

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BAKERSFIELD REPEALING AND REPLACING CHAPTER 8.80
OF THE BAKERSFIELD MUNICIPAL CODE RELATING TO
ABATEMENT OF PUBLIC NUISANCES.**

BE IT ORDAINED by the Council of the City of Bakersfield as follows:

SECTION 1.

Chapter 8.80 of the Bakersfield Municipal Code is hereby repealed in its entirety and replaced with the following:

Chapter 8.80 ABATEMENT OF PUBLIC NUISANCES

Sections:

8.80.010 Duty of property owner to abate.

8.80.020 General enforcement authority.

8.80.030 Authority to inspect.

8.80.040 Power to arrest.

8.80.050 Summary abatement of public nuisance.

8.80.060 Non-summary abatement procedures – Notices of violation.

8.80.070 Form of notices.

8.80.080 Abatement hearing.

8.80.090 Order after hearing; Right to appeal.

8.80.100 Discretionary notices.

8.80.110 Abatement by owner.

8.80.120 Civil violations—Injunctions and civil penalties.

8.80.130 Treble damages for subsequent abatement judgments.

8.80.140 Criminal violations—Misdemeanors and infractions.

8.80.010 Duty of property owner to abate.

A. It shall be the duty of every property owner to abate any public nuisance defined under state law or the Bakersfield Municipal Code existing upon that property which shall be deemed to include for purposes of this chapter the abutting half of the street, sidewalk, and/or alley, and between the sidelines thereof as extended. For purposes of this chapter, “property owner” shall mean the owner of property whose name and address appears on the latest equalized county assessment roll.

B. Any property owner who fails to abate a public nuisance within the time prescribed in any notice or order provided for herein, shall be assessed the cost

of inspection(s) and administrative hearing fees, if applicable, in accordance with Section 3.70.040 of this code.

C. All bills for the charges set forth in subsection B of this section are due and payable upon billing date. An additional ten percent administrative service charge and interest at the rate of one percent per month shall be added to any surcharge which is delinquent. Should the city resort to court action to collect amounts due, the city shall be entitled also to collect its reasonable costs including reasonable attorney's fees.

8.80.020 General enforcement authority.

Code enforcement officers have the authority and powers necessary to gain compliance with the provisions of the Bakersfield Municipal Code and applicable state codes. For the purposes of this chapter the term "code enforcement officer" shall include building inspectors where applicable. These powers include the power to issue notices of violations, correction orders, field citations and to inspect public or private property and to use whatever judicial and administrative remedies provided under the Bakersfield Municipal Code or applicable state law.

8.80.030 Authority to inspect.

Code enforcement officers are authorized to enter upon any property or premises to ascertain whether the provisions of the Bakersfield Municipal Code or applicable state codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If an owner, occupant or agent refuses permission to enter or inspect, the code enforcement officer may seek an administrative inspection warrant pursuant to the procedures provided for in California Code of Civil Procedure Section 1822.50 through 1822.59, as may be amended.

8.80.040 Power to arrest.

Code enforcement officers are authorized to arrest without a warrant any person whenever there is reasonable cause to believe that the person has committed a violation of the Bakersfield Municipal Code or applicable state codes in his or her presence. Pursuant to Penal Code Section 836.5, code enforcement officers can only arrest a person by issuing a misdemeanor field citation in the manner set forth in Penal Code Section 853.6.

8.80.050 Summary abatement of public nuisance.

A. Notwithstanding any other provision of this Chapter, and without limiting any other available legal remedies which may be available, any condition caused or

permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be summarily abated by the City.

B. The City may move forward with summary abatement of public nuisances and bypass the abatement procedures otherwise set forth in this chapter as follows:

- (1) Within forty-eight (48) hours after providing notice to the property owner and posting notice in a conspicuous place on the property, for conditions which present an imminent clear and present danger to life, health, and safety of occupants and/or the public, as determined by the Building Director;
- (2) Within fourteen (14) days after providing notice to the property owner and posting notice in a conspicuous place on the property, for conditions that constitute a nuisance on an existing substandard property/building, provided that a certificate that the property is substandard has previously been recorded against the property in the office of the county recorder and the conditions rendering the property substandard have yet to be abated by the property owner;
- (3) Within thirty (30) days after providing notice to the property owner and posting notice in a conspicuous place on the property, for conditions which render the property substandard and unsafe for human occupancy, provided that a certificate that the property is substandard is recorded against the property in the office of the county recorder;
- (4) Within thirty (30) days after providing notice to the property owner and posting notice in a conspicuous place on the property that the property is a chronic nuisance property. For purposes of this subsection, a chronic nuisance property is one characterized by repeated nuisance conditions with demonstrated property owner inaction as determined by policy of the Development Services Director, which may include but is not limited to multiple code enforcement proceedings within a 12-month period and/or excessive calls for service due to criminal or nuisance activity occurring while the property is vacant and unsecured.

8.80.060 Non-Summary Abatement Procedures – Notices of Violation

A. Notice of Violation. Where a code enforcement officer determines that a violation or purported violation of the Bakersfield Municipal Code or State law exists upon real property, the code enforcement officer shall notify the property owner that a public nuisance is alleged to exist upon the owner's property, as follows:

- (1) Such notice shall require the property owner to respond to the allegation within seven days of the date of the notice. Where a code enforcement

officer issues a correction order pursuant to the Uniform Housing Code, the California Building Code, the California Electrical Code, California Plumbing Code and/or California Mechanical Code, the property owner shall correct the violation in a manner set forth in the order within a reasonable time to be determined by the code enforcement officer.

(2) Such notice shall inform the property owner that failure to respond to the notice will result in the code enforcement officer performing an inspection to verify the alleged violation(s). If a violation is confirmed to exist, the cost of inspection shall be charged to the property or made a lien on the property in addition to other costs necessary to abate the public nuisance as provided in this chapter.

B. Notice to Abate and Order to Show Cause. If, upon reinspection, the code enforcement officer determines that a violation continues to exist, the code enforcement officer shall issue a notice to abate public nuisance and order to show cause, as follows:

(1) Such notice shall detail the specific violation(s) and deadline for abatement. The notice shall indicate that the cost to reinspect said violation, in addition to any further reinspection costs shall be charged to the property owner or made a lien on the property in addition to other costs necessary to abate the public nuisance as provided in this chapter. Should the owner fail to repair within the time stated in the notice or order, the city may seek all remedies provided for by law including those set forth in Health and Safety Code Section 17980.7.

8.80.070 Form of Notices.

A. Unless otherwise specified, notices shall be mailed to the owner of real property on which a nuisance exists. Notice shall also be provided to tenants of residential buildings where the violation affects the health and safety of the occupants and which violates Section 1941.1 of the California Civil Code.

B. If the name and address of such owner does not appear on the assessment roll or is not otherwise known, a copy of such notice shall be conspicuously posted on the property affected.

C. The notices so posted shall be substantially the same as the notices mailed.

D. The mailing or posting of all of the notices shall be completed at least ten (10) days before the time fixed for the hearing.

E. The failure of any property owner or other party entitled to notice under this chapter to receive such notice shall not deprive the city of jurisdiction to proceed or affect in any manner the validity of the proceedings taken or to be taken or of any assessment or personal obligation levied under this chapter.

8.80.080 Abatement Hearing.

A. Where a notice to abate nuisance and order to show cause has been issued under this chapter, the Building Director or designee shall hold a hearing at the time and place designated in the notice and shall receive all evidence presented on the issue of the need and necessity to abate any and all nuisances for which notice was given.

B. The Building Director or designee shall act in the capacity of administrative hearing officer (hereafter, "Hearing Officer") and shall have the authority to receive all relevant evidence, swear witnesses, question witnesses, demand the production of documents and witnesses, and otherwise do all things necessary and proper to reach an informed decision upon the existence of a nuisance or nuisances and the necessity to abate such. All testimony shall be taken under oath or affirmation or by sworn affidavit or declaration executed under penalty of perjury. The hearing officer(s) may consider all other issues relevant and reasonably necessary to reach the ultimate issues of the existence of a nuisance and the necessity to abate.

C. The burden shall be upon the city of Bakersfield to show the existence of any and all nuisances as noticed, and the necessity to abate such, by a preponderance of the evidence presented at the hearing. Only relevant evidence properly produced at the hearing may be considered by the hearing officer(s) in reaching a decision.

D. The hearing officer(s) shall cause the hearing to be tape recorded. Transcripts may be created at the expense of the person requesting the transcript.

8.80.090 Order after abatement hearing; Right to appeal.

A. After the conclusion of the hearing, the hearing officer(s) shall render a decision within ten days on the existence of a nuisance and the necessity to abate. The decision shall be issued as follows:

- (1) If such nuisance is not found to exist, or if the necessity to abate is not found to exist, the hearing officer(s) shall so notify all persons in writing who originally received notice; or, if such nuisance is found to exist and if the necessity to abate is also found, shall issue a written notice and order for abatement directing the nuisance(s) to be abated, which shall be mailed to all persons originally receiving notice.
- (2) Any order issued for the abatement of nuisances under the Uniform Housing Code and/or the Uniform Code for the Abatement of Dangerous Buildings, shall state that the owner of the substandard or dangerous building may abate the nuisance within thirty days from the posting on the premises of a copy of the order of the hearing officer(s) declaring the property a nuisance. The order shall also be mailed to the property owner and in cases of

violation(s) of the Uniform Code for the Abatement of Dangerous Buildings, to each mortgagee or beneficiary under any deed of trust, certified mail, postage prepaid, return receipt requested, with proof of service.

B. Any person subject to an order to abate a nuisance after hearing may appeal the decision of the hearing officer to the city manager of the city of Bakersfield by filing a written request to appeal with the city clerk within ten days, or within thirty days in cases of violations of the Uniform Housing Code or the Uniform Code for the Abatement of Dangerous Buildings, from the date appearing on the notice and order to abate. The request for appeal must be received by the city clerk by five p.m. on the respective deadlines appearing on the notice and order, and the cost of appeal must be paid at the time the request for appeal is filed. If no appeal is filed, the city shall be deemed to have acquired jurisdiction to abate the nuisance or have the same done under its direction and supervision.

C. As soon as practicable after receiving the appeal, the city manager, or his or her designee, shall set a date to hear the appeal, which date shall be within a reasonable time from the date the appeal was filed. The appellant shall be given written notice of the time and place of the hearing at least ten days prior to the date of the hearing, either by causing a copy of the notice to be delivered to the appellant personally or by certified mail addressed to the appellant at the address shown on the appeal. The city manager or his or her designee shall act in the capacity of administrative hearing officer for purposes of hearing any appeal timely filed pursuant to this section; provided, however, the board of building appeals of the city of Bakersfield shall hear any appeal concerning the abatement of nuisances under the Uniform Code for the Abatement of Dangerous Buildings. The hearing officer, or the board of building appeals as the case may be, shall have authority to receive all relevant evidence, swear witnesses, question witnesses, demand the production of documents and witnesses, and otherwise do all things necessary and proper to reach an informed decision on the appeal. The hearing need not be conducted according to technical rules of evidence. The hearing officer may affirm, deny, or modify the order after abatement hearing that is the subject of the appeal, which decision shall be final.

D. If after the issuance of a final order declaring a building a nuisance under the non-summary abatement procedures described above, and if no appeal has been timely filed or after an appeal has been timely filed but denied, the city shall be deemed to have acquired jurisdiction to abate such nuisance by repairing, securing against entry, razing or removing the building, unless the nuisance is abated by the owner or other person interested within the thirty day period or any extension thereof as may be granted by the hearing officer(s). In the event that the nuisance is not abated within the time prescribed, the city may raze and/or remove the building or have the same done under its direction and supervision.

8.80.100 Discretionary notices

A. Certificate of Substandard Building. At any time and without restricting any other procedure or remedy which may be available, in cases involving alleged violation(s) of the Uniform Housing Code, Uniform Code for the Abatement of Dangerous Buildings, California Building Code, California Plumbing Code, California Electrical Code and/or the California Mechanical Code, the building official, depending on the severity of the violation(s), may file in the office of the county recorder a certificate describing the property and certifying that: (1) the building is an alleged substandard building; and (2) the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed, or the building has been demolished so that it no longer exists as a substandard building on the property described in the certificate, or as a result of the hearing and/or appeals process it is found that the building is not in violation, the building official shall file a new certificate with the county recorder certifying that the building has been demolished, repaired, or that the building was found not to be substandard, whichever is appropriate. Should the owner fail to repair within the time stated in the notice or order, the city may seek all remedies provided for by law including those set forth in Health and Safety Code Section 17980.7 and may, thereafter, order the property to be vacated, secured and maintained against entry.

B. Posting of Property Ordered to Be Vacated. If the code enforcement officer determines that a building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the occupants or the public, it shall be ordered to be vacated, secured and maintained against entry. Every property ordered to be vacated shall be posted at or upon each exit of the building and shall be substantially in the following form:

DO NOT ENTER

UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building or to remove or deface this notice.

CITY OF BAKERSFIELD

CODE ENFORCEMENT DIVISION

C. Compliance with Order to Vacate. Where a property has been posted and ordered to be vacated as set forth in this section, notice of such vacation shall be provided to the property owner. No person shall remain in or enter any building which has been posted, except that entry may be made to repair, demolish or remove such building where any required permit to do so has been acquired. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a certificate of

occupancy issued. Any person violating this subsection shall be guilty of a misdemeanor.

8.80.110 Abatement by owner.

A. Any owner of real property on which public nuisance exists, may cause the same to be abated, providing it is done prior to the arrival of the city or its contractors to do the work; providing in all cases the work shall be done to the satisfaction of the city.

B. It is unlawful for any property owner or other person to burn, or attempt to burn any weeds, debris, or waste matter without first obtaining written permission to do so from the chief of the fire department of the city. Any person or entity who violates this section shall be guilty of a misdemeanor.

8.80.120 Civil violations—Injunctions and civil penalties.

A. In addition to any other remedy provided by this code, any provision of this code may be enforced by injunction issued by the Superior Court upon a suit brought by the city of Bakersfield.

B. As part of a civil action filed to enforce provisions of this code, a court may assess a maximum civil penalty of two thousand five hundred dollars per violation of the municipal code for each day during which any person commits, continues, allows or maintains a violation of any provisions of this code.

C. As part of any court action, the city has the authority to require any person to post a performance bond to ensure compliance with the municipal code, applicable state codes or any judicial action.

8.80.130 Treble damages for subsequent abatement judgments.

Pursuant to California Government Code Section 38773.7, upon the entry of a second or subsequent civil or criminal judgment within a two-year period that finds an owner of property responsible for a condition that may be abated in accordance with California Government Code Section 38773.5, a court may order the owner to pay treble the costs of the abatement. These costs shall not include conditions abated pursuant to Section 17980 of the California Health and Safety Code.

8.80.140 Criminal violations—Misdemeanors and infractions.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this code. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this code shall constitute a misdemeanor; except that notwithstanding any other provisions of this code, any such violation constituting a misdemeanor under this code may, in the discretion

of the city attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this code, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this code, unless provisions is otherwise herein made, shall be punishable by fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars and for a second conviction or any subsequent conviction within a period of one year, by a fine of not exceeding five hundred dollars.

Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

SECTION 2.

This Ordinance shall be posted in accordance with the Bakersfield Municipal Code and shall become effective thirty (30) days after the date of its passage.

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I HEREBY CERTIFY that the foregoing Ordinance was passed and adopted, by the Council of the City of Bakersfield at a regular meeting thereof held on _____ by the following vote:

| | |
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| AYES: | COUNCILMEMBER: ARIAS, GONZALES, WEIR, SMITH, FREEMAN, GRAY, PARLIER |
| NOES: | COUNCILMEMBER: _____ |
| ABSTAIN: | COUNCILMEMBER: _____ |
| ABSENT: | COUNCILMEMBER: _____ |

JULIE DRIMAKIS, CPMC, MMC
CITY CLERK and Ex Officio Clerk of the
Council of the City of Bakersfield

APPROVED:

By: _____
KAREN GOH
Mayor

APPROVED AS TO FORM:
VIRGINIA GENARO
City Attorney

By: _____
ASHLEY ZAMBRANO
Deputy City Attorney II

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