fire Department Ordinance

Chapter 1.36 ABATEMENT OF PUBLIC NUISANCES

1.36.010 Definitions.

The following definitions apply to this chapter:

A. "Abatement" means any action the city may take on public or private property and any adjacent property as may be necessary to remove or alleviate a nuisance, including but not limited to demolition, removal, repair, boarding and securing or replacement of property.

B. "Abatement notice" means a notice issued by the city manager or his/her designee, or by a department director, which requires a responsible person to abate a public nuisance.

C. "Legal interest" means any interest that is represented by a document such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument which is recorded with the county recorder.

D. "Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

E. "Property owner" means the record owner of real property based on the county assessor's records.

F. "Public nuisance" means any condition defined or declared to be a public nuisance in any section of this code, and/or any condition caused, maintained or permitted to exist which constitutes a threat to the public's health, safety and welfare or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to any considerable number of persons. A public nuisance also has the same meaning as set forth in California Civil Code Section 3479.

G. "Responsible person" means a person who is determined by the city manager or his/her designee, or by a department director, to be responsible for causing or maintaining a public nuisance or a violation of the municipal code or applicable state codes. The term "responsible person" includes but is not limited to a property owner, tenant, person with a legal interest in real property or person in possession of real property. (Ord. 2081 (part), 1994)

1.36.020 Abatement--When authorized.

A. Except in cases of emergency as set forth in Section 1.36.180, whenever the city manager or his/her designee, or a department director determines that public or private property or a condition upon any portion of public or private property is a public nuisance as defined or declared in any section of this code, an abatement notice may be issued to the responsible person to abate the public nuisance. The public nuisance shall be abated by the responsible person within the time frames set forth in the abatement notice, unless a timely appeal is filed in accordance with Section 1.36.050.

B. Procedures for the abatement of dangerous or unsafe nonresidential buildings or substandard residential buildings shall conform to the procedures established in Chapter 15.10 of this code. (Ord. 2140 3 (part), 1998; Ord. 2090, 1995; Ord. 2081 (part), 1994)

1.36.030 Abatement--Notice.

The abatement notice shall:

A. Be headed "Notice to Abate Public Nuisance";

B. Contain a description of the property on which the public nuisance is located in general terms reasonably sufficient to identify the property;

C. Refer to this chapter, to such other relevant portions of this code, and to applicable state laws or regulations, which render the property a public nuisance;

D. Describe the action required to abate the public nuisance, which may include without limitation correction, repair,

demolition, removal, obtaining the necessary permits, vacation of tenants or other appropriate action and shall establish time frames by which each action must occur;

E. Explain the consequences should the responsible person fail to comply with the terms of the notice;

F. Identify all applicable hearing and appeal rights. (Ord. 2081 (part), 1994)

1.36.040 Abatement--Notice--Service.

A. The notice required by Section 1.36.020 may be served by any of the following methods:

1. Personal service; or

2. Certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice may be signed and sent by regular mail. If a notice that is sent by certified mail is returned unsigned then service shall be deemed effective pursuant to regular mail, provided the notice that was sent by regular mail is not returned; or

3. Posting the notice conspicuously on or in front of the property.

B. Service by certified and regular mail in the manner described above shall be to the responsible person's address as indicated on the current assessment roll of the San Diego County assessor.

C. Failure of a responsible party to actually receive notice regularly made in conformity with this Section 1.36.040 shall not affect the validity of the notice or the proceedings. (Ord. 2140 3 (part), 1998; Ord. 2081 (part), 1994)

1.36.050 Abatement--Notice--Appeal.

Within ten days from the date of service of the abatement notice, the responsible person may appeal to the city council. Such appeal shall be in writing and shall be filed with the city clerk. Not less than five days nor more than twenty days after an appeal is filed with the city clerk, the city council shall hold a hearing on such appeal. (Ord. 2081 (part), 1994)

1.36.060 Abatement--Appeal--Hearing.

A. At the hearing of the appeal, after the city manager or his/her designee or the department director has presented evidence on the issue, any interested person may state his/her objections and protests and give evidence relative to the alleged public nuisance or the proposed abatement thereof.

B. After all such evidence is received and heard, the city council shall determine the issue. The decision of the city council shall be final and conclusive. If it finds and determines that the condition of the property constitutes a public nuisance and that the public nuisance requires abatement, the city council may issue an abatement order requiring such action as it may deem necessary, including, but not limited to, any of the following actions:

1. Allow abatement by means of reinstatement of lawful use(s) of the property, including rehabilitation and repair of buildings or structures if necessary, within a stated period of time; or

2. Order the nuisance to be abated by removal of the cause thereof, including, if necessary therefore, the demolition and removal of any or all buildings or structures situated on the property, the filling of all excavations, and the excavation or removal of all underground tanks and appurtenances; and

3. Revoke any permits or variances that authorized or otherwise pertained to the discontinued use.

C. If the city council's abatement order is made pursuant to subsections 1 or 2 of subsection B of this section, the city council may condition its order upon commencement of such abatement within such period of time as the city council may find to be reasonable in the circumstances, and may order that, upon failure of such condition:

1. The city manager or his/her designee, or the department director shall abate the nuisance by city personnel, or by awarding a contract for the work of abatement in the name of the city; or

2. The city attorney commence an action to enjoin the nuisance. (Ord. 2081 (part), 1994)

1.36.070 Appeal--Planning commission-- Advisory and appeals board.

A. In any nuisance abatement action initiated by the planning director, any responsible person who desires to appeal an abatement notice shall file an appeal with the planning commission, in accordance with the procedure set forth in Section 1.36.050. In any nuisance abatement action initiated by the fire chief or by the director of building and safety, any responsible person who desires to appeal an abatement notice shall file an appeal with the advisory and appeals board in accordance with the procedure set forth in Section 1.36.050.

B. Where an appeal has been filed with the planning commission or the advisory and appeals board, a hearing shall be held and a decision rendered by the appropriate body as set forth in Section 1.36.060.

C. The decision of the planning commission or the advisory and appeals board shall be final, unless within ten days from the date of service upon the responsible person of the decision of the planning commission or the advisory and appeals board pursuant to the procedure set forth in Section 1.36.030, the responsible person files an appeal with the city council. An appeal to the city council shall be initiated by filing a written appeal in accordance with the procedure set forth in Section 1.36.050. Upon such appeal, a hearing shall be held and a decision rendered by the city council as set forth in Section 1.36.060. (Ord. 2081 (part), 1994)

1.36.080 Abatement by city personnel or city contractor--Report and account.

A. If the responsible person fails or neglects to abate the public nuisance within the time frame specified by the city council, or within the time frame specified by the planning commission or the advisory and appeals board when a final decision is made by either of those bodies, the city manager or his/her designee or the department director shall cause the public nuisance to be abated. The abatement work may be done by city personnel or by private contractor.

B. City personnel or a private contractor can enter upon private property in a reasonable manner to abate the public nuisance as specified in the abatement notice or abatement order.

C. If the responsible person abates the public nuisance before the city performs the actual abatement pursuant to an abatement notice or abatement order, the city may still assess all costs incurred by the city at that point against the responsible person pursuant to the provisions set forth in this chapter.

D. When abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the city manager or his/her designee or by the department director. The report shall contain the names and addresses of the responsible person for each parcel, and the tax assessor's parcel number.

E. The city manager or his/her designee or the department director shall request the city clerk to schedule a confirmation of costs hearing pursuant to this chapter, unless waived in writing by all responsible persons.

F. All administrative and actual costs incurred by the city in abating the public nuisance may be assessed and recovered against the responsible person pursuant to this chapter.

G. Pursuant to Government Code Section 38773.5, attorneys' fees may be awarded to the prevailing party in any administrative or judicial proceeding to abate a public nuisance. If the responsible party is the prevailing party, attorneys' fees shall not exceed the amount of attorney fees incurred by the city in contesting or defending the action.

H. Pursuant to Government Code Section 38773.7, treble damages may be requested as part of any court order to abate a public nuisance which was the subject of a previous criminal or civil judgment within the preceding two-year period.

I. Any personal property that is useable or that has some utility value and which is removed from the premises as part of an abatement order shall be stored at the expense of the responsible party. The responsible party may reclaim the property within ninety days, but may not return the property to the premises from which it was abated without authorization of the city manager, unless the property is stored within properly conforming storage containers or structures. If the property is not reclaimed after ninety days, a notice shall be directed to the owner or other responsible party that the property will be treated as abandoned property and be disposed of according to Civil Code Section 2080, et seq. (Ord. 2151 3, 1998: Ord. 2140 3 (part), 1998: Ord. 2081 (part), 1994)

1.36.090 Abatement--Report and account--Hearing set.

The city council shall consider the report and account at a public confirmation of costs hearing set for such purpose by the city clerk. Notice of such

hearing shall be served at least ten days prior to the hearing upon the responsible person, as determined by the last equalized assessment roll or the supplemental roll, whichever is more current. The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the responsible person, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in the county pursuant to Section 6062 of the Government Code. (Ord. 2081 (part), 1994)

1.36.100 Abatement--Report and account--Hearing procedure.

The city council shall consider the report and account at the time set for the confirmation of costs hearing, together with any objections or protests by the responsible person or other interested persons. The responsible person or other interested persons may present a written or oral protest or objection to the report and account. At the conclusion of the hearing, the city council shall by resolution either approve the report and account as submitted, or as modified or corrected by the city council. The amounts so approved shall be charged as a personal obligation of the responsible person, or collected by the recordation of a nuisance abatement lien against the property, or by placement of a special assessment against the property. (Ord. 2081 (part), 1994)

1.36.110 Resolution--Service.

A copy of the resolution required by Section 1.36.100 shall be served on the responsible person, pursuant to the procedures set forth in Section 1.36.030, not later than fifteen days after the date of adoption of such resolution. (Ord. 2081 (part), 1994)

1.36.120 Abatement costs--Collection by nuisance abatement lien or special assessment, or both.

A. Any and all costs incurred by the city by reason of involuntary abatement of any condition determined to constitute a public nuisance under this chapter shall be charged against the responsible person.

B. If the costs of abatement which are charged against the responsible person are not paid within thirty days of service of the resolution of the city council approving, modifying or correcting the report and account, such costs shall be collected by the recordation of a nuisance abatement lien in the office of the county recorder, or in the alternative, by placement of a special assessment on the property by delivery of a notice of special assessment to the county assessor, or both. Such costs shall also constitute a personal obligation of the property owner. (Ord. 2140 3 (part), 1998; Ord. 2081 (part), 1994)

1.36.130 Recovery of costs by nuisance abatement lien--Procedure.

A nuisance abatement lien may be recorded against the property pursuant to Government Code Section 38773.1, as follows:

A. Prior notice shall be served upon the responsible person of the parcel abated by the city before recordation of the lien.

B. Prior notice shall be served in the same manner as a summons in a civil action.

C. If the responsible person cannot be found after a diligent search, the notice can be posted on the property for a period of ten calendar days, and the notice shall be published in a general circulation newspaper.

D. A nuisance abatement lien shall be recorded by the city clerk in the county recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien.

E. A nuisance abatement lien shall specify the amount of the lien, the name and address of the responsible city department, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

F. In the event that the nuisance abatement lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection E of this section shall be recorded by the city.

G. A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment.

H. The city may recover from the responsible person any costs incurred regarding the processing and recording of the nuisance abatement lien and providing notice to the property owner as part of its foreclosure action to enforce the lien. (Ord. 2081 (part), 1994)

1.36.140 Recovery of costs by special assessment--Procedure.

A special assessment may be placed against the property pursuant to Government Code Section 38773.5, as follows:

- A.** A notice of special assessment shall be delivered by the city to the county auditor, who shall place it on the county assessment roll. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

- B.** The notice of special assessment shall include a copy of the resolution of the city council approving, modifying or correcting the report and account as required by Section 1.36.090. The city may record a copy of the notice of special assessment in order to inform any subsequent purchasers of the property concerning the abatement action and resulting costs.

- C.** The city shall file a withdrawal of the notice of special assessment in the event the responsible person pays in full the costs of abatement of the public nuisance. (Ord. 2081 (part), 1994)

1.36.150 Remedies not exclusive.

The remedies and procedures set forth in this chapter are not exclusive. The city shall have the power to follow alternative procedures or remedies in accordance with the general law. (Ord. 2081 (part), 1994)

1.36.160 Nuisance--Penalty.

The responsible person of any lot or premises within the city who permits or allows the existence of a public nuisance as defined in this chapter, upon any lot or premises owned, occupied, or controlled by said responsible person or who violates any of the provisions of this chapter, is guilty of a misdemeanor and upon conviction thereof is punishable as prescribed in Section 1.20.010. (Ord. 2081 (part), 1994)

1.36.170 Appeal--Fee.

In addition to and apart from any abatement costs collected under this chapter, any responsible person filing an appeal with the planning commission, the board of building appeals, or with the city council, shall pay a nonrefundable fee to the finance department at the time the appeal is filed. The amount of such fee shall be as determined from time to time by resolution of the city council. No additional fee shall be collected for an appeal to the city council, when an initial fee has been paid prior to an appeal to the planning commission or the advisory and appeals board. (Ord. 2081 (part), 1994)

1.36.180 Immediate action excusing prior notice for purposes of abating dangerous conditions or imminent threat to life-safety.

The provisions for prior notice and hearing may be dispensed with when, in the opinion of the department director, immediate action is necessary to summarily abate a dangerous condition or an imminent threat to life-safety on public or private property. The director shall take only such immediate action as is reasonably necessary to summarily abate the danger or threat, and shall thereafter comply with Sections 1.36.020 through 1.36.030 regarding notice and hearing to the responsible party(ies) regarding the action taken by the director to summarily abate the condition. The purpose of any hearing will be restricted to affording the responsible party(ies) the opportunity to contest responsibility for the costs of the scope of summary abatement. If further corrective action and abatement is necessary, the director will comply with this Chapter 1.36, and such other sections of the code as may be applicable regarding further corrective action and abatement in due course. (Ord. 2140 3 (part), 1998)

1.36.190 Abatement fund.

The city manager is authorized to establish and administer a public nuisance abatement fund to be used for public nuisance abatement. Revenues from collections and fines for public nuisance violations, nuisance abatement liens, nuisance abatement assessments and administrative citations (Chapter 1.44), administrative remedies (Chapter 1.48), and any related revenues shall be credited to that fund. Surplus in excess of anticipated needs shall be returned to the general fund. Permissible expenditures from the abatement fund include departmental reimbursement for personnel and direct and overhead costs in administering city and contract public nuisance abatement programs. (Ord. 2140 3 (part), 1998)

