

ARTICLE 7

COMMUNITY PRESERVATION AND IMPROVEMENT

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ARTICLE 7

COMMUNITY PRESERVATION AND IMPROVEMENT

SEC. 5-7.00 FINDINGS. The City Council finds and declares that the regulations set forth in this Article are necessary in order to eliminate conditions on properties in the City which are detrimental or threaten injury or damage to the health, safety, and welfare of residents thereof, to neighboring occupants or properties, and the municipal welfare.

SEC. 5-7.10 DEFINITIONS. For the purposes of this Article, certain words and phrases are defined and shall be construed as set out in this section. Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

- a. BUILDING shall mean any structure used or intended for supporting or sheltering any use or occupancy.
- b. ENFORCEMENT OFFICER shall mean any employee or official appointed and designated by the City Manager to administer the provisions of this Article. For this purpose he/she shall have the authority to issue citations, and he/she may enter upon any portion of the premise for the purpose of inspection and enforcement.
- c. GRAFFITI shall mean the unauthorized letters, words, symbols, figures and marks placed on buildings and objects on a private property, public property or the public right-of-way by using paint or marking with ink, chalk, crayon, dye or other similar substances, or by cutting or scraping with any tool or instrument.
- d. HEARING OFFICER shall mean the City Manager or his/her designee authorized to conduct hearings pursuant to this Article.
- e. INOPERATIVE shall mean any vehicle that: (1) cannot be immediately started and driven under its own power on the streets and highways or (2) is in an unsafe condition or (3) is in any other condition specified in the California Vehicle Code which prohibits its placement and/or movement on the public streets or highways.
- f. NUISANCE shall mean anything or condition which threatens injury or damage to the health, safety, welfare or property of members of the public, which obstructs the free use of property of others or interferes with the comfortable enjoyment of life or property.
- g. OWNER shall mean any person, persons, organization or legal entity owning property as shown on the last equalized assessment roll for City taxes and also includes the lessee, tenant or other person having control or possession of the property unless otherwise specified.

- h. PLANTER STRIP shall mean the area between the curb and sidewalk on street frontage.
- i. PROPERTY shall mean all real property, improved or unimproved, including but not limited to residential, industrial, commercial, agricultural, open space and other real property. The area of such property includes front yards, front porch, rear yards, side yards, driveways, carports, walkways, alleys and sidewalks, and shall include any building or other structure, whether fixed or moveable, located on such property.
- j. RESPONSIBLE PARTY shall mean the owner, agent, manager, lessee, tenant or any other person having control or possession of the property, whether for residential, industrial, commercial or other purpose.
- k. COSTS shall mean and include, but not be limited to, personnel costs, both direct and indirect; cost incurred in documenting the nuisance and/or violation ; fines; fees; penalties; abatement and abatement related costs; the actual expenses and costs of the City in the preparation and dissemination of notices, specifications, and contracts and in inspecting the work; and the costs of printing and mailing the notices required hereunder and the actual expenses and costs of imposing a lien or special assessment if that become necessary.
- l. LIEN shall have the meaning set forth in Government Code Section 38773.1, or its successor.
- m. SPECIAL ASSESSMENT shall have the meaning set forth in Government Code Section 38773.5, or its successor.

SEC. 5-7.20 PUBLIC NUISANCE. It shall be unlawful for any responsible party owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain or to allow to be maintained such property in a condition detrimental to public health, safety, or general welfare or in a condition which violates any code or ordinance adopted by the City. Every owner of real property within the City shall manage that property in such a manner to avoid violation of this code. The property owner shall be responsible for violations thereof, regardless of any contract or agreement with any third party regarding the property. Where there are multiple property owners, the property owners shall have joint and several liability. The existence of any of the following conditions on the property is hereby declared to be detrimental to public health, safety, or general welfare and thus constitutes a public nuisance, including, but not limited to:

- a. Accumulation of garbage, litter, bins, boxes, construction debris, bags, dirt, used motor oil, or other debris;
 - b. Junk, trash, shopping carts, salvage materials, scrap metal, bottles, cans and wire, paint cans, or other debris kept on the property other than recycling materials contained in an enclosed non- habitable structure or appropriate containers;
 - c. Broken or discarded furniture, household furnishings, appliances, equipment, or other items intended for inside use;
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- d. Fences with broken boards, rotted posts, or fences that are leaning, dilapidated, or in disrepair that are visible from the public right-of-way;

- e. Fuel tanks, storage cylinders for any type of gas, or other such containers which are not located in an enclosed structure, connected to a gas barbeque or attached to a recreational vehicle, camper, or camping trailer;
- f. Graffiti on public or private property;
- g. The storage of construction materials on a construction site for more than 30 days where there is no on-going construction activity;
- h. Washers, dryers, refrigerators, freezers or other appliances or similar items on the property that is in view of the public right-of-way;
- i. Clotheslines or clothes hanging in front yards, side yards, porches, or balconies; however, clotheslines and clothes hanging in rear yards are permitted;
- j. Buildings where 25% or more of any painted surfaces of the building's exterior observable from public view is peeling; or lacks weather protection due to lack of paint.
- k. Occupied buildings whose doors or windows are boarded up or covered with tarps or similar opaque material, except as otherwise directed by the City's Building Official or designee;
- l. Occupied buildings with broken or cracked glass windows or doors;
- m. Unoccupied buildings which are unsecured;
- n. Materials such as tarps or similar non-permanent articles on roofs for more than 30 days;
- o. Attractive nuisances or any dangerous machinery or conditions including, but not limited to, abandoned, broken or neglected equipment, tools and vehicle repair equipment;
- p. Overgrown trees or vegetation that obstruct public right- of-way or sidewalk or obscure the necessary view of drivers or pedestrians on public streets or private driveways; or weeds that exceed four inches in any yard or planter strip; overgrown or unsightly vegetation or weeds which may harbor rats, vermin, or other rodents;
- q. Dead trees or dead plant material;
- r. Operable boats, trailers, and other vehicles of similar kind and use stored in the front yard on the property which are not entirely located on the designated paved driveway area that provides direct access to the garage from the street, perpendicular to the street or unless the driveway is curved;

- s. Inoperable, wrecked, dismantled, partially repaired or abandoned boats, trailers, cars, motorcycles, and/or other vehicles of similar kind and use on the property that are not stored in an enclosed structure;
- t. Unmounted campers or camper shells visible from the public right-of-way which are left in the rear, side, front yard areas;
- u. Automobile(s), truck(s), boat(s), trailer(s), and other vehicle(s) of similar kind and use which are displayed for sale on any parking lot or unimproved property, except for authorized vehicle dealer sales lots;
- v. Commercial vehicles, as defined by the California Vehicle Code, that are parked or stored in any residential district, except vehicles operating in the normal course of business;
- w. Sleeping or living in any vehicle.

SEC. 5-7.25 UNLAWFUL NUISANCE ON PUBLIC PROPERTY. It shall be unlawful for any person owning, leasing, renting, occupying, or having charge or possession of any private property in the City to maintain or to allow to be maintained such property for any purposes so as to create any of the following conditions on adjacent or contiguous public property:

- a. The discarding of furniture, appliances, containers of used motor oil, car batteries, tires and other household waste upon a public street, right-of-way or other public property;
- b. The depositing or spilling of debris, including trash, paper, wood, plant cuttings and other vegetation onto the public right-of-way or other public property;
- c. The depositing of mud, dirt, sand, gravel, or concrete onto the public right-of-way that is not associated with the construction or repair of any building or structure pursuant to section 3-5.02 of this code. In the event that such material is deposited in the public right-of-way the responsible party shall make every effort to ensure that the material does not flow into a public storm drain or watercourse and shall remove the material as quickly as is feasible;
- d. The existence of any condition or use which unlawfully obstructs the free passage or use of any public right-of-way, street, or sidewalk.

SEC. 5-7.30 ADMINISTRATIVE CITATION/ABATEMENT NOTICE. Whenever the Enforcement Officer determines that any property within the City is being maintained in violation of one or more of the provisions of this Article, the Enforcement Officer shall give written notice to the owner of said property stating the section(s) being violated. The notice shall set forth a reasonable time limit for the owner to abate the condition, which shall be no less than three calendar days or not more than 14 calendar days from the date of the notice unless otherwise authorized by another section of this code, and which may also set forth suggested methods of correcting the

violation(s). At the discretion of the Enforcement Officer, an extension(s) not to exceed 14 days at a time may be granted for good cause for correcting the violation(s).

The notice shall direct the property owner either to abate the violation(s) or request an administrative hearing. If the notice period provided for correcting the violation is less than seven days, then the owner may request an administrative hearing any time prior to the end of the time period provided in the notice. If notice is served by mail, the owner may request an administrative hearing, to show cause why the violation(s) should not be abated by the City at the property owner's expense. The notice shall also indicate that if the nuisance is abated by the City, the costs thereof will be assessed upon the property, and if not paid, will constitute a lien or special assessment upon the property until paid. The notice shall also include a description of any costs the City Council may adopt by resolution from time to time relating to enforcement of this Article.

SEC. 5-7.35 MANNER OF GIVING ABATEMENT NOTICE. A copy of the notice provided for in this section shall be served on the property owner in accordance with State law. A copy of the notice will be mailed to the owner's address as it appears on the last equalized assessment roll or as known to the Enforcement Officer. The failure of any person to receive notice properly given shall not affect the validity of any proceedings hereunder.

SEC. 5-7.40 ADMINISTRATIVE HEARING. Any owner may request an Administrative Hearing. The purpose of an Administrative Hearing is to allow the owner to dispute the factual findings of the violation(s). If a hearing is requested, at the time fixed for the Administrative Hearing, the Hearing Officer shall hear and consider all relevant evidence, objections, or protests offered on behalf of the owner to show why the condition should not be abated. The Hearing Officer may also consider rebuttal evidence offered by the City. The hearing may be continued from time to time. If, at the conclusion of the hearing, based upon the record, the Hearing Officer is satisfied that the condition exists and concludes that it should be abated, he or she shall issue a written decision setting forth his/her findings and shall cause the same to be served upon the persons attending the hearing. The right to Judicial Review shall be governed pursuant to section 1-7.13 Administrative Citation – Right to Judicial Review.

SEC. 5-7.50 INSPECTION WARRANTS. Whenever there exists cause to suspect a violation of any provision of this Article, and the owner refuses to permit entry for investigation, the Enforcement Officer may seek to obtain a warrant issued by the Superior Court of Alameda County for the purposes of inspection.

SEC. 5-7.60 ABATEMENT WARRANTS. Once notice has been given of a violation of any provision of this Article, and the owner does not abate or cause to abate the violation as required, the Enforcement Officer may seek to obtain a warrant issued by the Superior Court of Alameda County for the purposes of abatement.

SEC. 5-7.65 SUMMARY ABATEMENT BY CITY. If the Enforcement Officer finds that a violation constitutes an imminent danger to the public health or safety, he or she shall have the authority to abate the condition or cause the condition to be abated summarily and without notice. The expenses of such abatement shall become a lien or special assessment on the property and, if unpaid, collected as provided herein.

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SEC. 5-7.70 ABATEMENT OF NUISANCES. If the nuisance is not abated as ordered within the abatement period, the Enforcement Officer shall take all steps necessary to cause the same to be abated by such City employees or private contractors the Enforcement Officer may

authorize to enter upon the property for such purposes. The expenses of such abatement, including administrative costs, of abating the nuisance shall be billed to the owner and shall become due and payable 30 days thereafter. Failure to pay may result in a lien or special assessment being placed on the property after a hearing on the matter if requested as provided hereinafter.

SEC. 5-7.80 – NOTICE OF LIEN/SPECIAL ASSESSMENT. Pursuant to California State Government Code Sections 38773.1 and 38773.5, prior to placing any liens or special assessments against a property for unpaid inspection fees, charges or penalties, all applicable owners shall be properly served written notice of past due amounts, and the right to have a Lien/Special Assessment Hearing as described hereinafter.

SEC. 5-7.90 LIEN/SPECIAL ASSESSMENT HEARING. Any owner may request a Lien/Special Assessment Hearing. The purpose of the Lien/Special Assessment Hearing is to provide an opportunity for any objections which may be raised by any person liable to be charged for the work of abating cited code violations and related charges associated with their property. The Enforcement Officer shall attend said Lien/Special Assessment Hearings with his or her record thereof, and upon the hearing, the Hearing Officer may make the modifications in the proposed lien/special assessment as deemed necessary. When a Lien/Special Assessment Hearing is requested, the amount of the cost of abating cited code violations upheld by the Hearing Officer, including inspection charges and administrative expenses shall, after being confirmed by the City Council, constitute a lien or special assessment on the property for the amount of the charges until paid. The right to Judicial Review shall be governed pursuant to section 1-7.13 Administrative Citation – Right to Judicial Review.

SEC. 5-7.100 ACCOUNT AND REPORT OF COST. The Enforcement Officer shall keep an account of the cost of abating the nuisance on each separate lot or parcel of land where the work is done by the City, as well as any inspection charges which remain unpaid, and shall render an annual itemized report in writing to the City Council showing the cost of abatement, including any salvage value, and outstanding inspection charges. The City Council shall review and confirm the annual report and lien/special assessment list, amended as necessary, by way of resolution.

SEC. 5-7.110 NOTICE OF REPORT. The City Clerk shall post a copy of the report and lien/special assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place when and where it will be submitted to the City Council for confirmation by way of resolution. Notice shall also be published once in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 5-7.120 COLLECTION ON TAX ROLL. After City Council confirmation of the annual report and lien/special assessment list, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid liens/special assessments is sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. 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. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such liens or special assessments and this lien or special assessment shall have priority of the taxes with which it is collected.

SEC. 5-7.130 PROCEDURE NOT EXCLUSIVE; VIOLATION AN INFRACTION.

The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances and regulations or abating public nuisances in any other manner provided by law. Nothing in this Article shall be deemed to prevent the City Council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law.

Violation of the provisions of this Article constitutes an infraction, as set forth in Chapter 1, Article 3 of the Hayward Municipal Code.

Repealed and Replaced by Ord. 09-02, adopted February 17, 2009; amended by Ord. 12-06, adopted November 13, 2012.