

ORDINANCE NO. 1048 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF EL PASO DE ROBLES ADDING CHAPTER 16.10 TO
TITLE 16 – FIRE - OF THE PASO ROBLES MUNICIPAL CODE
REGARDING ABATEMENT OF HAZARDOUS WEEDS AND RUBBISH

WHEREAS, numerous communities in the State of California have suffered especially devastating fires in the 2017 fire season thus far, which is still ongoing; and

WHEREAS, the City has recognized that the current weed abatement program as set forth in Chapter 9.06 does not adequately address the specific need to timely address fire hazards presented by uncontrolled vegetative growth and rubbish; and

WHEREAS, California Government Code sections 39501 – 39588 contain specific abatement procedures that a city may implement to control vegetative growth and/or rubbish; and

WHEREAS, these procedures include due process procedures, including notice to property owners and an opportunity to be heard; and

WHEREAS, the proposed ordinance also gives the City the authority to abate the nuisance if the property owner does not, and to impose special assessments on the property to cover the City's costs of abatement; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state Constitution and state law to protect the peace, health and safety of the public.

The City Council of the City of El Paso de Robles does hereby ordain as follows:

Section 1. Incorporation of Recitals. The above recitals are true and correct and are hereby incorporated by reference.

Section 2. Chapter 16.10, attached hereto as Exhibit A to this Ordinance and incorporated herein, is hereby added to the Municipal Code of the City of El Paso de Robles.

Section 3. Severability. If any section, sentence, clause or phrase of the Ordinance of the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. The City Council of El Paso de Robles hereby declares that it would have adopted this Ordinance and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4. Effective Date. This Ordinance shall become effective 30 days after its passage and adoption as provided by Government Code section 36397.

Section 5. Publication. The City Clerk shall certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause the Ordinance to be published once within 15 days after passage in a newspaper of general circulation published and circulated in the City in accordance with Government Code section 36933.

INTRODUCED at a regular meeting of the City Council held on January 16, 2018, for first reading by the City Council of the City of El Paso de Robles, and adopted on the 6th day of February, 2018, by the following vote:

AYES: Hamon, Gregory, Strong, Reed, Martin

NOES:

ABSENT:

ABSTAIN:


Steven W. Martin, Mayor

Attest:


Kristen L. Buxkemper, Deputy City Clerk

Chapter 16.10 ABATEMENT OF HAZARDOUS WEEDS AND RUBBISH

Sections:

16.10.010 Definitions: For purposes of this Chapter, the following terms shall have the specified meanings as follows:

“Clearance requirements of Vegetative Growth” means:

- Mowed or disced to a maximum height of 4 inches.
- Clearance shall be a minimum of 50 feet in width at the perimeter of a parcel and from any roadway.
- Clearance shall be a minimum of 100 feet around all structures.
- Clearance shall be a minimum of 10 feet on each side of driveways.
- Clearance shall be a minimum of 50 feet around oak trees. Exemptions:
 - Grass and other vegetation located more than 50 feet from any structure and less than 18 inches in height may be maintained where necessary to stabilize the soil and prevent erosion.
 - Fenced pastures are exempt where existing livestock will significantly reduce Weeds and grasses.
 - Orchards/vineyards will be mowed or disced to a distance of 50 feet on both sides of any roadway. The remaining parcel may be mowed or disced one way
 - Growing hay and grain needs to be cut at harvest time; any hay or grain uncut will be subject to abatement.

“Drainage” means any ditch, culvert, and/or pipe used as a means of public drainage or drainage control.

“Fire Chief” means the fire chief, his or her assistants and deputies, or other public officer designated by the City Council to perform the duties imposed by Chapter 16.10, ABATEMENT OF HAZARDOUS WEEDS AND RUBBISH.

“In front of which the nuisance exists” shall also include the area to the rear of or abutting the Property upon which the nuisance exists.

“Noxious weeds” means dry flammable grass or stubble greater than 4 inches in height.

“Property” means the land, any buildings, drainage structures, roadways, drainage ways, and/or drainage easements.

“Refuse” means waste matter, appliances, abandoned automobiles, junk, litter, trash, debris, dirt, cut vegetation growth, dead trees which threaten structures or streets, tin cans, paper, waste material of every kind, or other unsanitary substance, object, or condition which is, or when dry, may become a fire hazard, or which is or may become a menace to health, safety, or welfare.

“Street” means public streets, alleys, parkways, sidewalks, and areas between sidewalks and curbs.

“Vegetative growth” or “vegetation” means flammable vegetation and combustible growth.

“Weeds” means vegetation growing upon streets, sidewalks, or private Property and includes any of the following:

- a) Vegetation that bear seeds of a downy or wingy nature.
- b) Sagebrush, chaparral, and any other brush or vegetation that is not pruned or is otherwise neglected so as to attain such large growth as to become, when dry, a fire menace to adjacent improved Property.
- c) Vegetation that is otherwise noxious or dangerous.
- d) Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health.
- e) Dry grass, stubble, brush, litter, or other flammable material that endangers the public safety by creating a fire hazard in an urbanized portion zoned for single- and multiplex residence purposes.

16.10.020 Authority

Whenever the Fire Chief or his or her authorized representative shall find Vegetative Growth and/or Refuse upon any Property, lands, or lots in the City, which in their opinion is or may become a fire hazard or health and safety hazard, they shall have cause to give the owner of said Property a notice to remove such Vegetative Growth and/or Refuse which may constitute a hazard in the manner provided in this part.

16.10.030 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.

16.10.040 Vegetative Growth and/or Refuse, which are public nuisances

The City Council may declare, by resolution in accordance with Sections 39561-39700 of the California Government Code, that Vegetative Growth and/or Refuse, as both are defined in Section 16.10.010, which are, or may become, a hazard upon or in front of private Property to the centerline of adjoining streets in the city, are public nuisances.

Any such resolution shall contain the following:

- a) The street, highway, or road by its commonly known name.
- b) A description of the Property upon which or in front of which the nuisance exists by giving its lot and block number according to the official or city assessment map. Any number of streets, highways, roads, or parcels of private Property may be included in one resolution.

16.10.050 Seasonal and Recurrent Nuisances

At the time council adopts the resolution specified in Section 16.10.040, the council may also find and declare that Weeds on specified parcels of Property are seasonal and recurrent nuisances.

Such seasonal and recurrent nuisances shall be abated in accordance with the provisions of this Chapter, provided, that upon the second and subsequent occurrence of such nuisance on the same parcel or parcels within the same 12-month period, no further hearings need be held and it shall be sufficient to mail a post card notice to the owners of the Property as they and their addresses appear upon the current assessment roll.

The notice shall refer to and describe the Property and shall state that noxious or dangerous Weeds of a seasonal and recurrent nature are growing on or in front of the Property, and that the same constitute a public nuisance which must be abated by the removal of said noxious or dangerous Weeds, and that otherwise they will be removed and the nuisance will be abated by the city authorities, in which case the cost of such removal shall be assessed upon the parcel and lands from which such Weeds are removed and that upon confirmation such cost will constitute a lien upon such parcel or lands until paid.

16.10.060 Chemical Control

In any case where the City is authorized to abate Weeds pursuant to the provisions of this Chapter and where the City Council finds and declares that Weeds on specified parcels of Property are seasonal and recurrent nuisances as provided in 16.14.050, the City Council may provide for the preventive abatement of such seasonal and recurrent nuisance as provided in this section.

The notice required by 16.10.040 shall, in addition to containing all other required matters, state that the efficient and economical control of such seasonal and recurrent nuisance requires

preventive chemical control of such Weeds, weed seeds and weed seedlings and that the city may require preventive chemical control of such nuisance.

In the event the City is once required to abate such nuisance the City may, in addition, before and during the next following germinating season of such Weeds, provide for the preventive abatement of such nuisance by using chemical control of such Weeds.

16.10.110 Posting of Notices.

After passage of the resolution, the Fire Chief shall cause notices to be conspicuously posted on or in front of the Property on or in front of which the nuisance exists. They shall post:

- a) One notice for each separately owned parcel of Property of not over fifty feet frontage.
- b) Not more than two notices for any such parcel of Property of one hundred feet frontage or less.
- c) No more than one hundred feet apart if the frontage of such parcel of Property is greater than one hundred feet.

16.10.120 Form of Notice.

The heading of the notices shall be "Notice to destroy Weeds and remove rubbish, Refuse, and dirt" in letters not less than one inch in height and be in substantially the following form:

NOTICE TO DESTROY WEEDS AND REMOVE RUBBISH, REFUSE, AND DIRT

Notice is hereby given that on the ___ day of _____, 20___, the City Council of the City of El Paso de Robles passed a resolution declaring that noxious weeds were growing upon or in front of the property on this street, and that rubbish, refuse, and dirt were upon or in front of property on this street, in _____, and more particularly described in the resolution, and that they constitute a public nuisance that must be abated by the removal of the weeds, rubbish, refuse, and dirt. Otherwise they will be removed and the nuisance abated by the city and the cost of removal will assessed upon the land from or in front of which the weeds, rubbish, refuse, and dirt are removed and will constitute a lien upon such land until paid. Reference is hereby made to the resolution for further particulars. A copy of said resolution is on file in the office of the city clerk.

All property owners having any objections to the proposed removal of the weeds, rubbish, and dirt are hereby notified to attend a meeting of the City Council of the City of El Paso de Robles to be held January 16, 2018 and February 6, 2018, when their objections will be heard and given due consideration.

Dated this _____ day of _____, 20_____.

Fire Chief
City of El Paso de Robles

16.10.130 Notices Posted Prior to Hearing.

The notices shall be posted at least five days prior to the time for hearing objections by the City Council.

16.10.140 Alternative Notice Procedures

As an alternative to posting notice of the resolution and notice of the meeting when objections will be heard, the City Council may direct the Fire Chief to mail written notice of the proposed abatement to all persons owning Property described in the resolution. The Fire Chief shall cause such written notice to be mailed to each person to whom such described Property is assessed in the last equalized assessment roll available on the date the resolution was adopted by the City Council.

The Fire Chief may request that the county assessor, within ten days after making such request, mail to the Fire Chief a list of the names and addresses of all of the persons owning Property

described in the resolution. The address of the owners shown on the assessment roll shall be conclusively deemed to be the proper address for the purpose of mailing such notice. The City shall reimburse the county for the actual cost of furnishing such list and the cost shall be a part of the costs of abatement.

The notices mailed by the Fire Chief shall be mailed at least five days prior to the time for hearing objections by the City Council and shall be substantially in the form provided by Section 16.10.120, except that the heading of the notice need not comply with Section 16.10.120.

16.10.150 Hearing.

At the time stated in the notices, the City Council shall hear and consider all objections to the proposed removal of Weeds, rubbish, Refuse, and dirt. It may continue the hearing from time to time.

By motion or resolution, at the conclusion of the hearing the City Council shall allow or overrule any objections. At that time, the City Council acquires jurisdiction to proceed and perform the work of removal.

16.10.160 Council Decision is Final

The decision of the City Council is final.

16.10.170 If objections have not been made, or after the City Council has disposed of those made, it shall order the Fire Chief to abate the nuisance by having the Weeds, rubbish, Refuse, and dirt removed. The order shall be made by motion.

16.10.200 Entry to Abate

The Fire Chief may enter upon private Property to abate the nuisance.

16.10.210 Abatement by Owner; Imposition of Special Assessment and Lien

Before the Fire Chief arrives, any Property owner may remove the Weeds, rubbish, Refuse, and dirt at his own expense. Nevertheless, in any case in which the order to abate is issued, the City Council by motion may further order that a special assessment and lien be imposed pursuant to Section 16.10.260. In that case, the assessment and lien shall be limited to the costs incurred by the responsible agency in enforcing abatement upon the parcels, including investigation, boundary determination, measurement, clerical and other general administration costs, which shall include charges sufficient to pay for the administrative costs of the program.

16.10.210 Equipment

All equipment used for weed abatement work shall be equipped with proper spark arresters, mufflers, etc. A fire extinguisher of a water or back pump type shall be required on weed abatement equipment or shall be immediately available.

16.10.220 Accounting for Costs

The Fire Chief shall keep an account of the cost of abatement in front of or on each separate parcel of land where the work is done by him. He or she shall submit to the City Council for confirmation an itemized written report showing such cost together with the expense proposed to be assessed against it, which shall include charges sufficient to pay for the administrative costs of the program.

16.10.230 Posting of Cost Report

A copy of the report shall be posted for at least three days prior to its submission to the City Council on or near the chamber door of the City Council, with a notice of the time of submission.

16.10.240 Hearing on Cost Report

At the time fixed for receiving and considering the report, the City Council shall hear it with any objections of the Property owners liable to be assessed for the abatement. It may modify the report if it is deemed necessary. The City Council shall confirm the report by motion.

16.10.250 Performance of Abatement by Contract

The abatement of the nuisance may in the discretion of the City Council be performed by contract awarded by the City on the basis of competitive bids let to the lowest responsible bidder pursuant to Sections 37903, 37904, 37905 and 37931 to 37935 inclusive of the California Government Code. In such event, the contractor shall keep the account and submit the itemized report for each separate parcel of land required by Section 16.14.25.

16.10.260 Costs, Special Assessment, Lien

The cost of abatement in front of or upon each parcel of land and the costs incurred by the City in enforcing abatement upon the parcels will include the actual costs of abatement as well as a 100% administrative fee deemed sufficient to cover the administrative costs incurred which includes the investigation, boundary determination, measurement, clerical and other related costs, and constitutes a special assessment against that parcel. After the assessment is made and confirmed, a lien attaches on the parcel upon recordation of the order confirming the assessment in the office of the county recorder of the county in which the Property is situated, except that if any real Property to which such lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of such taxes as imposed by Section 16.10.270 would become delinquent, then the lien which would otherwise be imposed by this section shall not attach to such real Property and the costs of abatement and the costs of enforcing abatement, as confirmed, relating to such Property will be transferred to the unsecured roll for collection.

16.10.270 Addition to Tax Bill

Except as provided in Section 16.10.260, after confirmation of the report, a copy shall be given to the county auditor, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

16.10.280 Filing with Auditor

Except as provided in Section 16.10.260, a certified copy of the report shall be filed with the county auditor on or before August 10th. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.

16.10.290 Entry on Tax Roll

The county auditor shall enter each assessment on the county tax roll opposite the parcel of land.

16.10.300 Collection of Assessment

The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedure of foreclosure and sale provided for ordinary municipal taxes.

The City Council may determine that, in lieu of collecting the entire assessment at the time and in the manner of ordinary municipal taxes, such assessments of fifty dollars (\$50) or more may be made in annual installments, in any event not to exceed five, and collected one installment at a time at the times and in the manner of ordinary municipal taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for foreclosure and sale provided for ordinary municipal taxes. The payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the City Council, not to exceed 6 percent per annum.

16.10.310 Alternative Collection by Separate Bills

As an alternative method, the county tax collector in his discretion may collect the assessments without reference to the general taxes by issuing separate bills and receipts for the assessments.

16.10.320 Payment to Fire Chief

The Fire Chief may receive the amount due on the abatement cost and issue receipts at any time after the confirmation of the report and until 10 days before a copy is given to the county auditor, or, where a certified copy is filed with the county auditor, until August 1st following the confirmation report.

16.10.330 Refunds

The City Manager may order refunded all or part of a tax paid pursuant to this Chapter if he finds that all or part of a tax paid pursuant to this Chapter has been erroneously levied. A tax or part shall not be refunded unless a claim is filed with the City Clerk on or before November 1st after the tax became due and payable. The claim shall be verified by the person who paid the tax or by the person's guardian, conservator, executor, or administrator.

16.10.340 Damages from Negligence in Abatement

If the City Council finds that Property damage was caused by the negligence of a city officer or employee in connection with the abatement of a nuisance pursuant to this Chapter, a claim for such damages may be paid from the City general fund. Claims therefor are governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the California Government Code.

16.10.400 Alternative to Proceedings in Chapter 9.06

The proceedings set forth in this Chapter are an alternative to any the procedures set forth in Chapter 9.06.