

## **Title 7**

### **COMMUNITY PRESERVATION**

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## Chapter 7.05

### PUBLIC NUISANCES<sup>1</sup>

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#### Article I. Generally

##### **7.05.010 Findings and purpose.**

The city council finds, determines and declares as follows:

A. This city has a history and reputation for implementing aesthetic considerations in the development of land uses and encouraging well-kept properties and strict enforcing of zoning and building regulations. The property values and general welfare of this community are founded in large part upon the appearance and maintenance of properties.

B. There is a need for further emphasis on the maintenance of a number of properties because certain conditions which appear to constitute nuisances as hereafter set forth are found to exist in the city.

C. The existence of property in a condition constituting a nuisance as hereafter defined is injurious and inimical to the public health, safety and welfare of the residents of this city and contributes substantially and increasingly to the problems of and the necessity for excessive and disproportionate expenditures for protection against hazards and diminution of property values, prevention of crime, and the preservation of the public health and safety and the maintaining of adequate police, fire and accident protection. Such problems are becoming increasingly direct and substantial in significance and effect.

D. The existence of public nuisances of the type hereafter referred to, and the abatement of them, is reasonably related to the proper exercise of the police power in protecting the health, safety and welfare of the public, and the exercise of that power by this city is authorized by the constitution of the State of California and applicable laws.

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1. **Editor's note:** Prior ordinance history includes portions of 1978 code Ch. 6.16.

E. Unless corrective measures of the type hereafter set forth are continued to be undertaken to alleviate such conditions, the public health, safety and general welfare and the property values and social and economic standards of this community will be substantially depreciated. The abatement of such conditions will enhance the appearance and value of such properties and will improve the tax base of the city. (Ord. 706 § 1, 1996; 1991 code § 11-1.1)

**7.05.020 Nuisance – Designated.**

It is declared to be a public nuisance for any person owning, leasing, occupying, or having charge or possession of any real property in this city to:

A. Maintain property, the topography or configuration of which, whether in natural or improved state or as a result of grading operations, causes or will cause erosion, subsidence or surface water runoff problems which can or may be injurious to the public health, safety and welfare or to adjacent properties;

B. Maintain property in a manner which causes a hazard to the public by obscuring visibility of an intersection;

C. Maintain property so that it constitutes a fire hazard by reason of rank overgrowth of vegetation or the accumulation of debris;

D. Maintain property, a building or structure, or a required fence in such condition that it is defective, unsightly, or in such condition of dilapidation or disrepair that it causes or accelerates the substandard condition of the property or causes the depreciable diminution of the property values of surrounding properties, or is otherwise materially detrimental to adjacent properties and improvements;

E. Maintain a building or structure which has been defaced with paint or other liquid (e.g., graffiti) which defacement is visible from a public street or sidewalk, public park, school or public right-of-way (see also PHMC Chapter 7.30, Graffiti Control);

F. Maintain a building, structure, any artificial alteration of property, any activity or any water that supports the development, attraction or harborage of vectors, that facilitates the introduction or spread of vectors, or that is a breeding place for vectors. The presence of vectors in their developmental stages on the property is prima facie evidence that the property is a public nuisance. *Vector* means any animal capable of transmitting human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates;

G. Maintain property with any of the following conditions in plain view:

1. The accumulation of garbage, litter, dirt, debris, junk, trash, salvage materials, lumber or other debris;
2. An attractive nuisance dangerous to children including, but not limited to: abandoned, broken or neglected equipment; machinery; a refrigerator, freezer or other appliance; or hazardous pool, pond or excavation;
3. Broken or discarded furniture, household equipment, goods and furnishings or shopping carts;
4. A dead, decayed or diseased, or hazardous tree, weeds or other vegetation which is dangerous to public safety and welfare or to property;
5. An unmounted camper or camper shell; abandoned, dismantled or wrecked trailer, camper, boat or similar form of personal property; or inoperable recreational vehicle; which is left on the property and is visible from a public street, unless it is in a carport or garage or behind a fence that screens it from view; or
6. Any other condition which is a hazard to health or property. (Ord. 782 § 4, 2004; Ord. 728 § 2, 1998; Ord. 706 § 1, 1996; 1991 code § 11-1.2)

**7.05.030 Nuisance – Unsafe, substandard and dangerous building.**

A building or structure which has one or more of the following conditions is deemed to be a public nuisance and an unsafe, substandard and dangerous building, if the conditions exist to the extent that the life, health, property, or safety of the public or occupants is endangered.

- A. Inadequate sanitation;
- B. Structural hazard;
- C. Hazardous electrical wiring;
- D. Hazardous plumbing;
- E. Hazardous mechanical equipment;
- F. Faulty weather protection;
- G. Fire hazard;
- H. Use of faulty construction materials;
- I. Hazardous or unsanitary premises;
- J. Inadequate exits;
- K. Inadequate fire protection or firefighting equipment;
- L. Improper occupancy;
- M. Any other violation of the most current adopted building codes;
- N. Any other violation which is set forth in the most current edition of any of the following code sections:
  - 1. Uniform Code for the Abatement of Dangerous Buildings, Section 302, Dangerous building.
  - 2. California Building Code, Section 102, Unsafe buildings or structures.
  - 3. California Health and Safety Code section 17920.3, Substandard buildings. (Amended during 2005 recodification; Ord. 728 § 4, 1998; 1991 code § 11-1.3)

**7.05.040 Abatement.**

All or any part of any parcel of real property, or a building or structure located on it, found to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair under the procedures set forth in this title, Community Preservation. (Ord. 728 § 5, 1998; Ord. 706 § 1, 1996; 1991 code § 11-1.4)

**Article II. Abatement of Nuisances****7.05.050 Nuisance abatement.**

A. The procedure set forth in this article for the abatement of a nuisance and the making of the cost of abatement a special assessment against that parcel is adopted under the authority of Government Code section 38773.5. The procedure set forth in this article for abatement applies to any nuisance which the city declares is a nuisance either under this code or by another ordinance which the city may adopt.

B. The procedure set forth in this chapter is not exclusive and is in addition to the procedure for abatement which is conferred upon the city by Civil Code section 3494, Code of Civil Procedures section 731, Government Code section 38773, or other lawful authority. (Ord. 706 § 1, 1996; 1991 code § 11-2.1)

**7.05.060 Definitions.**

For purposes of this article, the following definitions shall apply:

A. *Costs or expenses to abate the nuisance* means the actual cost of abatement plus all administrative expenses, including direct and indirect personnel costs; costs incurred in documenting the nuisance; the actual expenses and costs of the city in the preparation and dissemination of notices, specifications, and contracts and in inspecting the work; the costs of printing and mailing the required notices; and the costs of imposing a lien, if a lien becomes necessary.

B. *Enforcement officer* means the city code investigator. When acting within their field of expertise, *enforcement officer* also means employees of the Contra Costa Mosquito and Vector Control District and the Contra Costa County Health Services Department.

C. *Hearing officer* means the zoning administrator or his/her designee.

D. *Owner* means the person owning real property, as shown on the last equalized assessment roll or the supplemental roll, whichever is more current; the lessee, tenant or other person having control or possession of the property; and the mortgagee under a recorded deed of trust. (Ord. 782 § 4, 2004; Ord. 706 § 1, 1996; 1991 code § 11-2.2)

**7.05.070 Determination of nuisance – Notice to abate.**

A. Determination. Whenever the enforcement officer determines that property within the city is being maintained as a public nuisance, the enforcement officer shall give written notice to the owner by serving a “Notice to Abate or Show Cause.”

B. Contents of notice. The notice to abate or show cause shall include the following:

1. The street address, legal description or other description sufficient to identify the property affected;
2. A description of the conditions which constitute the nuisance and the code section(s) being violated;
3. A statement directing the owner to abate the nuisance and establishing the length of time permitted for voluntary abatement of the nuisance, which shall be at least 10 days;
4. A statement that the owner may, within seven days of service of the notice to abate, file a written request for an administrative hearing to show cause why the condition should not be abated.
5. A statement that if the owner does not voluntarily abate the nuisance or request a hearing within the specified time period, the city will enter the property and abate the nuisance, and the cost of abatement will become a charge against the owner and a lien or assessment against the property, if unpaid. The notice shall also state that the failure to seek a hearing as provided shall constitute a waiver of all right to an administrative hearing and determination of the matter and will waive all right to maintain an action to set aside or modify the enforcement officer’s notice, order and action.

C. Manner of giving notice. The notice to abate or show cause shall be given to the owner in person or by regular, first class mail, postage prepaid, to the owner’s address as it appears on the last equalized assessment roll or as known to the enforcement officer. Notice is deemed complete at the time notice is personally delivered or deposited in the mail.

If the owner of record, 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 10 days and publication thereof in a newspaper of general circulation published in Contra Costa County pursuant to Government Code section 6062.

The failure of a person to receive notice shall not affect the validity of proceedings under this article. (Ord. 728 § 2, 1998; Ord. 706 § 1, 1996; 1991 code § 11-2.3)

**7.05.080 Administrative show cause hearing.**

A. A written request for hearing must be received by the enforcement officer within the time specified in the notice to abate or show cause.

B. If a timely request for a hearing is received, the hearing officer shall set a time and date for hearing and notify the person requesting the hearing of the time, date, and place.

C. At the time of the hearing, the hearing officer shall hear and consider all relevant evidence from the owner, enforcement officer and any other interested person. The hearing is an informal opportunity for the person requesting the hearing to present his or her arguments against the requirement to abate the nuisance. The hearing may be continued from time to time.

D. At or after the hearing, the hearing officer shall render a decision either upholding, modifying or denying the requirement of abatement. The decision of the hearing officer shall be in writing, shall include the reasons for the decision, and shall be served by mail to the person requesting the hearing. If the requirement is upheld, the decision shall contain an order to abate and a deadline for abatement. The decision of the hearing officer is final. (Ord. 706 § 1, 1996; 1991 code § 11-2.4)

**7.05.090 Abatement by city.**

If the nuisance is not completely abated within the time prescribed by the notice to abate or show cause, or by the date established in the hearing officer's notice of decision if a hearing is held, the enforcement officer may proceed to abate the nuisance by city personnel or private contractor. The city personnel and/or private contractor may enter upon the property with either the owner's consent or a warrant from the court to enter the property, if legally required. (See Code of Civil Procedures section 1822.50 regarding warrants.) (Ord. 782 § 4, 2004; Ord. 706 § 1, 1996; 1991 code § 11-2.5)

**7.05.100 Record of expenses – Notice of expenses.**

A. The enforcement officer shall keep an account of the costs and expenses, and shall prepare a report regarding the costs of abatement.

B. The enforcement officer shall send a statement of the costs to the person or persons receiving the notice to abate. The person(s) receiving the notice to abate are liable to the city for the costs incurred in abating the nuisance.

C. If any of the costs remain unpaid after 30 days, the unpaid portion shall constitute and is hereby declared to be a lien on the real property which was the subject of the notice to abate and may be collected as a nuisance abatement lien or made a special assessment against the real property. The enforcement officer shall present the cost report and a resolution of lien (or assessment) to the city council.

At least 10 days before the council meeting at which the cost report and resolution of lien (or assessment) are considered, the enforcement officer shall mail the owner a copy, together with a notice of the time and place of the council meeting at which the report will be considered, and advising the owner that he or she may appear and protest any cost item contained in the report. The report and notice shall also be posted conspicuously on the property. Failure to receive the notice shall not invalidate the proceedings. (Ord. 706 § 1, 1996; 1991 code § 11-2.6)

**7.05.110 Council confirmation hearing.**

At the time fixed for hearing on the report of expenses, the council shall consider the report and protests or objections raised by the person liable to be assessed for the cost of abatement. The council may revise, correct or modify the report as it considers just. Thereafter, the council shall by resolution confirm the report and approve the nuisance abatement lien, making the cost of abatement a lien against the property if not paid. (Ord. 706 § 1, 1996; 1991 code § 11-2.7)

**7.05.120 Payment by owner – Nuisance abatement lien.**

A. The nuisance abatement lien shall specify the amount of the lien, the name and address of the city (on whose behalf the lien is imposed), 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. The lien shall also state that the lien accrues interest at the legal rate of interest.

B. The city clerk shall serve a copy of the resolution and the nuisance abatement lien on the owner in accordance with Government Code section 38773.1(b) and Code of Civil Procedures section 415.10 and following.

C. The city clerk shall record a certified copy of the nuisance abatement lien in the Contra Costa County recorder’s office. From the date of recording, the lien has the force, effect and priority of a judgment lien.

Alternatively, the city may make the cost of abatement a special assessment against the property. The notice of the special assessment shall be recorded. All laws and ordinances applicable to the levy, collection and enforcement of city taxes are hereby made applicable to the special assessment. 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. (Govt. Code § 38773.5.)

D. If the lien (or assessment) is discharged, released or satisfied, either through payment or foreclosure, the city shall record a notice of that fact in the recorder’s office. The notice shall include all of the information set forth in subsection A of this section.

E. The validity of an assessment made under this chapter shall not be contested in any action or proceeding unless it is begun within 30 days after the assessment is placed on the assessment roll. Such contest shall involve only the amount of assessment, and shall not involve any question of the validity of the abatement. (Ord. 728 § 3, 1998; Ord. 706 § 1, 1996; 1991 code § 11-2.8)

**7.05.130 Emergency procedure.**

When the conditions which constitute the nuisance pose an immediate threat to the public health or safety, the enforcement officer may immediately abate the nuisance or cause the nuisance to be abated summarily and without notice. The expenses of abatement shall become a lien on the property if unpaid and shall be collected as provided in PHMC § 7.05.120. (Ord. 706 § 1, 1996; 1991 code § 11-2.9)

**7.05.140 Alternative means of enforcement.**

Nothing in this chapter prevents the city council from authorizing the commencement of any other available civil or criminal proceeding to abate a public nuisance under applicable provisions of state law. (Ord. 706 § 1, 1996; 1991 code § 11-2.10)

**7.05.150 Assistance from other agencies.**

Within their field of expertise, employees of the Contra Costa Mosquito and Vector Control District and employees of the Contra Costa County health services department are authorized (in addition to city employ-

ees) to abate nuisances and to issue administrative citations within the city. When the district or county employees have acted in response to a specific request from the city, and to the extent the city is able to recover the expense of nuisance abatement from the persons responsible, the city shall reimburse the district or county a portion or all of their abatement costs. (Ord. 782 § 4, 2004; 1991 code § 11-2.11)

**Chapter 7.10****BUILDING ABATEMENT**

## Sections:

- 7.10.010 Nuisance abatement – Authority to enforce.
- 7.10.020 Definitions.
- 7.10.030 Determination of nuisance – Notice to abate.
- 7.10.040 Posting of signs to vacate.
- 7.10.050 Administrative show cause hearing.
- 7.10.060 Appeal of demolition order.
- 7.10.070 Recordation.
- 7.10.080 Standards in ordering repair, vacation or demolition.
- 7.10.090 Abatement by city.
- 7.10.100 Record of expenses – Notice of expenses.
- 7.10.110 Council confirmation hearing.
- 7.10.120 Payment by owner, nuisance abatement lien.
- 7.10.130 Emergency procedure.

**7.10.010 Nuisance abatement – Authority to enforce.**

A. The procedure set forth in this chapter for the abatement of a nuisance concerning a building or structure, and the making of the cost of abatement a special assessment or lien against that parcel is adopted under these authorities: Government Code sections 38771 through 38773.7, Civil Code section 3494, Health and Safety Code sections 17980 through 17980.8, California Code of Regulations Title 25, and the building codes adopted under PHMC Title 14.

B. The procedure set forth in this chapter is not exclusive and is in addition to the procedures established by any other lawful authority.

C. Under California Code of Regulations, Title 25, Section 52, the city council hereby determines that the procedures set forth in this chapter are equivalent to those in California Code of Regulations, Title 25.

D. Under the adopted building codes, the chief building official is authorized and directed to enforce those codes. The enforcement officer is authorized to enforce and to carry out the nuisance abatement provisions of this title; provided, that whenever a violation involves an unsafe, substandard and dangerous building, the technical determinations shall be made by the chief building official. The health officer and fire marshal are hereby authorized to make such determinations and take such actions within their areas of responsibility as may be required to enforce the provisions of this chapter. (Amended during 2005 recodification; Ord. 728 § 6, 1998; 1991 code § 11-3.1)

**7.10.020 Definitions.**

For purposes of this chapter, the following definitions apply. If a term is not defined here, that term shall have the meaning stated in the adopted building codes, or in the dictionary.

A. *Chief building official* means the city's chief building official or his or her designee.

B. *Costs or expenses to abate the nuisance* means the actual cost of abatement plus all administrative expenses, including direct and indirect personnel costs; costs incurred in documenting the nuisance; the actual expenses and costs of the city in the preparation and dissemination of notices, specifications, and contracts and in inspecting the work; the costs of printing and mailing the required notices; and the costs of imposing a lien, if a lien becomes necessary.

C. *Enforcement officer* means the city code investigator.

D. *Hearing officer* means the zoning administrator or his/her designee. In a case where demolition is ordered, the city council shall be the hearing officer on appeal.

E. *Owner* means the person owning real property (the owner of record as shown on the latest county records); the lessee, tenant or other person having control or possession of the property; the mortgagee under a recorded deed of trust; and any other person having a recorded beneficial or legal interest.

F. *Unsafe, substandard and dangerous building* means a building or structure in a condition as described in PHMC § 7.05.030, Nuisance – Unsafe, substandard and dangerous building. (Amended during 2005 recodification; Ord. 728 § 6, 1998; 1991 code § 11-3.2)

#### **7.10.030 Determination of nuisance – Notice to abate.**

A. Determination. Whenever the enforcement officer or chief building official determines that property within the city is being maintained as a public nuisance and is an unsafe, substandard and dangerous building, the enforcement officer shall give written notice to the owner by serving a “Notice to Abate or Show Cause.”

B. Contents of notice. The notice to abate or show cause shall include the following:

1. The street address, legal description or other description sufficient to identify the property affected.
2. A description of the conditions which constitute the nuisance and which render the building or structure an unsafe, substandard and dangerous building, and the code section(s) being violated.
3. A statement directing the owner to correct or abate the nuisance, either by repair, rehabilitation, demolition or removal, after first obtaining a building permit or demolition permit from the building inspection department. The statement shall establish the length of time permitted for voluntary abatement of the nuisance, as the enforcement officer determines is reasonable under the circumstances. The time shall be at least 30 days and not more than 120 days from the date of the notice (unless the enforcement officer or chief building official determines that immediate action is necessary, under PHMC § 7.10.130).
4. A statement that the owner (including any person having a beneficial or legal interest) may, within 10 days of service of the notice to abate, file a written request for an administrative hearing to show cause why the condition should not be abated (unless the enforcement officer or chief building official determines that immediate action is necessary under PHMC § 7.10.130). The notice shall also state that the failure to seek a hearing as provided shall constitute a waiver of all right to an administrative hearing and determination of the matter and will waive all right to maintain an action to set aside or modify the enforcement officer’s notice, order and action.
5. A statement that if the owner does not voluntarily abate the nuisance or request a hearing within the specified time period, or within an extension of time as may be granted by the enforcement officer for good cause shown, the city will enter the property and abate the nuisance, and the cost of abatement will become a charge against the owner and a lien or assessment against the property, if unpaid.
6. If necessary, the notice may also require the building or structure to be vacated by a certain date and not reoccupied until the required repairs and improvements are completed, inspected and approved by the enforcement officer and chief building official.
7. If the building or structure is encumbered by a mortgage or a deed of trust of record, and the owner has not complied with the order of the enforcement officer within the time specified in the notice, the mortgagee or beneficiary may, within the same period, comply with the notice. For good cause shown, the enforcement officer may extend the time within which to complete the repairs, rehabilitation, demolition or removal, not to exceed 120 days.
8. If the building is substandard housing, a statement that the owner who derives income from substandard housing is not allowed deductions for interest, taxes, depreciation or amortization paid or incurred in the taxable year with respect to the substandard housing, under California Revenue and Taxation Code sections 17274 and 24436.5.
9. If the building includes tenants, a statement that the lessor cannot retaliate against a lessee, under Civil Code section 1942.5.

C. Manner of giving notice. The notice to abate or show cause shall be given to the owner(s) in person or by regular, first class mail, postage prepaid, to the owner's address as it appears on the last equalized assessment roll or as known to the enforcement officer. Notice is deemed complete at the time notice is personally delivered or deposited in the mail. The enforcement officer shall post at least one copy of the notice in a conspicuous place on the building. If the building has one or more tenants, the notice shall also be mailed to each affected residential unit or posted in a prominent place on each affected residential unit.

If the owner of record, 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 10 days and publication thereof in a newspaper of general circulation published in Contra Costa County pursuant to Government Code section 6062. If the address of any known person entitled to notice is unknown to the enforcement officer, then a copy shall be mailed to that person at the address of the building.

The person who posts or mails the notice shall complete a written declaration of posting or mailing, or both, made under penalty of perjury. The declaration shall certify to the time and manner in which notice was given. The declaration, and any receipt card which may have been returned acknowledging receipt or refusal, shall be kept in the city's file.

The failure of a person to receive notice shall not affect the validity of proceedings under this chapter. (Amended during 2005 recodification; Ord. 782 § 4, 2004; Ord. 728 § 6, 1998; 1991 code § 11-3.3)

**7.10.040 Posting of signs to vacate.**

In those cases in which the chief building official or enforcement officer has determined that it is necessary to vacate the building, the enforcement officer shall post at each entrance to the building a notice to read:

DO NOT ENTER. UNSAFE TO OCCUPY.

It is a misdemeanor to occupy this building, or to remove or deface this notice. Code  
Enforcement and Building Inspection Divisions, City of Pleasant Hill.

The notice shall remain posted until the required repairs, demolition or removal are completed. No person shall remove the notice without written permission of the enforcement officer or chief building official. No person shall enter the building except for the purpose of complying with the notice, until a certificate of occupancy is issued by the building inspection department. (Ord. 728 § 6, 1998; 1991 code § 11-3.4)

**7.10.050 Administrative show cause hearing.**

A. Any person having a beneficial or legal interest in the property may file a request for hearing. The request must be in writing, and submitted to the enforcement officer within the time specified in the notice to abate or show cause. The only exception to this right to a prior hearing is in a case where the enforcement officer or chief building official must take immediate action pursuant to PHMC § 7.10.130.

B. If a timely request for a hearing is received, the hearing officer shall set a time and date for hearing and notify the person requesting the hearing of the time, date, and place at least 10 days before the hearing.

C. At the time of the hearing, the hearing officer shall hear and consider all relevant evidence from the owner, enforcement officer, chief building official and any other interested person. The hearing is an informal opportunity for the person requesting the hearing to present his or her arguments against the requirement to abate the nuisance. The hearing officer may continue the hearing from time to time.

D. At or after the hearing, the hearing officer shall render a decision either upholding, modifying or denying the requirement of abatement. The decision of the hearing officer shall be in writing, shall include the reasons for the decision, and shall be served personally or by mail to the person requesting the hearing, and to all own-

ers. If the requirement is upheld, the decision shall contain an order to abate and a deadline for abatement. The decision of the hearing officer is final unless the order is for demolition, in which case the owner may appeal the hearing officer's decision to the city council under PHMC § 7.10.060.

E. The failure to file a timely request for an administrative hearing shall constitute a waiver of all right to a hearing and will waive the right to maintain any action to set aside or modify the enforcement officer's notice, order and action. (Ord. 728 § 6, 1998; 1991 code § 11-3.5)

#### **7.10.060 Appeal of demolition order.**

A. If demolition is ordered, any person having a beneficial or legal interest in the property may file an appeal to the city council, except in a case where the enforcement officer or chief building official must take immediate action pursuant to PHMC § 7.10.130. The appeal must be in writing, stating the reasons for the appeal, and be filed within 10 days after the hearing officer's written decision is rendered under PHMC § 7.10.050.

B. The enforcement officer shall give the appellant and any other owner written notice of the time and place of the appeal hearing at least 10 days before the hearing. Enforcement of any notice and order of the enforcement officer or hearing officer (under PHMC § 7.10.050) is stayed during the pendency of the appeal.

C. The decision of the council on appeal is final. An aggrieved person shall have 30 calendar days from the effective date of the council's decision to bring an action in a court of competent jurisdiction to contest the validity of the proceedings or the decision of the council. Otherwise, all right to maintain an action to set aside or modify the council's decision is waived. (Ord. 728 § 6, 1998; 1991 code § 11-3.6)

#### **7.10.070 Recordation.**

If the owner has not complied with the notice within the time specified, or by the date established in the hearing officer's notice of decision if a hearing was held, or within the period of an extension granted for good cause, the enforcement officer or chief building official shall file in the office of the county recorder a certificate describing the property and certifying that the building is an unsafe, substandard and dangerous building and that the owner has been so notified. Whenever the corrections ordered have been completed, or the building demolished, so that it no longer exists as an unsafe, substandard and dangerous building, the enforcement officer or chief building official shall file a new certificate in the recorder's office certifying that the building is no longer an unsafe, substandard and dangerous building.

The enforcement officer may also file with the county recorder a notice of noncompliance, if the nuisance involves substandard housing and the officer has followed the procedures set forth in Revenue and Taxation Code sections 17274 and 24436.5. (Ord. 728 § 6, 1998; 1991 code § 11-3.7)

#### **7.10.080 Standards in ordering repair, vacation or demolition.**

The following standards shall be followed by the enforcement officer, chief building official (and by the hearing officer if a hearing is held) in ordering the repair, vacation or demolition of a building or structure:

A. A building or structure declared an unsafe, substandard and dangerous building under this chapter shall be made to comply with one of the following:

1. The building shall be repaired in accordance with the current building codes or other current codes applicable to the type of conditions requiring repair; or
2. The building shall be demolished at the option of the building owner; or
3. If the building does not constitute an immediate danger to the life, limb, property or safety of the public, it may be vacated, secured and maintained against entry.

B. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or of the occupants, it shall be ordered to be vacated. (Ord. 728 § 6, 1998; 1991 code § 11-3.8)

**7.10.090 Abatement by city.**

No person to whom an order is directed shall fail, neglect or refuse to obey the order, after it becomes final.

If the nuisance is not completely abated within the time prescribed by the notice to abate or show cause, or by the date established in the hearing officer's notice of decision if a hearing is held, or an extension granted for good cause, the enforcement officer may institute any appropriate action to abate the building as a public nuisance. In addition to any other remedy allowed, the enforcement officer may cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous, or, if the notice and order require demolition, to cause the building to be sold or demolished, or both, and the materials, rubble and debris removed and the lot cleaned. Any surplus realized from the sale of the building, or from the demolition, which exceeds the cost of demolition and cleaning the lot, shall be paid to the person (owner or lender) entitled to be paid.

The work may be done by city personnel or private contractor. The city personnel and/or private contractor may enter upon the property with either the owner's consent or a warrant from the court to enter the property, if legally required. Plans and specifications may be prepared by the public works department or architectural or engineering personnel hired on a contract basis, as deemed reasonably necessary. (Ord. 728 § 6, 1998; 1991 code § 11-3.9)

**7.10.100 Record of expenses – Notice of expenses.**

A. The enforcement officer shall keep an account of the costs and expenses, and shall prepare a report regarding the costs of abatement.

B. The enforcement officer shall send a statement of the costs to the person or persons receiving the notice to abate. The person(s) receiving the notice to abate are liable to the city for the costs incurred in abating the nuisance.

C. If any of the costs remain unpaid after 30 days, the unpaid portion shall constitute and is hereby declared to be a lien on the real property which was the subject of the notice to abate and may be collected as a nuisance abatement lien or made a special assessment against the real property. The enforcement officer shall present the costs report and a resolution of lien (or assessment) to the city council.

At least 10 days before the council meeting at which the cost report and resolution of lien (or assessment) are considered, the enforcement officer shall mail the owner a copy, together with a notice of the time and place of the council meeting at which the report will be considered, and advising the owner that he or she may appear and protest any cost item contained in the report. The report and notice shall also be posted conspicuously on the property. Failure to receive the notice shall not invalidate the proceedings. (Ord. 728 § 6, 1998; 1991 code § 11-3.10)

**7.10.110 Council confirmation hearing.**

At the time fixed for hearing on the report of expenses, the council shall consider the report and protests or objections raised by the person liable to be assessed for the cost of abatement. The council may revise, correct or modify the report as it considers just. Thereafter, the council shall by resolution confirm the report and approve the nuisance abatement lien, making the cost of abatement a lien against the property if not paid. The decision of the city council on the report and the charge, and on all objections, is final. (Ord. 728 § 6, 1998; 1991 code § 11-3.11)

**7.10.120 Payment by owner, nuisance abatement lien.**

A. The nuisance abatement lien shall specify the amount of the lien, the name and address of the city (on whose behalf the lien is imposed), 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. The lien shall also state that the lien accrues interest at the legal rate of interest.

B. The city clerk shall serve a copy of the resolution and the nuisance abatement lien on the owner in accordance with Government Code section 38773.1(b) and Code of Civil Procedures section 415.10 and following.

C. The city clerk shall record a certified copy of the nuisance abatement lien in the Contra Costa County recorder's office. From the date of recording, the lien has the force, effect and priority of a judgment lien.

Alternatively, the city may make the cost of abatement a special assessment against the property. The notice of the special assessment shall be recorded. All laws and ordinances applicable to the levy, collection and enforcement of city taxes are hereby made applicable to the special assessment. 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. (Govt. Code § 38773.5.)

D. If the lien (or assessment) is discharged, released or satisfied, either through payment or foreclosure, the city clerk shall record a notice of that fact in the recorder's office. The notice shall include all of the information set forth in subsection A of this section.

E. The validity of an assessment made under this chapter shall not be contested in any court action or proceeding unless it is begun within 30 days after the assessment is placed on the assessment roll. Such contest shall involve only the amount of assessment, and shall not involve any question of the validity of the abatement. (Ord. 728 § 6, 1998; 1991 code § 11-3.12)

**7.10.130 Emergency procedure.**

When the conditions which constitute the nuisance pose an immediate danger to the life, limb, property, health or safety of the public, the enforcement officer or chief building official may order the building to be vacated under the adopted building codes (including Uniform Housing Code Sections 1103 through 1104 or the Uniform Code for the Abatement of Dangerous Buildings Sections 403 through 404 or their successor provisions). Depending upon the circumstances constituting the danger, the enforcement officer or chief building official may cause the nuisance to be abated summarily and without notice, or may reduce the number of days allowed for notice and abatement provided in this chapter. The expense of abatement shall become a lien on the property if unpaid and shall be collected as provided in PHMC § 7.10.100. (Amended during 2005 recodification; Ord. 728 § 6, 1998; 1991 code § 11-3.13)

**Chapter 7.15****ABANDONED, WRECKED, DISMANTLED AND INOPERATIVE VEHICLES**

## Sections:

- 7.15.010 Findings and declaration.
- 7.15.020 Definitions.
- 7.15.030 Nonexclusive regulation.
- 7.15.040 Administration.
- 7.15.050 Abatement and removal.
- 7.15.060 Notice of intention.
- 7.15.070 Hearing.
- 7.15.080 Appeal.
- 7.15.090 Removal.
- 7.15.100 Administrative costs.
- 7.15.110 Right of entry.
- 7.15.120 Exceptions.
- 7.15.130 Acts prohibited – Time permitted.

**7.15.010 Findings and declaration.**

In accordance with the determination made and the authority granted by the State of California under Vehicle Code section 22660 to remove abandoned, wrecked, dismantled, or inoperative vehicles or parts as public nuisances, the city council makes the following findings and declarations: the accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles and parts of them on private or public property not including highways is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled, or inoperative vehicle or part of one on private or public property not including highways, except as expressly permitted in this chapter, is declared to constitute a public nuisance which may be abated as such in accordance with this chapter. (1991 code § 5-3.1)

**7.15.020 Definitions.**

As used in this chapter:

*Highway* means a way or place publicly maintained and open to the use of the public for purposes of vehicular travel. *Highway* includes street.

*Owner of the land* means the owner of the land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.

*Owner of the vehicle* means the last registered owner and legal owner of record.

*Public property* does not include *highway*.

*Vehicle* means a device or any part of one by which a person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks. (1991 code § 5-3.2)

**7.15.030 Nonexclusive regulation.**

This chapter is not the exclusive regulation of abandoned, wrecked, dismantled, or inoperative vehicles within the city. It supplements and is in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the city, the state, or other legal entity or agency having jurisdiction. (1991 code § 5-3.3)

**7.15.040 Administration.**

The chief of police shall administer this chapter. (1991 code § 5-3.4)

**7.15.050 Abatement and removal.**

Upon discovering the existence of an abandoned, wrecked, dismantled, or inoperative vehicle or parts thereof on public or private property, the chief of police may cause the abatement and removal of the vehicle or parts thereof as provided in this chapter. An irrebuttable presumption that a vehicle is inoperative shall arise upon the owner's or other responsible party's refusal to demonstrate a vehicle with two or more of the following characteristics is operative: (1) deflated tires; (2) an abundance of debris in or about the vehicle; (3) broken windows; (4) lack of current registration; (5) other similar indicia that the vehicle is inoperative. (Ord. 691 § 1, 1993; 1991 code § 5-3.5)

**7.15.060 Notice of intention.**

A 10-day notice of intention to abate and remove the vehicle or parts thereof as a public nuisance shall be mailed by registered mail to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following forms.

A. Notice of intention to abate and remove an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof as a public nuisance.

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED,  
DISMANTLED OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC  
NUISANCE

(Name and address of the owner of the land)

As owner shown on the last equalized assessment roll of the land located at [address], you are hereby notified that the undersigned, in accordance with PHMC § 7.15.050, has determined that there exists on such land an [or parts of an] abandoned, wrecked, dismantled or inoperative vehicle registered to \_\_\_\_\_, license number \_\_\_\_\_, which constitutes a public nuisance under PHMC Chapter 7.15. You are notified to abate such nuisance by the removal of the vehicle [or such parts of a vehicle] within 10 days from the date of mailing of this notice, and upon your failure to do so the vehicle [or parts of the vehicle] will be abated and removed by the city and the costs of abatement and removal, together with administrative costs, assessed to you as owner of the land on which the vehicle [or parts of a vehicle] is located.

As owner of the land on which the vehicle [or the parts of a vehicle] is located, you are notified that you may, within 10 days after the mailing of the notice of intention, request a public hearing. If a request for public hearing is not received by the public works and community development department and/or code enforcement officer within the 10-day period, the public works and community development department and/or code enforcement officer may abate and remove the vehicle [or the parts of a vehicle] as a public nuisance and assess the costs without a public hearing. You may submit a sworn written statement within the 10-day period

denying responsibility for the presence of the vehicle [or the parts of a vehicle] on the land, with your reasons for denial, and such statement shall be considered as a request for hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the vehicle or may present in lieu thereof a sworn written statement as aforesaid in time for consideration at the hearing.

Notice mailed \_\_\_\_\_  
[date]

/s/ \_\_\_\_\_  
[Code Enforcement Officer]

B. Notice of intention to abate and remove an abandoned, wrecked, dismantled or inoperative vehicle or parts thereof as a public nuisance.

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED,  
DISMANTLED OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC  
NUISANCE

(Name and address of last registered and/or legal owner of record of vehicle – notice should be given to both if different.)

As last registered [and/or legal] owner of record of [description of vehicle – make, model, license, etc.], you are hereby notified that the undersigned, in accordance with PHMC § 7.15.050, has determined that the vehicle [or parts of the vehicle] exists as an abandoned, wrecked, dismantled or inoperative vehicle at [describe location on public or private property] and constitutes a public nuisance under PHMC Chapter 7.15.

You are notified to abate the nuisance by the removal of the vehicle [or the parts of the vehicle] within 10 days from the date of mailing of this notice.

As registered [and/or legal] owner of record of the vehicle [or the parts of the vehicle], you are notified that you may within 10 days after the mailing of this notice of intention request a public hearing. If a request is not received by the public works and community development department and/or code enforcement officer within the 10-day period, the public works and community development department and/or code enforcement officer may abate and remove the vehicle [or parts of the vehicle] without a hearing.

Notice mailed \_\_\_\_\_  
[date]

/s/ \_\_\_\_\_  
[Code Enforcement Officer]

(Ord. 561 § 1, 1985; 1991 code § 5-3.6)

**7.15.070 Hearing.**

A. Upon request by the owner of the vehicle or owner of the land received by the public works and community development department or code enforcement officer within 10 days after the mailing of the notice of intention to abate and remove, the public hearing shall be held by the city on the question of abatement and removal of the vehicle or parts thereof as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of administrative costs and the costs of removal of the vehicle or parts thereof against the property on which it is located.

B. If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land within the 10-day period, the statement shall be considered as a request for a hearing which does not require his or her presence. Notice of the hearing shall be mailed at least 10 days before the hearing by registered mail to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within 10 days after mailing of the notice of intention to abate and remove, the city may abate and remove the vehicle or parts thereof as a public nuisance without holding a hearing.

C. All hearings under this chapter shall be held before the city manager. He or she shall hear all facts and testimony he or she considers pertinent. The facts and testimony may include testimony on the condition of the vehicle and the circumstances concerning its location on private or public property. The city manager is not limited by the technical rules of evidence. The owner of the land may appear in person at the hearing or present a written statement in time for consideration at the hearing and deny responsibility for the presence of the vehicle on the land, with his or her reasons for such denial.

D. The city manager may impose such conditions and take such other action as he or she considers appropriate under the circumstances to carry out this chapter. He or she may delay the time for removal of the vehicle if in his or her opinion the circumstances justify it. At the conclusion of the public hearing, the city manager may find that a vehicle has been abandoned, wrecked, dismantled, or is inoperative on private or public property and order it from the property as a public nuisance and disposed of as provided in this chapter and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle and the correct identification number and license number of the vehicle, if available at the site.

E. If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that he or she has not subsequently acquiesced in its presence, the city shall not assess the costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from the owner of the land.

F. If the owner of the land submits a written statement denying responsibility for the presence of the vehicle on his or her land but does not appear, or if an interested party makes a written presentation but does not appear, he or she shall be notified in writing of the decision. (Ord. 561 § 1, 1985; 1991 code § 5-3.7)

#### **7.15.080 Appeal.**

A. An interested party may appeal the decision of the city manager to the city council by filing a written notice of appeal with the city manager within 10 days after the decision.

B. The appeal shall be heard by the city council which may affirm, amend, or reverse the order or take other action deemed appropriate.

C. The clerk shall give written notice of the time and place of the hearing to the appellant and those persons specified in PHMC § 7.15.050. (Ord. 561 § 1, 1985; 1991 code § 5-3.8)

#### **7.15.090 Removal.**

A. Ten days after adoption of the order declaring the vehicle to be a public nuisance, 10 days from the date of mailing of notice of the decision if such notice is required by PHMC § 7.15.070, or 15 days after such action of the governing body authorizing removal following appeal, the vehicle may be disposed of by removal to a scrap yard or automobile dismantler's yard. After a vehicle is removed, it may not thereafter be reconstructed or made operable, except as provided in Vehicle Code section 22661(f).

B. Within five days after the date of removal of the vehicle, notice shall be given to the Department of Motor Vehicles identifying the vehicle or part removed. At the same time there shall be transmitted to the Department

of Motor Vehicles any evidence of registration available, including registration certificates, certificates of title and license plates. (Ord. 561 § 1, 1985; 1991 code § 5-3.9)

**7.15.100 Administrative costs.**

A. Established. The city council shall determine and fix an amount to be assessed as administrative costs, excluding the actual cost of removal of any vehicle or part thereof, under this chapter.

B. Collection and assessment. If the administrative costs and cost of removal which are charged against the owner of a parcel of land under PHMC § 7.15.070 are not paid within 30 days of the date of the order, or the final disposition of an appeal, such costs shall be assessed against the parcel of land pursuant to Government Code section 38773.5 and shall be transmitted to the tax collector for collection. (Ord. 561 § 1, 1985; 1991 code § 5-3.10)

**7.15.110 Right of entry.**

A. In the enforcement of this chapter, the chief of police may enter upon private or public property to examine a vehicle or obtain information as to the identity of a vehicle and to remove or cause the removal of a vehicle declared to be a nuisance.

B. When the city council has contracted with or granted a franchise to a person the person may enter upon private or public property to remove or cause the removal of a vehicle declared to be a nuisance. (Veh. Code §§ 22660, 22663) (1991 code § 5-3.11)

**7.15.120 Exceptions.**

A. This chapter shall not apply to a vehicle:

1. Which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or
2. Which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

B. This section does not authorize the maintenance of a public or private nuisance as defined under provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code or this chapter. (1991 code § 5-3.12)

**7.15.130 Acts prohibited – Time permitted.**

It is unlawful for a person to abandon, park, store, or leave or permit the abandonment, parking, storing or leaving of any licensed or unlicensed vehicle or part thereof which is in an abandoned, wrecked, dismantled or inoperative condition upon any private property or public property not including highways within the city for a period in excess of 72 consecutive hours unless such vehicle or part thereof is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property, or unless such vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer or a junk dealer, or is otherwise excepted under the provisions of this chapter. (Ord. 561 § 2, 1985; 1991 code § 5-3.13)

**Chapter 7.20****MOTOR VEHICLES – REGULATION OF STORAGE AND REPAIR<sup>1</sup>**

## Sections:

- 7.20.010 Purpose.
- 7.20.020 Storage and parking of vehicles.
- 7.20.030 Repairing vehicles.

**7.20.010 Purpose.**

The purpose of this chapter is to reduce fire hazards, alleviate police problems, prevent unsightly neighborhood nuisances, and restrict nonresidential uses of residential property by regulating out-of-doors storage, repair, or dismantling of vehicles and conveyances in residentially zoned areas. (Ord. 558 § 1, 1985; 1991 code § 8-40.1)

**7.20.020 Storage and parking of vehicles.**

Except in a driveway, carport, garage or other area lawfully designated for parking or storage of vehicles, no person may park or store or permit the parking or storing of any vehicle on private property within any residentially zoned area in the city unless it is enclosed so that no portion of the vehicle is visible from public property or the public right-of-way and does not violate other provisions of this code. (Ord. 562 § 1, 1985; 1991 code § 8-40.2)

**7.20.030 Repairing vehicles.**

No person may build, repair, grease, or dismantle a vehicle upon a public street. Temporary emergency repairs may be made upon a public street. (1991 code § 8-40.3)

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1. **Editor's note:** For provisions regarding abandoned vehicles, see PHMC Chapter 7.15.

## Chapter 7.25

### SIDEWALK MAINTENANCE

Sections:

- 7.25.010 Definitions.
- 7.25.020 Duty to maintain sidewalk.
- 7.25.030 Liability of owner.

#### **7.25.010 Definitions.**

As used in this chapter:

- A. *Owner* means the fee owner of real property and the person in possession of the property.
- B. *Sidewalk area* means the area between the property line of a parcel and the edge of the street pavement or the property side of a curb, if there is a curb. (Ord. 729 § 1, 1998; 1991 code § 11-4.1)

#### **7.25.020 Duty to maintain sidewalk.**

A. Owner's responsibility. Except as provided in subsection B of this section, the owner of property which fronts on sidewalk area shall maintain and repair the sidewalk area in a reasonably safe condition, at the owner's expense. The owner has a duty to the general public, including travelers on the sidewalk area, to maintain and repair the sidewalk area. If the owner makes an alteration to the sidewalk, the owner must use ordinary care in making the alteration and in keeping the altered portion of the sidewalk in a reasonably safe condition. (See also PHMC Chapter 11.05 regarding the requirement for an encroachment permit.)

The owner has the primary and exclusive duty to perform such maintenance and repair, whether or not notified by the city and whether or not the city has performed similar maintenance in the past. The city may notify the owner when the sidewalk is out of repair, in conformance with California Streets and Highways Code sections 5610 and following.

- B. Exceptions. An adjacent property owner is not responsible for sidewalk damage if:
  1. The damage is caused by trees and the trees are owned and maintained by the city, in locations set forth by resolution; or
  2. The damage is caused by a utility structure, such as a PG&E structure, telephone pole or structure, storm drain, cable television structure, fire hydrant, or similar utility structure. For this exception to apply, the property owner must have notified the appropriate utility company of any obvious damage or defects in the sidewalk. (Ord. 729 § 1, 1998; 1991 code § 11-4.2)

#### **7.25.030 Liability of owner.**

The failure of an owner to fulfill the duties imposed by PHMC § 7.25.020 is negligence and the owner is liable to members of the public injured as a result of that negligence. (Ord. 729 § 1, 1998; 1991 code § 11-4.3)

**Chapter 7.30****GRAFFITI CONTROL**

## Sections:

- 7.30.010 Purpose.
- 7.30.020 Definitions.
- 7.30.030 Declaration of nuisance.
- 7.30.040 Prohibited acts.
- 7.30.050 Removal and abatement.
- 7.30.060 Requirements for merchants.
- 7.30.070 Penalty and enforcement.
- 7.30.080 Rewards.

**7.30.010 Purpose.**

- A. Graffiti on public or private property is a condition of blight that not only depreciates the value of the property, but also depreciates the value of the adjacent and surrounding properties and businesses to create a negative impact upon the entire community.
- B. Graffiti has also been found to be associated with criminal activity and delinquency. It is also a means of identification and intimidation used by gangs, and its presence may further gang-related activities.
- C. Acts of graffiti are most often committed by persons under the age of 18, using aerosol containers of spray paint and/or etching solution. Retail stores that display and/or sell these implements of graffiti are prohibited by state law from selling them to minors, and should be required to take reasonable steps to prevent their theft.
- D. State law authorizes the city to declare what constitutes a nuisance, and to provide for the removal of the nuisance, including graffiti.
- E. The city council finds and determines that graffiti is detrimental to the public health, safety and general welfare and constitutes a public nuisance which must be abated so as to avoid the detrimental impact of such graffiti on the city and to prevent the further spread of graffiti.
- F. The purpose of this chapter is to provide a program and enforcement tools in addition to those already provided by state law for removal of graffiti from walls and structures on both public and private property and to prevent and control the further spread of graffiti in the city. (Ord. 849 § 1, 2010)

**7.30.020 Definitions.**

In this chapter:

*Apply* means to apply, cause, or attempt to apply or cause, including participating in any way, including acting as a lookout.

*Graffiti* means any unauthorized inscription, word, figure, mark or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property. (Gov't. Code §§ 53069.3(d) and 38772(d).) *Graffiti* includes tagging.

*Graffiti implement* means any implement used for graffiti, including, but not limited to, the following:

1. *Aerosol paint container* means any canister, can, bottle, container, or other receptacle which contains any substance commonly known as paint, stain, dye and/or any other pigmented substance which is and/or can be pressurized in order to propel any such substance.

2. *Markers* means any implement commonly known as an indelible or permanent ink marker and/or marking pen and/or similar implement which contains any pigmented substance including, but not limited to, ink or any other substance which cannot be easily and completely removed with water after said substance has dried, which implement at its broadest width is greater than one-eighth inch or which leaves a mark of at least one-eighth inch.

3. *Paint stick* means any device which contains any substance, solid or liquid, including, but not limited to, any form of any substance commonly known as paint, stain, ink, chalk, wax, epoxy and/or any other similar substance which can be applied to any surface by such means as applying pressure to and/or contacting any surface in such a way as to leave any visible mark, which at its broadest width is greater than one-eighth inch or which leaves a mark of at least one-eighth inch.

4. *Etcher* means any tool, device and/or other mechanism including, but not limited to, glass etchers, metal etchers, cutting instruments, drill bits or any other instrument or etching cream that is capable of permanently scratching or otherwise marking any surface including, but not limited to, glass, mirrors, windows, steel, aluminum, brass, tin, fiberglass, wood, plastic, concrete or any other surface. *Etching cream* means any caustic cream, gel, liquid, or solution capable by means of a chemical action of defacing, damaging or destroying hard surfaces in a manner similar to acid. (Penal Code § 594.1(a)(2).)

*Minor* means a person under the age of 18. Any document evidencing the age and identity of an individual which has been issued by a federal, state or local government entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued by a member of the armed forces may be considered bona fide evidence of majority and identity. (Penal Code § 594.1(a)(3).) (Ord. 849 § 1, 2010)

#### **7.30.030 Declaration of nuisance.**

The city council finds and declares that the existence of graffiti in the city is a public nuisance, subject to abatement under this chapter and any other applicable provisions of this code. (Ord. 849 § 1, 2010)

#### **7.30.040 Prohibited acts.**

- A. Grffiti. It is unlawful for a person to apply graffiti on any surface, whether publicly or privately owned.
- B. Possessing graffiti implement. It is unlawful for a minor to have in his or her possession a graffiti implement while in a public area (including, but not limited to, a park, playground, school, swimming pool, recreational facility, public right-of-way, or private property which is open to the public). Exceptions are (1) if the minor is in the presence of a parent or legal guardian, or (2) the possession is necessary to participate in a city- or school-sponsored function.
- C. Providing graffiti implement to minor. It is unlawful for any person or business to:
1. Sell or give a graffiti implement to a minor who is not with a parent or legal guardian, with the knowledge that the implement may be used to apply graffiti; or
  2. To store, stock or display an aerosol paint container in a way that is readily accessible to anyone other than an employee. (See PHMC § 7.30.060.) (Ord. 849 § 1, 2010)

#### **7.30.050 Removal and abatement.**

A. Removal by person applying graffiti. A person applying graffiti shall remove it within 72 hours after notice by the city or the public or private owner of the property involved. If the person applying the graffiti does not remove it, or is not known at the time, he or she is nevertheless responsible for the actual and administrative costs of abatement. (See PHMC § 1.35.050.) If the person is a minor, the parent or legal guardian is responsible. (See PHMC § 7.30.070.D.)

B. Removal by property owner. If graffiti is visible from the public right-of-way, any public property, or any private property open to the public, the owner of the property shall remove the graffiti within 10 days after

notice from the city (under PHMC Chapter 1.35 or 1.40). If the property owner fails to remove the graffiti when properly notified, the city may remove the graffiti at the owner's expense. The costs, and fines and administrative penalties if applicable, become the personal debt of the property owner and may result in a lien or special assessment on the property, under PHMC Chapter 1.40 or 7.05. (Gov't. Code §§ 53069.4, 38772, 38773, 38773.1, 38773.2, 38773.5, 38773.6 and 38773.7.) Any actual or administrative costs of abatement recovered from the person applying graffiti or, if a minor, his/her parent or legal guardian, shall be provided to the property owner to reimburse the property owner for costs of graffiti removal upon receipt of an invoice documenting those costs.

C. Painting. The person removing graffiti by painting over it shall use a paint color which matches the underlying surface and shall cover the graffiti completely. (Ord. 849 § 1, 2010)

### **7.30.060 Requirements for merchants.**

A. Stock and display. Each retail or commercial merchant in the city shall store, stock and display aerosol paint containers in a way that the containers are handled and readily accessible only by an employee or authorized personnel.<sup>1</sup>

B. Signs. Each retail and commercial merchant in the city who sells aerosol containers or etching cream shall conspicuously display a sign stating substantially the following:

1. Must be 18 years of age to purchase, with valid ID; and
2. A person who maliciously defaces real or personal property with graffiti is guilty of a misdemeanor, punishable by fine, imprisonment or both.

The sign must be at least 10 by 16 inches, with letter size of at least three-eighths inch, posted within six feet of the aerosol container or etching cream. (Penal Code § 594.1(c).) (Ord. 849 § 1, 2010)

### **7.30.070 Penalty and enforcement.**

A. Penalty. A violation of this chapter is a misdemeanor, punishable as set forth in PHMC Chapter 1.30.

B. Other enforcement. The city may enforce this chapter by any means authorized in PHMC Chapter 1.25, including but not limited to administrative citation, compliance order, and public nuisance abatement.

C. Costs. The costs of graffiti removal shall be the actual or reasonably estimated costs. Administrative costs, enforcement costs, fines and penalties authorized elsewhere in this code may be added. (Gov't. Code §§ 53069.3, 53069.4, 38772, 38773.2, 38773.6.)

D. Responsibility of parent or guardian. If the person who violates this chapter is a minor, the parent or legal guardian is the responsible party for removal or payment of abatement and related administrative costs. This may include a lien or special assessment on the property of the parent or legal guardian. (Gov't. Code §§ 38773.2 and 38773.6; Civil Code § 1714.1.)

E. Criminal penalties. The penalties in this chapter are in addition to any judicially ordered criminal penalties including: (1) clean-up, repair or replacement of damaged property; (2) maintaining the damaged property free of graffiti for a period of time; (3) payment of fines; (4) community service; (5) counseling; and (6) suspension of drivers' license or delay in issuing drivers' license. (Penal Code §§ 594, 594.1, 594.2, 594.3, 594.4, 640.5 and 640.6, and Vehicle Code § 13202.6.) The city encourages the court to impose these penalties upon conviction. (Ord. 849 § 1, 2010)

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1. **Editor's note:** Ord.849, Section 2, provides that PHMC 7.30.060(A) is effective December 21, 2010.

**7.30.080 Rewards.**

Government Code section 53069.5 authorizes a city to offer and pay a reward for information leading to the identity and apprehension of a person who willfully damages property. The chief of police and city manager are authorized to offer and pay such a reward. (Ord. 849 § 1, 2010)

**Chapter 7.35****SHOPPING CARTS**

## Sections:

- 7.35.010 Findings and purpose.
- 7.35.020 Applicability.
- 7.35.030 Definitions.
- 7.35.040 Prohibitions.
- 7.35.050 Shopping cart identification signs.
- 7.35.060 Shopping cart plan.
- 7.35.070 Enforcement.

**7.35.010 Findings and purpose.**

Abandoned shopping carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic within the city. The accumulation of wrecked, dismantled and abandoned shopping carts on public and private property also tends to create conditions that reduce property values, promoting blight and deterioration in the city. The intent of this chapter is to ensure that measures are taken by cart owners to prevent the removal of shopping carts from store premises. This chapter is based in part on California Business and Professions Code section 22435 and following. (Ord. 771 § 1, 2003; 1991 code § 11-6.1)

**7.35.020 Applicability.**

This chapter applies to:

- A. Each business owner in the city if the business provides 50 or more shopping carts for customer use at any one business location; and
- B. Any person in possession of an off-site shopping cart. (Ord. 771 § 1, 2003; 1991 code § 11-6.2)

**7.35.030 Definitions.**

*Administrator* means the zoning administrator or his or her designee.

*Business owner* means a person or establishment providing shopping carts for customer use.

*Off-site shopping cart* means a shopping cart which has been removed from the business premises where it belongs without the written consent of the business owner.

*Premises* means the entire area owned or under the control of a business owner, including the parking area.

*Shopping cart* means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for transporting goods.

*Shopping cart plan* means a document submitted to the city by the business owner, under PHMC § 7.35.060. (Ord. 771 § 1, 2003; 1991 code § 11-6.3)

**7.35.040 Prohibitions.**

It is unlawful and a violation of this chapter for a business owner having 50 or more shopping carts to:

- A. Fail to affix an identifying sign to each shopping cart;

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- B. Fail to submit a shopping cart plan or request for exemption in conformance with PHMC § 7.35.060;
- C. Fail to comply with an approved shopping cart plan; or
- D. Allow a shopping cart to be removed from the business premises. (Ord. 771 § 1, 2003; 1991 code § 11-6.4)

#### **7.35.050 Shopping cart identification signs.**

The owner of a business providing 50 or more shopping carts shall have a sign permanently affixed to each cart. A business owner providing fewer than 50 shopping carts may affix a sign to each cart. The sign shall include all of the following information:

- A. The identity of the owner or business, or both;
- B. The address or phone number of the business, for returning the cart;
- C. Notice to the public that the unauthorized removal of the cart from the business premises or the unauthorized possession of the cart is a violation of state law. The notice may also state that the unauthorized removal is a violation of city ordinance. (Ord. 771 § 1, 2003; 1991 code § 11-6.5)

#### **7.35.060 Shopping cart plan.**

A. General requirement. Each owner of a business providing 50 or more shopping carts shall submit to the administrator, obtain approval from the administrator, and effectively implement a shopping cart plan in accordance with this chapter.

B. Exemptions. A business owner is exempt from this chapter, for two years at a time, if the owner submits an exemption request and meets all of the following requirements:

1. The business has effective restraints that prohibit any carts from exiting the premises or from operating off the premises. Examples of such effective restraints include: poles attached to carts to keep them from passing a certain point; electronic wheel locks on all carts which prevent wheels from rolling past the perimeter of the premises; physical constraints such as bollards; and continuous use of courtesy clerks to accompany customers and return the carts to the store.
2. The business secures all shopping carts during the hours the business is closed by storing carts inside or locking them up outside.
3. A statement by the owner that no more than three of the owner's shopping carts have been found off-site during the previous six months. An off-site cart in someone's possession and containing personal property of the person will not be counted against the business owner.

C. Contents of the shopping cart plan. The shopping cart plan shall include all of the following elements:

1. Name, address and telephone number of the business, and the name and telephone number of the on-site manager.
2. The number of on-site shopping carts, and the requirements for sign identification on carts.
3. Public notices. A description of a customer education process by which the owner will inform customers that the removal or off-site possession of carts is a violation of state law and this chapter. This information may include business signs posted in prominent places, flyers, warnings on shopping bags, direct mail, in-store announcements, or other means demonstrated to be effective.
4. Employee training. A description of an annual (or more frequent) employee training program to educate existing and new employees about the shopping cart plan.
5. Loss prevention. A description of the measures that the owner will implement to prevent the removal of shopping carts from the premises. These measures may include any of those listed in subsection B of this section, Exemptions, or use of security personnel to prevent removal, security deposit for use of a cart, or other measures demonstrated to be effective.

6. Cart retrieval. A plan for mandatory retrieval of off-site shopping carts on at least a weekly basis, and within three business days of notice from the city under PHMC § 7.35.070.A. The administrator may require retrieval on a more frequent time schedule based on performance. Cart retrieval may be done by the owner, business employees or agents, or a retrieval service maintained by the owner or by a combination of owners. A business owner is not required to retrieve an off-site cart in someone's possession and containing personal property of the person.

D. Submittal and fees. Within 60 days after this chapter takes effect or within 60 days of obtaining a business license for a new business and by May 1st of each even-numbered year thereafter, each owner of a business having 50 or more carts shall submit to the zoning administrator either (1) a complete shopping cart plan, or (2) a request for exemption under subsection B of this section, stating the basis for the exemption. An owner submitting a shopping cart plan shall pay a fee in the amount established by city council resolution to cover the city's costs of plan review and inspections.

E. Zoning administrator review. Within 30 days after a shopping cart plan is submitted, the administrator shall render a decision to approve or deny the plan, or to request additional information. If a plan is rejected as incomplete or inadequate, or if additional information is needed, the administrator shall notify the owner in writing. The owner has 30 days to submit the additional information or a complete or adequate plan, as the case may be.

The administrator may deny a plan on any of the following grounds:

1. The plan fails to include the information required under this chapter or fails to adequately address the required elements.
2. The plan is insufficient, in the administrator's opinion, to prevent removal of carts.
3. Implementation of the plan violates this chapter, or a local, state or federal law.
4. The owner knowingly makes a false statement or omits relevant facts in the plan, or in any amendment or report.

F. Plan modification. The owner may submit a plan modification of any previously approved shopping cart plan to address changed circumstances or to modify ineffective provisions. The administrator shall review and consider the modification in the same manner set forth in subsection E of this section.

G. Biennial renewal. Every two years a business owner may renew an exemption or a previously approved shopping cart plan, without modification, if no more than three of the owner's shopping carts have been found off-site within the previous six months. The owner shall submit a written application for renewal by May 1st, together with the owner's statement that no more than three of the business's shopping carts have been found off-site within the previous six months.

H. Denial or revocation. The administrator may deny a renewal under subsection G of this section or revoke an exemption granted under subsection B of this section if:

1. A shopping cart has been found on public property on four or more occasions within the prior six-month period;
2. The owner has failed to comply with a provision of this chapter;
3. The owner has knowingly made a false statement or fails to disclose relevant information in an application, an amendment or in a report to the city. (Ord. 771 § 1, 2003; 1991 code § 11-6.6)

### **7.35.070 Enforcement.**

A. Retrieval. Whenever the administrator notifies a business owner of an off-site cart, either verbally or in writing, the owner shall retrieve the cart within three business days.

B. Violations. An owner who violates this chapter or a provision of the owner's approved shopping cart plan, a person who removes or possesses a shopping cart off-site, or a property owner who allows off-site carts to remain is subject to any enforcement procedures permitted by law, including:

1. Revocation of an exemption under PHMC § 7.35.060.B.
2. The requirement for a stricter shopping cart plan.
3. Issuance of an infraction citation for violation of the municipal code under PHMC Chapter 1.25.
4. Prosecution as a misdemeanor under the authority of California Business and Professions Code sections 22435.2, 22435.3 or 22435.13.
5. Procedures for abatement of a nuisance, under PHMC Chapter 7.05.
6. Civil action for enforcement, including injunction.
7. Proceedings for revocation of a use permit, if applicable. (Ord. 771 § 1, 2003; 1991 code § 11-6.7)

**Chapter 7.40****REGULATION OF NEWSRACKS**

## Sections:

- 7.40.010 Findings and purpose.
- 7.40.020 Definitions.
- 7.40.030 Encroachment permit required.
- 7.40.040 Permit application – Fee – Terms – Issuance.
- 7.40.050 Indemnification – Liability insurance – Bond.
- 7.40.060 Permitted types of newsracks – Coordination for multiple-unit newsracks.
- 7.40.070 Location of newsracks.
- 7.40.080 Unlawful obstructions.
- 7.40.090 Newsrack operating requirements – Identification – Material harmful to minors – Maintenance.
- 7.40.100 Removal by the city – Notice, hearing, appeal, disposition, costs.
- 7.40.110 Nonconforming newsracks.

**7.40.010 Findings and purpose.**

A. Findings. The city council finds that the uncontrolled placement and maintenance of easily movable, individual, freestanding newsracks upon public rights-of-way poses sight distance and other hazards to the traveling public; interferes with the property rights of adjacent owners and with other legitimate users of the rights-of-way; causes visual blight and detracts from the aesthetics of adjacent uses and the city as a whole; and results in an unnecessary degree of exposure of the city to liability claims.

B. Purpose. The purpose of this chapter is to regulate the placement and use of newsracks in the city. The regulation of newsracks as set forth in this chapter is the least intrusive and burdensome means for ensuring that the purposes stated in this chapter are carried out, while still providing ample opportunities for the distribution of newspapers to the citizens of the city. (Ord. 735 § 1, 1999; 1991 code § 11-7.1)

**7.40.020 Definitions.**

In this chapter, the following definitions apply:

A. *Director* means the director of public works and community development or his or her designee.

B. *Newspaper* means any publication which qualifies for second class newspaper mailing status under federal law, pursuant to 39 U.S.C. § 4352(c). As of the enactment of this chapter, a publication fails to qualify for second class mailing status if it has more than 75% advertising in more than one-half of its issues during any 12-month period. Nonnewspaper publication means any publication which is not a newspaper as defined here.

C. *Newsrack* means any self-service or coin-operated box, container, storage unit or other dispenser used for the display and sale or other distribution of a newspaper or nonnewspaper publication. The term *newsrack* includes one or more newsracks physically connected or joined to one or more other newsracks in a multiple-unit configuration (see PHMC § 7.40.060).

An abandoned newsrack is one remaining empty for 30 consecutive days or not claimed within 30 days of seizure, under PHMC § 7.40.100. A newsrack remaining empty due to a labor strike or a temporary interruption of distribution or publication by the newspaper sold from the newsrack is not considered abandoned if the city is notified in writing of this fact before the 30-day period has run.

D. *Planter strip* means any of the following areas, if unpaved, whether planted or not:

1. The area between the sidewalk and the curb of the street;
2. The area between the sidewalk and the property line, where the sidewalk is adjacent to the curb;

3. The area between the edge of the roadway and the property line, where there is no sidewalk.

E. *Public right-of-way* means land which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the general public for street, highway, alley, public utility, or pedestrian walkway purposes, whether or not the land has been improved or accepted for maintenance by the city. *Public right-of-way* includes but is not limited to street, roadway, planter strip or sidewalk. (Ord. 735 § 1, 1999; 1991 code § 11-7.2)

#### **7.40.030 Encroachment permit required.**

No person may place, install, or maintain a newsrack in the public right-of-way without first obtaining an encroachment permit from the director. If there is an inconsistency between this chapter and PHMC Chapter 11.05, Encroachments, this chapter prevails. (Ord. 735 § 1, 1999; 1991 code § 11-7.3)

#### **7.40.040 Permit application – Fee – Terms – Issuance.**

A. Application. The application for an encroachment permit for a newsrack shall be made to the director on a form provided by the city. The application may include all newsracks of the applicant and shall include or be accompanied by the following:

1. The name, street address and telephone number of the applicant.
2. The name, street address and telephone number of a distributor or other responsible person whom the city may notify or contact at any time concerning the applicant's newsrack.
3. A site plan at a scale of at least one inch equals 20 feet, showing:
  - a. The total number of newsracks for which a permit is sought;
  - b. The exact locations of the proposed newsracks;
  - c. Newsrack dimensions;
  - d. The location of the closest existing streets, driveways, rights-of-way and buildings; and
  - e. Where and how the newsrack will be secured (under PHMC § 7.40.070.B).
4. If the newsrack is a multiple-unit configuration, a description of its dimensions and the number of publication spaces it will contain.
5. Evidence that the applicant has sent written notice of the proposed application to each adjoining property owner at least two weeks before the application is made.

B. Encroachment permit fee. At the time of application, the applicant shall pay an encroachment permit fee equal to not more than three hours of time as set forth on the council's fee resolution.

C. Other permit terms. The encroachment permit shall incorporate the requirement that the permittee conform to the requirements of this chapter.

D. Permit issuance. The director shall issue a permit as soon as possible after receiving a complete application but in no event more than 30 days after he or she finds that the applicant has met the requirements of this chapter.

E. Term – Revocability. A permit is valid for and renewable every five years. A permit issued under this chapter is nontransferable. The director may revoke a permit upon 30 days' written notice. (Ord. 735 § 1, 1999; 1991 code § 11-7.4)

#### **7.40.050 Indemnification – Liability insurance – Bond.**

A. Indemnification. Every person operating or maintaining a newsrack within the public right-of-way shall indemnify and hold harmless the city, its officers and employees from any claims, demands, actions, losses, damages, injuries and liability, direct or indirect, arising out of the issuance of the encroachment permit or from the installation, operation or use of the newsrack. However, the obligation to indemnify and hold harmless the city, its officers, and employees shall not extend to any claims, demands, actions, losses, damages, injuries or

liability resulting solely from the active negligence, sole negligence or willful misconduct of the city, its officers, agents or employees.

B. Liability insurance. Before the director grants an encroachment permit, the applicant shall furnish to the director a certificate showing that the applicant has then in force general liability and property damage insurance naming the city as an additional insured in an amount not less than \$1,000,000 per person and per occurrence, combined single limit. The permittee shall keep the insurance in force during all times it continues to maintain a newsrack under the terms of the permit. The certificate of insurance filed with the city shall include a statement by the insurance carrier that 30 days' notice will be given to the city before cancellation.

C. Bond. If the encroachment permit authorizes securing a newsrack to the public sidewalk or other public property (under PHMC § 7.40.070.B), the permittee shall post with the director a cash deposit or a bond for \$500.00 for each pedestal to be affixed to public property. The city may use this security if damage occurs to public property during installation or removal of the newsrack. (Ord. 735 § 1, 1999; 1991 code § 11-7.5)

#### **7.40.060 Permitted types of newsracks – Coordination for multiple-unit newsracks.**

A. Permitted types. A single newsrack not located in the same city block and on the same side of the street as another newsrack shall be a Sho-Rack 84 model or a Sho-Rack 4916, or their equivalents. Wherever there are two or more newsracks located in the same city block and on the same side of the street, all shall be grouped in a multiple-unit configuration and shall be pedestal-mounted, Sho-Rack 4916 model or its equivalent. In all cases, the color of the newsrack shall be Sho-Rack color Safeway tan or its equivalent.

B. Coordination for multiple-unit newsracks. When more than one newsrack is located in the same city block and on the same side of the street, the shared multiple-unit newsrack may be coordinated through the Contra Costa Times, Single Copy Manager. (Ord. 735 § 1, 1999; 1991 code § 11-7.6)

#### **7.40.070 Location of newsracks.**

A. A newsrack on a sidewalk may be placed only on the side furthest from the street. A newsrack placed adjacent to a wall of a building shall be placed parallel to the wall and not more than six inches from the wall. A newsrack may not be located in or on a landscaped area.

B. A newsrack must be bolted and secured either to private property if the owner of the property has filed written consent with the city or to the public sidewalk, with the city's specific approval set forth in the permit.

C. No more than 16 individual newsracks (eight doubles or four quads) are allowed on any one city block, on the same side of the street.

D. If sufficient space does not exist to accommodate all newsracks sought to be placed at one location without violating the standards set forth in this chapter, the director shall give priority to permit applicants awaiting space as follows:

1. First priority shall be given to newsracks used for the sale of newspapers of general circulation in Contra Costa County under Government Code sections 6020 through 6027;
2. Second priority shall be given to newsracks used for the sale of newspapers (inclusive of their Saturday, Sunday, or other weekend editions, whether or not published jointly with another newspaper) published at least five times per week;
3. Third priority shall be given to newspapers published at least one time per week;
4. Fourth priority shall be given to all other newspapers; and
5. Fifth priority shall be given to nonnewspaper publications.

E. The director may waive or modify the standards for newsrack location contained in this chapter upon a showing of good cause and upon his or her determination that placing a newsrack at the modified location would not endanger the public health or safety or unreasonably interfere with the users of the public right-of-

way. Any approved modification shall be stated on the encroachment permit. (Ord. 735 § 1, 1999; 1991 code § 11-7.7)

**7.40.080 Unlawful obstructions.**

No person may place, install or maintain a newsrack:

- A. Within a portion of a roadway or projecting into a portion of a roadway;
- B. Within five feet of any marked crosswalk;
- C. Within 15 feet of the curb return of an unmarked crosswalk;
- D. Within five feet of a fire hydrant, fire call box, police call box or other emergency facility;
- E. Within five feet of a driveway, building entrance, or sidewalk leading to the entrance of a building;
- F. Within five feet ahead of, and five feet to the rear of, a sign or pavement marking designating a bus stop or within three feet of a city-approved bus shelter;
- G. Within five feet of a bench, seat or chair placed for public use within a public right-of-way;
- H. At any location where the clear space for the passageway of pedestrians is reduced to less than four feet;
- I. In such a place or manner as to create a traffic hazard;
- J. In such a place or manner as to obstruct access to or use of abutting property or as to obstruct visibility to and from windows of the abutting property;
- K. In such a place or manner as to endanger persons or property. (Ord. 735 § 1, 1999; 1991 code § 11-7.8)

**7.40.090 Newsrack operating requirements – Identification – Material harmful to minors – Maintenance.**

- A. Operating requirements. Every newsrack shall have an automatic coin return if it dispenses newspapers for sale.
- B. Identification. The permittee shall permanently display the permittee's name, street address, telephone number and instructions on how to receive a refund in the event of coin return malfunction upon each newsrack.
- C. Display of material harmful to minors unlawful. No person may display or exhibit in a public newsrack or other display device any material which is defined by Penal Code section 313 as harmful to minors unless such material is displayed in an area from which minors are excluded or is covered by a device commonly known as a blinder rack, so that the lower two-thirds of the material is not exposed to view.
- D. Maintenance.
  - 1. Each newsrack shall be maintained in a neat, graffiti-free, clean condition and in good repair at all times and shall be painted on a regular basis.
  - 2. A newsrack that is damaged or defective shall be replaced or repaired as soon as is practical or within 30 days after notice from the director. If the permittee wishes to abandon the location, he or she shall promptly remove the newsrack (unless another user has applied for an encroachment permit for the same location). The permittee shall repair all damage to sidewalks, newsrack enclosure or multiple-unit newsracks resulting from placement and removal of a newsrack. When use of a newsrack is abandoned, it shall

be removed and the location restored to its previous condition, normal wear and tear excepted. The city may use a deposit or bond to cover the cost of removal and restoration if the owner fails to perform.

3. No newsrack shall be used for advertising signs or publicity purposes other than the one concerned with display, sale or distribution of the newspaper or nonnewspaper publication distributed from it. There may be no sign on the back or side of a newsrack. (Ord. 735 § 1, 1999; 1991 code § 11-7.9)

#### **7.40.100 Removal by the city – Notice, hearing, appeal, disposition, costs.**

A. Removal. The director may require a permittee to move, remove or temporarily relocate a newsrack, at the permittee's expense, if the director determines that the placement of the newsrack does not meet the criteria of this chapter or if it interferes with a scheduled construction project.

The city may remove and retain a newsrack installed, maintained or abandoned in violation of this chapter in accordance with this section. Where practical, the violation may be remedied by moving the newsrack to another point on the sidewalk or public right-of-way.

B. Notice before removal.

1. Before the city may remove a newsrack, it shall give the permittee notice to remedy the violation or request a hearing before the director. Written notice shall be sent to the address stated on the newsrack permit or on the newsrack. The city may attach an additional copy of the notice to the newsrack. Notice affixed to the newsrack is sufficient when no identification is shown on the newsrack and no permit has been issued. The notice shall give the permittee 30 days from the date of mailing or the date notice was affixed to remedy the violation or request a hearing before the director.

2. Notwithstanding subsection B.1 of this section, prior notice of removal is not required where the newsrack poses an immediate danger to pedestrians or vehicles. However, the city shall mail notice to the permittee of the summary removal of the newsrack and an opportunity to request a hearing to contest the removal to the permittee within five business days after the removal.

C. Hearing procedure. A person notified under subsection B of this section may request a hearing before the director by making a written request within 30 days after a notice was mailed or attached to the newsrack. The hearing shall be informal, but oral and written evidence may be given by both sides. Action by the city with respect to the alleged violation shall be stayed pending the director's decision following the hearing. The director shall give written notice of the decision within five working days of the conclusion of the hearing.

D. Appeal. A permittee or applicant for an encroachment permit aggrieved by a decision of the director may appeal that decision to the city manager by filing written notice within 10 calendar days of such a decision. The city manager shall hear the appeal within 45 calendar days. The city manager may reverse, affirm, or modify the director's decision. The city manager's written decision shall be rendered within 10 working days of the conclusion of the appeal hearing. A decision of the city manager may be appealed to the city council by filing a written notice within 10 calendar days after the city manager has issued a decision. The city council shall hear the appeal within 45 calendar days and issue its decision on the appeal within 10 calendar days of the hearing. The decision of the city council is final.

E. Disposition. The city may remove and dispose of an abandoned newsrack if the responsible party does not, within 30 days, claim the newsrack and pay a fee established by the city council for the cost of removal. The city shall hold money it finds in a newsrack destroyed or otherwise disposed of under this chapter for a period of one year and then dispose of it under the law governing found or abandoned property.

F. Costs of removal. The cost to the city for removal of a newsrack is a debt to the city and is the obligation of the permittee and the owner of the newsrack. The amount due accrues interest at the rate of 10% annually from the date the city incurs the cost.

No newsrack abandoned or removed for violation of this chapter and impounded shall be restored to the owner, or to another person entitled to possession, unless and until the city's reasonable cost of removal and storage

of the newsrack has been paid to the city. However, if after a hearing before the director it is determined that the newsrack was improperly removed by the city, there shall be no charge for restoration of such a newsrack to the person entitled to possession. (Ord. 846 § 6, 2010; Ord. 735 § 1, 1999; 1991 code § 11-7.10)

**7.40.110 Nonconforming newsracks.**

The owner of a newsrack which does not conform to this chapter but which lawfully existed and was maintained before this chapter went into effect shall remove it or conform it to this chapter within 90 days of the effective date of this chapter. (Ord. 735 § 1, 1999; 1991 code § 11-7.11)

