

(O-88-141)

ORDINANCE NUMBER O- 17043 (NEW SERIES)

ADOPTED ON MAR 21 1988

AN ORDINANCE AMENDING CHAPTER I, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 11.16 AND ADDING SECTION 11.16.1 RELATING TO THE ADMINISTRATIVE AND SUMMARY ABATEMENT OF PUBLIC NUISANCES AND ESTABLISHING THE NUISANCE ABATEMENT SUPERFUND.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter I, of the San Diego Municipal Code be and the same is hereby amended by amending Section 11.16 and adding Section 11.16.1 to read as follows:

SEC. 11.16 NUISANCE VIOLATIONS - SUMMARY AND ADMINISTRATIVE ABATEMENT

a. Declaration and Purpose.

The Council declares that its purpose in adopting this section is to establish a procedure to cause the summary and administrative abatement of Municipal Code violations. The procedures established in this section shall be in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address violations of this Municipal Code. This section does not affect or alter nuisance abatement procedures established in other chapters of this Code.

b. Definitions.

(1) The term "imminent life safety hazard" shall mean any condition which creates a present, extreme and immediate danger to life, property, health or public safety.

(2) Director: Whenever used in the section, the term Director shall include the Directors of the following Departments: Planning, Building Inspection, Engineering & Development, General Services, Animal Control, Health, and the Fire and Police Chiefs and any of their designated agents or representatives.

c. Abatement of Public Nuisances.

The City Council declares that any condition caused, maintained or permitted to exist in violation of any provision of this Code which constitutes a threat to the public's health, safety and welfare or which significantly obstructs, injures, or interferes with the reasonable or free use of property in a neighborhood, community or to any considerable number of persons, shall be deemed a public nuisance and may be abated consistent with the procedures provided for in this section.

d. Procedure for Administrative Abatement.

(1) Whenever the Director determines that public or private property or any portion thereof

is a public nuisance, as defined in this section, a written notice may be issued to the record owner and/or the person in possession of the property to abate this public nuisance.

(2) The notice shall contain a description of the property in general terms reasonably sufficient to identify the location of the property. It shall refer to this section and the violation(s) of the Municipal Code which render(s) the property a public nuisance. It shall direct compliance by removal or correction of the conditions in violation of this Code within a minimum of seven (7) calendar days and a maximum of thirty (30) calendar days from the date of the notice. The notice shall further describe the consequences of failure to comply as prescribed in this section.

(3) The notice required by the preceding paragraph shall be served by any of the following methods on the owner or his agent and/or the person in possession of the property:

(a) Personal service; or

(b) Certified mail, postage prepaid, return receipt requested (service by certified mail in the manner described above shall be effective on the date of mailing); or

(c) Posting the notices

conspicuously on or in front of the property, with at least one notice per each parcel of fifty feet of frontage. The notice when posted shall be headed in bold-faced type, not less than one inch in height, "NOTICE TO CORRECT PUBLIC NUISANCE MUNICIPAL CODE VIOLATION."

(4) The failure to receive the notice shall not impair the validity of any proceedings taken under this section.

(5) Failure to Comply: Upon failure of the owner or his agent or the person in possession of the property to remove or correct the conditions described in the notice by the date specified, the Director shall refer the matter to the City Council for a noticed public hearing. Notice of the hearing shall be given to the owner or his agent and/or the person in possession of the property and to all property owners whose property lies within 300 feet of the property in question. The notice shall be titled "Notice of Public Hearing: Administrative Abatement of Public Nuisance Municipal Code Violation." Such notice shall be given at least ten (10) calendar days before the date of the hearing before the City Council. The notice shall be given in any of the manners provided in paragraph d(3).

(6) Abatement Hearing: At the noticed public hearing, the Director shall present evidence of the Municipal Code violations, the conditions which constitute a public nuisance, and the necessary means of abatement. The owner or his agent or person in possession of the property or any interested person may present testimony concerning the existence of a public nuisance on the property and proposed methods of abatement. At the conclusion of the public hearing, the City Council may confirm, by resolution, the determination of the Director that a public nuisance Municipal Code violation exists on the property. If the City Council confirms the determination of the Director, the City Council may order the abatement of those conditions which constitute a public nuisance by City personnel or by its private contractor. The owner or agent or person in possession of the property, however, may correct the conditions within seven (7) days of the date on which the City Council orders the abatement and confirms the determination of the public nuisance.

(7) In the event the owner or his agent or person in possession of the property does not abate the conditions determined to be a public nuisance, the conditions shall be abated by personnel designated by the City Manager or by contract.

(8) Costs: All administrative and actual costs incurred by the Director in the implementation of the notice and abatement can be assessed against the owner of the property as a personal obligation or against the property pursuant to Government Code section 38773.5.

(9) Accounting Report: When abatement is completed, a report describing the work performed and an itemized account of the total abatement cost shall be filed with the City Clerk. The report shall contain the names and addresses of all owners of each parcel, the tax assessors parcel number and a legal description of the property.

(10) Confirmation of Costs Hearing: The Director shall request the City Clerk to set a public hearing before the City Council within a reasonable time to consider the report and post a notice of the date, time and place of the hearing in a conspicuous place at or near the entrance to the Council Chambers. A copy of the report and itemized account and notice of the date, time and place of the hearing shall be provided to the owner of the property, his agent and/or the person in possession of the property at least ten (10) calendar days prior to the scheduled hearing. Such notice shall be served in the same manner as provided by paragraph d(3).

The City Council shall consider the report and itemized account at the hearing, together with any objections to its accuracy by any interested persons. The City Council may make such revisions, corrections or modifications in the report or the account as it may deem just. At the conclusion of the hearing, the report (as submitted, revised, corrected or as modified), together with the charge shall be confirmed or rejected by resolution. This decision of the City Council on the reports, itemized account and all protests or objections shall be final.

(11) Personal Obligation or Special Assessment:

The City Council may order that this charge shall be made a personal obligation of the property owner or assess it against the property involved pursuant to Government Code section 38773.5.

(a) Personal Obligation:

If the City Council orders that the charge shall be a personal obligation of the property owner, the Council shall direct the Director to collect this obligation by use of all appropriate legal means. If unable to collect this obligation, the Director shall refer the case to the City Attorney to file a court action to recover the costs.

(b) Special Assessment:

If the City Council orders that the charge shall be assessed against the property it shall confirm the assessment, record a notice of assessment and cause the same to be placed on the County Assessment Roll pursuant to Government Code section 38773.5.

(12) Recordation of Notice: After the City Council determines that the charge will be assessed against the property, the Director shall record a notice describing the abatement action and the total costs with the County Recorder to place any subsequent purchasers or owners on notice about this abatement action.

The Director shall file a withdrawal of this notice with the County Recorder when: (1) the owner or person responsible pays in full the abatement cost; or (2) the County Auditor or Tax Collector posts the lien on the property pursuant to Government Code section 38773.5.

(13) Report to Assessor and Tax Collector: After confirmation of the report and recordation of notice, certified copies of the report, itemized account and resolution shall be given to the County Auditor or Assessor who shall add the amount of the assessment to the next regular tax bill levied against the parcel in the same manner as ordinary municipal taxes.

(14) Collection of Assessment-Penalties for Foreclosure: The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes; and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment. The provisions of Government Code sections 38772 through 38773.5 are hereby incorporated by reference and made a part of this section.

(15) Repayment to Nuisance Abatement Superfund: All monies recovered by payment of the charge or assessment or from the sale or transfer of the property shall be paid to the City Treasurer who shall credit the same to the Nuisance Abatement Superfund.

e. Nuisance Violations - Summary Abatement.

(1) Whenever the Director determines that an imminent life safety hazard exists that requires immediate correction or elimination without prior notice to the owner, agent or persons in possession, the Director shall cause the premises, or portion thereof to be secured, demolished or removed, as appropriate under the circumstances.

The Director shall pursue only the minimum level of correction or abatement as shall be necessary to eliminate the immediacy of the hazard. The costs of such abatement, to the extent that they are not part of any regularly provided City service, shall be recoverable against the property owner through the steps outlined in section "d" above. The abatement of any remaining public nuisance can proceed in accordance with the administrative procedures outlined in section d.

(2) The City Manager may, by Administrative Regulation provide for the use of City equipment or forces to mitigate such imminent public nuisance pending complete abatement pursuant to section d.

SEC. 11.16.1. NUISANCE ABATEMENT SUPERFUND.

There is hereby established a revolving fund to be known as the Nuisance Abatement Superfund to defray costs of administrative and judicial abatements. The fund shall be reimbursed by collection from the property or property owner as specified in this Code and by the courts. The City Manager shall establish accounting procedures to ensure proper account identification, credit and collection. This fund may be operated and used in conjunction with procedures ordered or authorized under any other abatement provision of this Code

including but not limited to sections 54.0206,
55.11.412, 98.0116 and 101.0213.

Section 2. This ordinance shall take effect and be in force
on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By 
Joseph M. Schilling
Deputy City Attorney

JMS:la
02/17/88
Or.Dept:Police
0-88-141
Form=o.none

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MAR 21 1988

Passed and adopted by the Council of The City of San Diego, on.....
by the following vote:

| Council Members | Yeas | Nays | Not Present | Ineligible |
|------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Abbe Wolfsheimer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ron Roberts | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Gloria McColl | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| H. Wes Pratt | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Ed Struiksma | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| J. Bruce Henderson | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Judy McCarty | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Bob Filner | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mayor Maureen O'Connor | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

AUTHENTICATED BY:

15100
(Seal)

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By *Ellen Board*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 7 1988, and on MAR 21 1988

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By *Ellen Board*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-17043 Adopted MAR 21 1988

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CERTIFICATE OF PUBLICATION

CITY OF SAN DIEGO
202 C STREET, 2ND FLOOR
SAN DIEGO, CA 92101
ATTN: ELLEN BOVARD

Handwritten initials and a signature.

IN THE MATTER OF
AN ORDINANCE AMENDING CHAPTER 1, OF THE SAN DIEGO MUNICIPAL
CODE BY AMENDING SECTION 11.16 AND ADDING SECTION 11.16.1
RELATING TO THE ADMINISTRATIVE AND SUMMARY ABATEMENT OF
PUBLIC NUISANCES AND ESTABLISHING THE NUISANCE ABATEMENT SUPERFUND.

NO.

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The San Diego Municipal Code is amended relating to the administrative and summary abatement of public nuisances and the creation of the Nuisance Abatement Superfund. Under existing law the City Council has authority to declare properties which contain numerous or serious Municipal Code violations, "public nuisances," by following the administrative procedures outlined in San Diego Municipal Code section 11.16. These amendments clarify the definition of what constitutes a public nuisance, streamline the administrative procedures and expand the City's authority to summarily abate imminent hazards and recoup the costs of abatement performed at the City's expense.

The Directors of the following Departments: Planning, Building Inspection, Engineering and Development, General Services, Animal Control, Health, and the Fire and Police Chiefs are authorized to use these powers for administrative or summary abatement.

The Director starts the administrative abatement process by issuing a written notice to the property owner and/or person in possession of the property to abate the nuisance within a specified time frame. Certain clarifications are made regarding the methods of serving this notice and the owner's failure to actually receive it. If the property does not comply by the deadline, the Director schedules a hearing before the City Council to declare the property a public nuisance.

At the hearing the Director presents evidence concerning the violations, the condition of the property and the necessary means of abatement. The property owner and/or any interested party has the opportunity to oppose this evidence. If the Council finds a public nuisance, it may order abatement by City crews or hire a private contractor. The owner still has seven days following the hearing to voluntarily abate the nuisance.

After the work is done, another public hearing is scheduled before the City Council to confirm the abatement costs. Costs are further defined to include the actual physical work performed and costs of administration. At the hearing the Council shall consider an itemized account of the total abatement costs and a general report describing the abatement. The Council has discretion to revise the report and account or make any corrections or modifications as it deems just. The Council's authority to confirm the costs by resolution is expanded to include assessment against the property itself or the property owner as a personal obligation.

If the property owner fails to pay the personal obligation, the City Attorney is authorized to file a court action to recover the costs. If the costs are assessed against the property, this amendment creates a new noticing procedure whereby a "Notice of Assessment" is filed with the County Recorder pending the tax assessment by the County Auditor. Once the County Auditor assesses the property and the owner fails to pay, it becomes a lien against the property pursuant to Government Code section 38773.5.

All monies recovered through payment by the owner or satisfaction of the assessment or lien, shall be deposited in the Nuisance Abatement Superfund for future abatements.

The respective Directors now have express authority to "summarily" abate imminent life and safety hazards. This amendment further provides for cost recovery of the minimal corrections necessary to eliminate the imminent hazard. The City Manager is authorized to use City forces to summarily abate the imminent public nuisance.

I, THOMAS D. KELLEHER, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

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is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

APRIL 4

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 4 day of APRIL, 19 88.

Thomas D. Kelleher
(Signature)

83 lines x .98 = 81.26 P

7 1/2 x 2 x 10.78 = 161.70

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Administrative Abatement Superfund is created by law for the purpose of providing for the cleanup of hazardous waste sites. The City of San Diego has established procedures for the Superfund program. Administrative abatements performed pursuant to San Diego Municipal Code section 11.18 and other such administrative abatement procedures found in the Municipal Code. A complete copy of the ordinance is available for inspection in the office of the City Clerk of The City of San Diego, 2nd floor, City Administration Building, 202 "C" Street, San Diego, CA 92101. Ordinance adopted on March 7, 1988 and adopted by the Council of The City of San Diego on March 21, 1988.

AUTHENTICATED BY: MAUREEN O'CONNOR
Mayor of The City of San Diego, California
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

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