

ORDINANCE NO. 704 N.S.

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES
REPEALING CHAPTER 21.40 OF THE MUNICIPAL CODE
AND AMENDING CHAPTER 9.06 OF THE MUNICIPAL CODE
FOR NUISANCE ABATEMENT PROCEDURES
(CITY OF PASO ROBLES)

WHEREAS, the City's Municipal Code currently has two chapters that address nuisance abatement: Chapter 9.06 (Abatement of Nuisances) and Chapter 21.40 (Maintenance and Abatement of Property Nuisances), and

WHEREAS, the City of Paso Robles has initiated Code Amendment 95010 to combine and update the two chapters addressing nuisance abatements, thus eliminating any confusion or conflict between them, and

WHEREAS, this code amendment would apply to all zoning districts, and

WHEREAS, this project is exempt from environmental review in accordance with Section 15061(b)(3) of the State's Guidelines to Implement the California Environmental Quality Act (CEQA), and

WHEREAS, a public hearing was conducted by the City Council on December 5, 1995, to consider facts as presented in the staff report and to accept public testimony regarding this proposed code amendment, and

WHEREAS, at its meeting of December 5, 1995, the City Council gave first reading to this ordinance, and

WHEREAS, at its meeting of December 19, 1995, the City Council gave second reading to this ordinance, and

WHEREAS, this ordinance shall be effective on January 19, 1996.

NOW, THEREFORE, BE IT KNOWN that the Paso Robles City Council, based upon the substantial evidence presented at the above referenced public hearings, including oral and written staff reports, finds as follows:

- 1. The above stated facts of this ordinance are true and correct.
- 2. This ordinance is consistent with the goals and objectives of the City's General Plan.
- 3. This ordinance is not in conflict with any State laws.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of El Paso de Robles, California, that the Paso Robles Municipal Code is hereby amended as follows:

SECTION 1.

Chapter 21.40 (§21.40.010 through §21.40.180) of the Municipal Code is hereby repealed effective January 19, 1996.

SECTION 2.

Effect of Repeal on Past Actions and Obligations.

This ordinance does not affect prosecutions for code violations committed prior to the effective date of this ordinance, does not waive any fee or penalty due and unpaid on the effective

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date of this ordinance, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any code or City ordinance.

SECTION 3.

Publication. The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the City in accordance with Section 36933 of the Government Code.

SECTION 4.

Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not effect the validity of the remaining portion of this Ordinance, and this Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

SECTION 5.

Effective Date. This Ordinance shall be in full force and effect thirty (30) days after its passage.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the City Council of the City of El Paso de Robles, California, that the Paso Robles Municipal Code is hereby amended as follows:

SECTION 6: Chapter 9.06 is hereby revised in its entirety to read as follows:

Chapter 9.06

NUISANCE ABATEMENT

Sections:

- 9.06.010 Purpose.
- 9.06.020 Definitions.
- 9.06.030 Nuisances.
- 9.06.040 Responsibility for Property Maintenance.
- 9.06.050 Authority.
- 9.06.060 Right of Entry.
- 9.06.070 Violations and Penalties.
- 9.06.080 Additional Enforcement.
- 9.06.090 Cumulative Remedies.
- 9.06.100 Commencement of Proceedings.
- 9.06.110 Notice of Nuisance (first notice).
- 9.06.120 Notice to Abate Nuisance (second notice).
- 9.06.130 Hearing.
- 9.06.140 Order of City Council.
- 9.06.150 Failure to Abate.
- 9.06.160 Cost of Abatement.
- 9.06.170 Procedure for Assessing Costs
- 9.06.180 Notice of Lien.

9.06.010 Purpose.

The purpose of this chapter is to define what constitutes a public nuisance and to establish the authority and procedures to abate such nuisances in order to prevent conditions that could be detrimental to the public health, safety and welfare.

9.06.020 Definitions.

For the purposes of this chapter, the following words shall have the specified meanings:

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- (a) City. The City of El Paso de Robles, a municipal corporation of the State of California.
 - (b) Enforcement Official. The City Manager, the City Attorney or other legal representatives of the City, and the Director of each department or their authorized representatives.
 - (c) Inoperative vehicle. Any vehicle which cannot be legally operated on the street because of lack of current registration, lack of an engine, transmission, wheels, tires, doors, windshield or any other part or equipment necessary to operate safely, or which cannot be operated under its own power.
 - (d) Junk. Any cast-off, damaged, discarded, junked, obsolete, salvage, 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, plaster of paris, rubber, terra cotta, wool, cotton, cloth, canvas, wood, metal, sand, organic matter or other substance.
 - (e) "Owner" or "Occupant". Owner of record of real property as shown on the latest equalized property tax assessment rolls for the County of San Luis Obispo, occupant, lessee, or interested holder in same, as the case may be including the owner of real property whereon a vehicle(s) or part(s) thereof is located.
 - (f) Person(s). Any individual, group of individuals, firm or corporation owning, occupying or using any premises.
 - (g) Premises. Any real property and/or improvements thereon, as the case may be.
 - (h) Public right-of-way. Any highway, street, road, alley, way or place publicly maintained and opened to the use of the public for purposes of vehicular travel.
 - (I) Vehicle. Any device by which any person or property may be propelled, moved, or drawn upon a highway; excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

9.06.030 Nuisances.

All activities prohibited by California Penal Code, Part 1, Title 10 (Crimes Against Public Health and Safety), Penal Code sections 370 et seq., and Penal Code sections 11225 et seq. (Red Light Abatement Law), as enacted or hereinafter amended, shall be unlawful, constitute a nuisance, and enforcement and abatement shall be undertaken as provided by law.

It is hereby declared unlawful and a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises or land in this City to maintain such premises or land such that any one or more of the following conditions or activities exist:

- (1) Any condition recognized in law or equity as constituting a public nuisance.
- (2) Any dangerous, unsightly, or blighted condition that is detrimental to the health, safety or welfare of the public.
- (3) Any condition in violation of the Uniform Building Code, National Electrical Code, Uniform Mechanical Code, Uniform Plumbing Code, Uniform Fire Code, and all other Codes and Standards adopted by reference listed in Chapter 17.04 of the Paso Robles Municipal Code.

(4) Any condition caused or permitted to exist in violation of any of the provisions of the Paso Robles Municipal Code.

(5) Anything defined as a nuisance pursuant to state and federal law including but not limited to the California Civil Code, Division 4, Part 3 (Civil Code sections 3479 et seq.).

(6) Any condition in violation of the Weed and Rubbish Abatement Laws defined at Government Code Sections 39500 et seq. and 39560 et seq. as enacted or hereafter amended and enforced by City ordinance and resolutions.

(7) Any vacant, unoccupied or abandoned building or structure that is not reasonably secured against uninvited entry or that constitutes a fire hazard, or is in a state of unsightly or dangerous condition so as to constitute a blighted condition detrimental to property values in the neighborhood or otherwise detrimental to the health, safety and welfare of the public.

(8) Any condition that constitutes an attractive nuisance those objects or conditions that, by their nature may attract children or other curious individuals including, but not limited to, unprotected hazardous or unfilled pools, ponds, ice boxes, refrigerators, or excavations.

(9) Any condition that constitutes a visual blight. For purposes of this code, visual blight is any unreasonable or unlawful condition or use of real property, premises or of building exteriors which by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring premises, is detrimental to the property of others or to the value of property of others, offensive to the senses, or reduces the aesthetic appearance of the neighborhood. The only exception is for wood and building materials being used or to be used for a project of repair or renovation for which a building permit has been obtained may be stored for such period of time as is reasonably necessary to expeditiously complete the project.

Visual blight includes, but its not limited to, the keeping, storing, depositing, scattering over or accumulation on the premises any of the following:

(a) Lumber, junk, trash, debris, scrap metal, rubbish, packing materials, building materials;

(b) Abandoned, discarded or unused objects or equipment such as furniture, stoves, appliances, refrigerators, freezers, cans or containers, automotive parts and equipment;

(c) Abandoned, wrecked, disabled, dismantled or inoperative vehicles or parts thereof except inoperative vehicles that are not abandoned, are either registered or are certified as a non-operable vehicle pursuant to section 4604 of the California Vehicle Code, and are in an active state of renovation or restoration;

(d) Any personal property, object, device, decoration, design, fence, structure, clothesline, landscaping or vegetation which is unsightly by reason of its condition or its inappropriate location; and

(e) Vehicles parked on any surface other than a "paved" surface as defined in Chapter 21 of the Paso Robles Municipal Code.

(10) The keeping, storage, depositing or accumulation of dirt, sand, gravel, concrete or other similar materials, for an unreasonable period, which constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to nearby property or property value. The only exception is if the above listed materials are being used or to be used for a project of repair or renovation for which a

building permit has been obtained may be stored for such period of time as is reasonably necessary to expeditiously complete the project.

(11) The accumulation on any premises of any abandoned, wrecked, disabled, dismantled or inoperative vehicle or parts thereof.

(12) Automobile motors, transmissions, and all other automotive parts or accessories, stored or accumulated on any premises or land where they are visible from the public right-of-way.

(13) Any condition of a building or structure deemed to be unsafe or that in the discretion of the Enforcement Official would constitute a threat to public safety, health, or welfare, or poses a security problem by reason of dilapidation, fire hazard, disaster, damage or other similar occurrence specified in this code or any other applicable law.

(14) Overgrown, dead, decayed, diseased or hazardous vegetation likely to harbor rodents or which may be a fire hazard.

(15) Land where erosion, subsidence, surface water drainage problems, or stagnant water exists.

9.06.040 Responsibility for Property Maintenance.

Every owner or occupant of real property within the city is required to maintain such property in a manner so as not to violate the provisions of this chapter and such owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding such property. Every occupant, lessee or holder of any interest in property, other than as owner thereof, is required to maintain such property in the same manner as is required of the owner thereof, and the duty imposed on the owner thereof shall in no instance relieve those persons referred to from the similar duty.

9.06.050 Authority

The City Manager, the City Attorney or other legal representatives of the City, and the director of each department or their authorized representatives are hereby authorized and directed to use the provisions of this chapter for the purpose of abating those nuisances which exist as the result of violation of those ordinances and laws for which their departments have primary enforcement responsibility. As used herein the term "Enforcement Official" shall include the authorized representatives of the City Manager, the City Attorney, and the director of each department.

Pursuant to California Code of Regulations, Title 25, section 52, the procedures contained in this chapter are deemed to be equivalent for the purposes intended by, and may be used in lieu of, the regulations and procedures for abatement contained in article 6 of subchapter 1 of chapter 1 of division 1 of title 25 of the California Code of Regulations.

Nothing in this chapter shall be construed to limit the authority of the Paso Robles Police and Fire Departments to enforce all laws within their jurisdiction.

9.06.060. Right of Entry.

Whenever it is necessary to make an inspection of any premises to enforce the provisions of this chapter, and to the extent authorized by law, the Enforcement Official may enter on such premises at all reasonable times to inspect the same or to perform any duty imposed upon him/her by this code, subject to the requirements of Amendment IV of the United States Constitution and any other provisions of applicable law.

Whenever practical, the Enforcement Official shall contact the occupant of such premises prior to entry and inform the occupant of the reasons for such entry onto such property, and if the occupant is other than the owner, the Enforcement Official shall also, if practical, contact such owner.

If entry onto any premises is interfered with by the owner or occupant of such premises, or by any third party, the Department Head shall have recourse to every remedy provided by law to secure peaceable entry on such premises to perform the duties required by this chapter.

9.06.070 Violations and Penalties.

Unless otherwise expressly provided for, any person, firm or corporation, whether owner, lessee, sublessor, sublessee or occupant of any premises wherein a nuisance is found to exist, and/or that violates the provisions of this chapter or any order of abatement shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment of not longer than six months or both. Every day that any such violation continues shall constitute a separate offense.

9.06.080 Additional Enforcement.

Nothing in this chapter shall be deemed to prevent the City Council from authorizing the City Attorney or other authorized legal representative to commence any available administrative, civil or criminal processing to abate a nuisance pursuant to all applicable provisions of law as an alternative and in addition to any enforcement proceedings set forth in this chapter. The City Attorney or other authorized legal representative may bring an action in a court of competent jurisdiction to enjoin any nuisance, violation of any provision of this chapter, or violation of any other ordinance of this City.

9.06.090 Cumulative Remedies.

All remedies set forth in this chapter and in all city ordinances for the abatement or punishment of any violation thereof are cumulative and may be pursued alternatively or in combination. Provisions of this code are to be supplementary and complementary to all City Ordinances, the Municipal Code, state law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the City of Paso Robles to abate any and all nuisances.

9.06.100 Commencement of Proceedings.

Whenever an Enforcement Official has inspected any premises or condition and has found and determined that a violation of this chapter exists, the Enforcement Official may commence proceedings to cause abatement of the nuisance as provided herein.

Once proceedings have been commenced pursuant to this chapter to declare a public nuisance, no premises or building shall be deemed to be in compliance with this chapter solely because such building or premises thereafter becomes occupied or unoccupied.

9.06.110 Notice of nuisance (first notice).

Upon determination by the Enforcement Official that a premises is in violation of this chapter, the Enforcement Official shall issue a notice of nuisance, directed to the owner or occupant of the premises. The notice of nuisance shall be sent certified mail, return receipt requested and contain the following:

- (a) The street address or other description sufficient to identify

the premises;

(b) A statement specifying the conditions which constitute the nuisance. Where the Enforcement Official has determined that the condition causing the nuisance is imminently dangerous to human life or limb, or is unsafe, or is detrimental to the public health or safety, he may order that the affected premises be vacated, pending the correction or abatement of the conditions causing the nuisance;

(c) An order to commence and complete the abatement of the nuisance within thirty (30) days from the receipt of the notice.

(d) A statement that if the required abatement is not voluntarily completed within thirty (30) days, the matter will be scheduled for a public hearing before the City Council for an order to abate the nuisance, and that the costs of such abatement shall become a charge against the premises, and shall be made a special assessment against the premises, and that said special assessment may be collected at the same time and in the same manner as is provided for the collection of ordinary city taxes, and shall be subject to the same penalties, interest and to the same procedures of foreclosure and sale in the case of delinquency as is provided for ordinary city taxes.

9.06.120 Notice to abate nuisance (second notice).

If, after the thirty (30) day period as specified in the notice of nuisance, the abatement of the nuisance has not been completed, the Enforcement Official shall issue a notice to abate nuisance, directed to the owner of the premises. The notice to abate nuisance shall be sent certified mail, return receipt requested, and contain the following:

(a) A heading, "Notice to Abate Nuisance," in letters of not less than one inch in height;

(b) A statement specifying the conditions which constitute the nuisance.

(c) The location, time and date to appear before the City Council for a hearing, which shall be a minimum of fifteen (15) days from the date of the notice, to show cause, if any, why such condition should not be condemned as a nuisance, and why such nuisance should not be abated by the City. A copy of the notice to abate shall be conspicuously posted on the premises.

9.06.130 Hearing.

At the hearing, the City Council shall proceed to hear testimony and consider other evidence concerning the conditions constituting the nuisance and any other matters as the City Council deems pertinent. Any person affected may be present at such hearing, may be represented by counsel, may present testimony, and may cross-examine the Enforcement Official and other witnesses. The hearing need not be conducted according to technical rules relating to evidence and witnesses.

9.06.140 Order of the City Council.

Upon the conclusion of the hearing, the City Council may terminate the abatement proceedings, continue the hearing, or order the owner to abate the nuisance within a prescribed time as reasonably determined by the City Council, but not less than 15 days.

The order shall inform the owner that if the nuisance is not abated within the time prescribed by the City Council, the nuisance may be abated as ordered by the Enforcement Official and the expense made a special assessment on the subject property.

9.06.150 Failure to Abate.

If the declared nuisance is not completely abated by the owner within the time specified by the City Council, the Enforcement Official is authorized and directed to cause the nuisance to be abated by City personnel or private contract. The Enforcement Official shall obtain a warrant, if required, and is expressly authorized to enter upon the premises for the purpose of abating the nuisance.

Upon completion of the abatement, the Enforcement Official shall present the cost of such abatement to the City Council for their review and confirmation. The owner shall be mailed a notice at least fifteen days prior to the meeting informing him of the following: the costs incurred by the City of abating the nuisance, the time and place the City Council will consider confirming the abatement costs, and that the owner may appear and protest the abatement costs.

Upon Council confirmation of the abatement costs, the City Clerk shall mail to the owner the assessment amount (cost of the abatement). The letter shall specify that if the assessment is not paid within 15 days of the mailing of the statement, the costs of the abatement shall be assessed against the premises as a lien or special assessment or made a personal obligation of the owner thereof as provided in Sections 9.06.170 and 9.06.180.

9.06.160 Costs of Abatement.

The enforcement official shall keep an account of all costs and expenses of investigating and abating such nuisance, any proceeds from the sale of materials, and shall render a statement of such costs to the person(s) receiving the notice to abate. Such person(s) receiving the notice shall be liable to the City for any and all costs and expenses to the City involved in abating the nuisance.

Costs and expenses shall include, but are not limited to, all direct costs related to personnel salaries and benefits, operational overhead, rent, interest, fees for experts, consultants or contractors, legal costs or expenses including attorney fees, claims against the City arising as a consequence of the nuisance or violation, and all costs associated with collecting assessments and liens.

9.06.170 Procedure for Assessing Costs.

If the person liable to pay the costs of abatement fails to do so within fifteen (15) calendar days of receiving the statement of such costs, the City may initiate proceedings to have such costs assessed against the real property or premises on which the City abated the nuisance.

9.06.180 Notice of Lien.

The total cost for abating a nuisance shall constitute a special assessment against the premises to which it relates, and upon recordation in the Office of the County Recorder of a notice of lien, shall constitute a lien on the property for the amount of such assessment. The procedure for collecting abatement costs through a special assessment lien shall be in accordance with California Government Code Section 38773.5.

After such recordation, a copy of the lien may be turned over to the County Tax Assessor, who shall then enter the amount of the lien on the assessment rolls as a special assessment.

Thereafter, the amount shall 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 under

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foreclosure and sale in case of delinquency as provided by Government Code Section 38773.5 and as provided for ordinary municipal taxes. After such recordation, such lien may be foreclosed by judicial or other sale in a manner and means provided by law.

PASSED AND ADOPTED THIS 19th day of December, 1995 by the following roll call vote:

AYES: HEGGARTY, MARTIN, IVERSEN, PICANCO, MACKLIN

NOES: NONE

ABSENT: NONE

Walter J. Macklin
MAYOR WALTER MACKLIN

ATTEST:
Richard J. Ramirez
RICHARD J. RAMIREZ, CITY CLERK

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