

## **ORDINANCE NO. 1469**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE TO ADD PROCEDURES FOR GRAFFITI NUISANCE ABATEMENT AND ADMINISTRATIVE RECOVERY OF FINES AND PENALTIES**

#### **TITLE V—SANITATION & HEALTH CHAPTER 5—ABATEMENT OF NUISANCES TITLE I—GENERAL PROVISIONS CHAPTER 3—PENALTY PROVISIONS**

The City Council of the City of Arcata does ordain as follows:

Section 1: Title V—Sanitation and Health, Chapter 5—Abatement of Nuisances, Sections 5501–5518 of the Arcata Municipal Code are hereby amended as shown in the following strike through and double underscore.

#### **SEC. 5501. Definition of Nuisance.**

A nuisance is hereby defined to be:

- A. Any condition declared by any statute of the State of California or ordinance of the City of Arcata to be a nuisance.
- B. Any public nuisance known at common law or equity.
- C. Any attractive nuisance which may prove dangerous or detrimental to infants or children.
- D. Any condition dangerous to human life, unsafe, or detrimental to the public health or safety.
- E. Any violation of the provisions of part 5.5 (beginning with Section 19955) of Division 13 of the Health and Safety Code and any violation of Chapter 7 (commencing with Section 4450) of Division 5 of Title 1 of the Government Code, and any regulation issued by the Department of Housing and Community Development of the State of California in connection with either said part 5.5 or said Chapter 7.
- F. The defacement of property of another by “graffiti or any other inscribed material,” as defined in Section 5502.

#### **SEC. 5502. Other Definitions.**

- | EA. *Council* shall mean the City Council of the City of Arcata.

**AB.** *Enforcement Official* shall mean any officer or department head of the City of Arcata charged with the duty of enforcing ordinances of the City of Arcata, or laws of the State of California.

**C.** *Graffiti or any other inscribed material* shall mean any unauthorized inscription, word, figure, mark, adhesive sticker or design that is written marked, etched, scratched, drawn, affixed or painted on any real or personal property.

**CD.** *Occupier* shall mean the person occupying or otherwise in real or apparent charge and control of the premises affected.

**D.** *Beneficial Owner* shall mean any mortgagee of record; a beneficiary under a recorded deed of trust; the owner or holder of any lease of record; provided, however, that the United States, the State of California, and the County of Humboldt shall not be deemed to be beneficial owners by virtue of any lien for unpaid taxes.

**BE.** *Owner* shall mean the owner of record of the premises affected.

#### **SEC. 5503. Service of Notice.**

Except where specifically provided in Section 5514 for notice of an abatement lien or special assessment, Any notice required to be given by the provisions of this ordinance shall be deemed to have been given when:

A. A copy of said notice is either served personally or has been deposited in the mail, postage prepaid, certified, return receipt requested, to every owner of record; or occupier and beneficial owner of the premises affected, addressed to such person at his last known place of address. The failure of the enforcement official to make or attempt to make such service on any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served. If no address can be found or is known to the enforcement official, then any notice shall be so mailed to such person at the address of the premises affected by the proceedings. The failure of any person to receive such notice shall not affect the validity of any proceedings taken hereunder; and

B. A copy of the notice is prominently and conspicuously affixed to the premises affected by the proceedings herein.

#### **SEC. 5504. Notice of Nuisance.**

(First Notice) Upon the determination by the enforcement official that a nuisance exists, said enforcement official shall prepare a Notice of Nuisance, and shall cause copies of said Notice of Nuisance to be served as provided in Section 5503 herein.

#### **SEC. 5505. Contents of Notice of Nuisance.**

The Notice of Nuisance shall contain the following:

- A. A street address, legal description, or other description sufficient to identify the premises affected.
- B. A description of the condition causing the nuisance. Where the enforcement official has determined that the condition causing the nuisance can be corrected or abated by repair thereof, the notice shall state the repairs which will be required.
- C. Where the enforcement official has determined that the condition causing the nuisance is imminently dangerous to human life or limb, or is unsafe, or is detrimental to the public health or safety, he may order that the building or structure affected be vacated, pending the correction or abatement of the conditions causing the nuisance.
- D. An order to commence the abatement of said nuisance within 30 days, and to thereafter diligently prosecute and complete said abatement.
- E. A statement that if the required abatement is not commenced as and prosecuted within the time limit specified, the enforcement official will apply to the Council for an order to abate said nuisance, and that the costs of such abatement shall become a charge against the premises, and shall be made a lien or special assessment against the premises, and that if made a said special assessment, it may be collected at the same time and in the same manner as is provided for the collection of ordinary county taxes, and shall be subject to the same penalties, interest and to the same procedures of foreclosure and sale in the case of delinquency as is provided for ordinary county taxes.

#### **SEC. 5507. Notice to Abate Nuisance.**

(Second Notice) If, upon the expiration of the period specified in the Notice of Nuisance, action to abate the nuisance has not been commenced, or, if it has been commenced, it has not been prosecuted with due diligence nor completed within a reasonable time, the enforcement official shall cause a Notice to Abate Nuisance to be prepared, and shall serve such notice as provided in Section 5403-5503 hereof.

#### **SEC. 5514. Recovery of Abatement Costs, Account of costs and receipts and Notice of Assessment.**

- A. Abatement Lien or Assessment. The City may collect its abatement and related administrative costs by a nuisance abatement lien or as a special assessment against the parcel of land abated, after notice and hearing before the City Council. The owner of record of the property abated shall be given prior notice of the abatement lien or special assessment in accordance with this Section 5514.

- B. Account of Costs. The enforcement official shall keep an itemized account of the costs of enforcing the provision of this ordinance, and of the proceeds of the sale of any material connected therewith.

C. Notice. Upon the completion of the abatement, the enforcement official shall cause a notice to be prepared specifying the work done, an itemized account of the costs and receipts of performing the work, an address, legal description or other description sufficient to identify the description or other description sufficient to identify the premises, the amount of the assessment proposed to be levied against the premises, a minimum of 45 days to pay the abatement costs, and the time and place when and where the enforcement official will submit the account to the Council for confirmation if the fees are not paid. The time and place specified shall be not less than 15 45 days after the service of the notice as provided in this Section 5510-5514 hereof. The notice shall contain a statement that the Council will hear and consider objections and protests to said account and proposed assessment or lien.

D. Service of Abatement Lien or Assessment Notice.

1. Abatement lien. A notice of hearing on a proposed abatement lien shall be served on the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or supplemental roll, whichever is more current. The notice shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section 425.20) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication therefor in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062 of the Government Code.

2. Special Assessment. A notice of hearing on a proposed special assessment shall be served by certified mail to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's recorders. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments.

**SEC. 5515. Hearing on account and proposed assessment or lien.**

At the time and place fixed in the notice, the Council shall hear and consider the account and proposed assessment or lien, together with objections and protests thereto. At the conclusion of the hearing, the Council may make such modifications and revisions of the proposed account and assessment or lien as it deems just, and may order the account and proposed assessment or lien confirmed or denied, in whole or in part, or as modified and revised. The determination of the Council as to all matters contained therein shall be final and conclusive.

**SEC. 5516. Notice of Recordation of Abatement Lien or Assessment.**

Upon confirmation by the Council, the enforcement official shall cause to be prepared and recorded in the office of the County Recorder of the County of Humboldt, either a Notice of Abatement Lien or Notice of Special Assessment, as determined by the Council. Said Notice shall contain the following:

- A. An address, legal description or other description sufficient to identify the premises.
- B. A description of the proceedings under which the special assessment or lien was made, including the order of the Council confirming the assessment or lien.
- C. The amount of the assessment or lien.
- D. A claim of lien upon the described premises.

E. The identity of the record owner or possessor of the property, and the last known address of the record owner or possessor.

F. If confirmed by the Council as a special assessment, the date on which the assessment was made, and notice that the property may be sold after three years by the Tax Collector for unpaid delinquent assessments...

G. A nuisance abatement lien shall attach upon recordation.

**SEC. 5517. Effect of Nuisance Abatement Lien.**

A nuisance abatement lien shall attach Upon the recordation of such a Notice of Abatement Lien, the amount claimed shall constitute a lien upon the described premises and shall have the same force, priority and effect as a judgment lien. Such lien shall be upon a parity with the liens of State and County taxes. A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

**SEC. 5518. Assessment, Collection with ordinary taxes.**

The A Notice of Lien Assessment, after recordation, shall be delivered to the County Auditor who shall enter the amount of the lien assessment on the assessment roll as a special assessments.

Thereafter the amount set forth shall be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and interest, and to the same procedures for foreclosures and sale in case of delinquency, as is provided for ordinary county taxes, and all laws applicable to the levy, collection and enforcement of county taxes are hereby made applicable to such assessment.

Section 2: Title V—Sanitation and Health, Chapter 5—Abatement of Nuisances, of the Arcata Municipal Code is hereby amended by the addition of Section 5519, as follows:

**SEC. 5519. Graffiti Nuisance Abatement, Expense of Abatement.**

A. The City may recover its costs of abating a nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material in accordance with the provisions of this Chapter. Such costs may be made a lien against the property of the minor or other person creating, causing, or committing the nuisance, or against the property of the parent or guardian having custody or control of the minor. Alternatively, such costs may be made a special assessment against the property of the minor or other person creating, causing, or committing the nuisance, or against the property of the parent or guardian having custody or control of the minor.

B. Notice of a proposed abatement lien or special assessment shall be provided as set forth in this Chapter, except that in the case of any minor, notice shall be served on the parent or guardian having custody and control of the minor.

Section 3. Title 1 (General Provisions), Chapter 3 (Penalty Provisions), of the Arcata Municipal Code is hereby amended by the addition of Section 1210, as follows:

**SEC. 1210. Administrative Fines or Penalties Forfor Violation of Code.**

A. Unless otherwise provided, the violation of any provision of this Code is subject to an administrative fine or penalty pursuant to Government Code Section 53069.4. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in Section 1200 of this Code.

B. Administrative fines or penalties may be assessed by the City Manager after notice of intent to assess administrative fines or penalties is served by personal delivery or certified mail on the person responsible for a continuing violation. Said notice shall describe with specificity the violation. If the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, said notice shall provide for a reasonable period of time, no less than thirty (30) days, to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties.

C. Said notice shall additionally inform the person served that a hearing shall be conducted within sixty (60) days after the person has been served. The hearing shall be before the City Manager, or before his/her designee. The person who has been issued a notice of intent to assess administrative fines or penalties may waive the right to a hearing, in which case no hearing shall be conducted. A person dissatisfied with the decision of the City Manager may appeal to the City Council within thirty (30) days of notice of the City Manager's decision.

D. The determination of the Council after hearing, or of the City Manager if there is no appeal to the City Council, shall be considered a final determination and may be reviewed by filing an appeal to the Superior Court of Humboldt County within 20 days.

Section 3: Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 4: This ordinance is exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 5: This ordinance will take effect thirty (30) days after the date of its adoption.

**DATE:** October 21, 2015

**ATTEST:**

**APPROVED:**

/s/ Bridget Dory /s/ Michael Winkler  
City Clerk, City of Arcata Mayor, City of Arcata

#### **CLERK'S CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1469**, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California on the 21<sup>st</sup> day of October, 2015, by the following vote:

**AYES:** **WINKLER, PITINO (via teleconference), ORNELAS, PEREIRA, WHEATLEY**

**NOES:** **NONE**

**ABSENT:** **NONE**

**ABSTENTIONS:** **NONE**

/s/ Bridget Dory  
City Clerk, City of Arcata