

Chapter 8.40

NUISANCES

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8.40.010 Findings and purpose.

A. The city council of the city of Visalia does hereby find that it is necessary to provide for the abatement of conditions which are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction to or interference with the comfortable enjoyment of adjacent property or premises, or hazardous or injurious to the health, safety or welfare of the general public in such ways to constitute a nuisance; and to provide standards to safeguard life, health and public welfare in keeping with the character of the city by allowing for the maintenance of property or premises for each of the following purposes:

1. To safeguard the health, safety and welfare of the people maintaining property or premises in good and appropriate condition;
2. To promote a sound and attractive community appearance; and
3. To enhance the economic value of the community, and each area in it, through the regulation of the maintenance of property or premises.

B. Accordingly, the City Council finds and declares that the purpose of this Chapter is to:

1. Reduce the threat to health, safety, welfare, and appearance and economic value due to the decline in property condition(s) by lawfully delineating the circumstances under which such condition(s) may be considered illegal and/or abated; and further finds that,

2. Abatement of such condition(s) is in the best interest of the health, safety and welfare of the residents of the City because maximum use and enjoyment of property or premises in proximity to another depends upon maintenance of those properties or premises at or above the minimum standard. (Ord. 2006-16, passed § 2 (part), 2006)

8.40.020 Definitions.

For the purpose of this chapter the terms below shall mean the following:

“Abandoned,” in addition to those provisions provided by state codes, local ordinances and case law, shall mean and refer to any item which has ceased to be used for its designated purpose. The following factors will be considered in determining whether or not an item has been abandoned: present operability and functional utility, the date of last effective use, the condition of disrepair or damage, the last time effort was made to repair or rehabilitate the item, the status of registration or licensing of the item, the age and degree of obsolescence, the cost of rehabilitation of the item versus its market value, and the nature of the area and the location of the item.

“Abate” means to repair, replace, remove, demolish or otherwise remedy the condition in question by such means and in such manner and to such an extent as the Enforcement Officer in his/her judgment shall determine is necessary in the interest of the general health, safety, and welfare of the community.

“Abatement standards” means those minimum requirements set forth by the enforcement officer by which premises shall be abated and maintained in order to comply with the provisions of this chapter.

“Administrative enforcement order” shall refer to the order issued by an enforcement officer determining that a violation of a municipal code section or other provision as set forth in 1.13.050 has occurred, and establishing the administrative penalty to be assessed, or setting forth the administrative abatement order to be imposed.

“Attractive nuisance” means any condition, instrument or machine which is unsafe, unprotected and may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may prove hazardous or dangerous to inquisitive minors.

“Camping” means the use of either a public park, a private or public street, or a vacant field, or place, none of which are intended for living accommodation purposes, as a temporary or permanent residence. Camping activities may be evidenced by the erecting of tents or any structure providing shelter; (including but not limited to trees, paper, metal, tarps, wood, shrubs, or bushes) sleeping with or without bedding, sleeping bag, blanket, mattress, tent, hammock, or other similar device; making preparations to sleep; storing personal belongings; starting or maintaining a fire; cooking; or preparing meals. Persons utilizing a vehicle as a mobile living unit must abide by Visalia Municipal Code Section 17.32.100.

“Dismantled” means that from which essential equipment, parts or contents have been removed or stripped and the outward appearance verifies removal.

“Enforcement officer” means that City Officer or employee as may be designated in writing by the City Manager to enforce property or premises maintenance, zoning and other City Code violations, as authorized by California Penal Code § 836.5.

“Inoperative” means incapable of functioning or producing activity for mechanical or other reasons.

“Lienholder” means any person, as defined in this Chapter, who has a recorded interest in real property, including mortgagee, beneficiary under a deed of trust, or holder of other recorded liens or claims of interest in real property.

“Nuisance” means any public nuisance known at common law or in equity jurisprudence.

“Owner” means the registered owner of a vehicle, the person(s) to whom property tax is assessed on real or personal property, as shown on the last equalized assessment roll of the County, renter(s), lessor(s) and other occupants residing permanently or temporarily on property.

“Person” means individual, partnership, joint venture, corporation, association, social club, fraternal organization, trust, estate, receiver, or any other entity.

“Premises” means all property, lots, parcels or real estate, portion of any land, whether improved or unimproved, occupied or unoccupied, including adjacent or associated sidewalks, parking strips, the abutting half of any street or alley between lot lines, buildings, structures, landscaping, plantings, trees, bushes, fences, and the exterior storage of personal property, equipment, supplies and vehicles.

“Property” means any real property including but not limited to land, lot, or parcel of land, and any improvements located thereon, held by any owner, and shall include any alley, sidewalk, parkway or unimproved public easement abutting such real property, lot or parcel of land.

“Responsible party” shall refer to any natural person, the parent or legal guardian of any person under the age of eighteen (18) years, trust, estate, receiver, cooperative, partnership, corporation, association, business, joint venture, limited liability company, any government agency that is not statutorily exempt, or any other entity, who has done any act for which an administrative enforcement order may be imposed.

“Structure” means anything constructed, built or planted upon, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground, including fences, gates, garages, carports, swimming and wading pools, patios, outdoor areas, paved areas, walks, tennis courts and similar recreation areas.

“Wrecked” means that which has outward manifestation or appearance of damage to parts and contents which are essential to operation. (Ord. 2009-08, § 2 (part), 2009: Ord. 2006-16, § 2 (part), 2006)

8.40.030 Public nuisances.

It is hereby declared to be a public nuisance and a violation of this Chapter for an owner or other person in control of said property or premises to keep or maintain property, premises or rights-of-way in such a manner that any of the following conditions exist:

A. Abandoned, dismantled, wrecked, inoperable, unlicensed, and discarded objects, equipment or appliances such as, but not limited to vehicles, boats, water heaters, refrigerators, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers standing or stored on property or sidewalks or streets which can be viewed from a public street or walkway, alley or other public property which items are readily accessible from such places, or which are stored on private property in violation of any other law or ordinance;

B. Discarded putrescibles, garbage, rubbish, refuse, or recycled items which have not been recycled within thirty (30) days of being deposited on the property which are determined by an enforcement officer to constitute a fire hazard or to be detrimental to human life, health or safety;

C. Oil, grease, paint, other petroleum products, hazardous materials, volatile chemicals, pesticides, herbicides, fungicides or waste (solid, liquid or gaseous) which is determined by a enforcement officer to constitute a fire or environmental hazard, or to be detrimental to human life, health or safety;

D. Lumber (excluding lumber for a construction project on the property with a valid permit), salvage materials, including but not limited to auto parts, scrap metals, tires, other materials stored on premises in excess of seventy-two (72) hours and visible from a public street, walkway, alley or other public property;

E. Receptacles for discarded materials and recyclables which are left in the front yard following the day of the regularly scheduled refuse pick-up for the property;

F. Swimming pool, pond, spa, or other body of water, or excavation which is abandoned, unattended, unsanitary, empty, which is not securely fenced, or which is determined by the enforcement officer to be detrimental to life, health or safety;

G. Any premises which detrimentally impacts the surrounding neighborhood because of dilapidation, deterioration or decay or is unsafe for the purpose for which it is being used or is not secured or is improperly secured;

H. Any premise or property in a condition which is in fact a fire hazard or which results or can result in the impairment of the ability of the department of fire and emergency management to respond to and suppress fires; and,

I. Any condition on a property which meets the following requirements:

1. Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life and property; and

2. Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

J. Camping in areas not specifically designated for such use or not specifically authorized by a public agency. Camping on private property shall be permissible only in the rear yard of an existing single family residence in a residential zone for a period not to exceed two consecutive days and there is written permission from the property owner.

K. It is hereby declared to be a public nuisance for any person to place, deposit, or permit to be deposited in any unsanitary manner, upon public or private property within the city, or in an area under jurisdiction of said city, any human feces or to urinate in public. Violators of this provision are subject to administrative citation or being punished as authorized by this chapter for maintaining a public nuisance.

(Ord. 2013-12, § 3, 2013: Ord. 2009-08, § 2 (part), 2009: Ord. 2006-16, § 2 (part), 2006)

8.40.040 Responsibility for property maintenance.

The owner, occupant, lessee or tenant of any property within the City shall be responsible for the maintenance or property and premises in a manner consistent with the provisions of this Chapter and the Municipal Code of the City of Visalia. (Ord. 2006-16, § 2 (part), 2006)

8.40.050 Authority of enforcement officer.

Enforcement of this Chapter may be accomplished by the enforcement officer in any manner authorized by this Chapter, the City of Visalia Municipal Code, or by any other law, including but not limited to abatement of the nuisance conditions by the City pursuant to this Chapter, issuance of misdemeanor citation, and all other applicable civil actions and remedies. (Ord. 2006-16, § 2 (part), 2006)

8.40.060 Declaration of public nuisance; issuance of administrative enforcement order.

A. Right to inspect. The enforcement officer shall have the right to inspect properties pursuant to this code and other applicable laws. Such inspection shall be performed to secure compliance with or prevent the violation of this code or other uniform codes adopted thereunder. Such inspection may be made in the following circumstances:

1. The enforcement officer may inspect a residential unit upon receiving a complaint regarding public nuisance, substandard building conditions, or the management quality standards as specified in this code, from any person upon the property, who has viewed the property or who has reason to believe that such conditions exist;
2. The enforcement officer may inspect a property which he/she reasonably believes fails to meet the requirements of this code or other uniform codes adopted hereunder;
3. The owner, after failing to abate nuisance(s) as defined in this chapter, shall be subject to required annual inspections for a three year period for the subject property.

B. Reimbursement of inspection costs. Costs of inspections pursuant to this chapter shall be determined pursuant to Section 15.44.100 of this chapter, and unless otherwise provided, shall be paid by the owner of the residential unit. Provided, that costs of inspections initiated by tenant complaint shall be paid by the tenant, unless the enforcement officer determines that the public nuisance or a substandard building exists pursuant to the state housing law justifying the complaint exists, in which case the cost shall be paid by the owner.

C. Management quality standards. The following items shall constitute reasonable basis for the enforcement officer to believe that a property is not being properly managed or maintained. The existence of any of these circumstances shall justify an inspection of the property by the enforcement officer. In addition, violation of these standards may be used as evidence that a public nuisance exists.

1. For an individual residential unit, whether the unit is a standalone residence or part of a multi-family complex, more than six police and/or fire calls over a one year period (other than a medical emergency);
2. For a complex or building containing multiple residential units, more than a monthly average of .20 police and/or fire calls per unit over a six month period (other than a medical emergency);
3. Any violation of this chapter or the continued presence of graffiti for more than a two week period;
4. Any determination by the health officer that a pest vector is present;
5. Any violation of the Uniform Building Code or Uniform Housing Code relating to maximum occupancy or health and safety standards.

D. The administrative enforcement order required pursuant to this section shall contain those elements set forth in Section 1.13.060 (B) of this Municipal Code, and shall be substantially in the following form:

TO THE PROPERTY OWNER:

Property Address: _____

Property Owner's Address (if different)

NOTICE IS HEREBY GIVEN, that on the ___ day of _____, 2___, pursuant to Chapter 8.40 of the Municipal Code of the City of Visalia, an Enforcement Officer of the City of Visalia declares that the following conditions set forth in Chapter 8.40 of said Municipal Code constitute a public nuisance and that such nuisance must be abated by the repair, rehabilitation, demolition or removal of said conditions: [description of conditions constituting a nuisance in violation of this Chapter].

Restructure, repair, or removal of said conditions must be completed and maintained by the _____ day of _____, 2____, in accordance with the standards of the current codes as adopted by the City of Visalia or other standards as determined by the Enforcement Officer.

Failure to abate said conditions by the date specified above shall result in the City acquiring jurisdiction to abate the conditions at the owner's expense and in addition, an administrative penalty in the amount of _____ may be incurred.

All property owners who wish to object to the proposed abatement of the conditions cited in this notice are hereby notified that they have the right to request and Administrative hearing before a hearing officer pursuant to the provisions of Chapter 1.13 [Provide contact information]. Sufficient cause must be shown why said conditions should not be abated.

At the time the appeal is filed, an appeal fee is due and payable to the City of Visalia, and a deposit of the administrative penalty must be made, or evidence must be provided that a request for a hardship waiver has been filed with the City of Visalia finance division. All appeals must be made in writing and comply with Section 1.13.080 of the Visalia Municipal Code. If the property owner or responsible party fails to request an appeal before the date specified above, then the administrative order shall become final.

The responsible person or the property owner upon whom this administrative enforcement order has been imposed may seek review of the order pursuant to California Code of Civil Procedure Section 1094.4 and 1094.6. There are no appeals to the Visalia City Council excluding the separate review of the City costs to abate the nuisance, if any. (Ord. 2011-03, § 2, 2011; Ord. 2008-15, § 2, 2008; Ord. 2006-16, § 2 (part), 2006)

8.40.070 Abatement of public nuisances.

A. If an enforcement officer issues to an administrative enforcement order that includes an abatement order, the owner or responsible party shall abate the nuisance as follows:

1. All premises, buildings, or structures declared to be such public nuisances and ordered to be abated shall be abated by rehabilitation, demolition, removal or repair pursuant to the procedures set forth in this code with the concurrence of the enforcement officer.
2. Any unsafe building declared a public nuisance under this chapter either shall be repaired or rehabilitated in accordance with current codes as adopted by the city, or shall be demolished at the option of the enforcement officer. If the structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of its occupants or the public, it shall be ordered to be vacated.
3. Whenever an enforcement officer shall determine that any conditions constituting a public nuisance as defined in this Chapter exist upon any premises within the city, the enforcement officer may require or provide for the abatement thereof and may make the costs of such abatement a lien on the real property or premises in question pursuant to the procedures set forth in this Chapter and Chapter 1.13 of the Municipal Code of the City of Visalia.

B. When a administrative enforcement order includes an abatement order, the City may choose to abate the public nuisance or violation of the Municipal Code through any of the abatement methods set forth in the Municipal Code or in other local, state or federal law, and nothing contained in this Chapter shall be construed as limiting, prejudicing or adversely affecting the City's ability to concurrently or consecutively use any of those proceedings as the City may deem are applicable. Proceeding under this Section will not preclude the City from proceeding under other Sections of this Chapter. (Ord. 2006-16, § 2 (part), 2006)

8.40.080 Failure to respond to administrative enforcement order.

A. Owners and responsible parties who have failed to respond and abate a nuisance after issuance of an administrative enforcement order, and who have failed to appeal such determination as provided for in this Chapter and Chapter 1.13 of the Municipal Code, are conclusively deemed guilty of violating this Chapter and the administrative enforcement order shall become final and all appeal rights shall be deemed waived. Owners and responsible parties who have failed to respond and abate a nuisance after issuance of an administrative enforcement order, and who have failed to appeal such determination and may be assessed administrative penalties pursuant to the provisions of Chapter 1.13 and may be issued a citation for an infraction or a misdemeanor pursuant to Section 8.40.170.

B. Owners who through their inaction have caused the City to have their nuisance abated as set forth in Section 8.40.090 or 8.40.100 shall be assessed those costs incurred for such abatement. The cost of abating such nuisance shall also include a per parcel charge to cover the costs of administering this chapter. Collection of all costs assessed pursuant to this Section shall be made as provided for in this Chapter and Chapter 1.13 of the Municipal Code.

C. Any property owner, or other responsible person, who after notification by the enforcement officer, fails to abate a condition as set forth in this Chapter shall become liable for the expenses of fire suppression, including injury to firefighters which is determined to have been caused by or attributed to conditions for which the City has issued an administrative enforcement order. Such expenses shall become a lien on the property as provided for in this Chapter.

D. The failure of any owner or other person to receive the administrative enforcement order notice shall not affect the enforcement of this Chapter. (Ord. 2006-16, § 2 (part), 2006)

8.40.090 Abatement by City.

A. Upon the expiration of the time period set forth in the administrative enforcement order, the City shall acquire jurisdiction to abate any such condition constituting a nuisance pursuant to this Chapter which has not been abated by the owner of the property or premises in question or which has been confirmed to constitute a nuisance in the course of the administrative hearing process set forth in Chapter 1.13 of the Municipal Code.

B. Whenever the City has acquired jurisdiction to abate such a nuisance, the enforcement officer or his/her designee is authorized to enter upon private property for purposes of abating such conditions if:

1. The enforcement officer obtains written consent from the owner to enter the property or premises to abate the nuisance; or

2. The enforcement officer and/or his authorized representative is able to enter the property or premises and abate the nuisance without invading any of owner's constitutionally protected privacy interests; or

3. The enforcement officer obtains an abatement warrant from a court of competent jurisdiction.

C. The cost for abatement of a nuisance by the City shall be charged to the owner as set forth in this Chapter. Any owner shall have the right to abate said condition, or have the same abated at their own expense; provided, such condition has been abated prior to the arrival of the enforcement officer or his/her authorized representative. (Ord. 2006-16, § 2 (part), 2006)

8.40.100 Summary abatement.

A. The City may immediately abate any nuisance or violation of this Chapter that poses a clear and imminent danger to, or requires immediate action to prevent or mitigate the loss or impairment of, life, health, property, or essential public services. The City may perform this abatement without providing prior notice or hearing to the owner or occupier of the offending premises. Such summary abatement may proceed only upon the authorization of the City Manager and the City Attorney, or their respective

designees. The abatement shall include all actions necessary to secure the premises to prevent further occurrences of the nuisance.

B. The owner and/or occupier of the premises or the persons creating, causing, committing, or maintaining the nuisance shall be subject to any administrative fines, penalties, fees and costs, including reasonable attorney fees, imposed or incurred by the City pursuant to this Chapter.

C. Any abatement performed by the City pursuant to this section shall be at the expense of the owner and/or occupier of the premises or the persons creating, causing, allowing, permitting, committing, or maintaining the nuisance. The City shall recover its expenses pursuant any of the methods set forth in VMC Section 1.13.110.

D. As soon as practicable following completion of the abatement, the enforcement officer and the community development director shall issue an administrative enforcement order in accordance with this Chapter. Persons receiving such an order shall be entitled to all hearing rights as provided herein. (Ord. 2006-16, § 2 (part), 2006)

8.40.110 Notice to vacate.

A. Any structure determined to be a public nuisance by the Enforcement Officer under this Chapter and found to be in such a condition as to make it immediately dangerous to the life, limb, property, or safety of the public or its occupants shall be ordered to be vacated. A notice to vacate in addition to being served a Notice to Abate in accordance with Section 8.40.070, shall be posted or affixed upon each exit of the structure and shall be in substantially the following form:

DO NOT ENTER

UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building or to remove or deface this notice

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B. No person shall remain in or enter any structure which has been so posted, except that entry may be made to repair, demolish or remove such structure under permit. (Ord. 2006-16, passed § 2 (part), 2006)

8.40.120 Account and record of cost of abatement.

The enforcement officer shall keep an account of the cost of abating such nuisance and shall embody such account in the report and assessment list which shall be filed with the city clerk and presented to the city council. The allowable cost of abating such nuisance shall include a charge sufficient to cover the costs of administering this Chapter. The report and assessment list shall refer to each separate lot or parcel of land by description sufficient to identify such lot or parcel, together with the charge proposed to be assessed against each such separate lot or parcel.

(Ord. 2006-16, passed § 2 (part), 2006)

8.40.130 Notice of report.

The city clerk shall post a copy of such report and assessment list at city hall, together with the notice of filing thereof and of the time and place when and where it will be submitted to the city council for hearing and confirmation. Said notice shall advise owners that they may appear at the time and place of the city council hearing and object to any matter related thereto. A like notice shall also be served on each and every owner and/or other responsible person who owns or has control of any lot or parcel listed on said report in accordance with Article 3 (commencing with Section 415.10) of

Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure. 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 Tulare County. (Ord. 2006-16, passed § 2 (part), 2006)

8.40.140 Collection on tax roll.

After confirmation of the report and assessment list by the city council, a copy of the report shall be provided to the city finance officer and payments may be received by him/her for the amount due until such time as the matter is referred to the county auditor for placement on the tax rolls. On or before the 10th day of August of each year, a certified copy of the confirmed report shall be filed with the Tulare County Auditor for the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The assessments may be collected on the tax roll at the same time and in the same manner as municipal taxes. They shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for property taxes. All laws and ordinances applicable to the levy collection and enforcement of city taxes are made applicable to such special assessments, and the lien of said assessment shall have priority of the taxes with which it is collected. (Ord. 2006-16, passed § 2 (part), 2006)

8.40.150 Procedure not exclusive.

The procedure provided in this Chapter shall be cumulative and in addition to any other procedure or procedures provided in ordinances of this city or by state law for the abatement of any of the conditions described herein, and abatement hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such condition. (Ord. 2006-16, passed § 2 (part), 2006)

8.40.160 Franchise.

When the enforcement officer has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private property or public property to abate the condition constituting a public nuisance pursuant to this Chapter. (Ord. 2006-16, passed § 2 (part), 2006)

8.40.170 Penalties.

It is unlawful and a misdemeanor to maintain property or premises conducive to creating a public nuisance in violation of this chapter or to refuse to abate such nuisance when ordered to do so by the enforcement officer in accordance with the abatement provisions of this chapter or state law where such is applicable. Notwithstanding the classification of a violation of this chapter as a misdemeanor, at the time an action is commenced to enforce the provisions of this chapter, the trial court, upon recommendation of the prosecuting attorney, may reduce the charged offense from a misdemeanor to an infraction.

A. Any person convicted of a misdemeanor under this chapter shall be punished by: (1) a fine not to exceed five hundred dollars (\$500.00) and/or thirty (30) days in the county jail for a first violation; (2) a fine not exceeding one thousand dollars (\$1,000.00) and/or ninety (90) days in the county jail for a second violation of this chapter within one year; and (3) a fine not exceeding two thousand five hundred dollars (\$2,500.00) and/or six months in the county jail for each additional violation of this chapter within one year.

B. Any person convicted of an infraction under this chapter shall be punished by: (1) a fine not exceeding fifty dollars (\$50.00) for a first violation; (2) a fine not exceeding one hundred dollars (\$100.00) for the second violation of this article within one year; and (3) a fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation of this chapter within one year.

C. Each day that a violation continues shall be regarded as a new and separate offense. (Ord. 2006-16, passed § 2 (part), 2006)