

ORDINANCE NO. 3046

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, APPROVING FILE NO. PDCA16-001, AN ORDINANCE ESTABLISHING TITLE 5, CHAPTER 22 (PROPERTY APPEARANCE — NUISANCE) OF THE ONTARIO MUNICIPAL CODE, WHICH ESTABLISHES THE CONDITIONS UNDER WHICH THE MAINTENANCE OF PROPERTY WITHIN THE CITY MAY BE DETERMINED TO BE A NUISANCE, AND THE PROCEDURES TO ABATE SUCH NUISANCES, AND MAKING FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Ontario ("Applicant") has initiated an amendment to the Ontario Municipal Code, File No. PDCA16-001, as described in the title of this ordinance (hereinafter referred to as "Application" or "Project"); and

WHEREAS, on December 1, 2015, the City Council approved a comprehensive update to the City's Development Code, which became effective on January 1, 2016. The update included provisions relative to property maintenance, definition of a nuisance, and procedures for abating a nuisance within Division 6.10 (Property Appearance and Maintenance) of the Ontario Development Code; and

WHEREAS, since the adoption of the Development Code update, staff has determined that, from an operational standpoint, the regulations, definitions, and procedures pertaining to nuisances are more appropriately placed in the Ontario Municipal Code under Title 5, Public Welfare, Morals, and Conduct; and

WHEREAS, the project is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, which is the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

WHEREAS, on March 1, 2016, the City Council of the City of Ontario conducted a hearing to consider the proposed amendment to the Ontario Municipal Code, and concluded said hearing on that date; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario, as follows:

SECTION 1. As the decision-making body for the Project, the City Council has reviewed and considered the information contained in the administrative record for the Project. Based upon the facts and information contained in the administrative record, including all written and oral evidence presented to the City Council, the City Council finds as follows:

a. The project is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines — there is no possibility that the activity in question may have a significant effect on the environment; therefore, the activity is not subject to CEQA; and

b. The determination of CEQA exemption reflects the independent judgement of the City Council.

SECTION 2. Based upon the substantial evidence presented to the City Council during the above-referenced hearing and upon the specific findings set forth in Section 1 above, the City Council hereby concludes as follows:

a. The proposed Municipal Code Amendment is consistent with the goals, policies, plans, and exhibits of the Vision, Policy Plan (General Plan), and City Council Priorities components of The Ontario Plan; and

b. The proposed Municipal Code Amendment would not be detrimental to the public interest, health, safety, convenience, or general welfare of the City.

SECTION 3. Based upon the findings and conclusions set forth in Sections 1 and 2 above, the City Council hereby APPROVES the establishment of Ontario Municipal Code Title 5, Chapter 22 (Property Appearance — Nuisance), attached hereto as Exhibit A.

SECTION 4. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

SECTION 5. The Applicant shall agree to defend, indemnify and hold harmless, the City of Ontario or its agents, officers, and employees from any claim, action or proceeding against the City of Ontario or its agents, officers or employees to attack, set aside, void or annul this approval. The City of Ontario shall promptly notify the applicant of any such claim, action or proceeding, and the City of Ontario shall cooperate fully in the defense.

SECTION 6. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of Ontario City Hall, 303 East "B" Street, Ontario, California 91764. The custodian for these records is the City Clerk of the City of Ontario.

SECTION 7. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 8. Effective Date. This Ordinance shall become effective 30 days following its adoption.

SECTION 9. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 15th day of March 2016.



PAUL S. LEON, MAYOR

ATTEST:



SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:



BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF ONTARIO)

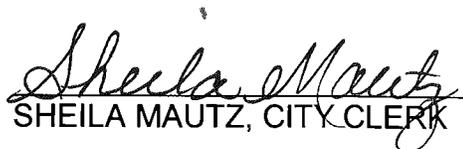
I, SHEILA MAUTZ, City Clerk of the City of Ontario, DO HEREBY CERTIFY that foregoing Ordinance No. 3046 was duly introduced at a regular meeting of the City Council of the City of Ontario held March 1, 2016 and adopted at the regular meeting held March 15, 2016, by the following roll call vote, to wit:

AYES: MAYOR/COUNCIL MEMBERS: LEON, DORST-PORADA AND BOWMAN
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: WAPNER AND AVILA


SHEILA MAUTZ, CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 3046 duly passed and adopted by the Ontario City Council at their regular meeting held March 5, 2016 and that Summaries of the Ordinance were published on March 8, 2016 and March 22, 2016, in the Inland Valley Daily Bulletin newspaper.


SHEILA MAUTZ, CITY CLERK

(SEAL)

EXHIBIT A
CHAPTER 22: PROPERTY APPEARANCE — NUISANCE

- Sec. 5-22.01: Definitions
- Sec. 5-22.02: Maintenance of Property
- Sec. 5-22.03: Abatement
- Sec. 5-22.04: Notice of Violation
- Sec. 5-22.05: Hearing of Determination
- Sec. 5-22.06: Record of Cost of Abatement
- Sec. 5-22.07: Assessment of Costs
- Sec. 5-22.08: Violations

Sec. 5-22.01: Definitions

For the purpose of this chapter, unless otherwise apparent from the context, certain words and phrases used herein are defined as follows:

(a) "Nuisance" means anything which is injurious to health, or is indecent or 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, street, sidewalk, alleyway, highway or other public easement is a nuisance.

(b) "Nuisance vegetation" means weeds and wild grasses, such as those commonly known as foxtails, tumbleweeds, devil thorns, puncture vines, horehound gourd vines, and other similar grasses and weeds.

(c) "Owner" means any person in possession and also the person(s) shown as owner(s) on the last equalized property tax assessment rolls.

(d) "Public nuisance" means one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(e) "Trash containers" means any container such as trash bags, boxes or bins used to store trash, rubbish or other such refuse matter that meets the requirements of Section 6-3.11(c) of the Ontario Municipal Code and is placed at a collection point.

(f) "Yard" means a tract of ground adjacent to, surrounding, or surrounded by a building or group of buildings.

Sec. 5-22.02: Maintenance of Property

It is a public nuisance for any person owning, leasing, occupying or having charge of any premises in this City to maintain such premises in such manner that any of the following conditions are found to exist thereon:

(a) Land, topography , geology or configuration of which, whether in natural state or as a result of grading operations, excavation or fill, causes erosion, subsidence or surface water drainage problems of such magnitude to be injurious or potentially injurious to the public health, safety and welfare or to adjacent properties;

(b) Buildings which are abandoned, partially destroyed or permitted to rein unreasonably in a state of partial construction;

(c) The failure to close, by such means as will protect against entry without the use of substantial force, all doorways, windows and other openings leading into vacant structures;

(d) Paint deterioration upon buildings, causing dry rot and warping or lack of weather protection;

(e) Broken windows constituting a hazardous condition, or inviting trespassers and malicious mischief, or constituting a condition tending to depreciate the aesthetic and property values of surrounding properties;

(f) Overgrown vegetation:

(1) Likely to harbor rats, vermin and other vectors;

(2) Constituting unsightly appearance;

(3) Having a tendency to depreciate the aesthetic and property values of surrounding properties; or

(4) Causing a fire hazard;

(g) Dead, decayed, diseased or hazardous trees, and other nuisance vegetation:

(1) Constituting unsightly appearance;

(2) Creating fire hazards or health problems dangerous to public safety and welfare; or

(3) Having a tendency to depreciate the aesthetic and property values of surrounding properties;

(h) Wrecked or otherwise disabled or abandoned vehicles, except in cases of emergency and in no event for a period longer than 5 days, and motors, equipment, and automotive parts or accessories stored anywhere other than within a fully enclosed space, carport, garage, or approved automobile wrecking yard;

(i) Vehicles, trailers, recreational vehicles, and boats kept or stored in yard areas, other than on paved driveways installed in accordance with the City's land use and development standards, where they are not screened from streets or highways;

(j) The existence of rubbish, tin cans, or other waste matter of any type upon any alley, sidewalk or vacant lot within the City;

(k) Accessible conditions dangerous to children, including:

(1) Abandoned and broken equipment;

(2) Refrigerators or freezers with latching doors;

(3) Unprotected and/or hazardous pools, ponds and excavations; or

(4) Neglected machinery;

(l) Broken or discarded furniture and household equipment on the premises for unreasonable periods and visible from the street or neighboring properties, and having a tendency to depreciate the aesthetic and property values of surrounding properties;

(m) Boxes, lumber, trash, rubbish and other debris either inside or outside buildings and visible from public streets or neighboring properties for unreasonable periods, and having a tendency to depreciate the aesthetic and property values of surrounding properties;

(n) The accumulation of rubbish, litter or debris in vestibules, doorways or the adjoining sidewalks of commercial or industrial buildings;

(o) Trash containers stored in front or side yards and visible from public streets except when placed in places of collection at the time permitted;

(p) Keeping of property with a lack of adequate landscaping or ground cover sufficient to prevent blowing dust and erosion;

(q) Any device, decoration, design, graffiti, fence structure, clothes line, or vegetation, which is unsightly by reason of its condition or its inappropriate location;

(r) The outside storage of building materials, machinery, or other material or equipment used in or for a business on any lot in any residential district, except during construction on the lot;

(s) The maintenance of signs and/or sign structures relating to uses no longer conducted, or products no longer sold on vacant commercial, industrial, or institutional buildings more than 45 days after such building becomes vacant;

(t) The maintenance of any structure in a state of substantial deterioration, such as peeling paint on a facade, broken windows, roofs in disrepair, damaged porches, broken steps, or other such deterioration or disrepair not otherwise constituting a violation, and which is visible from a public right-of-way or neighboring properties, where such condition would have a tendency to depreciate the aesthetic and property values of surrounding properties;

(u) The substantial lack of maintenance of grounds within the City, on which structures exist, where the grounds are visible by the public from a public right-of-way or neighboring properties, where such condition would have a tendency to depreciate the aesthetic and property values of surrounding properties;

(v) Property maintained (in relation to others) so as to establish a prevalence of depreciated values, impaired investment, and social and economic maladjustments that the capacity to generate taxes is reduced and tax receipts from such particular area are inadequate for the cost of public services rendered therein;

(w) The maintenance of any yard, including any parkway as defined in Section 7-3.03, which is visible from the public right-of-way without live and healthy grass and/or landscaping, or the failure to adequately irrigate such yard or parkway. If such yard or parkway is so maintained, the City may, pursuant to this Chapter, abate such conditions and collect the costs thereof by any reasonable method, including the installation and maintenance of healthy grass and/or landscaping and/or an irrigation sprinkler system, as well as the continued utilization of such irrigation sprinkler system;

(x) The maintenance of any vacant lot without live and healthy grass, landscaping, or screening combined with perimeter landscaping, where such lot is adjacent to an improved sidewalk and/or parkway;

(y) The existence of solid waste such as excessive animal feces or human waste of any kind;

(z) The presence of any abandoned shopping cart, to the extent not otherwise remedied by law.

Sec. 5-22.03: Abatement

All or any part of premises found, as provided herein, to constitute a public nuisance, shall be abated by rehabilitation, demolition or repair, or any other reasonable means pursuant to the procedures set forth in this Chapter. The procedures set forth herein shall not be exclusive, and shall not in any manner limit or restrict the City from enforcing other City ordinances, or abating public nuisances in any other manner provided by law.

Sec. 5-22.04: Notice of Violation

(a) If the Code Enforcement Director, or his or her designee, after investigation, believes that one or more public nuisance exist on premises within the City, the Code Enforcement Director, or his or her designee, shall cause to be served upon the owner, lessee, occupant or person having charge of the affected premises, a Notice of Violation. The Notice of Violation shall list the conditions constituting a public nuisance, and shall order the owner, lessee, occupant or person having charge of the affected premises to abate the nuisance or nuisances listed in the Notice of Violation. The Notice of Violation shall provide a reasonable time in which the owner, lessee, occupant or person having charge of the premises may abate the nuisance or nuisances cited in the Notice of Violation.

(b) Service of the Notice of Violation shall be made upon the owner, lessee, occupant or person having charge of the affected premises pursuant to Subdivisions (b) or (c) of Section 5-22.07 (Assessment of Costs).

(c) Any property owner, lessee, occupant, or person having charge of the affected premises, shall have the right to have any such premises rehabilitated, or to have the cited nuisance or nuisances abated in accordance with the Notice of Violation, at his or her own expense, provided the same is done prior to the expiration of the abatement period set forth in the Notice of Violation. Upon such abatement in full, proceedings under this Ordinance shall terminate.

(d) To the extent such nuisance is not completely abated by the owner, lessee, occupant, or person having charge of the affected premises, as directed within the designated period of abatement, the Code Enforcement Director, or his or her designee, is authorized and directed to cause the same to be abated by City forces or private contract in any reasonable manner; and the Code Enforcement Director, or his or her designee, is expressly authorized to enter the affected premises for such purpose. Upon request of the designated official, other City departments shall cooperate fully and shall render all reasonable assistance in abating any such nuisance.

Sec. 5-22.05: Hearing and Determination

(a) Upon request by the owner, lessee, occupant, or person having of the affected premises and if received by the Code Enforcement Director within 10 days after mailing of the Notice of Violation, the Code Enforcement Director or his or her designee shall hold a hearing, which shall be open to the public. The Code Enforcement Director or his or her designee shall hear and consider objections and/or protests from any owner, lessee, occupant, person having charge of the affected premises, or other interested persons relative to the served Notice of Violation.

(b) The Code Enforcement Director, or his or her designee, shall hear and receive all relevant evidence and testimony relative to the alleged public nuisance and shall consider methods to abate such nuisance. This hearing may be continued from time to time.

(c) Upon or after the conclusion of the hearing, the Code Enforcement Director, or his or her designee, shall, based upon the evidence presented at the hearing, determine whether the affected premises, or any part thereof, as maintained, constitute a public nuisance as defined herein.

Sec. 5-22.06: Record of Cost of Abatement

(a) The Code Enforcement Director, or his or her designee, shall keep an account of the cost (including incidental expenses) of abating such nuisance of each separate lot or parcel of land where the work is done, and shall prepare an itemized account showing the cost of abatement, including any salvage value relating thereto.

(b) The Code Enforcement Director shall serve on the owner, lessee, occupant or person in charge of the affected premises a copy of the itemized account pursuant to Section 5-22.07 (Assessment of Costs). Such service shall notify the recipient that failure to pay the amount listed in the account within 30 days of receipt by the recipient shall, upon a determination by the City Manager, or his or her designee, constitute a personal obligation of the recipient and may be collected by a lien on the affected premises or may be collected as a special assessment against the affected premises.

(c) "Incidental expenses" include, but are not limited to, the actual expenses and costs of the City in abating the public nuisance, including the preparation of the Notice of Violation, specifications and contracts, inspecting the work, attorneys' fees and costs, conducting the hearing pursuant to Section 5-22.05 (Hearing and Determination), and other costs associated with carrying out the provisions of this Chapter. The recovery of attorneys' fees and costs shall extend to any prevailing party, including the City. Attorneys' fees and costs, may be recovered by a prevailing party only in those proceedings in which the City has notified the owner, lessee, occupant or person having charge of the affected premises, in the Notice of Violation, that the City intends to seek recovery of its attorneys' fees and costs. In no event shall an award of attorneys' fees and costs to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the proceeding.

Sec. 5-22.07: Assessment of Costs

(a) To the extent the Code Enforcement Director, or his or her designee, determines that the public nuisance or nuisances cited in the Notice of Violation existed on the affected premises, and the cost of abatement of such nuisance or nuisances was reasonable, the Code Enforcement Director, or his or her designee, shall make a written order setting forth these findings and ordering that, if such costs are not paid within a specified period, the owner, lessee, occupant, or other person having charge of the affected premises, shall be personally liable for such costs. Upon resolution of the City Council, such costs shall be collected by:

(1) A lien on the affected premises pursuant to California Government Code Section 38773.1; or

(2) A special assessment against the affected premises pursuant to California Government Code Section 38773.5.

(b) If the City chooses to collect its abatement costs through a lien on the affected premises, the notices to the owner of the affected premises required by this Chapter shall be served in the same manner as summons in a civil action pursuant to Code of Civil Procedure Part 2, Title 5, Chapter 4, Article 3 (commencing with Section 415.10). If the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current, after diligent search cannot be found, notices to the owner may be served by posting a copy thereof in a conspicuous place upon the affected premises for a period of 10 days, and publication thereof in a newspaper of general circulation, published in San Bernardino County pursuant to California Government Code Section 6062. The lien shall be recorded in the San Bernardino County Recorder's Office, and from the date of recording, shall have the force, effect, and priority of a judgment lien. The lien shall specify the amount of the lien, the name of the City as the agency on whose behalf the lien is filed, the date of the Notice of Violation and order of the City Council, the street address, legal description and assessor's parcel number of the affected premises on which the lien is imposed, and the name and address of the recorded owner of the affected premises. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in the preceding sentence shall be recorded by the City. The lien and the release of the lien shall be indexed in the grantor-grantee index. The lien may be foreclosed by an action brought by the City for a monetary judgment.

(c) If the City chooses to collect its abatement costs through a special assessment, the notices required by this Chapter shall be provided to the owner by certified mail, as determined from the County Assessor's or County Recorder's records. Notice of the special assessment, and requests for a hearing regarding the special assessment, shall be in accordance with Section 1-4.05 (Appeal Hearing for Special Assessments) of this Code.

The special assessment shall be collected at the same time and in the same manner as ordinary City taxes are collected, and shall be subject to the same penalties, and the same procedure and sale in case of delinquency as provided for ordinary City taxes. All laws applicable to the levy, collection and enforcement of City taxes shall be applicable to the special assessment. If any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property, but instead shall be transferred to the unsecured roll for collection. The City may conduct a sale of vacant residential developed property for which the payment of such assessment made pursuant to this subdivision is delinquent. Notices or instruments relating to the abatement proceeding or special assessment may be recorded.

(d) All other notices required by this Chapter shall be delivered by certified US Mail, postage prepaid to the recipient thereof.

Sec. 5-22.08: Violations

(a) The owner, lessee, occupant, or other person having charge of any such buildings or premises who maintains any public nuisance, as defined in Section 5-22.01 (Definitions), Subsections (a) and (d), of this Chapter, or who neglects to comply with the Notice of Violation pursuant to Section 5-22.04 (Notice of Violation) of this Chapter, is guilty of an infraction.

(b) Any occupant or lessee in possession of any such building or structure who refuses to vacate the building or structure, in accordance with an order given as herein provided, is guilty of an infraction.

(c) Any person who removes any notice or order posted as herein required for the purpose of interfering with the enforcement of these provisions shall be guilty of an infraction.

(d) No person shall obstruct, impede, or interfere with any representative of the City Council, or any representative of a City department, or with any person who owns or holds any estate or interest in a building that has been ordered to be vacated, repaired, rehabilitated, or demolished and removed, or with any person to whom any such building has been lawfully sold pursuant to these provisions whenever any such representative of the City Council, representative of the City, purchaser or person having any interest or estate in such building is engaged in vacating, repairing, rehabilitating, or demolishing and removing any such building pursuant to these provisions, or in performing any necessary act preliminary to or incidental to such work as herein authorized or directed. It is a defense to prosecution under this Division (d) that the alleged obstruction or interference consisted of constitutionally protected speech only.

(e) Any prevailing party in an action to abate a public nuisance shall be entitled to attorneys' fees and costs, to the extent such attorneys' fees and costs do not exceed the reasonable attorneys' fees and costs incurred by the City. The City may limit recovery of attorneys' fees and costs by the prevailing party to those individual actions which the City elects, at the initiation of that individual action, to seek recovery of its own attorneys' fees and costs.

(f) Upon entry of a second or subsequent civil or criminal judgment within a 2-year period finding that an owner of property is responsible for a public nuisance, except for conditions abated pursuant to California Health & Safety Code Section 17980, the owner shall be liable to the City for treble the costs of the abatement.