

# Model Ordinances > Sacramento, California

ORDINANCE NO. 97-037

ADOPTED BY THE SACRAMENTO CITY COUNCIL

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ON DATE OF JUNE 24, 1997

AN ORDINANCE AMENDING CHAPTER 61.05, AND SECTIONS 61.02.201, 61.03.301, 61.07.701, 61.07.702, AND 61.16.1610 OF TITLE 61 OF THE SACRAMENTO CITY CODE, RELATING TO PUBLIC NUISANCE ABATEMENT

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

## **SECTION 1**

Subsection (a) of Section 61.02.201 of Title 61 of the Sacramento City Code is amended to read as follows:

61.02.201 Authority; "department head" construed.

(a) The responsible department director, or his/her designee, hereinafter referred to as "department head," is hereby authorized and directed to use the provisions of this code for the purpose of abating those nuisances which exist as the result of violation of those ordinances for which his/her department has primary enforcement responsibility.

## **SECTION 2**

Subsections (l) and (j) of Section 61.03.301 of the City Code are hereby amended to read as follows:

(l) **Inoperative vehicle:** Any motor vehicle which cannot be moved under its own power, or cannot be operated lawfully on a public street or highway within this state, due to removal of, damage to, or deterioration of, or inoperative condition of any component part or the lack of an engine, transmission, wheels, tires, doors, windshield or any other component part necessary for such movement or lawful operation.

(j) **Cost of abatement:** The total cost incurred by the City in connection with a public nuisance including, but not limited to:

(I) Any cost incurred in removing or remedying a public nuisance.

(ii) The Notice and Order, Appeal and Termination fees for administrative services rendered by the City in connection with the inspection, notification, prosecution and abatement procedures authorized by this code:

(a) The Notice and Order, Appeal and Termination fees shall be in such amounts as are determined from time to time by resolution of the city council.

(b) The Notice and Order, Appeal and Termination fees will be calculated based on services rendered by the Department from the time of the initial complaint intake for the purpose of documenting a violation of this code until the violation is corrected.

(c) The Notice and Order, Appeal and Termination fees are not intended to be a penalty imposed for violation of this code or other laws.

(iii) Any cost incurred by the City in collecting the costs enumerated in (I) and (ii) above.

### **SECTION 3**

Chapter 61.05 of Title 61 is amended to read as follows:

#### **61.05.501 Nuisance Abatement.**

Whenever the department head has inspected or caused to be inspected any premises and has found and determined that such premises are in violation of this code, he/she may commence proceedings to cause abatement of the nuisance as provided herein.

#### **61.05.502 Commencement of nuisance abatement proceedings: issuance of Notice and Order.**

To commence nuisance abatement proceedings, the department head shall issue a Notice of Violation and Order to Abate (Notice and Order) directed to the record owner(s) of the premises. The Notice and Order shall contain:

(1) The street address and/or such other description as is required to identify the premises.

(2) A statement specifying the conditions which constitute the nuisance and declaring such conditions to be a public nuisance pursuant to Section 61.04.401 of this code.

(3) A statement of the action required to be taken to eliminate the public nuisance.

(4) A statement ordering the owner to abate the nuisance prior to a set date.

(5) A statement advising that any person having any record title or legal interest in the premises may appeal the Notice and Order provided that the appeal is made in writing as provided in Section 61.05. 507 of this title.

(6) A statement that the appeal request must be in writing and filed with the department head within thirty (30) days of service of the Notice and Order.

(7) A statement that failure to appeal the Notice and Order will constitute a waiver of all right to an administrative hearing and will be a final determination of the matter.

(8) If the City intends to seek attorney's fees pursuant to Section 38773.5 of the Government Code, a statement that the City intends to seek and recover attorney's fees.

#### 61.05.503 Fees imposed.

A fee shall be imposed on the owner of any property for which a Notice and Order is issued pursuant to this section. The fee shall be calculated to recover the total City cost of inspections and enforcement and shall be set by resolution of the City

Council. An additional fee which shall be set by resolution of the City Council shall be imposed on the owner of the property at the conclusion of any matter in which a Notice and Order has been issued. This termination fee shall be calculated to recover the cost of closing the file, removing or placing liens, and other associated administrative costs. The fees imposed pursuant to this Section shall be due and owing regardless of whether the public nuisance is eliminated in response to the Notice and Order. No fees shall be due and owing if an appeal is filed and the appeal is sustained. All fees shall be a personal obligation of the owner and a lien upon the property and are due and payable within thirty days of issuance of the Notice and Order or closing of the file respectively;

provided that if an appeal is filed, the fees shall be due and payable upon a final decision on the appeal. Any fee not paid within that time shall be collected pursuant to the procedure set forth in Chapter 50.09 of the Sacramento City Code.

#### 61.05. 504 Notice and Order-service generally.

The Notice and Order, and any amended or supplemental Notice and Order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the department head or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the department head to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

#### 61.05.505 Method of service.

Service of the Notice and Order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service may be made upon the record owner at his/her/their address as it appears on the latest equalized assessment roll of Sacramento County, or as known to the department head. A copy of the Notice and Order and any amended or supplemental Notice and Order shall also be posted on the premises.

(1) In lieu of personally serving the owner or service by certified mail, service of the Notice and Order and any amended or supplemental Notice and Order may be made as follows:

(a) In the event that the person entitled to service refuses to accept certified return receipt mail or cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows: (1) by leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy to the recipient where the copy was left; (2) by leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent

member of the household and thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left.

(b) In the event the person entitled to service refuses to accept certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made as set forth in (a) above upon the property manager or rental agency.

(c) If the person entitled to service lives out of state and will not accept certified return receipt mail, then service may be made by first-class mail.

(d) If the person entitled to notice cannot be located, or service can not be effected as set forth in this section, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual Notice and Order to the person. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any such person to receive such Notice and Order shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

#### 61.05.506 Proof of service of Notice and Order.

Proof of service of the Notice and Order shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt returned in acknowledgment of receipt by certified mail shall be made part of the department's permanent record.

#### 61.05.507 Appeal.

(a) Form of appeal: Any person having any record title or legal interest in the premises may appeal from any Notice and Order of the department head under this title by filing at the office of the department head within thirty days from the date of service of such Notice and Order, a written appeal containing:

(1) A brief statement setting forth the legal interest of each of the appellants in the premises involved in the Notice and Order.

(2) A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.

(3) A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside.

(4) The signatures of all parties named as appellants and their official mailing addresses, with statements from each appellant that each agrees to accept service of the written notice of the time and place of the appeal hearing and the decision of the hearing examiner at such address.

(5) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(b) Processing of appeal: Upon receipt of any appeal filed and the appeal fee pursuant to this section, the department head shall transmit said appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:

(1) If the appeal is received by the department head not later than fifteen days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.

(2) If the appeal is received by the department head on a date less than fifteen days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.

(C) Noticing appeal for hearing: Written notice of the time and place of the hearing shall be given at least ten calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his address shown on the appeal.

(d) Appeal fee: The department may collect and require an appeal fee to be paid at the time the written appeal notice is filed. The appeal fee shall be set by resolution of the city council. The fee shall be calculated to recover the total city costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, hearing examiner compensation, preparation and

service of notices and staff appearance in the appeal hearing. No appeal shall proceed without payment of the fee at the time the appeal is filed provided that the department head may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the Notice and Order, and other factors indicating good faith attempts to comply.

(e) Effect of failure to appeal: Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the Notice and Order, or any portion thereof.

(f) Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

(g) Staying of order under appeal: Enforcement of any notice and order of the department head issued under this title shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

#### 61.05.508 Hearings--generally.

At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the department head, the owner, and other competent person respecting the condition of the premises, and other relevant facts concerning the matter.

#### 61.05. 509 Record of oral evidence at hearing.

(a) The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

(b) Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended.

#### 61 .05. 510 Continuances.

The hearing examiner may, upon request of the owner of the premises or upon request of the department head, grant continuances from time to time for good cause shown, or upon his own motion.

61 .05. 51 1 Oaths; certification.

The hearing examiner or designee shall administer the oath or affirmation.

61 .05. 512 Evidence rules.

Government Code of the State of California, Section 11513, Subsections (a), (b) and (c), as presently written or hereinafter amended, shall apply to hearings under Title 61 of the Sacramento City Code.

61.05. 513 Rights of parties.

(a) Each party may represent themselves, or be represented by anyone of their choice.

(b) If a party does not proficiently speak or understand the English language, he may provide an interpreter, at the party's own cost, to translate for the party. An interpreter shall not have had any involvement in the issues of the case prior to the hearing.

61 05.514 Official notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or any of its departments.

61.05.515 Inspection of Premises.

(a) The hearing examiner may inspect the premises involved in the hearing prior to, during or after the hearing, provided that:

(1) Notice of, such inspection shall be given to the parties before the inspection is made;

(2) The parties are given an opportunity to be present during the inspection; and

(3) The hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom.



(b) Each party then shall have a right to rebut or explain -the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

#### 61.05. 516 Form and contents of decision; finality of decision.

If it is shown by a preponderance of the evidence that the condition of the premises constitutes a public nuisance:

(a) The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall also require the owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of the decision, and that the abatement be completed within such time as specified by the hearing examiner, or in the alternative, within the time designated by the department head. The decision shall inform the owner that if the nuisance is not abated within the time specified, the nuisance may be abated by the City without further notice in such manner as may be ordered by the department head and the expense thereof made a lien on the property involved and/or a personal obligation.

(b) The decision shall also inform the applicant that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be forthwith delivered to the parties personally or sent to them by certified mail. The decision shall be final when signed by the hearing examiner and served as herein provided.

#### 61.05. 517 Service of the hearing examiner's decision.

Upon issuance of the decision, the department head shall post a copy thereof conspicuously on the premises involved and shall serve a copy on the record owner, in the same manner as set forth in Section 61.05. 505, and one copy shall be served on each of the following, if known to the department head or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in the premises.

## **SECTION 4**

Sections 61.07.701 and 61.07.702 of the Sacramento City Code are hereby amended to read as follows:

61.07.701 Enforcement of Notice and Order or hearing examiners decision.

After any Notice and Order issued pursuant to this code shall have become final by failure to file a timely appeal or after hearing examiners decision on appeal is rendered, no person to whom any such order is directed shall fail, neglect, or refuse to obey any such order. Any such person who fails to comply with any such order or decision is guilty of a misdemeanor.

61.07.702 Failure to obey order.

(a) If, after any Notice and Order has become final or order of the hearing examiner on appeal is made pursuant to this title the person(s) to whom such order has been directed shall fail, neglect or refuse to obey such order, the department head may, without further notice:

(i) cause such person(s) to be prosecuted;

(iii) institute any appropriate action to abate the conditions which constitute a public nuisance;

(iii) issue an administrative penalty order pursuant to Section 1.01.070 of this code.

(b) Attorney's Fees: Pursuant to Section 38773.5 of the Government Code, in any proceeding brought to enforce any order, the prevailing party shall be entitled to recover attorney's fees, provided that, pursuant to Section 38773.5, attorney's fees shall only be available in those proceedings in which the City has provided notice at the commencement of such proceedings that it intends to seek and recover attorney's fees.

## **SECTION 5**

Subsection (c) of Section 61.16,1610 of the Sacramento City Code is hereby amended to read as follows:

61.16.1610 Citation and Order-content; service; fee.

(C)A fee shall be imposed on the owner of any property for which a Citation and Order is issued pursuant to this Section. The fee shall be calculated to recover the total City cost of inspections and enforcement and shall be set by resolution of the City Council. An additional fee, which shall be set by resolution of the City Council, shall be imposed on the owner of the property at the conclusion of any matter in which a Citation and Order has been issued. This termination fee shall be calculated to recover the cost of closing the file, removing or placing liens, and other associated administrative costs. The fees imposed pursuant to this Section shall be due and owing regardless of whether the public nuisance is eliminated in response to the Citation and Order. No fees shall be due and owing if an appeal is filed and the appeal is sustained. All fees shall be a personal obligation of the owner and a lien upon the property and are due and payable within thirty days of issuance of the Citation and Order or closing of the file respectively, provided that if an appeal is filed, the fees shall be due and payable upon a final decision on the appeal. Any fee not paid within that time shall be collected pursuant to the procedure set forth in Chapter 50.09 of the Sacramento City Code.

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