AGENDA ITEM

27

AGENDA STAFF REPORT

DATE: January 22, 2020

TO: Mayor and City Council

APPROVED BY: David B. Dale, City Manager DD

PREPARED BY: Carlos Campos, City Attorney
Christopher Velasco, Contract Planner

SUBJECT: Introduction and First Reading By Title Only of Ordinance No. _____ An Ordinance of the City Council of the City of Calexico, California, Repealing Chapter 8.44 of the 8 (Health And Safety) of the Calexico Municipal Code Regarding Nuisances And Adding A New Chapter 8.44.

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Recommendation:

Staff recommends that the City Council adopt the following Ordinance by title only:

Ordinance No. _____ An Ordinance of the City Council of the City of Calexico, California, Repealing Chapter 8.44 of Title 8 (Health and Safety) of the Calexico Municipal Code Regarding Nuisances and adding a new Chapter 8.44.

Background:

The current version of Chapter 8.44 of Title 8 (Health and Safety) of the Calexico Municipal Code ("CMC") contains a limited list of public nuisances and an overly brief and general recitation of the City's authority to and procedures for abating public nuisances. The Chapter does not provide adequate notice to property owners and code enforcement officials of what conditions constitute public nuisances, what specific actions that City may take to abate public nuisances, and what due process protections property owners are afforded throughout the abatement process. Due to these limitations, the City faces a number of risks: (1) a court may reject the City's application for an Abatement Warrant thereby denying the City the ability to abate dangerous nuisance conditions; (2) a property owner could initiate litigation against the City for violation of the owner's due process rights; and (3) the City may not succeed in recovering its costs and fees associated

AGENDA ITEM
27

with abating nuisance conditions. Moreover, the lack of clear and uniform procedures for seeking property owners' compliance and affording property owners due process will continue to mire the City's efforts to abate dangerous nuisance conditions in an efficient and cost-effective manner. For the foregoing reasons, staff recommends that the City Council adopt the attached Ordinance, which will correct these deficiencies in the current version of the City's public nuisance Chapter.

On December 18, 2019 the City Council opened the public hearing and continued the item, including the public hearing to allow for the absent Council members to be present.

Discussion:

The purpose of the proposed Ordinance is twofold. First, the Ordinance is designed to facilitate the identification of commonly encountered public nuisance conditions. Identifying these common public nuisance conditions places the public on notice of what specific conditions constitute public nuisances and strengthens the City's authority to take action when these conditions arise. Identifying these common public nuisances in the CMC will also allow code enforcement officers to more easily cite to these specific code provisions when issuing notices, orders, and administrative citations.

The second purpose of the proposed Ordinance is to create uniform policies and procedures that City code enforcement officers and other City officials must follow, when seeking the abatement of a public nuisance condition. Adopting and implementing these uniform policies and procedures will ensure that property owners are afforded due process protections throughout the abatement process, thereby decreasing the risk of litigation against the City and increasing the likelihood that the City will recover its costs and fees. The adoption of uniform policies and procedures will also streamline the identification and abatement of public nuisance conditions for City officials, thereby reducing the upfront costs and fees associated with abating public nuisances and cutting down on the amount of time that it will take to abate hazardous and unsightly public nuisance conditions.

The proposed Ordinance includes, among others, the following provisions designed to accomplish these goals:

1. A Section that enumerates twenty four (24) of the most commonly encountered public nuisances conditions;

2. Authority for the issuance of "Notices to Abate" to property owners, who fail to abate public nuisance conditions on their property;

3. A required method of serving all Notices and Orders authorized under the Chapter;

4. A process, by which property owners may appeal a Notice to Abate;

5. Authority for the City to take action to abate public nuisance conditions, in the event that the property owner fails to comply with or appeal a Notice to Abate;

6. Authority for the City to take emergency action to abate conditions that pose an imminent safety hazard;

7. Procedures for the City to follow, in the event that a property owner fails to comply with or appeal a Notice to Abate, including a requirement that the City first seek the owner's consent to a City abatement; and

8. Authority for the City to recover the costs associated with abatement actions authorized by the Chapter in accordance with the procedures designated under Chapter 1.28 of the CMC.

If adopted and implemented, these provisions will allow the City to more efficiently and effectively identify and abate public nuisance conditions while affording property owners all necessary due process protections.

Attachment:

1. Ordinance No. _____ An Ordinance of the City Council of the City of Calexico, California, Repealing Chapter 8.44 of Title 8 (Health and Safety) of the Calexico Municipal Code Regarding Nuisances and adding a new Chapter 8.44.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA, REPEALING CHAPTER 8.44 OF TITLE 8 (HEALTH AND SAFETY) OF THE CALEXICO MUNICIPAL CODE REGARDING NUISANCES AND ADDING A NEW CHAPTER 8.44.

WHEREAS, the City Council for the City of Calexico ("City Council") finds that there is a need for a uniform procedure and standard for identifying and securing the abatement of conditions within the City of Calexico ("City") constituting public nuisances; and

WHEREAS, the City Council finds that the procedures established by this Ordinance are in addition to criminal, civil or other legal remedies that may be available to the City to enforce violations of the municipal code or applicable state codes; and

WHEREAS, the City Council finds that the adoption and implementation of the procedures and standards set forth below for the identification and abatement of public nuisances within the City is within the power and authority of the City to protect the public health, safety and welfare of the City's citizens;

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

SECTION 1. Incorporation of Recitals. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Repeal and Replacement of Chapter 8.44 of Title 8 Health and Safety. Chapter 8.44 of the Calexico Municipal Code is hereby repealed in its entirety and replaced with the following regulations:

"Chapter 8.44 – NUISANCES"

8.44.010 -- Purpose and Intent.

It is the intent of this Chapter to further the City's goals of protecting its citizens and their property from conditions that are offensive to the senses, detrimental to property values and community appearance, or injurious to the health, safety or welfare of the general public. Such conditions are nuisances and are subject to the City's authority to prevent and abate nuisance conditions within the community. As such, it is the intention of the City Council to set forth uniform guidelines for determining what conditions constitute nuisances and uniform policies and procedures for giving property owners notice of the

conditions and an opportunity to correct them. Furthermore, it is the City's intent to provide clear, fair, and efficient procedures, by which a nuisance condition shall be corrected or removed by the City, in the event that an owner fails to take the necessary corrective action.

8.44.020 – Definitions.

For the purposes of this chapter, the following definitions shall apply.

"Abatement costs" shall have the same meaning as the definition of "Costs" found in Section 1.28.020 of Chapter 1.28 of this Code.

"Attractive nuisance" means a hazardous condition or object that is likely to attract children.

"Building" means any structure designed, used, or maintained for the shelter or enclosure of persons, animals, chattels, equipment, or property of any kind, and shall also include structures wherein things may be grown, made, produced, kept, handled, stored, or disposed of, and all appendages, accessories, appliances, and equipment installed as a part thereof.

"Building official" means the City of Calexico building supervisor or the building supervisor's designee.

"Chief of police" means the chief of police of the City of Calexico Police Department or the chief of police's designee.

"City manager" means the city manager of the City of Calexico or the city manager's designee.

"City personnel" means any City employee, representative, agent, or contractor designated by the City Manager.

"Compliance Period" means the period of time or required schedule for the abatement of any violation as set forth in any warning, notice, citation, or other communication from the City, including a Notice to Abate or Order to Abate.

"Enforcement Officer" means any individual employed by the City with enforcement authority for City Codes or that officer's duly authorized representative(s).

"Hearing Officer" means any person appointed by the City Manager to hear all timely appeals as set forth in this Chapter. The employment, performance evaluation, compensation, and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the decision of the hearing officer.

"Landscaping" means healthy, growing, and cultivated vegetation common to most residential or commercial property, or planned drought tolerant schemes.

"Owner" means and includes any person having legal title to any real property in the City, as shown on the last equalized assessment role of the Imperial County Assessor's Office. An Owner of personal property shall be any person who has legal title, charge, control, or possession of such property.

"Person" means and includes any individual, partnership of any kind, corporation, limited liability company, association, joint venture or other organization, however formed, as well as trustees, heirs, executors, administrators, or assigns, or any combination of such persons.

"Personal property" means property that is not real property.

"Real property" means any real property owned by any person or any building, structure, or other improvement thereon, or portions thereof.

"Responsible person" means any person or other legal entity, who maintains, causes, aids, abets, conceals, suffers, or permits a violation of this Chapter, and includes any of the following:

1. The Owner, as that person's identity is set forth in the county assessor's or county recorder's records, occupant, or person in charge of the day-to-day activities, of real property;

2. The holder or the agent of the holder of any permit, entitlement, or review;

3. The Owner or the authorized agent of any Responsible Party that is not a natural person; or

4. The parent or legal guardian of any person under the age of eighteen years who violates any provision of this article.

"Structure" means, that which is built or constructed, an edifice, wall, fence, or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

"Unreasonable state of partial construction" means any unfinished building or structure for which required permits have expired, or construction activity has been abandoned for two or more years.

8.44.030 – Enumeration of Public Nuisance Conditions.

The City Council finds and declares that it is a public nuisance and unlawful for any person to maintain, cause, aid, abet, conceal, suffer, or permit another to maintain any real property in the City in such a manner that one or more of the following conditions are found to exist thereon:

1. A building, structure or facility is maintained thereon in violation of the California Standards Building Code.

2. A building or structure is maintained thereon in the condition such that it would constitute a "dangerous building" as defined in section 302 of the Uniform Code for the Abatement of Dangerous Buildings, as adopted within the city by section 15.18.010.

3. A building that is abandoned, partially destroyed or unsafe, as defined in the latest adopted Uniform Building Code.

4. A building left in an unreasonable state of partial construction.

5. An unfinished building or structure, the appearance or other conditions of which detracts from the appearance of the immediate neighborhood or which may reasonably be expected to reduce the property value in the immediate neighborhood.

6. A building or structure that is maintained thereon in a condition that would constitute a substandard building, as defined in chapter 10 of the Uniform Housing Code, as adopted within the city by section 15.08.010.

7. Any topography or land configuration that, whether in a natural state or as a result of grading operations, causes, or will cause erosion, subsidence of surface water containing any oil, solvent, detergent, or odorous material creating runoff problems, or that may be injurious to the public's health, safety and welfare, or to adjacent or nearby property.

8. Any excavation, pit, well, or hole, which is open to the public, unguarded, or abandoned, such that the excavation, pit, well or hole may pose a hazard to life or limb.

9. A solid wall or fence structure exists thereon with barbed wire, broken glass, metal spike, or other similar sharp or edged object affixed to or projecting from the top thereof, unless approval was otherwise granted by the building official.

10. Any sign or sign structure, including any support, brace, tie or anchor that constitutes a hazard to health, safety or public welfare by reason

of inadequate maintenance, dilapidation or obsolescence as declared by the building official.

11. Any condition that obscures the safe visibility of any public right of way, road intersection, or pedestrian walkway.

12. Obstructions of any kind, cause or form that interfere with required natural or mechanical light, heat, or ventilation for a building or structure, or that interfere with, hinder, delay, or impede ingress therein or egress therefrom.

13. Abandoned personal property that is visible from public or private real property.

14. Any form of an attractive nuisance.

15. Interior portions of buildings or structures including, but not limited to attics, ceilings, walls, floors, basements, mezzanines, and common areas, that have become defective or unsightly, that have been maintained in a condition of dilapidation, deterioration, or disrepair, that have fallen into a state that interferes with the peaceful use, possession or enjoyment of occupants or properties in the immediate vicinity, or that have created a condition, which otherwise violates any provision of this Code or other applicable law.

16. Refuse, rubbish, broken or discarded furniture or household equipment, which is visible from the public right-of-way or adjoining properties. This includes, but is not limited to, the keeping, disposing, or scattering over the property of any of the following:

    a. Junk, trash, debris; or

    b. Abandoned or discarded objects or equipment such as furniture, stoves, refrigerators, freezers, cans or boxes.

17. The existence of any one or more of the following conditions on improved or unimproved real property:

    a. Vegetation that is dead, decayed, dry or hazardous.

    b. Overgrown vegetation that is likely to harbor such nuisances as rats or vermin, or is in a condition to cause unsightliness.

    c. Lack of landscaping to such an extent that it detracts from the appearance of the surrounding community or my reasonably be expected to reduce surrounding property values.

d. Offal, animal excrement or other waste materials that emit odors that are unreasonably offensive to the physical senses of a normal person or that may attract insects.

18. Abandoned, unfenced or otherwise unprotected wells, swimming pools, spas, ponds, or excavations.

19. Stagnant water.

20. Dead, decayed, diseased, or hazardous trees, weeds, ground cover, and other vegetation, or the absence of healthful vegetation, that causes, contributes to, or tends to cause or contribute to any one of the following conditions or consequences:

    a. An attractive nuisance.

    b. A condition that increases the risk of fire.

    c. The creation or promotion of dust or of soil erosion.

    d. A condition, which is a detriment to public health, safety, or welfare.

    e. Landscaping consisting only of dirt or weeds, when the area is more than 25 percent of any bounded area of a front or side yard that is viewable from the public right-of-way.

21. A building, advertising structure, or other structure, which is constructed, maintained in whole or in part, or erected in whole or in part on any sidewalk, alley, street, lane, court, park, or other public place and which encroaches on or obstructs the free or open use thereof, unless otherwise permitted by this Code.

22. Any clothesline or clothes hanging in any front yard, front porch, balcony or fence, which is visible from a public street.

23. Hazardous substances, sewage or liquid waste, as defined by applicable federal, state or local laws or regulations that are stored, discharged, held, handled, used or otherwise dealt in violation of federal, state or local laws or regulations in any manner that affects the air quality or that creates an identifiable risk of accidental release, where such release may reasonably be expected to adversely affect the health or safety of persons, damage property, or adversely affect air or water quality.

24. Burial of the carcass of any dead animal within the city limits by anyone other than the chief of police.

8.44.040 – Abatement of Public Nuisances.

All conditions or uses that constitute a public nuisance, as defined in this Chapter, that are contrary to or in violation of any other provision of the Calexico Municipal Code, or that violate any applicable County or State law or regulation must be abated by repair, rehabilitation, demolition, removal, or termination.

8.44.050 – Continuing Obligation of Responsible Persons to Abate a Public Nuisance.

A. No responsible person shall allow, cause, create, permit, suffer, or maintain a public nuisance to exist. If a public nuisance does arise or occur, each Responsible Person must promptly secure all City approvals, permits, and inspections necessary to abate such nuisance and carry out the abatement, as appropriate, by repair, rehabilitation, demolition, removal, or termination.

B. The City may exercise its administrative, civil, injunctive, and criminal remedies, or any one or combination of those remedies, to compel the Responsible Persons to abate a public nuisance when, in the City's judgment, the Responsible Persons have not taken the necessary abatement actions in a timely or proper manner, or when the Responsible Persons have failed to prevent the occurrence or recurrence of a public nuisance.

8.44.060 – Notice to Abate.

A. When an Enforcement Officer finds that a nuisance, as defined in section 8.44.020 of this Chapter, exists on any property located within the City, the Enforcement Officer may cause to be served on all Responsible Persons a written Notice to Abate. The Notice to Abate shall be Titled "Notice to Abate" and shall contain the following:

1. The address of the real property on which the nuisance condition exists.

2. A description of the nuisance conditions.

3. A reference to the law describing or prohibiting the nuisance conditions.

4. A brief description of the actions the Responsible Person are required to take in order to abate the nuisance conditions.

5. A Compliance Period.

6. The period and manner, in which a Responsible Persons may contest the Notice to Abate as set forth in section 8.44.100 of this Chapter.

7. A statement notifying the Responsible Persons that the City may record a Notice of Administrative Pendency with the Imperial County Recorder's Office against the premises.

B. A "Notice to Abate" as defined in Subsection (a) shall not be issued, where the public nuisance at issue constitutes an imminent hazard. In such instances, the procedures set for in section 8.44.160 of this Chapter shall be followed.

C. An Enforcement Officer's decision to issue a Notice to Abate under this section does not excuse any Responsible Person from that Responsible Person's continuing obligation to abate a public nuisance in accordance with all applicable laws and regulations. Furthermore, the issuance of a Notice to Abate does not obligate the City to abate a public nuisance or create a legal duty that the City abate a public nuisance.

D. All Responsible Persons, to whom a Notice to Abate is served under this section, must be served with the Notice to Abate in the manner required by section 8.44.090 of this Chapter.

8.44.070 – Recordation of Notice of Pendency.

A. After the appeal deadline specified in Section 8.44.100 has passed, the Enforcement Officer may also record a Notice of Pendency of Administrative Proceedings with the Imperial County Recorder's Office. The Notice of Pendency shall contain the names of the parties and a description of the real property, on which the property affected by the administrative action is situated.

B. The Enforcement Officer must record a withdrawal of the Notice of Pendency following the Enforcement Officer's determination that a violation of a public nuisance has been fully abated or corrected and all abatement costs due to the City have been paid.

C. The Enforcement Office must cause copies of the recorded Notice of Pendency and withdrawal to be served on all persons having an ownership interest in the subject real property as shown in the last equalized assessment role of the Imperial County Assessor's Office. Service thereof must be made by first class mail.

8.44.080 – Right of Entry

City personnel may enter the property for the purpose of posting or serving any notice required by this Chapter and for the purpose of abating any nuisance or taking any other action authorized by this Chapter.

8.44.090 – Methods of Service of Notices and Orders

A. Except as otherwise expressly required by a provision of this Chapter, any notice, order, or document required to be served under this Chapter must be served by either certified mail with return receipt requested or by personal service. Service is deemed effective on the date it is personally delivered or placed in a U.S. Postal Service receptacle.

B. Except as otherwise expressly required by a provisions of this Chapter, any notice, order, or document issued to an Owner of real property must be sent to the mailing address listed on the last equalized assessment roll of the Imperial County Assessor's Office.

C. If there is no known address for any Responsible Person, the notice, order, or document must be mailed to the property address and, if the property is improved, must also be posted at or upon the main entrance of the building or structure or at another prominent location on the building/structure.

D. Failure of any Owner or Responsible Person to receive any notice, order, or document properly served pursuant to this Chapter does not affect the validity of the notice, order, or document, the service, or any action or proceeding taken pursuant to this Chapter.

8.44.100 – Right to Voluntary Abatement After Receiving Notice to Abate

A. Any Responsible Person has the right to abate a nuisance in accordance with the Notice to Abate at the Responsible Person's own expense, provided all corrective actions are completed in accordance with all required City permits, approvals, and inspections, before the end of the Compliance Period or the date set for an appeal hearing.

B. The Responsible Person must advise the citing Enforcement Officer of the abatement. Once so advised, the Enforcement Officer must inspect the premises to confirm whether the nuisance has been abated.

C. If the Enforcement Officer determines that all nuisances have been fully and lawfully abated prior to the end of the Compliance Period or, if a hearing date has been set pursuant to section 8.44.110(2) of this Chapter, prior to the set

hearing date, then the City Clerk must cancel the administrative appeal hearing and the Enforcement Officer must terminate all further administrative abatement proceedings excluding cost recovery proceedings conducted under Chapter 1.28 of this Code.

8.44.100 – Right of Appeal from Notice to Abate

A. Within thirty (30) calendar days following service of the Notice to Abate, the Responsible Person may contest a Notice to Abate by filing a written request for an appeal with the city clerk.

B. In order to be deemed complete, an appeal must contain all of the following:

1. Name, address, and telephone number of each Responsible Person, who is appealing the Notice to Abate.

2. Address and description of the real property.

3. Date of Notice to Abate being appealed.

4. Specific action or decision being appealed.

5. Grounds for appeal in sufficient detail to enable the Hearing Officer to understand the nature of the controversy.

6. The signature of at least one appellant.

7. An appeal fee, as may be established and amended by resolution of the City Council from time to time.

8.44.110 – Determination of Timeliness and Completeness of Appeals

The City Clerk shall be responsible for determining whether the appeal is complete and timely and shall take the following actions as appropriate:

1. *Determination of Untimeliness or Incompleteness* – If the City Clerk does not receive an appeal or receives an appeal that the City Clerk determines is incomplete or untimely, the right to an appeal shall be deemed waived, the Notice to Abate shall be final and binding, and the City shall be authorized to take action as described under section 8.44.120 of this Chapter.

2. *Determination of Timeliness and Completeness* – If the City Clerk determines that a timely and complete appeal has been filed, the City Clerk shall set a hearing date upon the appeal at a regular or

adjourned regular meeting of the city council within a reasonable amount of time. The City Clerk shall then notify all persons determined to have submitted a timely and complete appeal of such hearing date by certified mail return receipt requested or by personal service, as provided in section 8.44.090 of this Chapter. The City Clerk's notification of the appeal hearing date shall include the date, time, and location of the hearing. The appeal shall be heard and conducted in the manner identified in section 8.44.130 of this Chapter.

8.44.120 – Authority for City Abatement of Nuisance

Once the right to an appeal has been waived, the Notice to Abate has become final and binding, and the Compliance Period expires, the City may, without any further administrative hearing, cause the abatement of any or all of the public nuisances listed on the Notice to Abate pursuant to the procedures set forth in section 8.44.170 of this Chapter.

8.44.130 – Conduct of Hearing by Hearing Officer

A. The City Manager shall designate a Hearing Officer, who shall conduct and preside over all appeals under this Chapter.

B. Any request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than two business days before the date scheduled for the hearing. Any request for a continuance may be granted at the discretion of the hearing officer and only for good cause, or on the hearing officer's own motion; however, in no event may the hearing be continued for more than thirty (30) calendar days without stipulation by all parties.

C. At the time and place set for the appeal hearing, the hearing officer will hear and consider the testimony of the appellant, the Enforcement Officer, and any other witnesses, as well as any documentary evidence presented by these persons concerning the existence of the alleged public nuisance or nuisances and the responsibility for all such nuisances.

D. Appeal hearings are informal, and the formal rules of evidence and discovery do not apply. Irrelevant and unduly repetitious evidence may be excluded. The City bears the burden of proof to establish a nuisance exists by a preponderance of evidence. The issuance of a Notice to Abate constitutes *prima facie* evidence of the existence of a violation. The appellant and City representative(s), as well as all other Responsible Persons, may present evidence and present and cross-examine witnesses. Oral evidence may be taken only on oath or affirmation. The appellant and the citing Enforcement Officer, or other Responsible Persons, may represent themselves or be represented by anyone of their choice. The appellant, or

other Responsible Persons, may bring an interpreter to the hearing at the appellant's sole expense. The City will record the hearing by stenographer, court reporter, audio recording, or video recording, which option shall be selected by the City in its discretion. The hearing officer may question any person who presents evidence or testifies at any hearing.

E. If the appellant fails to appear, or to submit any admissible evidence in opposition to the Notice to Abate, the hearing officer may cancel the hearing and send a written notice thereof to the Responsible Person. A cancellation of a hearing due to non-appearance of the appellant constitutes the appellant's waiver of the right to appeal and a failure to exhaust all administrative remedies. In such instances, the Notice to Abate is final and binding.

8.44.140 – Decision of the Hearing Officer

A. No later than fifteen (15) calendar days following the conclusion of the hearing, the hearing officer must determine if any nuisance condition exists at the subject property. If the hearing officer determines that each nuisance condition described in the Notice to Abate is non-existent, the Notice to Abate will be cancelled by the hearing officer. If the hearing officer determines that one or more of the nuisance conditions described in the Notice to Abate exists, the hearing officer must issue a written Order to Abate that must contain the following:

1. A finding and description of each nuisance condition existing at the subject property.

2. The name of each person responsible for a nuisance condition or conditions at the subject property.

3. The required corrective action for each unabated nuisance condition.

4. A Compliance Period within which the corrective work must be completed.

5. Any other finding, determination or requirement that is relevant or related to the subject matter of the appeal.

6. A statement that if the nuisance is not abated, it will be removed and abated by the City, and the costs collected in accordance with Chapter 1.28 of this Code.

B. The decision of the hearing officer is conclusive and is the final administrative decision of the City regarding the Notice to Abate.

C. A copy of the decision must be served in accordance with section 8.44.090.

8.44.150 – Right to Voluntary Abatement After Order to Abate Issued

Any Responsible Person has the right to fully abate a nuisance in accordance with the hearing officer's decision before the expiration of the Compliance Period set forth in the Order to Abate. If the nuisance is fully abated within the required Compliance Period, all further administrative proceedings will be cancelled excluding cost recovery proceedings conducted under Chapter 1.28 of this Code.

8.44.160 – Emergency Action to Abate Imminent Hazard

A. Notwithstanding any provision of this Code to the contrary, the City Manager may cause a public nuisance to be summarily abated if the City Manager determines that the nuisance creates an imminent hazard to a person or persons, or to other real or personal property.

B. Before abating any nuisance that creates an imminent hazard, the City Manager must attempt to notify a Responsible Person by telephone or writing of the imminent hazard. The attempted notification must include a request that the notified Responsible Person abate the imminent hazard. Provided, however, that the City Manage may dispense with any attempt at prior notification of a Responsible Person if, in the City Manager's sole discretion, it is determined that the nature and severity of the hazard justifies dispense of the notice requirement. If notice has been given, but, in the sole discretion of the City Manager, it is determined that the Responsible Person has failed to take immediate and meaningful steps to abate the imminent hazard, the City Manager may direct City Personnel to abate the nuisance without further notice and may charge the costs and fees thereof to the Responsible Person pursuant to the procedures provided for in Chapter 1.28 of this Code.

C. Within ten (10) business days following the completion of a summary abatement under this section by City Personnel, the Enforcement Officer must serve any Responsible Person with a Notice of Emergency Abatement of an Imminent Hazard in accordance with section 8.44.090.

D. A Notice of Emergency Abatement of an Imminent Hazard required by subsection (c) above shall contain the following:

1. The name of all Responsible Persons known to the Enforcement Officer, who are being served with the Notice of Emergency Abatement of an Imminent Hazard.

2. The address of the real property, on which the imminent hazard was present.

3. A brief description of the law prohibiting or pertaining to the imminent hazard.

4. A brief description of the actions City Personnel took to abate the imminent hazard.

5. A statement notifying the recipient of the recipient's right to an appeal in the manner described in subsection (f) below.

E. Omission of one or more of the foregoing provisions in a Notice of Emergency Abatement of an Imminent Hazard, whether in whole or in part, does not render it defective or render any proceeding or action pursuant to this Chapter invalid.

F. By filing an appeal in the same manner described in Section 8.44.100, any recipient of a Notice of Emergency Abatement of an Imminent Hazard required by subsections (d) and (c) above, shall have the right to contest (1) whether the condition that precipitated the City Manager's determination that an imminent hazard necessitating summary abatement existed prior to the City Personnel's summary abatement, and (2) whether emergency action authorized under this Section was necessary.

8.44.170 – Abatement by City

A. If a declared nuisance is not completely abated within the Compliance Period prescribed by the Notice to Abate or the hearing officer's Order to Abate, the City is authorized to abate the nuisance with City Personnel according to the procedures set forth in this section.

B. Before the commencing of an abatement authorized under subsection (A) above, the Enforcement Officer shall serve all Responsible Persons with a Notice of Request for Consent to Abate and a Consent to Abate and Right of Entry Form in accordance with section 8.44.090.

C. The Notice of Request for Consent to Abate shall contain all of the following:

1. The name of all Responsible Persons known to the Enforcement Officer, who are being served with the Request for Consent to Abate.

2. The address of the real property, on which the nuisance conditions to be abated are present.

3. A brief description of the action City Personnel will take to abate the nuisance conditions.

4. The date, by which the enclosed Consent to Abate and Right of Entry Form must be signed and returned to the Enforcement Officer.

5. The address, to which the signed Consent to Abate Form must be delivered, and the telephone number of the Enforcement Officer.

D. The Consent to Abate and Right of Entry Form shall contain all of the following:

1. A statement to the effect that the undersigned consents to and allows City Personnel to enter the subject property for the purpose of abatement of the public nuisance.

2. A statement to the effect that the undersigned agrees to pay all costs incurred by the City to abate the public nuisance.

3. A statement to the effect that the undersigned is aware that if the undersigned fails to pay or enter into a payment plan for the costs incurred by the City to abate the public nuisance within thirty (30) days of the abatement, the City will place lien or special assessment on the property without further notice.

4. A statement to the effect that the undersigned warrants that the undersigned is in lawful possession or control of the property and has the authority to grant the required consent.

E. Omission of one or more of the foregoing provisions from either the Notice of Request for Consent to Abate or the Consent to Abate and Right of Entry Form whether in whole or in part, does not render it defective or render any proceeding or action pursuant to this Chapter invalid.

F. Regardless of whether the Consent to Abate and Right of Entry Form is signed and returned, after the date identified in subdivision (C)(4) of this section has passed, the City may commence with all additional actions necessary to abate the nuisances identified in the Notice of Request for Consent to Abate.

G. Notwithstanding Sections (b) through (f) above, if facts or circumstances exist that would reasonably justify the City's failure to seek consent to abate the nuisance conditions identified in the Notice to Abate, the City may commence with all additional actions necessary to abate the nuisance conditions identified in the Notice to Abate without first serving all Responsible Parties with a Notice of Request for Consent to Abate and a Consent to Abate and Right of Entry Form. Facts and circumstances that may reasonably justify the City's failure to seek consent to abate the nuisance conditions identified in the Notice to Abate include, but are not limited to, the following:

1. The impossibility of contacting any Responsible Party due to such conditions as the Owner's death or the dissolution of a corporate entity Owner;

2. The presence of a severe hazard posing an imminent threat to the community or general public, the existence of a which necessitates that abatement action be taken within a time period shorter than the time period, in which it would take to locate a Responsible Party; or

3. The likelihood that a request for consent to enter the property and abate the nuisance conditions would result in the temporary concealment of the nuisance conditions such that they cannot be abated.

G. All buildings, structures, or personal property that is removed by City Personnel from premises in the abatement of a nuisance may be lawfully disposed or, or destroyed without regard to the actual or salvage value.

8.44.180 – Recovery of Costs

All fees and costs incurred by the City in taking actions authorized by this Chapter shall be recovered according to the procedures set forth in Chapter 1.28 of this Code.

8.44.190 – Judicial Challenge

Any property Owner, Responsible Person, or other person who has an interest in the property and who is aggrieved by any final decision provided by this Chapter must both bring a judicial action to contest such decision and provide the City Clerk with a notice of the action, within ninety (90) days after the date of such decision in accordance with the Code of Civil Procedure section 1094.6. Otherwise, all objections to such decision shall be deemed waived.

8.44.200 – Violations and Penalties

A. Any Responsible Person who maintains, causes, aids, abets, conceals, suffers or permits a public nuisance as defined in section 8.44.020 of this Chapter is guilty of a misdemeanor offense punishable in accordance with Chapter 1.24 of this Code.

B. Any Responsible Person, who fails to comply with a Notice to Abate or Order to Abate is guilty of a misdemeanor offense punishable in accordance with Chapter 1.24 of this Code.

C. Any Person, who obstructs, impedes, or interferes with any representative of the City engaged in vacating, repairing, rehabilitating, or demolishing and removing any property pursuant to the provisions of this Chapter is guilty of a misdemeanor offense punishable in accordance with Chapter 1.24 of this Code.

D. Any Person, who defaces, alters, or removes any notice or order posted as required in this Chapter is guilty of a misdemeanor offense punishable in accordance with Chapter 1.24 of this Code.

E. A criminal prosecution, civil litigation, or other administrative remedy may be pursued without the commencement of the administrative nuisance abatement procedures outlined in this Chapter

F. Nothing in this article may prevent the City Attorney or the District Attorney from prosecuting a violation of this article as an infraction, at the City Attorney or the District Attorney's discretion, as permitted under this Code.

G. Each Responsible Person is guilty of a separate offense for each and every day, or part thereof, during which a violation of this Chapter, or of any law or regulation referenced herein, is maintained, caused, aided, abetted, concealed, suffered, or permitted by such person, and is punishable accordingly.

H. Nothing in this article shall prevent a civil or criminal or other administrative proceeding (including administrative citations as provided for in Chapter 1.27 of this Code) to abate a public nuisance as an alternative to the proceedings set forth in this Chapter, it being the intent of this article that the remedies provided in this article be cumulative of all others.

I. Pursuant to California Government Code section 38773.7, upon the entry of a second or subsequent civil or criminal judgment against the Responsible Person or property that constitutes a nuisance as set forth in this Chapter within a two-year period, the court may order that person to pay treble the costs of the abatement.

8.44.210 – Regulations

The City Manager shall have the power to render interpretations of this Chapter and to adopt and enforce rules and supplemental regulations to clarify the application of its provisions. These interpretations, rules and regulations shall be in conformity with the intent and purpose of this Chapter and shall be based on protection of the health, safety and welfare of the residents of the City.

8.44.220 – Severability

The provisions of this Chapter are severable. If any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 3. Effective Date. This ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. Certification. The City Clerk shall certify the passage of this ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

SECTION 5. CEQA. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

ORDINANCE PASSED AND APPROVED on this 18th day of December, 2019.

_____
Bill Hodge, Mayor

ATTEST:

_____
Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

_____
Carlos Campos, City Attorney

I, Gabriela T. Garcia, City Clerk, City of Calexico, California, certify that the foregoing Ordinance was adopted by the City Council at a regular meeting of the City Council held on the 18th of December, 2019, and was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Gabriela T. Garcia, City Clerk