

**ORDER OF THE DIRECTOR OF EMERGENCY SERVICES
FOR THE CITY OF LIVERMORE
ENACTING AMENDED AND RESTATED PUBLIC NUISANCE ORDINANCES IN THE
HEALTH AND SAFETY CHAPTER OF THE LIVERMORE MUNICIPAL CODE**

On March 13, 2020, under the authority contained in California Government Code section 8634 and City of Livermore Municipal Code sections 2.56.050 and 2.56.060, I declared the existence of a local emergency in the city of Livermore.

On March 16, 2020, the City Council of the City of Livermore adopted a resolution ratifying the proclamation of the existence of a local emergency in the city of Livermore.

Chapter 9.08 *Health Officer Orders* in the Livermore Municipal Code makes it unlawful for someone to violate, refuse, fail, or neglect to comply with any lawful general or special order, notice, or declaration of the health officer. However, that ordinance does not provide an effective enforcement mechanism.

The Neighborhood Preservation Division in the Community Development Department has been coordinating with the City Attorney's Office to update Chapter 8.14 *Neighborhood Nuisance Abatement* in the Chapter *Health and Safety* in the Livermore Municipal Code. The purpose of that work is to provide clarity and precisely define the conditions and activities that constitute a public nuisance in Livermore, and to streamline the abatement process. The goal of that work is to improve compliance and provide an effective tool to abate a nuisance in the event the responsible party refuses or is unable to comply. The updates include effective enforcement mechanisms for emergency summary abatement when a nuisance activity presents an imminent threat to life or public health, and to address violations of emergency orders.

On March 31, 2020, the Health Officer of the County of Alameda, who is also the health officer for the City of Livermore, issued Order 20-04 directing individuals living in the county to shelter in place and for all businesses and governmental operations to cease non-essential operations. That order superseded the Health Officer's prior order issued on March 16, 2020, and imposed more stringent restrictions, principally the following which are further defined in the order dated March 31, 2020:

1. All individuals living in the county are ordered to shelter at their place of residence and only leave for Essential Activities, Essential Governmental Functions, Essential Travel, and to work for Essential Businesses.
2. When people leave their place of residence they must strictly comply with Social Distancing requirements.
3. All businesses with a facility in Alameda County, except Essential Businesses, are required to cease all activities at those facilities, except Minimum Basic Operations.

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4. All public gatherings of any number of people occurring outside a single household or living unit are prohibited.
5. All travel, except Essential Travel, is prohibited.

The Health Officer's order also contains limited exceptions to those prohibitions and orders.

Section 15 of the Health Officer's order requests that the Chief of Police for Livermore ensure compliance with and enforce the order, and provides that a "violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both."

The Livermore Police Department has coordinated with the Neighborhood Preservation Division in the Community Development Department to adopt and implement an enforcement program that prioritizes education as the primary means to obtain compliance with the Order. However, those enforcement officers anticipate there may be a need for enhanced tools during a prolonged quarantine period and as the weather improves. The enforcement program will continue to prioritize education and voluntary compliance over citations, but the nuisance ordinances will provide an enhanced enforcement mechanism, along with corresponding due process rights, for effective enforcement to abate public nuisances, including violations of the Health Officer's order.

Under California Government Code section 8634 and Livermore Municipal Code section 2.56.060.B.1, I am empowered upon the proclamation of a local emergency to make and issue orders and regulations on matters reasonably related to the protection of life and property as affected by such local emergency. These orders and regulations are to be confirmed by the City Council at the earliest practicable time.

THEREFORE, I, Marc Roberts, as Director of Emergency Services, order the following:

1. Chapter 8.14 *Neighborhood Nuisance Abatement* in the Livermore Municipal Code is hereby amended and replaced by the following which are hereby enacted:

- a. Chapter 8.14 *Public Nuisances*, attached hereto as Exhibit A, and
- b. Chapter 8.15 *Procedure for Abatement of Public Nuisances*, attached hereto as Exhibit B.

2. The City Attorney is requested to prepare formal ordinances for the City Council to adopt these changes to the Livermore Municipal Code as an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety in Livermore, concurrent with the Council's consideration of this order for confirmation.

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3. The City Attorney is also requested to review the Municipal Code and prepare such additional amendments to the Livermore Municipal Code that are necessary to implement Chapters 8.14 and 8.15 enacted by this order, for the City Council's consideration concurrent with the items set forth in section 2 above.

This Order shall go into effect immediately, and will remain in effect unless it is not confirmed when presented to the City Council for confirmation, or until it is superseded by a duly enacted Ordinance of the City Council of the City of Livermore or a superseding order issued by a duly authorized person or agency. This Order may be extended or supplemented in response to subsequent Executive Orders by the Governor of the State of California on this subject, or orders or ordinances issued or adopted by Alameda County complementing or superseding this Order, or the City Council or the Director of Emergency Services for the City of Livermore.

Dated: 4/10/2020


Marc Roberts
Director of Emergency Services

Exhibit A - Chapter 8.14 *Public Nuisances*

Exhibit B - Chapter 8.15 *Procedure for Abatement of Public Nuisances*

CITY OF LIVERMORE

Chapter 8.14

PUBLIC NUISANCES

Sections:

- 8.14.010 Purpose and findings.**
- 8.14.020 Definitions.**
- 8.14.030 Declaration of what constitutes a public nuisance.**
- 8.14.040 Nuisance – unsafe, substandard, and dangerous buildings.**
- 8.14.050 Enforcement**
- 8.14.060 Abatement of public nuisances.**

8.14.010 Purpose and findings.

The purpose of this chapter is to promote and protect the public health, safety, aesthetic, and general welfare of the Livermore community against activities and conditions that negatively interfere with, or negatively affect, the community at large.

The City Council finds that: the city of Livermore has a history and reputation for well-kept properties and that the general welfare of the community is founded, in part, upon the appearance and maintenance of private properties; it is injurious and detrimental to the public health, safety, and welfare of residents of the city and contributes substantially and increasingly to the deterioration of residential neighborhoods and commercial areas when certain conditions exist on properties in the city that are below the minimum conditions required by this chapter; it is injurious and detrimental to the public health, safety, and welfare of residents of the city when certain prohibited activities occur; nuisances should be abated by the responsible parties; and, the need to formally abate the conditions and activities declared to be public nuisances in this chapter impacts City personnel and resources, and the abatement of repeat violations requires resources over and above the level of enforcement services normally provided, and the costs for the City's enforcement and abatement should be paid by the responsible parties.

8.14.020 Definitions.

As used in this chapter:

“Front yard” means the same as that term is defined in LDC 11.01.020.

“Graffiti” means vandalism consisting of defacing, tagging, marring, inscribing, etching, scratching, painting, pasting, or affixing of other markings on buildings, improvements, fixtures, or structures, including but not limited to, walls, fences, signs, retaining walls, driveways, walkways, sidewalks, pavement, curbs, curbstones, street lamp posts, hydrants, trees, electric light or power or telephone or telegraph or trolley wire poles,

fire alarms, drinking fountains, vehicles, statues and sculptures, newspaper stands, or garbage receptacles without the prior consent of the owner of the property on which the surface is located, regardless of the nature of the material. "Graffiti" does not refer to any particular style of art and does not include:

1. any sign or banner that is authorized by, and in compliance with, the applicable requirements of this code;

2. any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Reservation Act (CA Civil Code sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. sections 101 et seq.); or,

3. any art work consented to in advance by the property owner..

"Owner" and "property owner" means the person identified in the last equalized assessment roll prepared by the Alameda County Assessor, or in the records maintained by the Alameda County Recorder, whichever is most current.

"Person" as used in this chapter, means any individual, partnership, corporation, limited liability company, association, or other organization, however formed, including heirs in possession, executors, administrators, or assigns.

"Property" means the same as that term is defined in LDC 11.01.020, and includes any alley, sidewalk or parkway abutting such lot or parcel of land, or improvements thereon, or portions thereof, as the case may be.

"Public nuisance" means anything which is, or is likely to become, injurious to health or safety, or is offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any public park, square, street or highway, as well as any violation of this code as set forth in LMC 1.16.030. All conditions and acts enumerated in LMC 8.14.030 and LMC 8.14.040 are public nuisances per se by definition and declaration, but those enumerated conditions and acts shall in no way be construed to be exclusive or exhaustive of public nuisances in the city.

"Rear yard" means the same as that term is defined in LDC 11.01.020.

"Responsible party" means any owner; property owner; person leasing, renting, or occupying property; and any person having charge, control, or possession of any property, as well as any other person, that causes, creates, permits, maintains, tolerates, or allows any public nuisance activity or condition to be created or exist.

"Side yard" means the same as that term is defined in LDC 11.01.020.

“Vector” means any animal capable of transmitting human disease or capable of producing human discomfort or injury, including but not limited to mosquitoes, flies, mites, ticks, other arthropods, rodents and other vertebrates.

“Vehicle” means the same as that term is defined in California Vehicle Code section 670, as that statute may be amended from time-to-time, and includes any device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. Vehicle does not include wheelchairs.

8.14.030 Declaration of what constitutes a public nuisance.

In addition to other provisions in this code that constitute a public nuisance, it is hereby declared that the creation, maintenance, or mere existence of any of the following conditions and activities is a public nuisance per se:

A. Landscaping and Vegetation. The existence of neglected or improperly maintained landscaping and vegetation, including but not limited to the following conditions:

1. Landscaping and other vegetation that is dead, debris laden, overgrown, unsightly, or unkempt.
2. Accumulation of plant litter, or litter fallen from trees, shrubs, hedges, grass and other ground covers; uncollected trimmings from plants, trees, or other debris and litter.
3. Vegetation likely to harbor rodents or vermin.
4. Vegetation growing on the roof or compromising the integrity of any structure, except for rooftop gardens designed and constructed to withstand structural load.
5. Vegetation that is unhealthy, has not been properly pruned or cared for, or that is structurally unsound, and any cutting, trimming, and removal of trees that violates LMC Chapter 12.20.
6. Required landscaping as a condition of any permit or development approval, or included in the project plans or application without City approval, that is not maintained in a good condition. “Good condition” means that plant material is alive, irrigated, and otherwise cared for to ensure survival.

B. Waste. The accumulation, deposit, or storage of waste on public property, in the public right-of-way, on commercial property that is accessible to or visible to the general public, or in any front, side, or rear yard that is accessible to or visible to the general public from a public sidewalk, trail, alley, or right-of-way, including but not limited to the following conditions:

1. Junk, dirt, or debris, including but not limited to broken, abandoned or discarded furniture, goods and furnishings, personal property or other property not deemed for outdoor use including sinks, toilets, cabinets, or other household fixtures or appliances. Junk includes but is not limited to items listed in this section that are abandoned, bailed, bartered, bought, brought, bundled, deposited, disassembled, disposed of, exchanged, handled, kept, stored or transported, regardless of whether or not such activity is done for profit.

2. Unused or discarded matter or material, including but not limited to, rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials, lumber, salvage materials, or other materials.

3. Machinery or parts thereof, including but not limited to, scrap metals and other pieces of metal that are ferrous or nonferrous, wrecked, dismantled, or inoperable vehicles, tires, and equipment, and parts thereof.

4. Rubbish, trash, or garbage, including but not limited to, cans, bottles and barrels, and any other type of garbage that has not been collected by the garbage service.

5. Dilapidated or deteriorated tarps or coverings.

6. Shopping carts, boxes, crates, cartons, containers, packing boxes, storage containers, pallets, metal storage bins or containers, or other storage items or material.

7. Grease, oil, paint cans, or petroleum-based products of any kind.

8. Any abandoned, broken, or neglected equipment, machinery, tool, engine, motor, refrigerator, freezer, wash, dryer, dishwasher, trash compactor, or other major household appliance.

9. Garbage cans, containers, and solid waste carts in front yards and side yards except as permitted by LMC 8.08.040.H.1. It is not a public nuisance for garbage cans, containers, and solid waste carts to be neatly stored and not overflowing in side yards visible from the public right of way provided they are screened from view by the general public from a public sidewalk, trail, alley, or right-of-way, or are located next to the residential structure or in a similar location.

10. Commercial litter that violates LMC 8.08.630.

11. Overflowing trash or accumulation of litter in multi-family residential properties that violates LMC 8.08.040.G.

C. Maintenance of Property. The maintenance of property and buildings accessible to or visible to the general public from a public sidewalk, trail, alley, or right-of-way, in a broken, defective, or unsightly condition, or in a condition of disrepair, including but not limited to the following conditions:

1. Property, structures, buildings, fences, hardscape features, or building exteriors that are in a broken, defective, or unsightly condition, or in a condition of disrepair. This includes but is not limited to:

a. Exterior walls, windows, or fences that are cracked, broken, leaning, fallen, decayed, deteriorated, or defaced.

b. Unpainted, untreated, or unfinished buildings where no major exterior repair or construction activity is occurring.

c. Building and structure exterior that has deteriorated paint, treatment, stucco, finish, or other exterior covering, that is checking, cracking, peeling, or chalking.

d. Building and structure exterior that is warping, or contains dry rot, or is causing structural decay, or is infested by rodents, vermin, or insects.

e. Inadequate weather protection on buildings or structures including but not limited to, broken or inadequate windows, inadequate roofing material, or holes in walls, floors, or the roof.

2. Property, buildings, structures, driveways, sidewalks, or parking areas that are in a broken, defective, or unsightly condition, or in a condition of disrepair.

3. Buildings or other structures that are partially or wholly destroyed, or that are partially constructed without a valid building permit, or without on-going construction activity occurring if a building permit is not otherwise required.

4. Vacant or abandoned buildings or structures with doorways, windows, or other openings left open, unlocked, unsecured, or otherwise easily accessible to trespassers, vagrants, vandals, or other persons not authorized to enter.

5. Unsafe play structures or other attractive nuisances dangerous to children including unsecured pools, ponds, grading, excavation, and construction.

6. Any condition violating the International Property Maintenance Code as adopted in LMC Chapter 15.04.

D. Vehicle and Vehicle Repair Nuisances. The improper parking and storage of vehicles, and the existence of dismantled and abandoned vehicles and unpermitted vehicle repair services in zones that do not permit those activities, including but not limited to the following conditions:

1. On property in residential zones, the exterior storage or maintenance of dismantled or inoperative vehicles, automotive engines, parts, or machinery of any type that is visible to the general public from a public sidewalk, trail, alley, or right-of-way.

2. On property in residential zones, performing repairs on vehicles that are not owned by a property owner or verified resident, or that violate the home occupancy regulations in LDC 6.02.060.H. Repairs to vehicles that are owned by the property owner or a verified resident, including a car, truck, boat, trailer, camper, motor home, or other mobile or mechanical equipment, whether or not motorized, may be performed in an approved driveway, garage, carport, or other required off-street parking space in compliance with City codes but must either be completed within 72 consecutive hours or enclosed within a garage or other building and not visible to the general public from a public sidewalk, trail, alley, or right-of-way.

3. On property in residential and commercial zones, the parking or storage of heavy commercial vehicles, military vehicles, construction equipment, or machinery of any type or description that is visible to the general public from a public sidewalk, trail, alley, or right-of-way, without a valid permit, except during excavation, construction, or demolition operations pursuant to an active building permit in progress on the subject property or on adjoining property, or if exempt by state law.

4. The accumulation or storage of vehicles that violates LMC Chapter 10.48.

5. The parking or storage of any vehicle that violates LMC 10.20.270, LDC 4.04.010.A.4, or LDC 4.04.010.A.5.

E. Land Use Nuisances. The maintenance of property in a condition that is injurious or potentially injurious to the public health, safety, and welfare of the public or adjacent properties, including but not limited to the following conditions:

1. Changes to the natural topography, geology, or configuration of land that causes erosion, subsidence, or a change in surface water discharge that:

a. Damages or intrudes upon any public or private property; and,

b. Arises from work that was performed without a City permit or work that either violates or is not maintained consistent with permit conditions.

2. Obstruction or encroachment upon any public property, including but not limited to, any public street, sidewalk, gutter, highway, right-of-way, trail, park, or building without a valid permit. Such obstructions or encroachments include, but are not limited to, overgrown trees and shrubs; building materials or ramps; merchandise or other personal property, such as sports equipment, basketball hoops, and discarded furniture that is not scheduled for collection; and buildings or portions of buildings or structures protruding onto public property.

3. Property maintained in a manner which causes a hazard to the public by obscuring visibility of an intersection, including any fence that violates LDC 4.05.040.A.5.

4. Discharge of any materials other than storm water into the City storm sewer system that violates LMC Chapter 13.45.

5. On property in residential zones, the use of barbed wire, concertina wire, razor-cut wire, fencing topped with spikes, nails, broken glass or other such similar fencing material, and any fencing of screening material that violates LDC 4.05.040.

F. Emergency proclamations and orders. Any activity that violates any order issued by the Director of Emergency Services for the City of Livermore, the Health Officer of the County of Alameda, or any person with competent jurisdiction and authority to authorize, direct, and empower enforcement by the City, including any activity violating LMC Chapter 9.08, during an emergency.

G. Vectors. Any activity, including the maintenance of a building, structure, property, or water, that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors, or that is a breeding place for vectors. The presence of vectors in their developmental stages on the property is prima facie evidence that the property is a public nuisance.

H. Graffiti. Causing, maintaining, or permitting graffiti:

1. On exterior walls or facades of buildings, fences, walls, sidewalks, gutters, street surfaces, or other structures of whatever nature; or

2. On the exterior of motor vehicles, vans, or trucks which are parked on driveways or on private property that are otherwise accessible to or visible to the general public from a public sidewalk, trail, alley, or right-of-way.

I. Hazardous Materials. The storage of hazardous materials in such a manner as to be injurious or potentially injurious to public health, safety, and welfare or to adjacent properties.

J. Signs. The installation or maintenance of a sign or sign structure that violates LMC Chapter 4.40, and the existence of any sign on property relating to uses no longer conducted or products no longer sold on the property more than 60 days after business uses or products sold cease. This section does not apply to historic signs or to the exempt signs identified in LDC 4.06.030.

K. Miscellaneous. The creation, maintenance, or mere existence of any of the following conditions:

1. The existence of any property condition which is unlawful or declared to be a public nuisance pursuant to any other provision in this code, including any violation of the Livermore Municipal or Development Code as defined in LMC 1.16.030.

2. A public nuisance as defined to be a nuisance by California Civil Code sections 3479 or 3480.

3. Any condition recognized in law or in equity as constituting a public nuisance, or any condition existing on a property which constitutes visual blight, or is a health or safety hazard to the community or neighboring properties.

8.14.040 Nuisance – unsafe, substandard, and dangerous buildings.

In addition to other provisions in this code that constitute a public nuisance, it is hereby declared that any building or structure that has one or more of the following conditions that is determined to exist by the City building official or his or her designee is declared to be a public nuisance per se and an unsafe, substandard, and dangerous building:

- A. Inadequate sanitation;
- B. Structural hazard;
- C. Hazardous electrical wiring;
- D. Hazardous plumbing;
- E. Hazardous mechanical equipment;
- F. Faulty weather protection (faulty or inadequate roof or exterior cover);
- G. Fire hazard;
- H. Use of faulty construction materials;
- I. Hazardous or unsanitary premises (for the purposes of this section, premises means property as that term is defined in this Chapter);
- J. Inadequate exits;
- K. Inadequate fire protection or firefighting equipment;
- L. Improper occupancy;
- M. Vacant and not secured against entry to trespassers;
- N. Any other violation of the most current adopted building codes;
- O. Any other violation which is set forth in the most current edition of any of the following code sections:
 - 1. LMC Chapter 15.04, Property Maintenance Code.
 - 2. LMC Chapter 15.20, Dangerous Buildings.
 - 3. California Building Code section 116, Unsafe buildings or structures.
 - 4. California Health and Safety Code section 17920.3, Substandard buildings.

5. Uniform Code for the Abatement of Dangerous Buildings section 302, Dangerous building.

8.14.050 Enforcement.

- A. It is unlawful for any person to engage in any activity that is declared to be a public nuisance.
- B. It is unlawful for any person to create, maintain, or allow a public nuisance to exist on property the person owns, possesses, occupies, maintains, or controls.
- C. Each day a public nuisance exists is a separate and distinct offense.

8.14.060 Abatement of public nuisances.

A public nuisance shall be abated as follows:

- A. All or any part of property found to constitute a public nuisance shall be abated by rehabilitation, demolition, and/or repair pursuant to the procedures set forth in LMC Chapter 8.15 Procedure for Abatement of Public Nuisances.
- B. If the City's Building Official determines that an unsafe, substandard, and dangerous building or structure can be rehabilitated or repaired and made safe, it shall be abated pursuant to LMC Chapter 8.15, Procedure for Abatement of Public Nuisances. If the City's Building Official determines that the condition of the building or structure is in such a dangerous condition that the only feasibly economic alternative is to demolish it, it shall be abated pursuant to the procedures set forth in LMC Chapter 15.20 Dangerous Buildings.
- C. Activities that violate emergency proclamations and orders, or that involve vectors, may be abated using the emergency abatement procedures set forth in LMC 8.15.040.
- D. Enforcement and abatement of a public nuisance violation by way of criminal prosecution is an alternate and additional remedy to other abatement and enforcement procedures available to the City.

CITY OF LIVERMORE

Chapter 8.15

Procedure for Abatement of Public Nuisances

- 8.15.010 Purpose.
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- 8.15.040 Emergency summary abatement.
- 8.15.050 Compliance order.
- 8.15.060 Failure to abate – administrative citation.
- 8.15.070 Notice and order to abate.
- 8.15.080 Administrative charge.
- 8.15.090 Request for administrative hearing.
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- 8.15.110 Administrative hearing.
- 8.15.120 Written decision and order.
- 8.15.130 Abatement by responsible party.
- 8.15.140 Abatement by City.
- 8.15.150 Abatement costs.
- 8.15.160 Collection of unpaid costs and expenses to abate the nuisance.
- 8.15.170 City Council confirmation hearing for lien.
- 8.15.180 Nuisance abatement lien – judgment lien.
- 8.15.190 Special assessment against property – tax lien.
- 8.15.200 Satisfaction of lien.
- 8.15.210 Limitation on filing judicial action.
- 8.15.220 Alternative means of enforcement.
- 8.15.230 Treble damages.
- 8.15.240 Attorney’s fees.
- 8.15.250 No duty on City to enforce.

8.15.010 Purpose.

This chapter establishes procedures to abate any and all public nuisances which are violations of this code, or which the City has declared to be injurious to the public health, comfort, convenience, safety, welfare, prosperity, peace, and quiet of the citizens.

8.15.020 Definitions.

As used in this chapter:

“Administrative citation” means an administrative citation issued by an enforcement officer pursuant to LMC Chapter 1.20.

“Costs and expenses to abate the nuisance” means the actual costs incurred to abate a public nuisance, including but not limited to, all administrative charges, direct and

indirect personnel costs, attorney's fees, costs incurred to document the existence of a nuisance, actual expenses and costs for the preparation and dissemination of notices, the costs of imposing a lien if any, and incidental costs associated with those items.

"Enforcement officer" means any individual employed by the City with primary enforcement authority for this chapter, or his or her duly authorized representative, or any City official, employee, or agent with competent authority to enforce this code.

"Hearing officer" is the individual appointed in accordance with LMC 8.15.040.C or LMC 8.15.110 to preside over an administrative hearing and for issuing a written decision and order after hearing.

"Owner" and "property owner" means the same as those terms are defined in LMC 8.14.020.

"Person" means the same as that term is defined in LMC 8.14.020.

"Property" means that same as that term is defined in LMC 8.14.020.

"Public nuisance" means anything defined as a public nuisance in LMC Chapter 8.14 or elsewhere in this code, or which the City has declared to be injurious to the public health, comfort, convenience, safety, welfare, prosperity, peace and quiet of the citizens.

"Responsible Party" means the same as that term is defined in LMC 8.14.020.

8.15.030 Nonexclusive remedies.

A. The procedures in this chapter shall not be exclusive and shall not in any manner limit or restrict the City from enforcing its ordinances or abating public nuisances by any other means, including the issuance of administrative citations pursuant to LMC Chapter 1.20, or other administrative, civil, or criminal proceedings, or in any other manner provided by law. Nothing contained in this chapter shall be construed as limiting, prejudicing, or adversely affecting the City's ability to concurrently or consecutively use any of those proceedings as the City may deem are appropriate, efficient, effective, or practical.

B. The failure of any responsible party or owner to receive any notice set forth in these procedures shall not affect the validity of proceedings under this chapter.

C. In no event does this chapter or its requirements limit the right of an enforcement officer to issue informal written or oral notices of code violations to persons when appropriate.

D. Additional time to abate the nuisance may be granted if an enforcement officer determines that there are circumstances of hardship or practicality that warrant additional time for abatement.

8.15.040 Emergency summary abatement.

Notwithstanding any other provisions of this chapter to the contrary, whenever it is determined that a public nuisance activity or condition exists and presents an imminent threat to life, public health, or property such that the activity or condition must be immediately abated, corrected, or isolated, an enforcement officer may institute the following emergency summary abatement procedures:

A. Notice. An enforcement officer shall attempt to make contact with the responsible party engaged in the nuisance activity or condition to provide verbal notice of the public nuisance and the imminent danger involved, and to order that the activity or condition be immediately abated, corrected, or isolated to prevent harm to any person or property. A compliance order is not required for emergency summary abatement for nuisances that pose an imminent threat to life, public health, or property, but the enforcement officer shall issue a notice and order to abate that will be sent to the responsible party and posted on the property where the nuisance activity or condition exists as soon as practicable after the verbal notice is provided.

B. Abatement. In the event an enforcement officer is unable to make contact, or if after verbal notice the responsible party does not take action to abate the nuisance by the specified date, then an enforcement officer may, with the approval of the City Manager and City Attorney, take all steps necessary to abate the activity or condition using City resources pursuant to the provisions of this code. Summary abatement shall be limited to abating activities and conditions that are immediately dangerous. All other nuisances, or aspects of nuisances, shall be abated through the standard process outlined in this chapter. Administrative citations may also be issued to any and all responsible parties that received verbal notice of the nuisance but failed to abate the nuisance activity or condition by the specified date.

C. Post Abatement Hearing. Any responsible party and any person having charge, control, or possession of any property where a nuisance is summarily abated may contest the validity of the summary abatement upon written request for a hearing within 10 calendar days from the date of the City's summary abatement action. The City Manager shall appoint a hearing officer within 10 working days and provide written notice of the date, time, and location of the hearing to the requesting party. The City has the burden to establish by a preponderance of the evidence that the public nuisance presented an imminent threat to life, public health, or property such that the condition needed to be immediately abated, corrected, or isolated. Upon review, the hearing officer must consider any extenuating circumstances and the information available to the City at the time when the summary abatement was performed. If an administrative citation has been issued, the hearing officer shall also make a determination whether to uphold, modify, or set aside the fines. The decisions by the hearing officer shall be final and conclusive for the City. Failure to timely request a hearing shall result in a waiver of the right to a hearing and constitutes a failure to exhaust the administrative remedies. The administrative hearing officer shall observe the procedures in LMC 8.15.110.E for the hearing, except as modified by this section.

D. Costs. An enforcement officer shall keep an itemized account of the costs incurred by the City in removing or isolating such condition or conditions. Such costs may be recovered to the same extent and in the same manner that abatement costs are recovered as set forth in this chapter pursuant to Government Code sections 38773 and 38733.1.

8.15.050 Compliance order.

A. Whenever an enforcement officer charged with the enforcement of any provision of this chapter determines that a public nuisance activity or condition exists, the enforcement officer shall notify a responsible party of the existence of such activity or condition and shall direct such party to abate the nuisance by issuing a compliance order as set forth in LMC 1.20.030.

B. The compliance order shall include the contents required by LMC 1.20.030.B, as well as a statement explaining the consequences and penalties if the nuisance activity or condition is not abated by the specified date, including but not limited to, the imposition of administrative charges, issuance of administrative citations, incurring City abatement costs, and other legal remedies available to the City.

8.15.060 Failure to abate – administrative citation.

If a responsible party does not abate the nuisance activity or condition identified in the compliance order, or in the notice provided for emergency summary abatement, by the specified date, then the enforcement officer may issue an administrative citation to the responsible party pursuant to LMC 1.20.040.

8.15.070 Notice and order to abate.

A. If an enforcement officer determines that the nuisance activity or condition identified in a compliance order has not been abated by the specified date, then the enforcement officer shall send a notice and order to abate to the person or other responsible party.

B. Contents of Notice. The notice and order to abate shall contain the following information:

1. The names and addresses of the person engaged in the nuisance activity, and in the case of a property nuisance the responsible party and property owner for the property where a nuisance exists, and the street address, legal description, or other description of the property where the nuisance exists.

2. A description of each activity or condition that has been determined to be a public nuisance, and the corresponding code section violated by the nuisance, and specific actions to be taken to abate each nuisance.

3. A statement directing the person engaged in the nuisance activity, and in the case of a property nuisance directing the responsible party and property owner for

the property where a nuisance exists, to abate the nuisance within a specified period of time or else the City will take action to abate the nuisance. The specified time period shall be at least 10 calendar days, but not more than 20 calendar days, from the date the notice and order to abate is sent, unless the person, owner, or responsible party makes other arrangements with the approval of the enforcement officer.

4. The anticipated administrative charge incurred and an estimate of the City's costs and expenses to abate the nuisance that are likely to be incurred by the City pursuant to LMC 8.15.080 if the activity or condition is not abated by the responsible party.

5. A statement that all responsible parties shall be jointly and severally responsible for the administrative charge and all costs and expenses to abate the nuisance that are incurred by the City from the date that the notice and order to abate is sent.

6. A statement that if the responsible party does not abate the nuisance or request a hearing within the specified time period, the City will take action to abate the nuisance activity or condition, including entering the subject property where the nuisance exists, and that the total costs and expenses to abate the nuisance incurred by the City will also become a charge against the owner and a lien or special assessment against the property until paid.

7. A statement that within 10 calendar days of date of the notice and order to abate is sent, the responsible party may file a written request with the Community Development Department pursuant to LMC 8.15.090 for an administrative hearing to contest the notice and to show cause why the activity or condition should not be abated or why the administrative charge should not be assessed.

8. A statement that failure to file a timely and complete request for an administrative hearing shall constitute a waiver of all rights to a hearing and a waiver of all rights to maintain an action to modify or set aside an enforcement officer's notice and order to abate, and any City abatement action.

C. Manner of Giving Notice. The notice and order to abate shall be sent to the responsible party engaged in the nuisance activity, and for property nuisances to the owner of the subject property by certified mail to the owner's address as it appears on the last equalized assessment roll or as known to an enforcement officer. For property nuisances, the enforcement officer shall also post a copy of the notice and order to abate in a conspicuous place upon the subject property and shall send the notice and order by certified mail to all other responsible parties at their addresses gathered through the enforcement officer's investigation. The enforcement officer may also provide the notice and order to abate by hand delivery, in which case the enforcement officer shall not have to send the notice by certified mail to that particular responsible party or owner. Notice is deemed complete at the time the notice and order to abate is hand delivered or deposited in the mail.

D. The failure of a responsible party or owner to receive any notice required by this chapter shall not affect the validity of proceedings under this chapter.

8.15.080 Administrative charge.

If a notice and order to abate is issued, the person engaged in the nuisance activity, and the property owner and responsible party for a property nuisance, shall be assessed an administrative charge to recover the City's administrative costs for the issuance of the notice and order to abate. The amount of the charge shall be established by City Council resolution based on an analysis of direct and indirect personnel costs, including but not limited to, cost of inspection to determine a nuisance activity or condition exists, documenting the nuisance in the notice, attorney fees for reviewing the notice, and the actual costs of preparing, printing, and mailing the notice and order to abate. The administrative charge shall become due and payable 30 days from the date that notice is deemed complete for the notice and order to abate.

8.15.090 Request for administrative hearing.

A. Within 10 calendar days of the date that notice is deemed complete for a notice and order to abate, the responsible party or property owner may file a written request with the Community Development Department for an administrative hearing to contest the notice and to show cause why the activity or condition should not be abated or why the administrative charge should not be assessed.

B. A request for an administrative hearing must contain the following:

1. The name, address, email address, telephone number, and any facsimile number of the person requesting an administrative hearing to contest the notice and order to abate.

2. A statement of the specific reason and basis why the person is contesting the notice and order to abate.

3. A statement whether the nuisance activity or condition identified in the notice and order to abate exists. And if the person concedes that a nuisance activity or condition exists, a further statement why the person believes the nuisance activity or condition identified in the notice should not be abated. The person requesting the hearing must provide this information for each nuisance that is being contested.

4. The date and signature of the person requesting the administrative hearing.

5. The administrative hearing fee established by City Council resolution. Failure to pay the established fee will result in the request be rejected as incomplete.

C. Failure to file a timely and complete request for an administrative hearing shall constitute a waiver of all rights to a hearing and a waiver of all rights to maintain an

action to modify or set aside an enforcement officer's notice and order to abate, and any City abatement action

D. If a timely and complete request is not filed, the enforcement division will notify all persons and responsible parties that were sent a notice and order to abate that the time to request an administrative hearing has expired and that the City may proceed to abate the nuisance pursuant to LMC 8.15.140.

8.15.100 Consolidated administrative hearing.

In the event a person files a timely and complete request for an administrative hearing to contest the notice and order to abate, then all other administrative citations and appeals of citations associated with the nuisance activity or condition identified in the notice, as well as all other timely and complete requests for an administrative hearing related to the notice, will be combined into a single consolidated administrative hearing. The failure of any party to participate in the consolidated administrative hearing will constitute a failure to exhaust administrative remedies.

8.15.110 Administrative hearing.

A. Appointment. Upon receipt of a timely and complete request for an administrative hearing, the Community Development Director, or his or her designee, will appoint a hearing officer.

B. Scheduling hearing date. Within 10 working days from the date of his or her appointment, the hearing officer shall schedule a date, time, and location for the administrative hearing, which hearing date shall not be scheduled for a date that is more than 60 days from the date of the request. The hearing date may be continued to a date and time that is mutually convenient to the hearing officer, enforcement officer, and the person or responsible party that requested the administrative hearing. The person or responsible party requesting the administrative hearing has one opportunity to unilaterally continue the hearing date to a mutually convenient date and time, but the request for continuance must be made to the hearing officer at least 72 hours prior to the scheduled hearing date.

C. Notice of hearing date. The enforcement division shall send written notice of the date, time, and location for the administrative hearing to the hearing officer, enforcement officer, Community Development Director, City Attorney, the person that requested the administrative hearing, and to any other person or responsible party that was sent the notice and order to abate. The enforcement division shall also send notice of the hearing to all responsible parties involved with any item that was consolidated with the hearing.

D. Purpose of the hearing. The purpose of the administrative hearing is to provide an opportunity for an aggrieved party to contest the notice and to show cause why the activity or condition should not be abated or why the administrative charge should not be assessed.

E. Hearing procedures. The hearing officer shall observe the following procedures for the administrative hearing:

1. The hearing officer shall receive and consider all relevant testimony evidence, objections, or protests presented.

2. The person requesting the hearing may represent himself or herself or may be represented by the person of their choice.

3. The formal rules of evidence and discovery will not apply to the administrative hearing, but the person requesting the hearing, and the enforcement officer, shall have the following rights:

a. To appear and present testimony and evidence relevant to any activity or condition identified in the notice and order to abate that is being contested. Hearsay evidence may be presented 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 civil actions in courts of competent jurisdiction in California. Relevant evidence may be admitted if it is the type of evidence that is competent and may be relied upon by reasonable persons to make a decision, provided the evidence is more than speculation or conjecture. Irrelevant and unduly repetitious evidence shall be excluded.

b. To produce and examine witnesses on any matter relevant to the condition of the premises constituting a nuisance.

c. To introduce documentary and physical evidence.

d. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing.

e. To impeach any witness, regardless of which party first called that witness to testify.

f. To rebut the evidence.

g. The proceedings at the hearing shall be recorded.

h. The person requesting the hearing, or the enforcement officer, may use a certified shorthand or stenographic reporter to maintain a written record of the proceedings at the party's own expense. When a certified shorthand or stenographic reporter is used, the preparation of a record of the proceeding shall be governed by California Code of Civil Procedure section 1904.6, as it is amended from time-to-time.

F. Burden of proof. The enforcement officer's enforcement file, including the notice and order to abate, shall constitute prima facie evidence that the public nuisance exists and that the administrative charge assessed is appropriate, and shall be deemed evidence of sufficient substantiality to shift the burden of proof to the person contesting

the notice to show cause why the nuisance activity or condition does not exist or should not be abated, or why the administrative charge should not be assessed. The person requesting the hearing has the burden of proving there is a substantial conflict of evidence, or that different conclusions must be drawn from the enforcement officer's evidence, that warrants modifying or setting aside the contested portion of the notice and order to abate. The enforcement officer has the ultimate burden of proving by a preponderance of the evidence that the activity or condition identified in the notice and order to abate exists, and to establish that the administrative charge should be assessed.

G. Additional information. The hearing officer may request additional information from the enforcement officer or the person requesting the administrative hearing, or to conduct an inspection of the activity or condition that is being contested, at any time before issuing a written decision as set forth in LMC 8.15.120.

The hearing officer may inspect the activity or condition being contested as part of the hearing process, provided that the parties mutually agree, and for property nuisances the owner for the subject property consents, to the inspection. The hearing officer must give written notice to the parties of the date and time of the inspection, and the parties are permitted to be present during the hearing officer's inspection. When the hearing resumes after the inspection, the hearing officer shall state for the record the material facts observed during the inspection. The parties shall be afforded an opportunity to rebut or explain the material facts stated by the hearing officer.

H. Failure to appear. The failure of any person contesting the notice and order to abate to appear at the hearing shall constitute a waiver of all rights to a hearing and a waiver of all rights to maintain an action to modify or set aside an enforcement officer's notice and order to abate, and any City abatement action. The failure to appear shall also constitute a failure to exhaust administrative remedies, and the hearing officer is directed to issue a written decision and order upholding the notice and order to abate as to that party. The hearing officer's written decision and order is final and conclusive for the City.

I. Abatement before hearing. If an enforcement officer determines that the nuisance has been properly abated, or that the person requesting the administrative hearing is actively pursuing permits to abate a nuisance activity or condition, then the Community Development Director and the person requesting the hearing may mutually agree in writing to terminate the administrative hearing proceedings. However, the Community Development Director may, in his or her discretion, proceed to recover the assessed administrative charge.

J. Administrative hearing costs. The responsible party is not required to pay the cost for the administrative hearing in advance of the hearing, but if the hearing officer upholds the notice and order to abate, or any part thereof, then the administrative hearing costs will be added to the costs and expenses to abate the nuisance to be collected or assessed as a lien.

8.15.120 Written decision and order.

A. Decision and order. Within 30 working days after the conclusion of the administrative hearing, unless extended by mutual agreement of the parties, the hearing officer shall issue a written decision and order to uphold, modify, or set aside the notice and order to abate, or any portions thereof, as well as any other items consolidated in the hearing. The written decision shall state the reasons for the decision, including the hearing officer's factual findings and conclusions.

B. Notice upheld or modified.

1. If the hearing officer determines that the notice and order to abate should be upheld, then the written decision shall include an order directing the person requesting the hearing to abate the nuisance activity or condition by a specified date, which date shall be no later than 60 days from the date the decision is mailed.

2. If the hearing officer determines the time to abate the nuisance activity or condition, or the specific actions to be taken to abate the nuisance, should be modified, then the written decision shall identify the specific modifications and include an order directing the person requesting the hearing to abate the nuisance activity or condition by a specified date, which date shall be no later than 60 days from the date the decision is mailed.

3. The written determination shall further state that if the nuisance is not abated by the specified date, then the City is ordered and authorized to abate the nuisance and to recover the administrative charge and costs and expenses to abate the nuisance from the responsible party as set forth in LMC 8.15.150.

4. If the hearing officer determines that the nuisance is likely to recur after abatement, the hearing officer's written decision may order the person to take adequate precautions for a period of time not to exceed 12 months so that the nuisance will not recur.

C. Notice set aside. If the hearing officer determines that the notice and order to abate should be set aside, then the written decision shall include findings detailing the facts and findings why the nuisance does not exist, the procedural defects that warrant setting aside the notice, or such other reasons that explain why the order should be set aside. The written decision shall include an order dismissing the notice and order to abate in the interest of justice.

D. Consolidated hearing. For any administrative citations consolidated in the administrative hearing, the written decision shall include a determination and findings as to whether the administrative fines should be upheld, modified, or set aside. If the fines are upheld or modified, the decision should include an order stating the date on which the fines must be paid, which date shall be no later than 60 days from the date the decision and order is mailed.

E. Finality of decision – judicial review. The hearing officer’s decision is final and conclusive for the City. The written decision and order shall contain a statement of the right to seek judicial review of the hearing officer’s decision by filing a petition within 90 days with a court of competent jurisdiction pursuant to California Code of Civil Procedure sections 1094.5 and 1094.6.

F. Notice of decision and order. The hearing officer shall send his or her written decision and order by certified mail, return receipt requested, to the person that requested the administrative hearing and any other person that was sent the notice and order to abate, and for any item that was consolidated with the hearing. The hearing officer shall provide a copy of the decision to the enforcement officer, City Manager, City Attorney, and Community Development Director.

8.15.130 Abatement by responsible party.

A responsible party may and should, at his or her own expense, abate the nuisance activity or condition identified in a compliance order, a notice and order to abate, or a written decision and order from a hearing officer, by the specified actions and date. If a responsible party does not abate the nuisance activity or condition, then the City may abate the nuisance as set forth in LMC 8.15.140.

8.15.140 Abatement by City.

A. Abatement - notice and order to abate. If responsible party does not abate the nuisance activity or condition by the specified date in a notice and order to abate, then the Community Development Director or his or her designee may, with the City Attorney’s approval, proceed to abate the nuisance using City resources, which include any City officer, employee, agent, contractor, or authorized representative of the City to abate the nuisance. The abatement authorized by this section shall be stayed in response to any timely and complete request for an administrative hearing except as provided for in the hearing officer’s written decision as set forth in section 8.15.140.B.

B. Abatement - order after administrative hearing. If a person does not abate a public nuisance by the date specified in a hearing officer’s written decision and order, then the Community Development Director or his or her designee may, with the City Attorney’s approval, proceed to abate the nuisance using City resources.

C. Accessing property for abatement. For the limited purpose of abating a nuisance activity or condition identified in a notice and order to abate, or in the written decision and order from a hearing officer, City resources, including any officer, employee, agent, contractor, or authorized representative of the City may:

1. Enter upon those portions of the property that are open and accessible to the public that are under the charge, control, or possession of the person or responsible party that is the subject of the notice or decision.

2. Not enter property that is not open and accessible to the public until the enforcement obtains an abatement warrant from a court of competent jurisdiction to abate the nuisance as authorized by this chapter.

D. No person shall obstruct, impede, or interfere with any officer, employee, agent contractor, or authorized representative of the City whenever such person is engaged in work to abate a public nuisance, or in performing any necessary act preliminary to or incidental to such work, as authorized or directed pursuant to this chapter.

8.15.150 Abatement costs.

A. Each and every responsible party is liable to the City for the costs and expenses to abate the nuisance that are incurred by the City and accrue from the date delivery of the notice and order to abate is deemed complete.

B. If a nuisance is abated by the City pursuant to LMC 8.15.140, the enforcement officer shall keep an accurate accounting of all costs and expenses to abate the nuisance incurred by the City and provide a statement of the costs and expenses to the responsible party for payment. The costs and expenses to abate the nuisance shall constitute a civil debt owed jointly and severally by all responsible parties to the City. The costs and expenses are due to the City within 30 calendar days of the date the statement of costs is sent to the responsible party. If the responsible party does not pay costs and expenses to abate the nuisance, then they may be collected pursuant to LMC 8.15.160, or assessed as a lien against the subject property pursuant to LMC 8.15.170 through LMC 8.15.190.

8.15.160 Collection of unpaid costs and expenses to abate the nuisance.

A. Cumulative Remedies. At its discretion, the City may pursue any and all legal and equitable remedies to collect the administrative charge and all other costs and expenses to abate the nuisance that are owed to the City. Pursuit of one remedy does not preclude the pursuit of any other remedies until the full amount of the administrative charge and all other costs and expenses to abate the nuisance have been recovered. Any responsible party that fails to pay any administrative charge or other costs and expenses to abate the nuisance owed to the City shall be liable in any action brought by the City for costs incurred in securing payment of the delinquent amount. The City's collection costs may include, but are not limited to, those for personnel, materials, overhead, attorney's fees, and any other City expenditure required to collect unpaid abatement costs and administrative charges.

B. Liens. In the event the full amount of the administrative charge and all other costs and expenses to abate the nuisance are not paid in full to the City within 30 calendar days of the date the statement of costs is sent to the responsible party, and no other payment arrangements have been made and approved by a mutual agreement between the responsible party and the City, the City may elect to assign the debt to collections, place a nuisance lien against the real property on which the violation occurred, or levy a special assessment lien against the property on which the violation occurred. Any

administrative or recording costs charged by the county shall also become a debt of the owner.

8.15.170 City Council confirmation hearing for lien.

A. If a nuisance is abated by the City pursuant to LMC 8.15.140, the enforcement officer may present the statement of the costs and expenses to abate the nuisance to the City Council for confirmation at a public hearing at a regular City Council meeting. At that public hearing, the City Council shall also determine whether to impose a nuisance abatement lien or special assessment on the subject property owned by the responsible party pursuant to either LMC 8.15.180 or LMC 8.15.190, respectively, for those cost and expenses.

B. The enforcement officer shall send notice of the public hearing to the responsible party and property owner at least 10 days prior to the City Council meeting, and shall cause notice of the hearing to be published pursuant to Government Code section 6602. The notice shall include the date, time, and location of the City Council meeting, and shall advise the responsible party and property owner that he or she may appear and protest any cost item contained in the report and the imposition of a lien or assessment. In addition to the public hearing notice, the enforcement officer shall also send the property owner a copy of the statement of costs and expenses and the proposed resolution to confirm the amounts and place an abatement lien or special assessment on the subject property. The enforcement officer shall also post a copy of the hearing notice, statement of costs and expenses, and proposed resolution conspicuously on the subject property. The enforcement officer shall also send the hearing notice and attachments by certified mail, return receipt requested, to the property owner at the owner's address as it appears on the last equalized assessment roll on the date the notice is prepared, and to any responsible party at their address known to the enforcement officer. The failure of any responsible party or owner to receive any notice set forth in this section shall not invalidate the lien proceedings.

C. At the time fixed for the public hearing, the City Council shall consider all protests or objections raised by the responsible party and the owner of the subject property. The City Council may in its sole discretion revise, correct, or modify the statement of the costs and expenses to abate the nuisance. Likewise, the City Council may in its sole discretion decide whether to impose a nuisance abatement lien or to impose a special assessment on the subject property for the costs and expenses to abate the nuisance pursuant to either LMC 8.15.180 or LMC 8.15.190, respectively.

D. The public hearing is limited to confirming the amount of the costs and expenses to abate the nuisance, and whether to impose a nuisance abatement lien or to impose a special assessment on the subject property. The City Council shall not consider whether the nuisance exists or the validity of the abatement, which decisions are final and conclusive for the City pursuant to this chapter prior to the public hearing.

E. Upon conclusion of the hearing, the City Council may adopt a resolution to approve and accept the statement of the costs and expenses to abate the nuisance,

and to confirm the amounts set forth therein. The City Council's resolution shall also state whether the costs and expenses to abate the nuisance shall be imposed on the subject property as a nuisance abatement lien or a special assessment as provided for in LMC 8.15.200 or LMC 8.15.210. Any administrative or recording costs charged by the county shall be added to the cost and expenses to abate the nuisance to be imposed on the subject property. The decisions of the City Council shall be final and conclusive for the City.

8.15.180 Nuisance abatement lien – judgment lien.

A. This chapter, and in particular this section, establishes the procedures to collect abatement and related administrative costs by a nuisance abatement lien pursuant to Government Code section 38773.1.

B. The nuisance abatement lien shall specify the amount of the lien, the name and address of the City as the agency on whose behalf the lien is imposed, 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, the name and address of the recorded owner of the parcel, and the fact that the owner has failed to pay the City the cost of the abatement. The lien shall also state that the lien accrues interest at the legal rate of interest.

C. The City Clerk shall cause a copy of the resolution and the nuisance abatement lien on the property owner in accordance with Government Code section 38773.1(b) and Code of Civil Procedure section 415.10 by having it personally served, or, if the owner of record cannot be found after diligent search, by posting a copy in a conspicuous place on the subject property for a period of 10 days and publishing it in a newspaper of general circulation in the county pursuant to Government Code section 6062.

D. The City Clerk shall record a certified copy of the resolution and nuisance abatement lien in the Alameda County Recorder's Office, and from the date of recording, the lien has the force, effect, and priority of a judgment lien.

E. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.

F. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

G. A nuisance abatement lien may be foreclosed by an action brought by the City for money judgment.

8.15.190 Special assessment against property – tax lien.

A. This chapter, and in particular this section, establishes the procedures for the abatement of a nuisance and to make the cost of abatement of a nuisance upon a parcel of land a special assessment pursuant to Government Code section 38773.5.

B. The notice of special assessment shall specify the amount of the assessment, the name and address of the City, the date of the abatement order and City Council resolution making the cost of abatement a special assessment, the street address, legal description and assessor's parcel number of the parcel on which the assessment is imposed, the name and address of the recorded owner of the parcel, the fact that the property owner has failed to pay City the cost of the abatement, and that the property may be sold after three years by the tax collector for unpaid delinquent assessments .

C. The notice of special assessment shall be sent 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 records pursuant to Government Code section 38773.5(c). If the owner of record cannot be found after diligent search, a copy of the notice of special assessment shall be posted in a conspicuous place on the property for a period of 10 days and shall be published in a newspaper of general circulation in the county pursuant to Government Code section 6062. The notice shall be given at the time of imposing the assessment.

D. The notice of special assessment shall be filed with the Alameda County recorder. Upon recordation in the office of the county recorder of a notice of assessment lien, a copy of the special assessment may be turned over to the county auditor, who shall then enter the amount of the lien on the assessment rolls as a special assessment. Thereafter, the amount 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 penalties and the same procedure under foreclosure and sale in case of delinquency as provided by California Government Code section 38773.5 and as provided for ordinary municipal taxes. However, if any real property to which the abatement and related administrative costs relate has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches prior to the date on which the first installment of the taxes would become delinquent, then the abatement and related administrative costs shall be transferred to the unsecured roll for collection.

8.15.200 Satisfaction of lien.

If the nuisance abatement lien or special assessment is discharged, released, or satisfied, either through payment or foreclosure, the City shall record a notice of satisfaction of lien in the county recorder's office or provide the property owner with a notice of satisfaction so they may record the notice with the county recorder's office. The notice shall include all of the information set forth in LMC 8.15.180.A or LMC 8.15.190.A. Such notice of satisfaction shall cancel the City's lien.

8.15.210 Limitation on filing judicial action.

Pursuant to Code of Civil Procedure sections 1094.5 and 1094.6 any action appealing a decision order that is final and conclusive for the City shall be commenced within 90 calendar days of the date the decision becomes final.

8.15.220 Alternative means of enforcement.

A. Nothing in this chapter prevents the City Council from authorizing, or the City Attorney from initiating, the commencement of any other available civil or criminal proceeding to abate a public nuisance under applicable provisions of state or federal law.

B. Any person violating or causing the violation of this chapter shall be guilty of an infraction as provided for in LMC 1.16.010 in addition to any other remedies provided for in this chapter, in the code, or under applicable law.

C. The enforcement officer is authorized and directed to issue infraction citations to persons maintaining or permitting the maintenance of a nuisance as declared in this chapter or in any other ordinance adopted by the City Council.

D. It is a misdemeanor to refuse to sign a notice to appear citation prepared by a citing officer for the City that acknowledges receipt of a copy and includes a promise to appear at a hearing authorized by this chapter or required by Alameda County Superior Court or Traffic Court.

8.15.230 Treble damages.

Upon entry of a second or subsequent civil or criminal judgment within a two-year period that determines an owner of property is responsible for a condition that may be abated in accordance with the provisions of this chapter, the court may order the owner to pay treble the costs and expenses to abate the nuisance, as authorized by Government Code section 38773.7.

8.15.240 Attorney's fees.

Pursuant to Government Code section 38773.5, this chapter provides for the recovery of attorney's fees in any action, administrative proceeding, or special proceeding to abate a nuisance. However, attorney's fees may only be recovered by a prevailing party if the City elects, at the initiation of the individual action or proceeding, to recover its attorney's fees. If the City elects to seek recovery of its own attorney's fees, attorney's fees may be recovered by the prevailing party in said action or proceeding. Pursuant to Government Code section 38773.5(b), an award of attorney's fees to the prevailing party shall not exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

8.15.250 No duty on City to enforce.

Nothing in this chapter shall be construed as imposing a duty on the City to enforce the prohibitions in this chapter against any or all properties which may violate this chapter.

This chapter may be enforced, in the City's prosecutorial discretion, only as resources permit.