

DRAFT ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, AMENDING SECTION 9-8.107 OF TITLE 9, CHAPTER 8 OF THE ATASCADERO MUNICIPAL CODE PERTAINING TO RECOVERY OF NUISANCE ABATEMENT COSTS AND SUMMARY NUISANCE ABATEMENT

WHEREAS, California Government Code section 38771 authorizes a city council to declare by ordinance what constitutes a nuisance; and

WHEREAS, California Government Code section 38773 permits a city council to authorize the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining it and to make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with Government Code sections 38773.1 or 3.8773.5; and,

WHEREAS, the Atascadero Municipal Code does not currently provide a procedure for summary abatement of nuisances and the recovery of costs associated with summary abatement; and,

WHEREAS, Government Code section 38773.1 permits cities to establish by ordinance a procedure to collect abatement and related administrative costs by a nuisance abatement lien, which is recorded in the county recorder's office and has the same force, effect, and priority of a judgment lien; and,

WHEREAS, the Atascadero Municipal Code does not currently provide for a procedure as allowed by Government Code section 38773.1; and

WHEREAS, the addition of procedure pursuant to Government Code section 38773.1 and a summary abatement procedure would provide the City with greater flexibility in responding to nuisance conditions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATASCADERO DOES ORDAIN AS FOLLOWS:

SECTION ONE. Findings. The City Council hereby incorporates the foregoing recitals and findings.

SECTION TWO. Adoption. The City Council of the City of Atascadero hereby amends Section 9-8.107 of Title 9, Chapter 8 of the Municipal Code as follows:

9-8.107 Abatement of nuisance.

The Enforcement Officer may initiate proceedings to abate nuisances (see Section 9-8.106) as follows:

(a) First Notice of Nuisance. Upon the determination by the Enforcement Officer that a nuisance exists, a Notice of Nuisance shall be prepared with copies thereof to be served either personally or by mail, postage prepaid, certified, return receipt requested, to the owner of said affected premises as shown on the last equalized assessment role, or the tenant. If no address can be found or is known to the Enforcement Officer, then the notice shall be mailed to such person at the address of the premises affected by the proceedings. The failure of any person to receive the notice does not affect the validity of any proceedings taken hereunder. A copy of the Notice of Nuisance shall be prominently and conspicuously placed upon the premises affected by the nuisance proceedings. Where the Enforcement Officer has determined that the condition causing the nuisance is imminently dangerous to human life or limb, or to public health or safety, the Enforcement Officer may include in the first notice an order that the property, building or structure affected be vacated pending correction or abatement of the conditions causing the nuisance.

(1) Content of First Notice of Nuisance.

(i) A legal description and street address, assessor's parcel number, or other description sufficient to identify the premises affected.

(ii) A description of the condition causing the nuisance. Where the Enforcement Officer has determined that the condition causing the nuisance can be corrected or abated by repair or corrective action, the notice shall state the repairs or corrective actions that will be required and the time limit within which the nuisance must be corrected.

(iii) An order to complete abatement of the nuisance within thirty (30) days.

(iv) A statement that if the nuisance is not corrected as specified, a hearing will be held before the Atascadero City Council to consider whether to order abatement of the nuisance and levy a special assessment, which may be collected at the same time and in the same manner as is provided for the collection of ordinary taxes pursuant to Section 25845 of the Government Code. Special assessments shall be subject to the same penalties, interest and procedures of foreclosure and sale in the case of delinquency as is provided for ordinary taxes.

(b) Notice of Nuisance Abatement. If, upon the expiration of the period specified in the First Notice of Nuisance, action to abate the nuisance has not been commenced, or, if it has been commenced, it has not been pursued with due diligence nor completed within the time specified, the Enforcement Officer shall prepare a Notice of Nuisance Abatement and serve such notice. The hearing shall be scheduled before the City Council at a stated time and place not less than fifteen (15) nor more than thirty (30) days after service of the notice to show cause why stated conditions should not be found to be a nuisance and why the nuisance should not be abated by the Enforcement Officer.

(1) Content of Abatement Notice. The Notice of Nuisance Abatement shall contain the following:

- (i) The information specified in Section 9-8.104(d)(1) and (3).
- (ii) The information specified in subdivisions (1) (i), (iii), and (iv) of subsection (a) of this section.

(c) Abatement Action. A decision to abate a nuisance shall be reached through a hearing (Section 9-8.104). Upon the conclusion of the hearing, the Council may terminate the abatement proceedings or it may order the owner or other affected person to abate the nuisance prescribing a reasonable time (not less than thirty (30) days) for completion of abatement. The order may further provide that, in the event abatement is not commenced, conducted and completed in accordance with the terms set by the City Council, the Enforcement Officer is empowered and authorized to abate the nuisance. The order of the City Council shall be served by mail, postage prepaid, certified, return receipt requested to the owner of said affected premises as shown on the last equalized assessment roll. The time limits set by the City Council are to begin upon service of the notice.

(d) Abatement Penalties and Costs. Upon expiration of the time limits established as set forth in subsection (c) of this section, the Enforcement Officer shall acquire jurisdiction to abate the nuisance and carry out the following as appropriate.

- (1) Disposal of Materials. Any materials in or constituting any nuisance abated by the Enforcement Officer may be disposed of or, if directed by the Council, sold in the same manner as surplus City personal property is sold.

(e) Account of Costs and Receipts and Notice of Assessment. The Enforcement Officer will keep an itemized account of the costs of enforcing the provisions of this title and of the proceeds of the sale of any materials connected therewith. Upon completion of abatement, the Enforcement Officer shall prepare a notice to be served by mail, postage prepaid, certified, return receipt requested, to the owner as shown on the last equalized assessment roll specifying:

- (1) The work done.
- (2) An itemized account of the costs and receipts of performing the work.
- (3) An address, legal description, or other description sufficient to identify the premises.
- (4) The amount of the assessment proposed to be levied against the premises, or the amount to be refunded, if any, due to excess proceeds over expenses.
- (5) The time and place where the Enforcement Officer will submit the account to the Council for confirmation. The time and place specified shall be not less than fifteen (15) days after service of the notice.
- (6) A statement that the Council will hear and consider objections and protests to said account and proposed assessment or refund.

(f) Hearing on Account and Proposed Lien. At the time and place fixed in the notice, the Council will hear and consider the account and proposed assessment, together with objections and protests thereto (Section 9-8.104). At the conclusion of the hearing, the City Council may make such modifications and revisions of the proposed account and lien as it deems just and may order the account and proposed lien confirmed or denied, in whole or in part, or as modified and revised. The determination of the City Council as to

all matters contained therein is final and conclusive. The city manager must give notice of the City Council's decision on the assessment of the costs of abatement by certified mail to the property owner and to any responsible person.

(g) Notice of Lien. Upon confirmation of an assessment by the Council, the Enforcement Officer is to prepare and have recorded in the office of the County Recorder of San Luis Obispo County a notice of lien. The notice is to contain:

- (1) A legal description, address and/or other description sufficient to identify the premises.
- (2) A description of the proceeding under which the special assessment was made, including the order of the Council confirming the assessment.
- (3) The amount of the assessment.
- (4) A claim of lien upon the described premises.

(h) Lien. Upon the recordation of a notice of lien, the amount claimed shall constitute a lien upon the described premises, pursuant to Section 25845 of the Government Code. Such lien is to be at a parity with the liens of state and county taxes.

(i) Collection with Ordinary Taxes. After recordation, the Notice of Lien is to be delivered to the County Auditor, who will enter the amount of the lien on the assessment roll as a special assessment. Thereafter, the amount set forth is to be collected at the same time and in the same manner as ordinary county taxes and is subject to the same penalties and interest and to the same procedures for foreclosure and sale in case of delinquency, as is provided for ordinary county taxes; all laws applicable to the levy, collection and enforcement of County taxes are made applicable to such assessment.

(j) Summary Abatement Procedure. Notwithstanding any other provision of this code, whenever the Enforcement Officer determines that a public nuisance exists within the city and that nuisance constitutes an imminent hazard or danger to public health or safety, the Enforcement Officer, without observing the provisions of this chapter with regard to abatement procedures, may take the following steps to abate the nuisance: (1) give the property owner written notice by U.S. mail of the public nuisance, the City's proposed timing and method of the abatement, and the City's intent to collect the abatement costs as lien against the property subject to collection as property taxes; (2) following notice to the property owner, take all necessary and reasonable steps to cause the abatement of such nuisance in such manner as the Enforcement Officer determines is reasonably required; (3) promptly report any such emergency abatement action to the City Council; and (4) cause to be maintained an itemized account of the costs incurred by the city in abating the imminently dangerous condition. Such costs may be recovered by the city in the same manner that abatement costs are recovered pursuant to subsections (e) through (i) of this section.

SECTION THREE. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this

ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION FOUR. A summary of this ordinance, approved by the City Attorney, together with the ayes and noes, must be published twice: at least five (5) days prior to its final passage in the *Atascadero News*, a newspaper published and circulated in the City of Atascadero, and, before the expiration of fifteen (15) days after its final passage, in the *Atascadero News*. A copy of the full text of this ordinance must be on file in the City Clerk's Office on and after the date following introduction and passage and must be available to any interested member of the public.

INTRODUCED at a regular meeting of the City Council held on _____, and PASSED and ADOPTED by the City Council of the City of Atascadero, State of California, on _____, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

CITY OF ATASCADERO

Marcia McClure Torgerson, C.M.C.,
City Clerk

Mike Brenner, Mayor

APPROVED AS TO FORM:

Brian Pierik, City Attorney