

Chapter 8.40 - NUISANCE

Sections:

Footnotes:

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Editor's note— Section 1 of Ord. No. 2349, adopted March 1, 2010, amended Ch. 8.40, Property Maintenance and Nuisances, in its entirety to read as herein set out. Former Ch. 8.40 was comprised of §§ 8.40-005—8.40.160, and derived from Ord. 1870 of 1994; and Ord. 2186 of 2005.

Article I. - Generally

8.40.010 - Generally.

For purposes of this chapter, certain words and phrases are defined and certain provisions are to be construed as set out in this article, unless it is apparent from the context that a different meaning is intended.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.020 - Applicability.

- A. The provisions in Article IV of this chapter regarding preabatement notice and hearing requirements are hereby made applicable to all ordinances requiring the abatement of nuisances which are silent as to the procedures to be followed for the preabatement notice, summary abatement and/or hearing requirements, and to any other subsequently enacted ordinance declaring additional acts or omissions a nuisance.
- B. The provisions in this chapter pertaining to the recovery of costs are applicable to the recovery of costs for all nuisance abatements effected by the city through its employees or by contract pursuant to any ordinance of the city unless an alternate procedure is specified in said ordinance or by other applicable law.

(Ord. No. 2349, § 1, 3-1-2010)

Article II. - Definitions

8.40.030 - Definitions.

For the purposes of this chapter, certain words and phrases are defined and certain provisions are to be construed as set forth in this section:

- A. "Abate" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such manner and to such an extent as the city manager, or his/her designated representative, shall determine is necessary in the interest of the general health, safety and welfare of the community.
- B. "Abatement costs" means the actual costs paid or incurred by the city in connection with the matter, including, but not limited to:
 - 1. Costs of investigation;
 - 2. Personnel costs;
 - 3. City overhead incurred in the preparation for any hearing and appearing at the hearing itself;
 - 4. Costs incurred for all inspections and reinspections necessary to enforce any order issued under this chapter;
 - 5. Costs of preparation of notices, specifications and contracts, and inspecting the work performed under contract;
 - 6. Costs of mailing and printing notices and documents; and
 - 7. The cost, including staffing costs, expended or incurred by the city in abating the conditions or violations pursuant to any order under this chapter.
- C. "Premises" means any building, lot, parcel, real estate, or land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- D. "Hearing officer" means the individual who shall conduct nuisance abatement hearings pursuant to this chapter and shall render decisions pursuant to the applicable hearing procedures set forth in this chapter. The hearing officer shall be designated by the city manager.
- E. "Responsible party or person" means any individual, business or entity responsible for creating, causing, maintaining or permitting the nuisance activity, premises, condition or conduct, and includes, but is not limited to, the property owner, tenant, lessee, possessor, or occupant of real property, the president or other officer of the corporation, and a business owner or manager of a business.
- F. "Weeds" mean all weeds growing upon streets, alleys, sidewalks, or private property in the city and includes any of the following:
 - 1. Weeds which bear or may bear seeds of a downy or wingy nature;
 - 2. Weeds and indigenous grasses which may attain such large growth as to become, when dry, a fire menace to adjacent improved property;
 - 3. Weeds which are otherwise noxious or dangerous;
 - 4. Weeds which are a public nuisance of seasonal and recurring nature;
 - 5. Poison oak and poison ivy when the conditions of growth are such as to constitute a menace to the public health;

6. Accumulations of garden refuse, cuttings and other combustible trash;

7. Mistletoe, viscum album.

(Ord. No. 2349, § 1, 3-1-2010)

Article III. - Rules and Obligations

8.40.040 - Responsibility for property maintenance.

Every owner, tenant, occupant, agent, person having charge or possession of any premises or property, lessee or holder of any possessory interest in real property within the city is required to maintain such property so as not to violate the provisions of this chapter. The owner of the property shall remain liable for violations hereof regardless of any contract or agreement with any third party regarding such property or the occupation of the property by any third party. Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by the former owner, is liable therefore in the same manner as the one who first created it.

8.40.050 - Keeping sidewalks clean.

The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the city in front of which there is a paved sidewalk shall maintain the sidewalk free of accumulating dirt, sand, soil (including eroding dirt, sand, or soil), leaf, vegetation, waste paper, hay, grass, straw, weeds, litter, sawdust, building materials, paint, chemical, combustible materials, trash, or other debris, and shall promptly remove such materials from the sidewalk, gutter, and storm drains located under or next to the sidewalks. Sweepings from the sidewalk shall not be swept, blown by mechanical means, or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on such real property as required for the disposal of garbage or green waste, as appropriate.

8.40.060 - Repair of motor vehicles in residential district; permit required.

- A. It is unlawful and a misdemeanor subject to punishment in accordance with Chapter 1.12 of this code, for any person to repair or dismantle in the open in any residential district of the city, any automobile, boat, or other vehicle or conveyance without having first obtained a permit to do so.
- B. Application for a permit shall be made to the fire department on forms provided for such purpose. The applicant shall furnish all of the following information:
 1. Name and address of applicant;
 2. Address at which proposed work is to be done;
 3. Written consent of owner of premises if other than applicant;
 - 4.

Description of the type of conveyance to be dismantled or repaired and a statement of work to be done;

5. Estimated time necessary to complete the work; and
 6. Such other information as may be required by the fire department.
- C. All applications shall be referred to the fire chief for review prior to the granting of any permit. Where such work can be done without creating a police problem or a fire hazard, a permit shall be granted for the doing of the work described in such application.
- D. The permit shall specify the time period in which the work shall be accomplished, which time period shall not be more than fifteen (15) days. Work shall be completed within the time limit specified, or any extension granted for reasonable cause shown.
- E. Upon completion of the work authorized, the applicant shall clear the work site of all debris, oil, grease, gasoline, paints, lacquer, or other combustible material, and leave it in such a condition that no hazard to persons or property shall remain.
- F. As a condition to the granting of the permit, applicants shall be required to authorize the fire department to remove and store at applicant's expense, any conveyance and/or parts thereof where dismantling or repair is not completed within the time granted.
- G. The term "repair" as used in this section shall not include minor adjustments or the replacement of parts where such adjustments or replacement may reasonably be expected to be accomplished within a seventy-two-hour period. No permit shall be required for such minor adjustments or replacement.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.070 - Maintenance of property; nuisances.

It is declared a public nuisance for any person owning, leasing, occupying, or having charge of any premises in this city to maintain such premises in such manner that any of the following conditions are found to exist thereon including, but not limited to, those stated in this section:

- A. Land, topography, geology, or configuration of which, whether in a natural state or as a result of grading operations, excavation, fill, or landscaping, causes erosion, subsidence or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety and welfare, or to adjacent properties;
- B. Buildings which are abandoned, partially destroyed, or permitted to remain for an unreasonable period of time in a state of partial construction;
- C. The failure to close, by such means as shall be acceptable to the city manager or his/her designated representative, all doorways, windows, and other openings into vacant structures;
- D. Unpainted buildings causing dry rot, warping and lack of adequate weather protection;
- E.

Broken windows, doors, fences or gates; or walls constituting potentially hazardous conditions or inviting trespassers and malicious mischief;

- F. The existence of any fence or other structure or thing on private property abutting or fronting upon any public street, sidewalk or place, which is in a sagging, leaning, fallen, decayed or other dilapidated or unsafe condition;
- G. Overgrown vegetation likely to harbor rats, vermin, and other nuisances or having a tendency to depreciate the aesthetic and property values of surrounding properties;
- H. Dead, decayed, diseased, or hazardous trees, weeds, and other vegetation potentially dangerous to the public safety and welfare or having a tendency to depreciate the aesthetic and property values of surrounding properties;
- I. The existence of any accumulation of waste paper, hay, grass, dirt, straw, weeds, litter or combustible trash upon the premises or public sidewalks, streets or areas in front of said premises or upon any roof or in any building, entranceway, court or yard thereof;
- J. The existence of mistletoe (*Phoradendron flavescens*) on any property within the city;
- K. The existence of any accumulation of dirt, sand, soil (including eroding dirt, sand, or soil), leaf, vegetation, waste paper, hay, grass, straw, weeds, litter, sawdust, building materials, paint, chemical, combustible materials, trash, or other debris emanating from any real property in the city onto the city's streets and/or sidewalks. Any accumulation of the above at or near storm drains shall be immediately cleared and removed by the developer, property owner, construction contractor, lessee, renter, or occupant of the property, and replaced with appropriate prevention devices pursuant to the city-approved storm water pollution prevention plan and by use of maintained best management practices;
- L. The existence of any branches or foliage which interferes with visibility on, or free use of, or access to, any portion of any street improved for vehicular or pedestrian travel or which interferes with access to any hydrant, alarm box, standpipe, sprinkler system, connection or any other appliance or facility provided for fire protection purposes;
- M. The substantial lack of maintenance of grounds within the city on which structures exist, where said grounds are visible from the public right-of-way or from the sites of neighboring properties where such conditions would have a tendency to depreciate the aesthetic and property values of surrounding properties;
- N. The existence of any garbage or rubbish upon the premises contrary to the provisions of Chapter 8.04 of this code, or any amendments thereto or replacements thereof;
- O. The parking or storing of any motor vehicle, motorcycle, tractor, trailer, camper, or other mode of transportation, whether or not motorized or operational, on a required front yard, side yard, lawn, grass, or landscaped area other than a permanent driveway or parking place specifically and properly designed for the purpose of parking vehicles and constructed of

asphalt blacktop, concrete, cement, paver blocks or other paved surface. Any motor vehicle, motorcycle, tractor, trailer, camper, or other mode of transportation, whether or not motorized or operational, parked on a street or public way in a manner such that one (1) or more wheels rest in a yard, lot or lawn more than twelve (12) inches from the curb or pavement edge shall be deemed to be in violation of this section;

- P. The accumulation and storage for unreasonable periods of time of abandoned, wrecked, dismantled, unlicensed, or inoperative automobiles, or trailers, campers, boats, and other mobile equipment in any yard or parts thereof;
- Q. The accumulation and storage of vehicles in violation of Chapter 8.34, and/or the repair or dismantling of any vehicle on any premises not in compliance with Section 8.40.060;
- R. Attractive nuisances potentially dangerous to children or the general public in the form of abandoned, discarded, or broken equipment, unprotected and/or hazardous pools, ponds, and excavations, neglected machinery, icebox, refrigerator, deep-freeze locker, clothes dryer, washing machine, or any other enclosed container of any kind with a closable door, or any other attractive nuisance visible to the public or surrounding properties;
- S. Broken or discarded furniture and household items on the premises for unreasonable periods of time and visible from the street or from neighboring properties and having a tendency to depreciate the aesthetic and property values of surrounding properties;
- T. Packing boxes, unused building materials, lumber, trash, dirt, litter, and other debris either inside or outside buildings, in vestibules, doorways, or along the adjoining sidewalks of residential, commercial, or industrial buildings and visible from the public right-of-way, or from the site of neighboring properties for unreasonable periods of time and having a tendency to depreciate the aesthetic and property values of surrounding properties. Nothing in this section shall prevent the storage of packing boxes, unused building materials and lumber when done in conjunction with a construction project for which a building permit has been issued and which is being prosecuted diligently until completion;
- U. The existence on any premises of any unused and abandoned open pipe, well or excavation, building foundation or buildings which are abandoned, or boarded up, partially destroyed or unfinished and not properly secured;
- V. The maintenance of any premises, building, dwelling, or dwelling unit in such condition as to be detrimental to the public health, safety, or general welfare or in such a manner as to constitute a public nuisance, substandard building, or dangerous building as these terms are defined in Health and Safety Code Section 17920.3, 1997 Uniform Code for the Abatement of Dangerous Buildings, or Title 17 of this code, as amended from time to time;
- W. The operation and maintenance of any premises or property within the city in a manner that has resulted in repeated disruptive activities including, but not limited to, disturbances of the peace, public drunkenness, drinking in public, harassment of passers-by, sale of stolen goods,

public urination, theft, assaults, batteries, acts of vandalism, excessive littering, illegal parking, loud noises which violate any of the city's Municipal Code regulations, traffic violations, curfew violations, or police detentions and arrests;

- X. The maintenance of any premises or property within the city which fails to comply with any condition imposed on any entitlement, permit, contract, or environmental document issued by or approved by the city in connection with said premises or property or improvement located thereon;
- Y. To cause or permit on any premises or property within the city any matter or substance from a private vault, cesspool, septic tank, water closet, privy vault, urinal, pipe, sewer line or any sewage, effluent, slop water or any other filthy water, matter or substance to flow or discharge upon the ground or upon any private property, public sidewalk, street, or other public place;
- Z. For any person owning, leasing, occupying, or having charge or possession of any premises or property in the city to permit or maintain on such premises or property stagnant water, refuse, rubbish, garbage, dead animal carcasses, offal, animal excrement or other waste materials which emit odors that are unreasonably offensive to the physical senses of a reasonable person of normal sensitivity or which may cause or attract insects;
- AA. The city may:
 - 1. Declare that a public nuisance exists whenever any member of the public creates, causes, commits, permits, or maintains any condition or performs or causes to be performed any activity that falls within the scope of the definition of 'public nuisance' as set forth in California Health and Safety Code Section 11570; and
 - 2. Commence any action or proceeding pursuant to the California Drug Abatement Act to abate the public nuisance, to pursue all other remedies against the violator, to seek the imposition of all penalties against the violator and to recover any and all costs from the violator.
- BB. Maintenance of premises in such condition as to be detrimental to the public health, safety, or general welfare or in such a manner as to constitute a public nuisance as defined by Civil Code Section 3480;
- CC. The existence of graffiti on the exterior portions of any buildings or structures located upon the property. For the purpose of this chapter, graffiti has the same meaning as defined in Chapter 8.36;
- DD. Any other condition on or use of property which constitutes a public nuisance as defined by state law or which may be declared such by other ordinances of the city.

(Ord. No. 2349, § 1, 3-1-2010)

Article IV. - General Procedures for Nuisance Abatement

8.40.080 - Abatement of nuisances.

All or any part of premises found as provided in this chapter to constitute a public nuisance shall be abated by rehabilitation, demolition, repair, removal, or other appropriate means as determined by the enforcement officer pursuant to the provisions set forth in this chapter. The procedures set forth in this chapter shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner provided by law.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.090 - Right to enter property to inspect or abate.

An enforcement officer may enter and inspect or abate any building or premises whenever necessary to secure compliance with, or prevent violation of, any provision of this chapter, in accordance with Chapter 1.13 and as authorized by law. If required by law, the enforcement officer shall first obtain consent of the responsible person or an appropriate court order to inspect and/or abate a nuisance.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.100 - Notice and order to abate public nuisance.

- A. Whenever the enforcement officer determines that any premises within the incorporated city limits is maintained as a nuisance pursuant to the appropriate Merced Municipal Code section or other law, then an inspection shall be made, and written notice of inspection and findings provided to the responsible party.
- B. The written notice shall contain the following information:
 1. Date and the address or definite description of the location of the nuisance.
 2. The Merced Municipal Code section(s) or other laws or conditions violated, all facts constituting the nuisance, and a declaration of nuisance.
 3. A reasonable time limit, in no event less than seven (7) days, in which to take corrective action to remedy the nuisance, except as set forth in Articles V and VI of this chapter.
 4. A date for reinspection of the premises.
 5. A description of the consequences for failing to abate the nuisance.
 6. Name and signature of the enforcement officer.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.110 - Methods of acceptable notice.

A. Notice shall be given by as follows:

1. If the nuisance relates to real property, by posting on the property; and
2. By personal delivery to the responsible party; or
3. To the property owner, by mailing a copy of the notice by certified mail, return receipt requested, postage prepaid, to his or her address shown on the last equalized assessment roll available on the date the notice is prepared, and by first class mail to the same address, and to other responsible parties at their address as known to the enforcement officer or at the property address. Service under this subsection shall be deemed complete after deposit in the United States mail.
4. If the corrective action may involve demolition of or significant expense to abate, the property, to all other persons with a legal interest in the property subject to abatement, by mailing a copy of the notice by United States mail, postage prepaid. Service under this subsection shall be deemed complete after deposit in the United States mail.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.120 - Reinspection of nuisance.

After the period of time specified in the declaration of nuisance served pursuant to Section 8.40.100, a reinspection of the premises shall be made to determine whether or not compliance has been achieved.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.130 - Notice of results of reinspection.

- A. If, after reinspection on the indicated date, the nuisance has not been abated, a notice of the results of said reinspection shall be mailed to the involved parties. Said notice shall contain the following information:
1. Date and the address or definite description of the location of the nuisance.
 2. The Merced Municipal Code section(s) or other laws or conditions violated, all facts constituting the nuisance, and a declaration of nuisance.
 3. Specify the corrective action required.
 4. A reasonable time limit, in no event less than seven (7) days, in which to take corrective action to remedy the nuisance, except as set forth in Articles V and VI of this chapter.
 5. A date for reinspection of the premises.
 6. A description of the consequences for failing to abate the nuisance.
 - 7.

Advise that failure to correct the violation will result in the city taking corrective action and collecting all charges related thereto, by pursuing appropriate civil remedies, including billing, obtaining a civil judgment, lien, or special assessment against the property.

8. Advise of the right to an appeal hearing before a hearing officer for the date set on the notice.
9. Advise of the right to present evidence, including written, oral, and testimony from witnesses at the administrative appeal hearing.
10. That failure to appear at the administrative appeal hearing shall constitute a waiver of the right to be heard at the hearing.
11. Name and signature of the enforcement officer.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.140 - Administrative appeal hearing.

- A. Report and Recommendation. The enforcement officer shall prepare an administrative hearing packet for the hearing officer and provide for his/her review five (5) days prior to the hearing. The packet shall include a copy of the notice and order to abate public nuisance, a staff report, and any evidence of the violation(s).
- B. Admissibility of Evidence at Administrative Appeal Hearing. At the administrative appeal hearing, the hearing officer shall review all evidence, documents and written testimony and hear all oral testimony offered either in support of appellant's claim or in support of the notice and order to abate public nuisance, provided such evidence and testimony is relevant to the issues of the hearing. The hearing officer has the authority to determine the relevance of any evidence to the issues of the hearing. The hearing officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy. The formal rules of evidence shall not apply at the administrative appeal hearing.
- C. Failure to Attend Administrative Appeal Hearing. If the responsible party(s) fails to attend the scheduled administrative appeal hearing, the hearing will proceed without the responsible party(s) and he or she will be deemed to have waived his or her rights to be orally heard at the administrative appeal hearing.
- D. Hearing Officer's Determination on Appeal.
 1. Following the appeal of a notice of order to abate public nuisance, the hearing officer may decide to uphold the notice and order, establish a modified schedule for compliance, overturn some or all of the findings of the enforcement officer and/or rescind the notice and order in part or in its entirety.
 2. The hearing officer shall prepare and serve a written notice of decision ("decision") upon the responsible party(s), including the owner, by certified mail, return receipt requested, and by regular first-class mail to all other persons and entities who received notice of the original

hearing, and to any other person requesting the same. The decision of the hearing officer shall be final, except as otherwise provided by Section 8.40.150. In the event the decision may require demolition of a structure, the decision must also be served on all persons with a legal interest in the property, in the manner specified in Section 8.40.110.

3. The hearing officer shall serve the written notice of decision five (5) days from the date the hearing is deemed closed. The hearing officer shall also provide or cause to be provided a copy of the decision to the enforcement officer.
4. The decision shall include the following:
 - (a) Whether the notice and order to abate public nuisance has been either upheld, in full or in part, or rescinded, in full or in part;
 - (b) A brief summary of the evidence considered;
 - (c) Findings of fact;
 - (d) A determination of the issues presented;
 - (e) The effective date of the decision;
 - (f) A compliance order, if applicable, which shall:
 - (1) Specifically describe the actions which shall be required to be taken to remedy the code violations indicated in the decision; and,
 - (2) Shall require the actions to be completed within a specified time period and by a specified deadline; and
 - (g) Specify the consequences for failure to comply with the order.
5. The decision of the hearing officer shall be final.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.150 - Limitation of filing judicial action.

Any appeal of the decision of the hearing officer ordering the abatement of any public nuisance under the provisions of this chapter must be brought in accordance with California Code of Civil Procedure Sections 1094.5 and 1094.6.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.160 - Compliance with abatement order.

At no cost to the city, the responsible party will comply with all of the provisions of an abatement order. If the responsible party fails, for any reason, to comply with an abatement order within the time required in the order, the city manager, or his or her designee, shall cause the nuisance described in the abatement

order to be abated by city forces or by private contractor. The city attorney is authorized to take action as needed to gain entry upon the property where the public nuisance exists for purposes of abating a public nuisance.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.170 - City expenses; record of costs.

The enforcement officer shall keep an account of all abatement costs, as defined in Section 8.40.030.B., for abating the nuisance on each separate lot or parcel of land where the work is done.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.180 - Hearing on the cost of abatement.

- A. The enforcement officer shall give notice of the cost of abatement by certified mail (postage fully prepaid) addressed to the owner of the property at the address appearing on the last equalized assessment roll or the supplemental roll, whichever is more current, and to the responsible party. The cost notice will include a statement of hearing rights of the property owner and the responsible party (if not the property owner) concerning the cost of abatement. Upon written request for a hearing by the property owner received by the city manager within ten (10) days after mailing the cost notice, a hearing will be held by the city manager, or his/her designee, on the question of the cost of the abatement.
- B. Notice of the hearing will be mailed at least ten (10) days before the hearing by certified mail, to the property owner and responsible party. The city manager or his/her designee will either confirm the costs of abatement or modify the amount. The decision of the city manager or his/her designee is final. The city manager or designee will give notice of the decision on the cost of abatement by registered or certified mail to the property owner and responsible party.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.190 - Cost recovery.

- A. The city may pursue any available legal remedy to collect costs owed to the city for abatement of the nuisance.
- B. Collection costs shall be in addition to any penalties, interest and/or late charges imposed on the delinquent obligation. Collection costs imposed under this section shall be added to and become part of the underlying obligation.
- C. Interest. Any person who fails to remit payment to the city of all abatement costs required to be paid to the city pursuant to a nuisance abatement order under this chapter within sixty (60) days of the date such abatement costs are confirmed in accordance with Section 8.40.180, shall, in

addition to the amount of the abatement costs, pay interest on the amounts due at the rate of ten (10) percent per annum, pro rata, from the date on which the amount due first became delinquent until the date that payment is received by the city.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.200 - Nuisance abatement lien and special assessment procedures.

- A. Lien. Pursuant to California Government Code Sections 38773, 38773.1 and 38773.5, and any successor statutes, persons failing to abate a public nuisance as ordered pursuant to this article will be obligated to pay all city expenses of abating the nuisance and all administrative costs, as defined in Section 8.40.030.B., associated therewith. A nuisance abatement lien in favor of the city for the expenses of the city will be created and recorded, pursuant to this section, against the property on which the nuisance is maintained. The lien will specify the amount of the lien, the name of the city, 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.
- B. Notice of Proposed Recordings. An itemized notice of the lien amount and proposed recording will be sent by certified mail to the property owner of record of the parcel of land on which the nuisance was abated by the city, based on the last equalized assessment roll or the supplemental roll, whichever is more current, before recordation of the lien. The notice will be served in the same manner as a summons in a civil action in accordance with California Code of Civil Procedure Section 415.10 et seq., at least ten (10) days before recording the lien. 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 ten (10) days, and publication thereof in a newspaper of general circulation published in the county in which the property is located.
- C. Recording. The city's nuisance abatement lien will then be recorded in the Merced County Recorder's office, and from the date of recording, will have the force, effect, and priority of a judgment lien.
- D. Special Assessment.
 1. The city's total abatement costs may also be collected as a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the county recorder of the County of Merced of a notice of lien, as so made and confirmed shall constitute a special assessment on the property for the amount of the assessment. The assessment shall be collected at the same time and in the same manner as ordinary municipal taxes.
 - 2.

The city clerk shall give written notice to the owner of the imposition of the special assessment by United States mail, postage prepaid, at the time of imposing the assessment. The notice shall contain the following information:

- (a) That the property may be sold after three (3) years by the tax collector for unpaid delinquent assessments and that the tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.
 - (b) That the assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and subject to the same penalties and the same procedure and the sale in case of delinquency as provided for ordinary municipal taxes.
 - (c) That if the property is sold to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date to which the first installment of taxes would become delinquent, the cost of abatement shall not be a lien against the real property, but shall be transferred to the unsecured roll for collection.
- E. Satisfaction. In the event that the lien or special assessment is discharged, released, or satisfied, either through payment or foreclosure, a notice of the discharge containing the information specified in the lien shall be recorded by the city.
- F. Fees. Any fees incurred by the city for processing, recording of the lien and providing notice to the property owner may be recovered by the city as part of its foreclosure action to enforce the lien.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.210 - Order for treble costs of abatement.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with Article IV of this chapter, except conditions abated pursuant to California Health and Safety Code Section 17980, the court may order the owner to pay treble the costs of the abatement.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.220 - Recovery of attorney's fees.

In all cases where the city attorney or his/her designee has determined to proceed with abatement proceedings either by filing a criminal or a civil action, initiating an administrative proceeding or special proceeding, recovery of attorney's fees shall be available to the prevailing party. However, recovery of attorney's fees shall only be available to those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the city in the action or proceeding.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.230 - Judicial remedies.

- A. Nothing in this chapter will be deemed to prevent the city attorney from:
1. Commencing a civil action in the Superior Court to enforce all or any of the provisions of any abatement order;
 2. Commencing a civil action to abate a public nuisance as an alternative to or in conjunction with an administrative proceeding pursuant to this chapter;
 3. Filing a civil action to recover the amount of a confirmed accounting from an owner or occupant of the lot to which it relates; or
 4. Filing a criminal action to enforce this code.
- B. Where a civil action is filed, if the court issues an order or a judgment which finds a public nuisance to exist, and orders or approves the abatement of the public nuisance, or where the court validates an accounting, the court will also award the city its actual costs of abatement, including, without limitation, reasonable attorney's fees incurred by the city in the judicial proceeding.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.240 - Alternative remedies.

Nothing in this chapter shall be so interpreted as to prevent prosecution under any other civil, penal, building, fire, or related codes or other sections in other titles of the Merced Municipal Code. The city reserves the right to employ any one (1) or any combination of any and all codes for prosecution.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.250 - Violation.

Any person, firm, or corporation, whether as a principal, agent, employee or otherwise, violating any provision(s) of this chapter shall be guilty of a misdemeanor and upon conviction thereof, shall be punished in accordance with Chapter 1.12 of this code.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.260 - Liability.

The city manager or any employee charged with the enforcement of this code, acting in good faith and without malice for the city in the discharge of his/her duties, shall not thereby render himself/herself liable personally and he/she is relieved from all personal liability for any damage that may accrue to persons or

property as a result of any act required or by reason of any act or omission in the discharge of his/her duties. Any suit brought against the city manager or employee because of such act or omission performed by him or her in the enforcement of any provisions of this code shall be defended by the city attorney or designated counsel until final termination of the proceedings.

(Ord. No. 2349, § 1, 3-1-2010)

Article V. - Special Nuisance Abatement Proceedings for Weeds and Rubbish

8.40.270 - Weed abatement.

The city council may:

- A. Declare by resolution, pursuant to California Government Code Section 39561 et seq., that a public nuisance exists with respect to a specific parcel whenever that parcel is being maintained in a manner that has resulted in weeds, as that term is defined in California Government Code Section 39561.5, being grown upon the streets, sidewalks or private property in the city; and
- B. Commence any action or proceeding, pursuant to California Government Code Section 39561 et seq., to abate the public nuisance, to pursue all other remedies against the violator, to seek the imposition of all penalties against the violator and to recover any and all costs from the responsible person.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.280 - Rubbish, refuse and dirt.

The city council may:

- A. Declare by resolution, pursuant to California Government Code Section 39561 et seq., that a public nuisance exists with respect to a specific parcel whenever that parcel is being maintained in a manner that has resulted in an accumulation of rubbish, refuse, and dirt upon the parkways, sidewalks, or private property in the city; and
- B. Commence any action or proceeding, pursuant to California Government Code Section 39561 et seq., to abate the public nuisance, to pursue all other remedies against the responsible person, to seek the imposition of all penalties against the responsible person and to recover any and all costs from the responsible person.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.290 - Notice.

The enforcement officer shall cause any owner or other responsible person to be notified of the existence of such condition on the premises and shall direct that such person or persons shall abate such condition or appear before the enforcement officer at a stated time and place and show cause why such condition should not be abated by the city at such person's expense.

The notice shall be substantially in the following form:

NOTICE TO REMOVE WEEDS, RUBBISH,
LITTER AND MISTLETOE

(Name and Address of such person notified)

As owner, agent, lessee or other person occupying or having charge or control of the building, lot or premises at _____ you are hereby notified that the undersigned, pursuant to Section 8.40.070 of the Merced Municipal Code, has determined that there exists upon or adjoining said premises the following condition contrary to the provision of Subsection _____ of Section 8.40.070.

You are hereby notified to abate said condition to the satisfaction of the undersigned within ____ days of the date of this notice or to appear at the office of the _____ at Merced, California, on _____ 20__ at ____ o'clock ____M., and show cause, if any you have, why said condition should not be abated by the City and the expenses thereof charged to you as a personal obligation and/or made a lien upon said buildings or grounds. Abatement is to be accomplished in the following manner:

Dated: _____

(Name of Department Head)

By _____

(Ord. No. 2349, § 1, 3-1-2010)

8.40.300 - Manner of giving notice.

A. A copy of the notice provided for in Section 8.40.290 shall be sent to the owner and may be sent to any other of said persons sought to be charged with the responsibility of abatement. The notice shall be sent by mail, postage prepaid and addressed as follows:

1. To the owner: as such person's name and address appear on the last equalized assessment roll of the county or as known to the enforcement officer or the person authorized by the enforcement officer to give such notice;

2. To any other such person: as such person's name and address are known to the enforcement officer or the person authorized by him/her to give notice.

- B. The person giving such notice shall file a copy thereof in the office of the enforcement officer together with an affidavit or certificate stating the time and manner in which such notice was given. The failure of any owner or any other person to receive such notice shall not affect in any manner the validity of any proceedings taken under this article.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.310 - Hearing.

At the time fixed in the notice described in Section 8.40.290, the enforcement officer shall hear testimony offered on behalf of the person or persons sought to be charged which tends to show why the condition should not be abated and the expense thereof charged to the person as a civil debt and/or made a lien upon the buildings or grounds. The enforcement officer may hear rebuttal testimony on behalf of the city. If at the conclusion of the hearing the enforcement officer is satisfied that the condition exists and concludes that it should be abated at the expense of such person or persons as aforesaid, he/she shall so advise such persons attending the hearing, either orally or in writing. In the event any person given notice of hearing as shown by the evidence of mailing shall fail to appear at the hearing, then as to him/her such evidence of mailing shall, without the taking of further testimony, be sufficient evidence of the existence of facts in support of the conclusion, and no notice of the conclusion of the enforcement officer need be given to any such person failing to appear.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.320 - Abatement by city.

In all cases where the enforcement officer has determined to proceed with abatement, then on the day following the date fixed for the hearing or, if the matter has been continued by the enforcement officer, the day following the conclusion thereof, the city shall acquire jurisdiction to abate the condition at the person's expense as provided in this article. Any property owner or responsible person shall have the right to abate the condition himself/herself or have the same abated at his/her own expense, provided such condition has been abated prior to the arrival of the enforcement officer or his/her authorized representative to do so.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.330 - Account and report of cost.

The enforcement officer shall keep an account of the cost of abating such nuisance and embody such an account in a report and assessment list to the city council, which shall be filed with the city clerk. Such report shall refer to each separate lot or parcel of land by description sufficient to identify such lot or parcel,

together with the expense proposed to be assessed against each separate lot or parcel of land.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.340 - Notice of report.

The city clerk shall post a copy of such report and assessment list on the bulletin board near the entrance to the City Hall, together with a notice of filing thereof and of the time and place when and where it will be submitted to the city council for hearing and confirmation, notifying property owners that they may appear at such time and place, and object to any matter contained therein. A like notice shall also be published once in a newspaper of general circulation, published and circulated within the city. The posting and publication of said notice shall be made and completed at least five (5) days before the time such report has been submitted to the city council. Such notice, as so posted and published, shall be substantially in the following form:

NOTICE OF HEARING ON REPORT
AND ASSESSMENT FOR
WEED, RUBBISH, LITTER AND
MISTLETOE ABATEMENT

NOTICE IS HEREBY GIVEN that on _____, 20____, the Enforcement Officer of the City of Merced filed with the City Clerk of said City a report and assessment on abatement of weeds, rubbish, litter, and mistletoe, within said City, a copy of which is posted on the bulletin board at the entrance to the City Hall.

NOTICE IS FURTHER GIVEN that on _____ 20____, at the hour of 7:00 o'clock P.M., in the Council Chambers of said City Hall, said report and assessment list will be presented to the City Council of said City for consideration and confirmation, and that any and all persons interested, having any objections to said report and assessment list, or to any matter or thing contained therein, may appear at said time and place and be heard.

List of properties to be assessed:

DATED: _____

CITY CLERK OF THE CITY OF MERCED

(Ord. No. 2349, § 1, 3-1-2010)

8.40.350 - Hearing; lien on property.

- A. At the time and place fixed for receiving and considering such report, the city council shall hear the same together with any objections which may be raised by any of the property owners liable to be assessed for the work of abating such nuisance. The purpose of the hearing shall only be to consider the amount of the liens in the report of the enforcement officer, and not to consider or contest the validity of the liens. The enforcement officer shall attend such hearing with his/her record thereof; and upon such hearing, the city council may make such modifications in the proposed assessments therefor as it may deem necessary, after which such report and assessment list shall be confirmed by resolution.
- B. The amount of the cost of abating such nuisance upon, or in the front or rear of, the various lots or parcels of land respectively referred to in such report, shall constitute special assessments against such respective lots or parcels of land, and after thus made and confirmed, shall constitute a lien on such property for the amount of such assessments, until paid.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.360 - Collection on tax roll.

After confirmation of the report, a copy shall be given to the city finance officer, who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid assessments shall have been given at least annually to the county auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year. All laws and ordinances applicable to the levy, collection and enforcement of city taxes are made applicable to such special assessment, and the lien of said assessment shall have priority of the taxes with which it is collected.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.370 - Enforcement agency.

The fire department, chief building official, and code enforcement officers shall have jurisdiction to administer the provisions hereof.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.380 - Procedure not exclusive.

The special procedure provided in Article V of 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 weeds and rubbish, and abatement under this chapter shall not prejudice or affect any other action, civil or

criminal, for the maintenance of any such condition.

(Ord. No. 2349, § 1, 3-1-2010)

Article VI. - Summary Abatement Proceedings

8.40.390 - Summary abatement proceedings.

Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, any enforcement officer or his/her authorized representative shall have the authority to summarily and without notice abate the same. The enforcement officer or his/her authorized representative shall further have the authority to summarily stop all work on, and/or suspend any and all permits applicable to, the property and/or the subdivision under development in which the property is located, until the condition or use of the property that constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof is abated. The expenses of such abatement shall become a lien on the property and be collected as provided in Section 8.40.200. The property owner shall be entitled to a hearing on the cost of such abatement in accordance with Section 8.40.180.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.400 - Inventory.

Prior to the city performing any summary abatement, the enforcement officer shall, if feasible, cause an inventory to be taken which lists those items which are proposed to be removed from the property and discarded.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.410 - Summary abatement report.

- A. Prior to ordering a summary abatement, the enforcement officer shall prepare a written report which sets forth in writing the facts and circumstances establishing:
1. Why advance notice of the abatement to the property owner, occupant and/or agent having charge or control is not reasonable or feasible or why prior advance notice was not effective;
 2. Why the subject property constitutes a public nuisance; and
 3. Why immediate abatement of the public nuisance is essential.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.420 - Service of summary abatement report.

A copy of the summary abatement report shall be served as soon as possible on the owner(s) of record of the parcel of land on which the public nuisance exists by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last equalized assessment roll of the county or as otherwise known by the enforcement officer. If no address of any such person so appears or is not otherwise known, then a copy of the summary abatement report shall be so mailed, addressed to such person(s), at the address of the subject premises. The failure of the enforcement officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of the Municipal Code or any other applicable statute, rule, code or regulation.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.430 - Proof of service of summary abatement report.

Proof of service of the summary abatement report shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card, returned in acknowledgment of receipt by certified mail, shall be affixed to a copy of the summary abatement report and retained by the enforcement officer.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.440 - Attorney's fees.

The prevailing party in any proceeding conducted pursuant to this article and associated with the abatement of a public nuisance shall be entitled to recovery of attorney's fees incurred in any such proceeding.

(Ord. No. 2349, § 1, 3-1-2010)

8.40.450 - Responsibility for public nuisance abatement costs.

If the city elects to perform public nuisance abatement work pursuant to this article, the owner of record of the property shall be liable for all fees and costs of abatement, as defined in Section 8.40.030.B., incurred by the city to abate the public nuisances. Such costs may be recovered in accordance with Sections 8.40.200 and 8.40.230 of this code.

(Ord. No. 2349, § 1, 3-1-2010)