

**ORDINANCE NO. 1133**

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UKIAH ADDING A NEW CHAPTER 12, ENTITLED: "ABATEMENT OF PUBLIC NUISANCES," TO DIVISION 3 OF THE UKIAH CITY CODE.**

**SECTION ONE.**

The City Council of the City of Ukiah hereby ordains that a new Chapter 12, entitled "Abatement of Public Nuisances" is hereby added to Division 3 of the Ukiah City Code to read as follows.

**DIVISION 3 BUILDING**

**CHAPTER 12 ABATEMENT OF PUBLIC NUISANCES**

**Sections:**

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- 3466 Collection of costs and attorney's fees prior to hearing.**
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**3450: PURPOSE.**

It is hereby declared to be in the public interest to promote the health, safety and welfare of the residents of the City of Ukiah by providing procedures for the abatement of nuisances as declared by the City Council of the City of Ukiah, which abatement procedures shall be in addition to all other proceedings authorized by this Code or otherwise by law.

**3451: DEFINITIONS.**

For the purpose of this Chapter the following words and phrases shall have the

meanings:

"Abandoned vehicle" means an unlicensed or physically inoperable vehicle.

"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.

"Agricultural groves" means any grove of ten or more trees on a parcel or lot.

"Attractive nuisance" means any 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;
2. Swimming pools being used as fish ponds or other uses contrary to permitted swimming or other pool uses, subject to state or local regulations requiring, without limitation, that drains be visible from the water's surface and that the water be filtered;
3. Hazardous and/or unmaintained pools, ponds, culverts, excavations; and
4. Neglected machinery.

"Building" means any structure including, but not limited to, any house, garage, duplex, apartment, condominium, stock cooperative, mobile home, or other residential 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, or other structures affixed to or upon real property, used for the purpose of conducting a business, storage or other activity.

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

"Code Compliance Manager" shall mean the person or persons designated by the City Council or the City Manager to enforce the provisions of this Chapter.

"Excavation" means any wells, shafts, basements, cesspools, septic tanks, fish ponds, and other like or similar conditions more than six inches in diameter and three feet in depth.

"Foul" means very offensive to the senses.

"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 materials and waste" 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. §§ 261.1 through 261.33, except that for 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 individual appointed by the City Manager of the City of Ukiah to hear the appeal on a determination of the existence of a nuisance.

"Noxious" means hurtful or unwholesome.

"Odor" means any smell, scent, or fragrance.

"Owner" means any person, agent, firm or corporation having legal or equitable interest in the property, as disclosed by a current title search from any accredited title company, and shall include any person in possession of the property.

"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.

"Stagnant water" means water which is allowed to become stagnant contained in ditches, pools, excavations, holes, depressions, open cesspools, privy vaults, fountains, open cisterns, open tanks, shallow wells, barrels, troughs, urns, cans, tires, boxes, bottles, tubs, buckets, vessels, receptacles of any kind or other containers or devices which may hold water.

"Unmerchantable" means unsalable.

"Vehicle" means any device by which any person or property may be propelled, moved, or drawn upon a highway, or upon water, excepting a device moved exclusively by human power, or used exclusively upon stationary rails or tracks.

"Violator" means any responsible party, including the landowner, or lessee, tenant, or any other person who had possession or custody of the property.

"Waste matter" means any rubbish or construction waste .

"Weeds" means useless and troublesome plants generally accepted as having no value and frequently of uncontrolled growth.

### **3452: DECLARATION OF NUISANCES.**

It is unlawful and is hereby declared a nuisance for any person owning, leasing, occupying or having charge or possession of any Property and any vehicles thereon, in the City to maintain the Property in such a manner that any of the following conditions are present:

A. The existence of any garbage, rubbish, refuse or waste matter upon the premises contrary to the provisions of Article 2, Chapter 5, Division 4 of the Ukiah City Code.

B. Any abandoned or discarded furniture, stove, refrigerator, freezer, sink, toilet, cabinet, or other household fixture or equipment visible from a public right-of-way.

C. The existence of any abandoned, wrecked, dismantled or inoperative motor vehicle upon the premises contrary to the provisions of Chapter 9, Division 8 of the Ukiah City Code.

D. The outdoor storage of personal property on private property visible from the public right of way or adjacent property as follows:

1. Any furniture, whether designed for indoor or outdoor use, which is in dilapidated condition and would be offensive to the senses of a person of ordinary sensitivity or a significant percentage of owners or residents in the neighborhood; upholstered furniture where the original or replacement upholstery is torn, tattered, or soiled to the degree that it substantially detracts from the aesthetic and property values of neighboring properties; mattresses and box springs; any other personal property not designed for outdoor use that is not in good working order or is stored or maintained in such a way that it substantially detracts from the aesthetic and property values of neighboring properties; and

2. The existence of any junk, trash, refuse, construction waste or household appliances including washers, dryers, water heaters, commercial/industrial machinery and/or equipment (whether operable or inoperable); and

3. Any items or conditions, including those visible from neighboring properties, which provide a harborage for rats and/or other vermin, or create any other potential health hazard or nuisance.

E. The outdoor storage of personal property on public property, including any public street, sidewalk, parking lot, public park, parkway, median or greenbelt or other public area, whether improved or unimproved, except with the consent and approval of the City. Any personal property stored, maintained, placed or abandoned in violation of this section may be removed and discarded at the discretion of the Public Works Director or his designee.

F. Any dangerous or substandard building, whether or not occupied, abandoned, boarded-up or partially destroyed, contrary to the provisions of the California Fire Code, California Building Code, California Housing Code, and/or California Code for Abatement of Dangerous Buildings.

G. The existence of loud or unusual noises, or foul or noxious odors which offend the peace and quiet enjoyment of persons of ordinary sensibilities and which interferes with the comfortable enjoyment of life or property and affect the entire neighborhood or any considerable number of persons.

H. The existence of hazardous substances and waste unlawfully released, discharged, or deposited upon any premises or onto any City property.

I. The existence of any stagnant water that poses a health risk or water contained in hazardous and/or unmaintained swimming or other pools on private property which obscure required visibility and proper filtering.

J. Any attractive nuisance.

K. Any other condition which is contrary to the public peace, health and safety.

**3453: SUMMARY ABATEMENT.**

In cases where a public nuisance poses a serious and imminent threat to public health or safety, such that during the time required to provide prior notice and an opportunity for a hearing, a significant risk of serious personal injury or substantial property damage exists, the Building Official or the Code Compliance Manager, or their designees, shall have the authority to immediately abate or call a contractor to abate such public nuisance. Any such abatement activity may be conducted without observance of any notice requirements described in this Chapter; provided, however, that in the absence of consent from the owner, the City shall obtain an inspection and/or abatement warrant<sup>1</sup> prior to entering upon the property and abating the nuisance. The City may recover all abatement costs as set forth in this Chapter.

**3454: METHOD OF GIVING NOTICE.**

A. Any notice required by this Chapter may be served in any one of the following methods:

(1) by personal service on the owner, occupant, or person in charge or control of the property; or

(2) if the owner cannot be located in the exercise of reasonable diligence, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the City pursuant to Government Code Section 6062.; or

(3) by mailing the notice by first class U.S. Mail to the address shown on the last available assessment roll, or as otherwise known; or

(4) publication of a legal advertisement at least once a week for the period of two weeks in a newspaper of general circulation in the City of Ukiah.

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<sup>1</sup> See, e.g., Cal. Code Civ. Proc. §1822.50 et seq.

B. Notice deemed served as follows:

(1) if served pursuant to A(1), upon receipt;

(2) if served pursuant to A(2), at the expiration of the time required for posting and publication;

(3) if served pursuant to A(3), 48 hours after deposit in the U.S. Mail; or

(4) if served pursuant to A(4), 24 hours after publication of the second weekly notice.

### **3455: DETERMINATION OF NUISANCE.**

A. The Code Enforcement Manager may determine that any premises within the City may constitute a public nuisance pursuant to any provisions of Section 3452 and may initiate abatement proceedings pursuant to this Chapter. The Code Compliance Manager or the authorized representative thereof shall set forth such determination in a notice to abate which shall identify the premises and state the conditions which may constitute the nuisance and shall require that such conditions be corrected within such time periods set forth in the notice to abate.

B. The notice to abate to the owner or person in control or charge of the property shall include (1) the condition or conditions on the premises creating the nuisance; (2) a description of the actions required to abate the nuisance; (2) a reasonable time limit to abate the nuisance; and (4) notice of the right to appeal, if filed within ten (10) calendar days of the date the notice is served. The notice shall direct the abatement of the nuisance and refer to this Chapter for particulars.

C. Failure of the owner to accept or otherwise receive such notice shall not affect the validity of any proceeding pursuant to this Chapter, except as otherwise required by law.

### **3456: APPEAL.**

A. Within ten days from the date of giving notice to abate, the violator may file a appeal of the determination of the nuisance with the Code Compliance Manager. Such appeal shall be in writing and shall identify the property subject to the Notice to Abate. The Code Compliance Manager shall then cause the matter to be set for hearing before a Hearing Officer appointed by the City to hear such matters. The Hearing Officer shall be qualified by training, education and/or experience to conduct the hearing and shall be impartial. Except in his or her capacity as a Hearing Officer, he or she shall have no personal or business relationship to the property owner or the City.

B. Notice of the date of hearing shall be given in writing. The date of the hearing shall be no sooner than fifteen days from the date when notice of the hearing is given to the appellant and to the Code Compliance Manager.

C. At the time fixed in the notice, the Hearing Officer shall receive evidence, including the testimony of all competent persons desiring to testify respecting the condition constituting the nuisance.

D. At the conclusion of the hearing, the Hearing Officer shall determine whether or not a nuisance exists, and if the Hearing Officer so concludes, he or she may declare the conditions existing to be a nuisance and direct the person owning the property upon which the nuisance exists to abate it within ten days after the date of posting on the premises a notice of the Hearing Officer's order. The Hearing Officer may grant additional time to abate the nuisance, if in his or her opinion, good cause for additional time exists.

E. The decision of the Hearing Officer on the determination of nuisance is final. Any appeal of the Hearing Officer's decision shall be governed by California Code of Civil Procedure Section 1094.6 as such section may be amended from time to time.

**3457: TIME LIMIT FOR COMPLIANCE.**

The violator must abate the nuisance within the period of time set forth in the Notice to Abate, or, in case of an appeal, within ten days from the finding of the Hearing Officer or such longer period as may be determined by the Hearing Officer. Unless an emergency situation exists, the violator shall be given at least ten days to abate the nuisance.

**3458: ABATEMENT BY CITY.**

A. If the nuisance is not abated by the violator within the time limits set forth above in Section 3457, the City, by its employees or any hired contractor, may cause the nuisance to be abated.

**3459: REPORT OF ABATEMENT COSTS.**

A. The Code Compliance Manager shall thereafter cause a report of the action and an accurate account of the costs to be filed with the City Clerk of the City of Ukiah.

B. The statement shall be accompanied by a notice to the owner that the cost of abatement may be protested as set forth in Section 3462. If the cost is not protested within ten calendar days after service, it shall be deemed final.

**3460: RECOVERY OF ATTORNEYS' FEES AND REPORT OF ATTORNEYS' FEES.**

In any action, administrative proceeding, or special proceeding to abate a nuisance, the prevailing party shall be entitled to recovery of attorneys' fees. The recovery of attorneys' fees by the prevailing party shall be limited to those individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. The City Attorney's Office shall thereafter cause a report of the action and an accurate account of costs to be filed with the City Clerk of the City of Ukiah.

**3461: TREBLE DAMAGES.**

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in

accordance with this Chapter, except for conditions abated pursuant to Section 17980 of the Health and Safety Code, related to substandard buildings, the court may order the owner to pay treble the costs of the abatement.

**3462: PROTEST OF ABATEMENT COSTS.**

A. The property owner may protest the cost of abatement by filing a written request for a hearing on the abatement costs with the Code Compliance Manager, and the Code Compliance Manager shall cause a Hearing Officer to be appointed to hear the protest. At the time fixed for the hearing on the statement of abatement costs, the Hearing Officer shall consider the statement and protests or objections raised by the person liable to be assessed for the cost of the abatement.

B. The Hearing Officer may revise, correct or modify the statement as the Hearing Officer considers just and thereafter shall confirm the cost.

C. The decision of the Hearing Officer shall be in writing and shall be served by mail. The decision of the Hearing Officer on the abatement costs shall be final.

D. Any appeal of the Hearing Officer's decision shall be governed by California Code of Civil Procedure Section 1094.6 or such section as it may be amended from time to time.

**3463: COUNCIL ACTION.**

A. If the property owner does not pay the cost of abating the nuisance within thirty calendar days after the cost becomes final or the hearing officer confirms the costs of abatement, the cost shall become a special assessment against the real property upon which the nuisance was abated. The assessment shall continue until it is paid, together with interest at the legal maximum rate computed from the date of confirmation of the statement until payment. The assessment may be collected at the same time and in the same manner as ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for property taxes.

B. The City Council shall adopt a resolution assessing such unpaid costs of abatement as liens upon the respective parcels of land as they are shown upon the last available assessment roll.

**3464: IMPOSITION OF SPECIAL ASSESSMENT LIEN AND NOTICE.**

A. The City Clerk shall prepare and file with the County Auditor a certified copy of the resolution of the City Council assessing the costs of abatement as a lien on the land, adopted pursuant to the preceding section.

B. Notice of lien shall be mailed by certified mail to the property owner, if the property owner's identity can be determined from the County Assessor's or County Recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the Tax Collector for unpaid delinquent assessments. The Tax Collector's power of sale shall not be affected by the failure of the property owner to receive notice.

C. The County Auditor shall enter each assessment on the County tax roll upon the parcel of land. The assessment shall be collected at the same time and in the same manner as ad valorem real property taxes are collected, and shall be subject to the same penalties and procedure and sale in case of delinquency as is provided for such taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates 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 the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

#### **3465: RECORDING OF NUISANCE ABATEMENT LIEN.**

As an additional remedy, the Code Compliance Manager may cause a nuisance abatement lien for costs related to abatements, other than dangerous building abatements, to be recorded with the Mendocino County Recorder's Office, in accordance with the procedures specified in Government Code Section 38773.1. As required by Section 37773.1, prior to recording the lien, notice of the proposed lien shall be given to the property owner as provided in Section 3454(a)(1) or (2).

#### **3466: COLLECTION OF COSTS AND ATTORNEY'S FEES PRIOR TO HEARING.**

The Finance Department of the City may accept payment of any amount due at any time prior to the filing of a certified copy of the City Council resolution assessing the abatement costs with the County Auditor.

#### **3467: ALTERNATIVE REMEDIES.**

The procedures established in this Chapter shall be in addition to criminal, civil or other legal or equitable remedies established by law which may be pursued to address violations of this Code or applicable state codes and the use of this Chapter shall be at the sole discretion of the City.

### **SECTION TWO**

1. **COMPLIANCE WITH CEQA.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment.)

2. **SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby. The City Council hereby declares that it would have adopted this Ordinance and any section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

3. **EFFECTIVE DATE.** This Ordinance shall be published as required by law in a newspaper of general circulation in the City of Ukiah, and shall become effective thirty (30) days after its adoption.

Introduced by title only on January 18, 2012, by the following roll call vote:

AYES: Councilmembers Thomas, Crane, Rodin, Baldwin, and Mayor Landis.  
NOES: None  
ABSENT: None  
ABSTAIN: None

Adopted on February 1, 2012, by the following roll call vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Mary Anne Landis, Mayor

ATTEST:

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JoAnne Currie, City Clerk