

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIO REPEALING AND ADOPTING CHAPTER 95A, SECTIONS 95A.101 – 95A.124 OF TITLE IX OF THE MUNICIPAL CODE PERTAINING TO THE ABATEMENT OF PUBLIC NUISANCES.

WHEREAS, the City Council is authorized to declare those things which constitute a public nuisance and involve a threat to the public peace, health, safety or general welfare in the City of Indio pursuant to Government Code Section 38771 and Civil Code Section 3480; and

WHEREAS, Government Code Section 38773 permits the legislative body of the City of Indio to provide for the abatement of any nuisance at the expense of the persons who create, cause, commit or maintain the nuisance, and by ordinance make the expense of such abatement a personal obligation against the owner; and

WHEREAS, the City of Indio is allowed to seek injunctive relief against those creating a public nuisance pursuant to Civil Code Section 3491; and

WHEREAS, modern life creates innumerable circumstances where certain individuals or entities, either intentionally or through neglect, create conditions which offend or endanger the health, safety and welfare of the public in general; and

WHEREAS, it is the intent of the Indio City Council to protect the public from offenses or dangers to its health, safety and welfare; and

WHEREAS, the Indio City Council deems it fair that individuals or entities responsible for endangering the public health, safety and welfare pay for the abatement of such nuisance, rather than the public in general; and

WHEREAS, the provisions of this ordinance bear a reasonable and substantial relation to its objective and constitutes a proper exercise of the police power of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIO HEREBY ORDAINS AS FOLLOWS:

Section 1: Code Repealed

Chapter 95A, section 95A.101 – 95A.124 of Title IX of the Indio Municipal Code is hereby repealed.

Section 2: Code Adopted

Chapter 95A, sections 95A.101 – 95A.124 of Title IX of the Indio Municipal Code is hereby adopted as follows:

Chapter 95A

PUBLIC NUISANCES

Sections:

- 95A.101 Purpose**
- 95A.102 General enforcement authority**
- 95A.103 Definitions**
- 95A.104 Declaration of a public nuisance**
- 95A.105 Emergency abatement**
- 95A.106 Notification to property owner**
- 95A.107 Voluntary abatement of nuisances**
- 95A.108 Failure to voluntarily abate a declared nuisance**
- 95A.109 Authority to enter upon property**
- 95A.110 Service of notices and orders for the abatement of a public nuisance**
- 95A.111 Abatement of public nuisance hearing by the hearing officer**
- 95A.112 Abatement of public nuisance hearing procedures**
- 95A.113 Order on the abatement of a public nuisance**
- 95A.114 Alternative process**
- 95A.115 Service of the order to abatement a public nuisance**
- 95A.116 Voluntary abatement after order to abate a public nuisance**
- 95A.117 Abatement by the city**
- 95A.118 Recording the notice of intent to demolish**
- 95A.119 Record of expenses and order for costs for abatement**
- 95A.120 Grievance with abatement order - appeal to the nuisance abatement appeals board**
- 95A.121 Grievance with cost order - appeals to the nuisance abatement appeals board**
- 95A.122 Assessment of costs**
- 95A.123 Violations**
- 95A.124 Alternative remedies**

§95A.101 PURPOSE

A. It is the intention of the City Council, in adopting the ordinance codified in this chapter, to set forth guidelines for determining what conditions constitute a public nuisance; to establish a method for giving notice of the conditions and an opportunity to correct; and finally in the event the public nuisance is not abated or corrected, to provide a procedure for a hearing and determination of the facts and manner in which the conditions shall be corrected or removed.

B. In order to further the stated goals of the City and to protect its citizens and their property from conditions which are offensive or annoying to the senses, detrimental to property values and community appearance, or hazardous or injurious to the health, safety, or welfare of the general public, the City Council has determined that

this chapter pertaining to nuisance abatement is necessary to effectively abate or prevent the development of such conditions in the City.

C. The remedies provided for in this chapter are supplemental and complementary to all of the provisions of this Code, state law, and any law cognizable at common law or in equity; and nothing herein shall be read, interpreted, or construed in any manner to limit any existing right or power of the City to abate any and all public nuisances.

§ 95A.102 GENERAL ENFORCEMENT AUTHORITY

Enforcement officials have the authority and powers necessary to gain compliance with the provisions of the Municipal Code, land use plans, and applicable State and/or Uniform codes. These powers include, but are not limited to; the power to issue notices of violation, field citations, or notices and orders to abate nuisances, inspect public and private property, and use whatever judicial and administrative remedies are available under the Municipal Code or applicable state codes.

95A.103 DEFINITIONS

For the purpose of this chapter, certain words and phrases used in this chapter are defined as follows:

ABANDONED. Buildings, structures, property or other items found to be unoccupied, unattended or left in a place or condition in which it is reasonably apparent or obvious that the owner has no intention of returning to occupy or claim it.

ABATE. To remove the source of the public nuisance either by correcting specific problems or by removal from public or private property.

ABATEMENT COSTS. Also referred to as **COSTS OF ABATEMENT** and **ADMINISTRATIVE COSTS.** They include all costs and expenses incurred by the City in abating a public nuisance. Such costs include, but are not limited to, the following: the actual expenses and costs to the City in the preparation of notices, specification and contracts; inspection of the work; recording fees; any attorney's fees expended in the abatement of the nuisance, through civil action or otherwise; all costs and expenses for which the City may be liable under State law arising from or related to the nuisance abatement action; and all costs or expenses to which the City may be entitled pursuant to California Health and Safety Code § 520 and other statutory entitlements. Costs may be recovered by the prevailing party in actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. Abatement costs shall begin to accrue at the time the City first receives a complaint regarding a problem on the property.

ABATEMENT HEARING. The administrative hearing before the Hearing Officer after issuance of a Notice to Abate by an Enforcement Official.

APPLICABLE STATE CODE. Any law of the State of California which protects the health, safety or welfare of the citizens of the City of Indio.

BOARDED BUILDING. A building whose doors or windows have been covered with plywood or other material for the purpose of preventing entry into the building by persons or animals.

BUILDING. A man made structure used for or intended for the occupancy of humans.

BUILDING OFFICIAL. The Building Official of the City of Indio.

CITY MANAGER. The City Manager of the City of Indio.

DECAYED. Vegetation which has become deteriorated, lost its strength, health or has declined in quality.

DETERIORATED. Any building, structure, fence, automobile, or other item which is in a state of disrepair, partial ruin or decay.

DILAPIDATED. Any building, structure, fence, automobile, etc in a state of disrepair or reduced into partial ruin or decay.

DISEASED. Any abnormal condition that interferes with vital physiological processes, caused by unfavorable or environmental conditions.

DISMANTLING. Stripping, disassembling or taking apart any building, structure, automobile, furniture or equipment.

ENCROACHES. Advancement beyond property boundaries.

ENFORCEMENT OFFICIAL. The City Manager, the Building Official, the Chief of Police and any employee or agent of the City of Indio so designated by them and charged with enforcing the Municipal Code of the City of Indio, or applicable state code.

EXCAVATION. A natural cavity, pouch or recess; the action or process of excavating formed by cutting, digging or scooping.

FACADES. The decorated face or front of a building or structure.

FIELD. A wide open space of land.

FIRE HAZARD. Any situation in which there is a greater than normal risk of harm to people or property due to fire.

FIRE MARSHAL. The Fire Marshal of the City of Indio.

HEARING OFFICER. The official designated by the City Manager charged with presiding over the abatement hearing and responsible for issuing orders to abate public nuisances and costs.

HARBOR. To provide a place, home or habitat for rodents, vermin or farm animals.

HAZARDOUS. A situation which poses a level of threat to life, health, property or environment.

HAZARDOUS LIQUID. A liquid deemed to cause a hazard, exposing one to unsafe, dangerous conditions by skin or airborne exposure.

HAZARDOUS TREE. Trees in which the branches, trunk or other portion has grown into a position which has, or may have the potential to become hazardous to people, pedestrians or other property.

HOLIDAY LIGHTS AND DECORATIONS. Lights or decorations used to denote a holiday or used in association with a holiday.

HOMEOWNERS' ASSOCIATION. An organization, elected or not, which governs regulations and expenditures of a particular community.

ILLEGAL ACTIVITY. Engaging in activities that are prohibited by law or statute, contrary to, or forbidden by official rules, regulations, accepted rules or this Code.

INTERESTED PARTY. The owner, legal occupant, or holder of a recorded interest of a property subject to a Notice or Order to Abate.

LAND. The part of the earth that is not covered by water.

LOT. A parcel of land having fixed boundaries.

MERCHANDISE. Commodities offered for sale.

NAUSEATING. Causing nausea, disgust, revulsion or loathing.

NEGLECTED. To disregard, pay inadequate attention to, fail to care for, or to fail to attend to any building, structure, equipment, vehicles, vegetation, etc.

NONAPPROVED MATERIAL. A material utilized, but which is not approved by the City of Indio.

NOTICE TO ABATE. Notice provided by the City that a nuisance exists on a property and instructions to abate. Such notice is issued by an enforcement official upon determining the existence of a nuisance.

NUISANCE ABATEMENT APPEALS BOARD. The three member board appointed by the City Manager to hear administrative appeals under this chapter.

ORDER. The order to abate a public nuisance issued pursuant to Section 95A.113 of this Chapter.

ORDER TO ABATE. The Order of the City of Indio to abate a nuisance.

OWNER. The owner of record of property.

OVERGROWN. Vegetation that has grown abnormally or excessively large.

PARKWAY. That portion of the street right-of-way which is available for landscaping, and not for curb, gutter or pavement.

PATCH PAINTED. Any building or structure that is painted in a fashion that gives the reasonable appearance of being incomplete or mismatched.

POLICE CHIEF. The Chief of the Indio Police Department.

PREMISES. Any real property or improvements thereon.

PROPERTY. Also known as real property, land, lots, parcels or real estate, is the land or any permanent feature or structure above or below the surface.

PUBLIC RIGHT-OF-WAY. Any place or location on which the public has a right to travel, including, but not limited to, a street, road, sidewalk or footpath.

PUBLIC NUISANCE. Any nuisance designated in Section 95A.104 of this Chapter.

PUBLIC VIEW. Anything which can be seen by a person from the public right of way, or from public property, or on areas of private property open to access by the public or by consent of the person in possession of the property or by consent of an agent of that person.

RECIPIENT. Any person, not necessarily the owner of the premises, who receives a Notice or Order to Abate pursuant to this chapter.

REFUSE. Unused or discarded matter/material having no substantial market value, including, but not limited to, rubbish, refuse, debris, sludge, rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials, wood, crates, cartons, paper, containers, cans, bottles or barrels containing refuse or other matter, and plant or tree trimmings.

STRUCTURES. Building or structures not designed for human occupancy.

TARPAULIN. A piece of cloth or other material used for protecting or covering exposed objects or areas.

TERRAIN. An area of land or the particular features of it.

TOPPED. Trees that have been cut leaving only the tree trunk or stump, or any other severe type of pruning which usually produces less desirable results than a more

moderate pruning with respect to the tree's natural form and which is generally hazardous to the overall health and stability of the tree.

VEHICLE. For the purpose of this section, vehicle is defined in Indio Municipal Code, Chapter 71.

VERMIN. Any one of various common types of small insects or animals which cause harm and annoyance.

§95A.104 DECLARATION OF A PUBLIC NUISANCE

It is unlawful and is hereby declared to be a public nuisance for any person, business, homeowners' association, corporation or entity owning, leasing, occupying, or having charge or possession of any land, parcel, building, structure or premises, in any location within the City, to maintain such premises in such a manner that any of the following conditions are found to exist, or cause or may cause a hazard to health, safety or general welfare:

- A. Any violation of a Federal, State, or local law or ordinance, land use plan, rule, regulation, and/or any code adopted by reference in this Code, or any nuisance known in equity;
- B. Any property not maintained or used in a condition consistent with the approved plans or conditions;
- C. Any land, terrain or configuration which interferes with the established drainage pattern over a property or from adjoining properties that may result in erosion and/or surface drainage problems that could be detrimental to the public health, safety, usability, or appearance to neighboring properties;
- D. Any building or structure left, not secured, not occupied, abandoned, partially or completely damaged or destroyed, or which is in a state of partial construction for an unreasonable period of time;
- E. Any building or structure erected, altered, expanded, maintained or used, contrary to the provisions of this Code or any condition or requirement imposed upon the building or structure;
- F. Any building or structure not adequately maintained or which is deteriorated in any of the following ways;
 - 1. Peeling, discolored or patch painted with colors that do not match on the exterior of the structure;
 - 2. Missing, broken or boarded up windows;
 - 3. Roof or ceiling in disrepair;
 - 4. Damaged porch, balcony or stairways;

5. Missing or damaged handrails or related safety equipment;
 6. Broken or missing window screens, if required;
 7. Broken or missing locks and latches on windows and doors;
 8. Facades, exterior stucco or decorative planters or any other portion of the exterior of a structure which is damaged or not adequately maintained;
- G. Bees and other stinging insects, either intentionally or not, in a place or condition that has, or may have the potential to bite, sting or harm humans or animals, unless otherwise permitted by the City;
- H. Any building or structure that is overcrowded with persons such that it unreasonably interferes with a neighboring resident's right to access, use, or enjoyment of their property, or such that it impairs the general welfare of a neighboring resident, or provides inadequate sanitation for the number of occupants;
- I. Failure to secure and prevent public access to abandoned or vacant buildings, structures or portions thereof;
- J. Any fence, wall or gate in any of the following conditions:
1. Installed without the proper permits;
 2. Installed or maintained contrary with the conditions set forth in the approved plans or permits;
 3. Damaged, broken, dilapidated, unsightly or not adequately maintained;
 4. Patch painted with colors that do not match;
 5. Patched or covered by plywood, metal, plastic, tarpaulin or other non approved materials;
 6. Constructed of metal or plywood garage doors;
 7. Broken or non-working emergency access gates or equipment;
- K. Landscaping, vegetation, trees, vacant land, and parkways or any portion thereof, in public view, in any of the following conditions:
1. Lack of turf, planted material, decorative rock, bark, planted ground cover or coverings;
 2. Lawn or grass in excess of six (6) inches in height or which is dead, decayed, diseased, or not adequately maintained, except

that lawn or grass may not exceed twelve (12) inches in height on parkways;

3. Overgrown to a point which does, or has a potential to, harbor rats, vermin, excessive amounts of insects or other potential disease carriers;
 4. Obstructs vision of motorists or pedestrians or official traffic control devices;
 5. Encroaches onto, over, or upon any public right-of-way, including, but not limited to streets, alleys or sidewalks;
 6. Flowerbeds, planters, gardens and other decorative growing areas which contain overgrown, dead, decayed, diseased, or inadequately maintained flowers, bushes, hedges, ground coverings or vegetation;
 7. Flowerbeds, planters, gardens and other decorative growing areas which have become overrun with grass or weeds;
 8. Trees, bushes, hedges, and other vegetation which has become overgrown to a point where it substantially encroaches onto neighboring properties causing a substantial interference with the neighboring resident's right to access, use or enjoyment of their property, or otherwise causes a hazard to health, safety or general welfare;
 9. Vacant land, fields or lots on which the vegetation is overgrown, or which contains or is likely to contain rats, vermin, trash, or illegal activity;
 10. Vacant land, fields or lots which is maintained in a condition which is a fire hazard, unsightly, or likely to invite mischievous or illegal activity;
 11. Trees which are dead, overgrown, not adequately maintained, or which have been declared hazardous or have been topped leaving only the tree trunk or tree stump, or have been declared to be hazardous by a certified arborist;
- L. Offensive or nauseating odor or smell created by garbage, recycling or garbage containers, dead animals or other odor causing substances or materials.
- M. Any of the following conditions on any property or portion thereof visible from public view:
1. Lumber, trash, garbage, debris, refuse;

2. Hazardous swimming pools, spas, ponds, bodies of water or excavations;
3. Abandoned, broken or neglected equipment and machinery;
4. Furniture, appliances, play equipment or other household fixtures, except for lawn furniture;
5. Clotheslines, clothes or similar materials hanging or placed in front yards, side yards, porches, balconies or fencing, or otherwise in public view;
6. Any type of item or material stored on a rooftop;
7. Accumulation of litter, trash, boxes, or other items in front of doorways, on sidewalks, public walkways and other common areas used by the public;
8. Accumulation of litter, trash, boxes or other items in parking lots, planters and other landscaped areas;
9. Display, sale or use of merchandise, equipment, machinery or other items in, on, or blocking streets, sidewalks, walkways, parking lots, parking stalls or other common areas;
10. Temporary service bins, dumpsters, or storage containers stored on a public street or on private property, except when associated with a permitted construction or remodeling project, stored in an approved trash enclosure, or completely stored out of public view;
11. Garbage cans, trash cans, recycling containers and bins, bags and other trash collection devices in place beyond twenty-four (24) hours before or after the scheduled trash day;
12. Commercial garbage or recycling bins stored outside the dumpster enclosure;
13. Accumulation of grease, oil or other hazardous liquids or materials on paved and unpaved surfaces, driveways, sidewalks, walkways or any other location;
14. Tarpaulins or any unapproved screening materials used for any purpose other than in an emergency weather condition, or when attached to temporary construction fencing surrounding an approved and permitted construction project or public safety hazard;
15. Portable devices or equipment, including but not limited to play equipment, located or stored on any street, sidewalk or public right-of-way;

16. Holiday lights or decorations, excluding permitted flags, installed or displayed in front or side yards, or on a structure, except 30 days before and after December 25, and fourteen (14) days before or after the Fourth of July, Halloween, Easter and Thanksgiving;
 17. Storage of construction equipment, machinery or building materials other than during operations conducted under a valid building, grading or demolition permit;
 18. Cement mixers, construction trailers or other equipment parked more than four (4) hours at a location other than the site of the construction project;
 19. Animal, fowl or bird feces kept in a visible location or in a condition that is or may become hazardous or nauseating;
 20. Foundations, retaining walls, planters, pools and other structures left on a property after a building or structure has been demolished or destroyed unless expressly authorized under this Code or demolition permit.
- N. Any of the following conditions on parking lots, or vehicular or pedestrian access areas:
1. Striping installed or maintained contrary to the conditions set forth in the approved plans or permit;
 2. Potholes, major cracks or other conditions which reflect inadequate or poor maintenance;
 3. Vehicular parking stall markings have become deteriorated or are non-existent;
 4. Pedestrian walkway markings, if required, which are deteriorated or not clearly visible;
 5. Lack of the required number of handicap parking stalls or handicap walkways;
 6. Lack of the required handicap stall signage;
 7. Required curb markings or signs installed improperly;
 8. Required curb markings or signs not maintained in a clean, visible condition, or otherwise improperly maintained.
- O. Growth on palm trees, including but not limited to, dead or decayed palm fronds, noncommercial fruit, or flowers/pollen hanging from palm trees;

- P. Repairing, dismantling, or painting of any vehicle or motorized equipment visible from public view unless:
 1. The repairing or dismantling is conducted in an enclosed garage where the vehicle or equipment is registered to and owned by a person permanently residing on the property.
 2. The repairing or dismantling can be started and completed in less than twenty-four (24) hours.
 3. The painting is done in an approved paint booth or in accordance with the allowed uses in the Fire Code. At no time can the painting be conducted in a residential district.

- Q. Repairing or dismantling of any vehicle or motorized equipment on vacant lots, residential, commercial or industrial parking lots, including those associated with auto repair or auto parts stores, or on any street or alley;

- R. Any swimming pool, spa, pond, fountain or other body of water which is unfiltered, polluted or not otherwise adequately maintained, or which creates a hazard to public safety, health or general welfare;

- S. Any outdoor burning of any trash, material, building, structure, matter of thing, unless authorized by the Fire Marshal or his or her authorized representative by the issuance of a permit; except wood, charcoal, or those materials normally associated with and used inside of a barbecue, fire pit, wood burning stove or other similar device specifically made and designed for the burning of such materials.

- T. Any property with dirty water, sewage or any other substance, including but not limited to, urine or other bodily matter, discolored water, contents of septic tanks, cesspools or privy vaults, which flows onto public or private property;

- U. Any property, building or structure, wall, fence, pavement, or walkway which is painted in an unreasonably offensive or garish manner, or in bright, fluorescent, or luminescent colors, which is out of harmony or conformity with the standards of adjacent properties;

- W. Maintenance of property in conditions that are detrimental to the public health, safety or general welfare or that constitutes a public nuisance as defined in California Civil Code Section 3479 and 3480, including, but not limited to, anything dangerous to human life or detrimental to human health, or that lacks adequate ventilation, sanitation or plumbing facilities, or that constitutes a fire hazard.

§95A.105 EMERGENCY ABATEMENT

When a public nuisance constitutes an immediate hazard or threat of harm and the situation calls for abatement sooner than the abatement procedures in this chapter

otherwise allow, the code enforcement officer may take or cause emergency abatement of such nuisance with such notice to parties concerned, or without notice, as the particular circumstance reasonably allows.

Whenever the Police Chief, Building Official, or Fire Marshal, finds conditions on a property constitute an immediate hazard or threat to the public health, safety, or welfare of persons or property, and the situation calls for abatement sooner than the abatement procedures in this chapter permit, the Police Chief, Building Official, or Fire Marshal may order and cause the summary abatement of those conditions constituting the threat without the prior notice or hearing described in Sections 95A.108 and 95A.111. After the summary abatement, notice and a reasonable opportunity to be heard will be afforded. Expenses and costs of abatement can be appealed to the Nuisance Abatement Appeals Board pursuant to Section 95A.121.

§95A.106 NOTIFICATION TO PROPERTY OWNER

Whenever an Enforcement Official declares a nuisance as defined by Section 95A.104, he or she shall notify the property owner and any interested party in writing of the existence of the alleged nuisance and direct that it be abated. This notification, hereafter known as a Notice to Abate, shall detail the violations and include the date, time, and place of a Nuisance Abatement Hearing. This Nuisance Abate Hearing shall be held by no more than twenty (20) days from the issuance of the Notice to Abate. At the hearing, a Hearing Officer will determine if a public nuisance exists. The format of the notice shall be available to the public upon request of the City Clerk. Other information, such as the owner's responsibility for administrative and incidental costs and expenses incurred in abating the nuisance, may be included in the Notice to Abate. This section shall not apply to section 95A.105 concerning emergency abatement.

§95A.107 VOLUNTARY ABATEMENT OF NUISANCES

The owner of any building, structure, or property alleged to be a nuisance under the provisions of this chapter may abate the nuisance at any time within the abatement period provided in Section 95A.106. The owner shall advise the Enforcement Official of the abatement. Once advised the enforcement official shall inspect the premises to insure that the nuisance has been abated.

§95A.108 FAILURE TO VOLUNTARILY ABATE A DECLARED NUISANCE

If an alleged nuisance is not properly abated within the period established under the provisions of Section 95A.106, the property owner, if not notified of the hearing date initially, shall be served with a Notice to Abate, in accordance with Section 95A.106 of this Chapter. In addition, the Enforcement Official may institute any and all other remedies as provided by federal, state or local law.

In addition to the remedies set forth above, and pursuant to the authority of Government Code Section 38773.5, once the City has determined that a public nuisance or other code violation exists, the City Council and the City of Indio are authorized to record an appropriate notice of violation against the subject property setting forth the nature of the violation or public nuisance. The property owner shall be notified in writing ten days in advance of such recordation of the City's intent to record the notice of violation. The notice of intent shall provide that the City intends to record a notice of

violation and that the property owner may respond to the notice or otherwise abate the violation before the notice is recorded. Copies of the recorded notice shall be mailed to the affected property owner at the address shown on the last assessment roll, at the time the notice is recorded. The City may seek recovery of the cost of such recording from the property owner.

§95A.109 AUTHORITY TO ENTER UPON PROPERTY

The Enforcement Official may enter upon the property for the purpose of posting or serving notice required by this chapter, in accordance to Federal, state and local law.

§95A.110 SERVICE OF NOTICES AND ORDERS FOR THE ABATEMENT OF A PUBLIC NUISANCE

Service of notices and orders required under this chapter shall be made by personally serving the property owner(s). If personal service is not possible, service by at least two (2) of the following methods is required:

- A. By posting the notice or order in a conspicuous place on, or in front of the property.
- B. By registered or certified mail addressed to the owner(s) of the property at the last-known address of the owner shown upon any current record of the City or the last equalized assessment roll. If there is no known address for the owner, lessee, occupant or other person having charge or control of the property, the notice shall be sent to the property address. Service shall be completed at the time of deposit into the United States mail.

§95A.111 ABATEMENT OF PUBLIC NUISANCE HEARING BY THE HEARING OFFICER

At the time and place stated in the Notice to Abate, issued pursuant to Section 95A.106, the Hearing Officer shall hear and consider all relevant evidence, objections, or protests, and shall receive sworn testimony of owners, witnesses, City personnel, and interested persons relative to such alleged public nuisance and to any proposed abatement measures. The hearing may be continued from time to time at the request of the City or Hearing Officer.

§95A.112 ABATEMENT OF PUBLIC NUISANCE HEARING PROCEDURES

Pursuant to the Hearing Officer's determination, hearings held pursuant to this chapter shall be recorded by either a video or audio-recording device or transcribed by a court reporter. The hearings need not be conducted according to technical rules of evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action in a California court of competent jurisdiction. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious

affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action. Oral evidence shall be taken only on oath or affirmation. Irrelevant and unduly repetitious evidence shall be excluded.

§95A.113 ORDER ON THE ABATEMENT OF A PUBLIC NUISANCE

Within five (5) days of the hearing on the abatement of a public nuisance, the Hearing Officer shall consider all relevant evidence and shall issue a written decision. The written decision shall state that the Hearing Officer finds a public nuisance to exist or not to exist, in whole or in part, as alleged by the City.

- (A) If the Hearing Officer finds a public nuisance does not exist, the City shall have the right to appeal the decision to the Nuisance Abatement Appeals Board pursuant to section 95A.120. Such finding by the Hearing Officer shall not preclude the City from seeking any other remedy, or taking any other lawful action, as provided for in this Code or under the laws of the State of California.
- (B) If the Hearing Officer finds a public nuisance to exist, they shall state in a written decision whether the property, in whole or in part, or any building or structure thereon, constitutes a public nuisance.
- (C) If the Hearing Officer finds a public nuisance to exist and finds there is sufficient cause to abate the nuisance, the Hearing Officer shall make a written order within five (5) days of the hearing entitled "Order to Abate".
 - (1) Said order shall set forth those findings, and order the owner to abate the nuisance.
 - (2) The order shall provide notice to the owner that the administrative and incidental costs and expensive incurred in abating the nuisance shall be assessed against the property and results in a recorded lien or special assessment until paid.
 - (3) As applicable to the particular found to exist, the order shall specifically direct the owner to abate the nuisance by rehabilitation, repair, or demolition in a lawful manner. The may set forth a particular manner in which the nuisance must be abated.
 - (4) The order shall state of the nuisance is not abated, it will be removed and abated by the City. The order shall state that the additional cost and expenses of removal and abatement by the City, including any additional cost and expensive, together with the prime interest rate plus 1% of the entire amount owing, will be assessed and result in a lien or special assessment upon the property until paid.
 - (5) The order shall set forth time within the work shall be commenced and completed. This time period shall not be longer than thirty (30) calendar days unless otherwise specified in the order upon finding

that the nuisance present unusual circumstances which cannot be timely abated within a thirty (30) day time period.

- (6) The order shall inform the property owners of their right to appeal the order to the Nuisance Abatement Appeals Board pursuant to Sections 95A.120 and 95A.121.

§95A.114 ALTERNATIVE PROCESS

In addition to being granted the authority to issue an “Order to Abate a Public Nuisance” the Hearing Officer shall also be authorized to impose an administrative fine and/or penalty pursuant to Chapter 11 of this Code.

§95A.115 SERVICE OF THE ORDER TO ABATE A PUBLIC NUISANCE

The Hearing Officer’s order to abate a public nuisance shall be served upon the property owner, in accordance with Section 95A.110.

§95A.116 VOLUNTARY ABATEMENT AFTER ORDER TO ABATE A PUBLIC NUISANCE

The property owner may, at his own expense, remove and abate the nuisance as prescribed by the order prior to the expiration of the abatement period set forth in the order. If the property has been inspected by the Enforcement Official and the nuisance has been abated in accordance with the order to abate, the Enforcement Official shall not remove or abate the nuisance but may schedule a hearing with the Hearing Officer to determine the administrative and incidental costs and expenses incurred so far in abating the public nuisance.

§95A.117 ABATEMENT BY THE CITY

If a declared nuisance is not completely abated within the time prescribed in the Hearing Officer’s order to abate a public nuisance, the Enforcement Official is authorized and directed to abate the nuisance by City forces or private contract in accordance with law. Furthermore, the Enforcement Official is expressly authorized to enter upon the premises for the purpose of removing and abating the nuisance. An administrative inspection warrant shall be obtained prior to any entry if the nuisance is not located in an open area or if the nuisance is not seizable without an intrusion into privacy.

§95A.118 RECORDING THE NOTICE OF INTENT TO DEMOLISH

A copy of an order to abate a public nuisance that requires abatement by demolition of any habitable structure or any building with a floor, four walls, a roof and which is larger than one hundred twenty (120) square feet shall be immediately recorded with the county recorder.

§95A.119 RECORD OF EXPENSES AND ORDER FOR COSTS OF ABATEMENT

A. The Enforcement Official shall keep an account of the expenses and costs of removing and abating the nuisance on each separate lot or parcel of land where the work is done, and shall render a written, itemized report to the Hearing Officer, showing

the costs and expenses of abating the nuisance including the City's incidental and direct administrative expenses, less any salvage value relating thereto. The Hearing Officer may make any revision, correction, or modification in the report as he/she deems just, after which the report, as submitted or modified, shall be confirmed.

B. The term "incidental expenses" or "expenses" shall include, but shall not be limited to, the actual expenses and costs of the City in preparing notice, specifications, and contracts, in inspecting the work, legal fees, and other related costs.

§95A.120 GRIEVANCE WITH ABATEMENT ORDER - APPEAL TO THE NUISANCE ABATEMENT APPEALS BOARD

A. The City, owner, responsible party, or other party who has a legal or equitable interest in the property may appeal the final order of the Hearing Officer's order to abate a public nuisance pursuant to Section 95A.113. The appeal must be in writing and must be filed with the City Clerk no later than ten (10) days from the date of the service of the Hearing Officer's order. After ten (10) days from the date of service of the Hearing Officer's order, the order is deemed final and may no longer be appealed.

B. Any written appeals to the nuisance abatement order shall be legible and filed with the City Clerk and shall state the grounds for such appeal and the specific factual and/or legal errors committed by the Hearing Officer in issuing the order to abate a public nuisance. Any appeal shall contain:

1. A specific identification of the subject property;
2. The names and addresses of all appellants;
3. A statement of appellant's legal interest in the subject property;
4. A statement, in ordinary and concise language, of the specific order or action protested and the grounds for appeal, together with all supporting material facts;
5. The date and signatures of all appellants; and
6. The verification of at least one appellant as to the truth of the matters stated in the appeal.

C. The City Clerk shall then transmit a copy of the written appeal to the Hearing Officer and the Enforcement Official.

D. Upon receipt of the written appeal, the Hearing Officer shall transmit to the Nuisance Abatement Appeals Board the records of all hearings and copies of all papers submitted, and orders given. The Hearing Officer shall also submit a written report, stating the factual and legal basis upon which his or her decision was reached pursuant to Section 95A.113. The Nuisance Abatement Appeals Board shall, after review of the entire record, the Hearing Officer's report, and appellant's written appeal, and without further hearings on the matter, issue a final order decision affirming, reversing, or modifying, in whole or in part, the order to abate any public nuisance deemed to exist. Such final order decision shall be served upon the owner's or other appellants in

accordance with Section 95A.110. The decision of the Nuisance Abatement Appeals Board shall be final.

F. On the date a written appeal is filed under this section, all proceedings in furtherance of the order appealed shall be stayed until the final determination by the Nuisance Abatement Appeals Board of the appeal, unless the Enforcement Official finds that conditions on the property constitute an immediate threat to the health, safety or welfare of persons or property and must be abated immediately.

§95A.121 GRIEVANCE WITH COST ORDER - APPEAL TO THE NUISANCE ABATEMENT BOARD OF APPEALS

A. Upon the final determination for cost of abatement, the Hearing Officer shall within 10 days, in accordance with 95A.110, serve the order for cost of abatement upon the owner, occupant, or other party who has a legal or equitable interest in the property. An appeal of the order for cost must be in writing and filed within ten (10) calendar days from the date of service of the Hearing Officer's order. Unless the written appeal is filed within ten (10) days from the date of service of the Hearing Officer's order, the order determining the costs of abatement is final. This appeal is limited to evaluating the fairness and accuracy of determining the costs of abatement pursuant to Sections 95A.113 and 95A.119.

B. All written appeals as to a cost order shall be legible and filed with the City Clerk and shall state the grounds for such appeal and the specific factual and/or legal errors committed by the Hearing Officer in issuing either the order of costs of abatement. Any appeal shall contain:

1. A specific identification of the subject property;
2. The names and addresses of all appellants;
3. A statement of appellant's legal interest in the subject property;
4. A statement, in ordinary and concise language, of the specific order or action protested and the grounds for appeal, together with all supporting material facts;
5. The date and signatures of all appellants; and
6. The verification of at least one appellant as to the truth of the matters stated in the appeal.

C. The City Clerk shall then transmit a copy of the written appeal to the Hearing Officer or designee and the Enforcement Official.

D. Upon receipt of the written appeal, the Hearing Officer shall transmit to the Nuisance Abatement Appeals Board the records of all hearings and copies of all papers submitted, and orders given. The Hearing Officer shall also submit a written report, stating the factual and legal basis upon which his or her decision was reached pursuant to Section 95A.113. Within five (5) days of the receipt of the written appeal, The Nuisance Abatement Appeals Board shall, after review of the entire record, the Hearing

Officer's report, and appellant's written appeal, and without further hearings on the matter, issue a final order decision affirming, reversing, or modifying, in whole or in part, the order to abate any public nuisance deemed to exist. Such final order decision shall be served upon the owner's or other appellants in accordance with Section 95.110A. The decision of the Nuisance Abatement Appeals Board shall be final.

§ 95A.122 ASSESSMENT OF COSTS

A. The order determining the cost of abatement of public nuisance shall constitute a special assessment against the property to which it relates, and upon recordation in the office of the county recorder, shall constitute a lien on the property for the amount of the assessment.

B. Before the recording of a lien, not less than 10 days after the order of costs, notice thereof shall be served on the property owner of record by certified mail or personal service, in the same manner as a civil summons. If the owner of record cannot be found after diligent search, then 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 Riverside County. The form of the notice shall be available to the public upon request of the City Clerk.

C. After the notice of lien is confirmed and recorded in the office of the county recorder, a copy shall be filed with the assessor and tax collector of Riverside County, acting for the City in order that the county officials may add amounts of the respective assessments to the next regular tax bills levied against the respective lots and parcels of land, and thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

D. In the alternative, after recordation of the notice of lien, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

E. Pursuant to California Government Code Section 38773.7, upon the entry of a second or subsequent civil or criminal judgment within a two (2) year period that finds an owner of property responsible for a condition that may be abated pursuant to this Code, the responsible party may be ordered to pay treble the costs of the abatement. These costs shall not include costs incurred abating conditions pursuant to Section 17980 of the California Health and Safety Code.

§ 95A.123 VIOLATIONS

Any person, whether the owner and/or other legally responsible party who causes, permits or maintains any condition subject to abatement pursuant to the provisions of this chapter to exist on any property, place or area within the City, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable as provided in Chapter 10 of this Code.

§95A.124 ALTERNATIVE REMEDIES

Nothing in this chapter shall prevent the Enforcement Official, Hearing Officer or Nuisance Abatement Appeals Board from requesting that the City Attorney commence a civil, criminal or other proceeding to abate a public nuisance as an alternative to, or in addition to, the proceedings set forth in this chapter.