Attachment 12

~~Chapter 18.74 NEIGHBORHOOD PRESERVATION, CODE ENFORCEMENT AND ABATEMENT~~

~~§ 18.74.010. Purpose and alternative actions.~~

~~A. In order to further the stated goals of the city, and, more particularly, for the stabilization of the economic and social aspects of a neighborhood, and the promotion of aesthetic considerations and to protect its citizens and their property, the city council has determined that an ordinance is necessary to effectively abate conditions or activities in this city which constitute a public nuisance. The purpose of this chapter is to require the maintenance of property on commercial, industrial and residentially zoned property. The city council recognizes that the use of property for residential use includes those customary activities which make the home more comfortable and enjoyable, such as gardening, certain recreational activities, and the enjoyment of certain hobbies. The scope of such activity is circumscribed only insofar as it may not assume a commercial or public character, or constitutes a health hazard or safety hazard, or is detrimental to other properties in the neighborhood. Any zoning restrictions contained herein are intended to retain the highest residential and aesthetic value to the property owners and the city.~~

~~B. It is the intention of the city council, in adopting the ordinance codified in this chapter, to set forth general guidelines for determining what conditions/activities constitute a nuisance; to establish a method for giving notice of the conditions and an opportunity to correct them; and finally, in the event the nuisance is not corrected, to provide a procedure which allows the property owner reasonable notice and a reasonable opportunity to be heard on the issues of (1) whether a nuisance exists on the property; and (2) whether in fairness and in justice there is no other way to eliminate the nuisance.~~

~~C. It is the purpose of the provisions of this chapter to provide a just, equitable and practical method, to be cumulative with and in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address violations of this municipal code. Nothing in this chapter shall be deemed to prevent the city from at any time commencing a civil or criminal proceeding to abate a public nuisance or from pursuing any other means available to it under provisions of applicable ordinances or state law to correct hazards or deficiencies in real property in addition to or as alternatives to the proceedings herein set forth.~~

~~D. This chapter does not affect or alter nuisance abatement procedures established or which may be established in other chapters of this municipal code. This chapter is not the exclusive regulation of property maintenance. It shall be supplemental and in addition to the other regulatory codes, statutes, and ordinances heretofore or hereinafter enacted by the city, state of California, or any other legal entity or agency having jurisdiction.~~

~~E. In addition to the abatement procedures provided herein, this chapter defines what conditions or activities constitute a public nuisance. The city council declares that any condition or activity caused, maintained or permitted to exist in violation of any provisions of this code which is offensive or annoying to the senses, or is detrimental to property values or community appearance, or is injurious so as to pose a serious threat to the public's health, safety or welfare, shall be deemed a public nuisance and may be abated consistent with the procedures provided for in this chapter.~~

~~§ 18.74.020. Administration and enforcement.~~

~~A. The community preservation technicians, building officials, and the manager shall have the authority to issue citations should there be no response to the initial notice of an incident constituting a nuisance as defined in this chapter as opposed to the general policy of first issuing correction notices.~~

~~B. The issuance of citations to enforce provisions as contained in this chapter shall be governed by Title 1 of this code.~~

~~C. Any person authorized by the manager to administer this chapter may, with the consent of the property owner or the person in possession thereof, enter upon private property at all reasonable times for the purposes specified in this chapter including, but not limited to, entry for inspection and for enforcement of this chapter, to examine vehicles or parts thereof, obtain information as to the identity of the vehicle, and remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this chapter. Where consent is refused or cannot be obtained, a judicial warrant which authorizes entry into the property to inspect and abate must be obtained.~~

~~D. When such entry is to be made in an area which is fenced or posted and which is within the "curtilage" area immediately surrounding the residence the following procedures shall apply in the absence of state legislation creating an abatement warrant procedure:~~

~~1. An attempt shall be made to obtain the written consent of the property owner to enter the property and to abate the nuisance. An initial request for entry within ten days, utilizing a stamped and addressed return addressed envelope shall be mailed to the property owner at the address shown on the last equalized assessment roll or the supplemental roll, whichever is more current. If consent to enter enclosed private property for purposes of this chapter is refused by the property owner or occupant, the city attorney shall, at his/her option, send a second demand letter. If again entry is refused or if the city attorney determines that a second demand letter is not feasible, the city attorney shall, utilizing an inspection warrant procedure detailed in California Code of Civil Procedure Section 1822.50 et seq., apply to a judicial officer for a warrant which authorizes entry onto property for the purposes of abatement in connection with issuing the warrant.~~

~~2. If exigent circumstances exist which pose an immediate threat to public health and safety or if facts and circumstances exist to reasonably justify a failure to seek consent from the property owner, the city attorney shall seek relief from the court and cause the issuance of a forcible warrant by the court pursuant to Section 1822.56 of the California Code of Civil Procedure.~~

~~§ 18.74.030. Definitions.~~

~~For the purpose of this chapter, words and phrases designated herein have the following meanings:~~

~~"Abandoned," in addition to such other definitions that may be provided in law, means and refers to any item of property which has been given up absolutely, without reference to any particular person; or some overt act or failure to act which carries an implication that the owner neither claims nor retains any interest. In determining whether one has abandoned his/her property, the following factors shall be considered:~~

~~1. Present operability and functional utility, although mere nonuse is not necessarily an abandonment;~~

~~2. The date of last effective use accompanied by acts manifesting an intent to abandonment;~~

~~3. The physical condition of disrepair or damage;~~

~~4. The last time an effort was made to repair or rehabilitate the item;~~

~~5. The status of registration or licensing of the item;~~

~~6. The age of the item and degree of obsolescence;~~

~~7. The cost of rehabilitation or repair of the item versus its market value;~~

~~8. The nature of the area and location of the item;~~

~~9. The physical location of the owner.~~

~~"Appeals board" means the planning commission, which shall hear appeals arising from all abatement proceedings arising from enforcement of this chapter.~~

~~"Director" means the director of planning of the city or authorized agents, assistants, deputies or representatives.~~

~~"Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes streets and alleys.~~

~~"Manager" or "city manager" means the city manager of the city of La Habra or designee.~~

~~"Nuisance" means any activity or condition which poses a danger and serious threat to health or safety, or may be injurious to the public health, if not suppressed or regulated, 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, square, street or highway.~~

~~"Occupant" means any person or entity having possessory rights, who can control what goes on premises, whether as a tenant or owner.~~

~~"Officer" or "designated officer" means any officer of the city selected by the manager, or if the manager elects to contract for a hearing officer, that individual selected by the manager authorized to administratively adjudicate public nuisance proceedings.~~

~~"Owner" means any person or entity owning, leasing, occupying or having charge or possession of any real or personal property in the city. Owner as applied to real property is the legal owner, one in whom that legal title of real estate is vested.~~

~~"Planning commission" or "commission" means the planning commission of the city of La Habra.~~

~~"Polluted water" means water contained in a swimming pool, pond or other body of water which is abandoned, unattended, unfiltered or not otherwise maintained resulting in the water becoming polluted which includes but is not limited to bacterial growth, algae, remains of insects, remains of deceased animals, reptiles, rubbish, refuse, debris, papers and any other foreign matter or material which because of its nature, amount or location constitutes an unhealthy, unsafe or unsightly condition.~~

~~"Premises" means an estate, including land and buildings thereon, encompassing a definite and distinct locality, such as a room, shop, building, structure or other definite area, or a distinct portion of real estate.~~

~~"Private nuisance" means every nuisance other than a public nuisance.~~

~~"Public nuisance" means any nuisance 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.~~

~~"Recreational vehicle" means a vehicle, boat, vessel or other type of portable structure, with or without a mode of power, and without permanent foundation, which can be towed, hauled, sailed, flown or driven, and is designed, used, or maintained primarily for recreational purposes, such as, but not limited to, travel trailers, tent trailers, camping trailers, motor homes, buses converted to recreational or other noncommercial uses, vans, trucks with or without camper shells, campers, motorcycles, off-road vehicles, aircraft, boats or other vessels.~~

~~"Refuse and waste" means unused or discarded matter and material having no substantial market value and which consists of such matter and material as: rubbish, refuse, debris and matter of any kind including but not limited to rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, boxes, appliances, furniture, inoperative vehicles and parts thereof, trimmings from plants and items which are offensive or odorous. Refuse and waste matter, which by reason of its location and character is unsightly and interferes with the reasonable enjoyment of property by neighbors, or which would materially hamper or interfere with the prevention or suppression of fire upon the premises.~~

~~"Vehicle" means a device by which any person or property may be propelled, moved or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.~~

~~§ 18.74.040. Declaration of nuisance.~~

~~It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in the city to maintain upon such premises or to permit, cause or allow to exist on such premises, any condition which constitutes a public nuisance as defined by this chapter or a condition that is determined to be detrimental to the public health, safety or general welfare. Such conditions shall include, but shall not be limited to, the following:~~

~~A. Landscape Areas.~~

~~1. Maintenance of Dead/Overgrown Vegetation. To maintain vegetation, including, but not limited to, trees, shrubbery, weeds and grass greater than six inches in height, cultivated or uncultivated, which is overgrown, dead, decayed or diseased such that it is likely to harbor rats, vermin, insects, other animals, or other nuisances which are dangerous to the public health, safety or general welfare; or~~

~~2. Maintenance of Adverse Topography. To maintain land, the topography, geology or configuration of which causes erosion, subsidence or surface water runoff problems of such magnitude as to be injurious or potentially injurious to the public health, safety or general welfare; or~~

~~3. Maintenance of Uncompacted Fill. To maintain on the property or premises any accumulation of uncompacted fill over three feet in height over predominant grade and contrary to adjacent contour for any period when such accumulation would seriously endanger public health or safety; or~~

~~4. Maintenance of Excavations and Piles of Dirt. To maintain excavations and piles of dirt such that they constitute a hazard to unwary passersby or to minor children, and are detrimental to the public health, safety or general welfare; or~~

~~5. Maintenance of Underground or Aboveground Storage Tanks. To fail to remove underground or aboveground storage vessels or tanks within six months after the use of such tanks or vessels ceases pursuant to the Uniform Fire Code Section 79.115 or to maintain underground tanks contrary to the provisions of the California State Health and Safety Code Sections 25280 through26299.6 inclusive; or~~

~~6. Maintenance of Vacant Lots. To fail to maintain a vacant lot in the city in accordance with the requirements of Section 18.74.040(E); or~~

~~7. Maintenance of Artificial Turf. The property owner shall be responsible for the maintenance of all artificial turf at all times. The property owner shall be responsible for the replacement/repair of artificial turf due to the following issues, but not limited to: fading; unnatural appearance; stains; rips; tears; weeds; debris; impressions; has improper water drainage forming small ponds that could be attractive to vectors; lumps or rolls causing an unsecure or unsafe surface; or graffiti.~~

~~B. Main Building and Accessory Structures.~~

~~1. Maintenance of Dilapidated Structures. To maintain buildings or structures, or portions thereof, which are damaged, dilapidated, or inadequately or improperly maintained such that they are structurally unsafe, or do not provide adequate egress, or which constitute a fire hazard, or which are otherwise dangerous to human life or which in relation to existing use constitute a serious threat to the public's health, safety and general welfare. This includes any building, structure or property which has been constructed or is maintained in violation of any specific regulation applicable to a building, structure or property contained in the building codes of this city, or any law of the city or state relating to the condition, location, maintenance or construction of buildings or property. Such buildings or structures shall include those which are abandoned, hazardously or inadequately boarded up, partially destroyed, or in an unreasonable state of partial construction. An unreasonable state of partial construction is defined as any unfinished building or structure which has been in the course of construction two years or more, and where the appearance and other conditions of the unfinished building or structure substantially detracts from the appearance of the immediate neighborhood or reduces the property values in the immediate neighborhood; or 2. Maintenance of Hazardous Conditions. To maintain some activity or condition that would seriously endanger public health or safety and which is related to buildings, structures or appendages, walls, fences or landscaping which requires immediate correction, repair or adequate and proper maintenance, including but not limited to the existence of broken glass in doors or windows which are located in an area of public access; surfaces showing evidence of excessive dry rot, warping or termite infestation; absence of paint, stain, varnish or similar coating intended to protect the weatherability of any structural member; doors, aisles, passageways, stairways or other means of exit which do not provide a safe and adequate means of exit; any wall or other vertical structural member which lists, leans or is buckled to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base; or any other condition which because of a lack of proper sanitation or soundness, or as a result of dilapidation, decay, damage or faulty construction or arrangement, may be injurious to the public health and safety if not suppressed or regulated; or~~

~~3. Abandoned Buildings. To abandon or vacate any building or structure so that it becomes readily available to unauthorized persons; or~~

~~4. Violate Land Use Ordinance, Licensing and Building Codes. To construct, erect, alter, move or maintain any building or structure contrary to the provisions of the La Habra land use ordinance, or to use any property contrary to such ordinance, or fail to comply with any condition attached to the granting of a conditional use permit, variance, or site plan; or to conduct or operate a commercial activity in any zone without a business license and in direct violation of zoning, licensing and building codes regarding location, compatibility and occupancy; or~~

~~5. Violate Sign Ordinance. Any sign or sign structure maintained in violation of Chapter 18.23 of this code; or~~

~~6. Maximum Percentage of Front Yard to be Covered with Impervious Materials. The coverage of more than sixty percent of the front yard of residential properties by pavement or other hardscape (impervious) material which may be used for the temporary parking of vehicles is prohibited. When practical difficulties exist that require a greater front yard coverage than allowed by this section, approval of a zone variance is required in order to obtain permission to increase the percentage of front yard coverage. The planning commission may, upon sufficient showing of need by the applicant, increase the front yard coverage to a maximum of eighty percent. In consideration of such an increase, the planning commission shall be guided by a review of the size and configuration of the proposed coverage as compared with other similar developments in the same zone or vicinity.~~

~~C. Supplemental Conditions.~~

~~1. Maintenance of Detrimental Property Conditions. To maintain or fail to maintain property, or any building or structure thereon, in such condition so that it is defective, unsightly, or in such condition of deterioration or disrepair that it causes or will cause a health or safety hazard or in such a manner as to constitute a public nuisance as defined in California Civil Code Section 3480, including, but not limited to, anything dangerous to human life or detrimental to human health, or any habitation that is overcrowded with occupants or that lacks adequate ventilation, sanitation or plumbing facilities, or that constitute a fire hazard; or~~

~~2. Maintenance of Unharmonious Uses. To use or maintain, or fail to use or maintain the property, or any building or structure thereon, in such a manner or condition so out of harmony or conformity with the use or maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use or property values of such adjacent properties; or~~

~~3. Maintenance of Hazardous Pools, Ponds, Polluted Water and Excavations.~~

~~a. To maintain ponds, pools, polluted water or unenclosed or empty swimming pools such that they constitute a hazard to unwary passersby or to minor children, and are detrimental to the public health, safety or general welfare,~~

~~b. Further, to maintain excavations, ponds, pools, or unenclosed or empty swimming pools contrary to the provisions of Chapter 15.32 of the La Habra Municipal Code; or~~

~~4. Maintenance of Miscellaneous Conditions or Activities which Are Detrimental to Property Values or Community Appearances. To place, maintain, hang, dry, or air clothing, household fabric or laundry on or from any manmade or natural device, including, but not limited to, clotheslines, fences, open windows, balconies, trees or shrubbery in a front or side yard that abuts a public street; or~~

~~5. Storage of Construction Material/Equipment in Residential Zone. To park or store on any street or property within a residential zone construction equipment, buses, limousines, tow trucks, flatbed trucks, grading equipment, tractors trailers, truck tractors, any other commercial vehicle over twenty-two feet long or eight feet in height or ninety inches wide, supplies, materials or machinery of any type or description. Commercial vehicles, for the purpose of this section, shall be defined as any motorized or nonmotorized vehicle used or maintained to transport property or goods for profit, or persons for hire or compensation. This section shall not apply to lawfully placed construction vehicles, machinery, equipment, supplies or materials during the period in which a valid building permit exists for the on-site construction, rehabilitation, remodel, or refurbishment of a residential property on which or in front of which the construction vehicles, machinery, equipment, materials and supplies are parked or stored; provided, that said work is progressing normally and diligently and the vehicles, machinery, equipment, materials and supplies are just those needed for the particular work being performed; or~~

~~6. Storage of Discarded Materials. To store refuse and waste in such a manner or in such condition as to be detrimental to the public health, safety, or general welfare or which is detrimental to nearby property values or community appearance; or~~

~~7. Storage of Trash/Garbage Containers. To store trash or garbage cans, bins, boxes or other such containers in any single-unit residential yard area, parking area, front or side yard, such that they are visible from a highway as defined herein on other than regularly scheduled pick up days and which are detrimental to nearby property values, improvements or the public health, safety or general welfare. Refuse containers may be placed at the collection location in public view between four p.m. on the day preceding collection until ten p.m. on the day of collection. Dumpsters or storage bins may be located in front yard areas with an active building permit that covers excavation, construction or demolition operations, or for a period not to exceed seventy-two hours for general cleanup of the subject property; or~~

~~8. Storage of Hazardous Materials.~~

~~a. To improperly store, discharge, hold, handle, maintain, use or otherwise deal with hazardous or extremely hazardous wastes as defined by California Health and Safety Code Sections 25115, 25117, 25117.5 and 25124 respectively. Hazardous shall be defined by Health and Safety Code Section 25116.5 which states, in part, "causing or significantly contributing to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or posing a substantial present or potential risk to human health or the environment,"~~

~~b. This includes the discharge or deposit of any source of hazardous, infectious or extremely hazardous waste into any sewer, storm drain or similar facility which will or may cause or result in the pollution of any underground or surface water. Examples include but are not limited to petroleum products, laboratory wastes, specimens (pathological or surgical) or equipment,~~

~~c. Furthermore, any violation of federal, state, or local laws or regulations, including but not limited to California Health and Code Sections 25100 through 25185 and Section 4-3 of the Orange County Code, and all their respective amendments, shall constitute a public nuisance under this part; or~~

~~9. Fences and Walls. To maintain fences, walls or similar structures which are not structurally intact or that are damaged, dilapidated or in nonconformance with specific provisions contained in zoning ordinances; or~~

~~10. Driveways, Walkways and Potholes. To maintain driveways or walkways in such a condition so as to be injurious or potentially injurious to the public health, safety or general welfare; or~~

~~11. Animals, Reptiles or Insects. To keep any animal, reptile or insect in such a manner as to pose a threat, disturbance or menace to persons or property of another or in a public right-of-way; or~~

~~12. Machinery Dust, Exhaust, Noise or Fumes. To keep, operate or maintain any machinery which by reason of its dust, exhaust, noise or fumes creates a health or safety hazard; or~~

~~13. Buildings or Structures with Broken Windows. To maintain buildings or structures in such a condition so as to allow broken windows to remain unboarded longer than twenty-four hours from the date of the first "Notice of Correction," or so as to allow any construction material utilized in the boarding up process to remain attached or affixed to the building or structure for longer than any five-day period or to maintain buildings or structures in such a condition so as to allow broken windows to be injurious or potentially injurious to the public health.~~

~~D. Vehicles—Living in Recreational Vehicle. To use a parked or stored recreational vehicle as temporary or permanent living space.~~

~~E. Vacant Lots. To fail to maintain a vacant lot, located in a residential, commercial or industrial zones of the city, in accordance with the following minimum landscape requirements:~~

~~1. Vacant Lots With No Previous Development. Vacant lots where no previousdevelopment has taken place, and where none currently exists, shall not permit vegetation tobe over six inches in height in accordance with Section 18.74.040(A)(l).~~

~~2. Vacant lots where previous development existed and structures were/are removed. Vacant lots which were previously developed, but where all, or substantially all, of the structures on the property have been removed, shall be maintained as follows:~~

~~a. The number of trees and size to be provided along the street setback area(s) shall be in accordance with Section 18.16.040(A)(4). The entire lot, including parkways, shall be improved with sod or other ground planting material as approved by the director of community development. The property, including parkways, shall be improved with an irrigation system to maintain the installed landscaping in good condition. All approved landscaping shall be maintained in good condition at all times.~~

~~b. In addition to complying with any and all county, state and federal requirements, lots that have been deemed contaminated by the Orange County Health Department or any other governmental agency, shall be landscaped in the following manner:~~

~~i. Where the ground water table is twenty feet or less from surface grade, palm trees shall be utilized along the street setback in accordance with the requirements in Section 18.16.040(A)(4). The entire lot shall be improved with a drought tolerant groundcover variety. The irrigation system shall be designed utilizing drip irrigation techniques. All approved landscaping shall be maintained in good condition at all times.~~

~~ii. Where the groundwater table is twenty-one feet or more from surface grade, the property owner shall maintain the lot in accordance with the requirements of subsection (E)(2)(a), noted above, in addition to complying with the remaining requirements of subsection (E)(2).~~

~~c. Within thirty days of a lot becoming vacant within the meaning of this section or before issuance of demolition permits, the property owner shall submit a landscape and irrigation plan in compliance with the requirements of this section, along with a schedule for implementation for the proposed improvements, to the director of community development for his/her approval. Upon the approval of the plan, full improvements to the property shall be completed within thirty days. A reasonable extension of time may be granted by the director of community development in those situations where the director, in his/her sole discretion, determines that a good faith effort is being made by the property owner to comply with the ordinance.~~

~~d. The director of community development, in his/her discretion, may require that any lot covered by this section be secured with a fence, to preclude illegal dumping on the property, or to otherwise protect the health, safety or welfare of the public. The director of community development must approve any such fence prior to installation. The fence shall be a wrought iron fence, and shall allow clear visibility of all portions of the lot, unless written permission is obtained to the contrary from the director of community development. An alternate type of fence material may be allowed if the condition of the property and surrounding developments warrant such a change. The fence shall not exceed a height limit of six feet and may not be placed within the required front or street setback areas.~~

~~e. Vacant unimproved lots existing at the time of this code amendment shall be brought into compliance with the code within one hundred and eighty days of the effective date of the ordinance codified in this section. A reasonable extension of time may be granted by the director of community development in those situations where the director, in his or her sole discretion, determines that a good faith effort is being made by the property owner to comply with this section.~~

~~3. Lots Improved With Vacant Structures. Lots improved with structures that become vacant shall be maintained as follows:~~

~~a. All existing landscaping shall be maintained in good condition at all times, including parkways.~~

~~b. All structures shall be maintained in good condition at all times in accordance with requirements of Section 18.74.040.~~

~~c. The director of community development, in his or her discretion, after a structure has become vacant for thirty days, may require that any lot covered by this section be secured with a fence, to preclude illegal dumping on the property, or to otherwise protect the health, safety or welfare of the public. The director of community development must approve any such fence prior to installation. The fence shall be a wrought iron fence, and shall allow clear visibility of all portions of the lot, unless written permission is obtained to the contrary from the director of community development. An alternate type of fence material may be allowed if the condition of the property and surrounding developments warrant such a change. The fence shall not exceed a height limit of six feet and may not be placed within the required front or street setback areas.~~

~~d. Vacant lots improved with structures at the time of this code amendment shall be brought into conformance within sixty days of the effective date of the ordinance codified in this section. A reasonable extension of time may be granted by the director of community development in those situations where the director, in his or her sole discretion, determines that a good faith effort is being made by the property owner to comply with this section.~~

~~4. Noncompliance. Failure to comply with the requirements of subsection E, Vacant Lots, shall constitute a nuisance in accordance with Section 18.74.040(A)(6), and may be abated as permitted in this chapter.~~

~~§ 18.74.050. Unlawful property nuisances.~~

~~It is unlawful for any person owning, leasing, occupying or having charge or possession of any property in the city to maintain such property in such manner that any of the conditions set forth in Section 18.74.040 shall exist. The procedures for abatement set forth in this chapter shall not be the exclusive means by which such conditions may be abated and shall not in any manner limit or restrict the city from enforcing other city ordinances or provisions of the municipal code or from abating public nuisances in any other manner provided by law.~~

~~§ 18.74.060. Owners' responsibility for property maintenance.~~

~~A. Every owner of real property within the city, whether commercial, industrial or residential, is required to maintain such property in a manner so as not to violate the provisions of this code and such owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding such property.~~

~~B. Every occupant, lessee, or holder of any interest in property other than as owner thereof is required to maintain such property in a manner consistent with the standards described in Section 18.76.040. California Civil Code Section 1941 requires the lessor of a building intended for human occupancy to maintain the building in a condition which is fit for such occupation and to repair all dilapidation which render it untenantable. Accordingly, this section is intended to and shall be interpreted in a manner which is consistent with California Civil Code Section 1941 and any amendments thereto.~~

~~C. An occupant of property who is not the legal owner shall not be liable for any nuisance (as defined by Section 18.74.030) which the occupant did not create, and which the occupant did not knowingly maintain or permit to continue.~~

~~§ 18.74.070. Finding of nuisance.~~

~~A. When the conditions which are found to constitute a nuisance are determined not to pose an immediate threat to the public peace, health, safety or welfare, a correction notice shall be personally served, delivered by mail or certified mail to each (one) of the following:~~

~~1. The owner of record of the premises on which the nuisance is maintained as shown on the most recent county assessor's parcel roll; and~~

~~2. The person, or persons, if any, occupying or in real or apparent charge and control of the premises involved.~~

~~B. Such notice shall describe in detail the conditions or activities which render the building, structure, premises or portion thereof a public nuisance, set forth a reasonable date and time by which the violation(s) shall be abated, and may contain a brief concise statement of the proposed methods of abatement.~~

~~C. An extension of time in which to correct the violations may be given based upon a showing of extenuating circumstances; however, in no event shall the extension exceed thirty days without written authorization of the planning commission.~~

~~§ 18.74.080. Abatement options.~~

~~A. If the manager finds that any premises or any portion thereof continues to constitute a public nuisance after the owner/occupant has failed to voluntarily correct those certain enumerated conditions as written in the correction notice, he or she may direct the city attorney or an authorized legal representative to seek judicial relief from a court of competent jurisdiction in order to abate the nuisance. Nothing in this chapter shall ever be construed to prevent the city from commencing an action at law or in equity for abatement thereof in the manner provided by law in addition to, or in conjunction with, the proceedings set forth in this chapter, nor shall anything in this chapter ever be deemed to prevent the city from commencing a criminal action with respect to the nuisance in addition to, alternatively to, or in conjunction with, the proceedings set forth in this chapter; or~~

~~B. If the manager finds that any premises or any portion thereof continues to constitute a public nuisance after the owner/occupant has failed to voluntarily correct those certain enumerated conditions as written in the correction notice, he or she may direct an officer of the city to initiate abatement proceedings, without judicial procedure, pursuant to the due process provisions contained herein, at the expense of the person(s) creating, causing, committing, or maintaining the nuisance.~~

~~§ 18.74.090. Initiation of abatement proceedings.~~

~~The designated officer shall prepare or cause to be prepared a "Notice to Abate Nuisance," stating in detail the conditions or activities which render the building, structure, premises or portion thereof a public nuisance. The notice of such public hearing shall:~~

~~A. Describe the premises involved by setting forth the street address, if applicable, or if a street address is not known or applicable, the notice shall set forth the location of the nuisance, and a description sufficient for general identification of the building, structure, premises or portion thereof. The location of the nuisance shall be identified utilizing the assessor's parcel number and a legal description of the real property; and~~

~~B. Contain a brief description of the materials, activities and conditions constituting the nuisance; and~~

~~C. Contain a brief concise statement of the proposed methods of abatement.~~

~~§ 18.74.100. Notice to abate nuisance—Persons to be served.~~

~~A. The officer shall cause the notice to abate to be served upon each of the following:~~

~~1. The owner or agent of record of the premises on which the nuisance is maintained as shown on the most recent equalized tax assessment rolls; and~~

~~2. The person, if any, occupying, in possession of or in real or apparent charge and control of the premises involved.~~

~~B. "Owner" as used in this section also means any person, mortgagee or beneficiary having or claiming to have any legal or equitable interest in said premises when known by the city to have an ownership or leasehold interest in the premises, as disclosed by a current title search from any accredited title company.~~

~~C. The notice may be served personally upon, or may be sent by mail or may be sent by prepaid certified U.S. mail to the occupant and the owner or agent of such premises. Service by mail shall be deemed completed upon deposit of the mail in a~~

~~U.S. mailbox. The notice shall also be posted on the premises in a conspicuous manner at the same time at least ten days before the time fixed for abatement. The failure of any person to receive such notice shall not affect the validity of the proceedings hereunder.~~

~~D. In addition to the notice required by this section, the planning director may, in his or her discretion, give notice of the abatement in any manner to any real property owners adjacent from the site of the alleged nuisance or to the affected property owner.~~

~~§ 18.74.110. Effect of failure to abate.~~

~~A. Notwithstanding the provisions of subsection A of Section 18.74.080, if the nuisance is not abated within the period given in the notice to abate, the manager may proceed with summary abatement pursuant to subsection B of Section~~

~~18.74.080. When he or she orders summary abatement, the designated officer shall give a second notice in the same manner as set forth in Section 18.74.100.~~

~~B. The second notice shall inform the persons that the city will commence summary nuisance abatement proceedings at the expense of the person(s) creating, causing, committing, or maintaining the nuisance and that the cost of abating the nuisance upon each lot or parcel of land shall constitute a special assessment against each such lot or parcel of land and shall also become the personal obligation of the owner of each such lot or parcel of land. This notice shall also inform the persons that they may appear before the commission or such other person as the manager specifies in the notice, at a stated time and place and show cause why the nuisance should not be summarily abated, provided the following appeal procedures are followed. When a person files an appeal, the order of abatement shall be suspended pending the review of the determination.~~

~~C. Failure of any person to file an appeal in accordance with the provisions of Section 18.74.120 shall constitute a waiver of the right to an administrative hearing.~~

~~§ 18.74.120. Appeal procedures.~~

~~A. Upon receipt of the second notice, any person entitled to service under subsection A or B of Section 18.74.080 may appeal from the notice and order of the designated officer under this chapter by filing with the planning secretary a written appeal containing at a minimum:~~

~~1. A brief statement setting forth the legal interest of each of the appellants in the building or the land 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;~~

~~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. The request for appeal shall be filed within thirty days from the date of service of such order or action of the designated officer; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with the Uniform Code for the Abatement of Dangerous Buildings (as adopted pursuant to Section 15.08.010 of this code), such appeal shall be filed within ten days from the date of the service of the notice and order of either the designated officer or a building official.~~

~~C. Only those matters or issues specifically raised by the appellant shall be considered in the hearing appeal.~~

~~D. Upon receipt of any appeal filed pursuant to this section, the planning secretary shall present it at the next regular meeting of the planning commission.~~

~~E. As soon as practicable after receiving the written appeal, the planning secretary shall fix a date, time and place for the hearing of the appeal by the commission. Such date shall not be less than ten days nor more than sixty days from the date the appeal was filed with the planning secretary.~~

~~F. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the secretary of the commission either by causing a copy of such notice to be delivered to the appellant personally or by mailing first class, or by certified, a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.~~

~~G. A written notification of the commission's decision will be given to the appellant either personally after the hearing, or by first class mail delivered to the appellant within ten days following the hearing.~~

~~§ 18.74.130. Form of notice of public hearing.~~

~~The second notice given shall be provided in substantially the following format:~~

~~Notice of Hearing on Abatement of Public Nuisance~~

~~1. A hearing will be held at on~~

~~at City Hall, , La Habra, before to receive testimony from any person having any interest in the property described below, and to show cause, if any they have, why certain unsafe, dangerous, hazardous or obnoxious materials and/or conditions existing on the premises/property at~~

~~shall not be declared a public nuisance.~~

~~2. The materials and/or conditions found to constitute the public nuisance are as follows: .~~

~~3. The public hearing may be avoided if the following corrections are made at least two days before the date set for the hearing:~~

~~Notice of Hearing on Abatement of Public Nuisance~~

~~4. If it is determined by the that the premises/property herein described is currently being maintained in such manner as to constitute a public nuisance as defined by Section 18.77.030, said nuisance may be abated by the removal or repair of said unsafe, dangerous, hazardous or obnoxious materials and/or conditions.~~

~~5. If the owner of record has not completed the corrective action, the materials and/or conditions found to constitute the public nuisances will be removed and repaired and the nuisances will be abated by the municipal authorities of the City of La Habra, in which case the cost of such removal or repair shall be assessed upon the lot(s) and land upon which said unsafe, dangerous, hazardous or obnoxious materials and/or conditions exist, and such cost will constitute a lien upon such lot(s) or land until paid.~~

~~§ 18.74.140. Service of notice of public hearing—Proof.~~

~~When personally delivered, proof of service of the notice and posting thereof shall be documented at the time of service by a declaration under penalty of perjury executed by the person effecting service, declaring the time and manner in which such notice was given and posted. He shall file such declaration in the planning office and therewith any receipt card which may have been returned to him in acknowledgment of the receipt of such notice by certified mail, or any return by first class regular mail.~~

~~§ 18.74.150. Conduct of hearing—Content of testimony.~~

~~At the time stated in the notice, the commission or designated officer shall hear and consider all relevant testimony or evidence offered by the director, manager, or other officials or employees of the city or other qualified witnesses, including but not limited to the owner of record or his/her authorized representatives, a responsible person in charge or control of the affected premises, a mortgagee or beneficiary under any trust deed, lessee, or any other person having any estate or interest in such premises. The commission or designated officer is authorized to grant reasonable extensions, not to exceed thirty days, on the time period for the hearing based upon a proper showing of extenuating circumstances made before the date stated in the notice.~~

~~§ 18.74.160. Conduct of hearing—Procedure.~~

~~A. The hearing shall be conducted informally, and the technical rules of evidence shall not apply, notwithstanding the fact that the rights to confrontation, opportunity to be heard, cross-examination and the opportunity to rebut ex parte evidence are presumed to exist. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions except that unduly repetitious evidence shall be excluded.~~

~~B. During the course of the hearing, the commission or designated officer may visit and inspect any premises involved in the proceedings and may therewith receive oral testimony of any sworn or unsworn witnesses.~~

~~§ 18.74.170. Conduct of hearing—Decision.~~

~~A. Upon conclusion of the hearing, the commission or designated officer shall consider the evidence presented and shall make written findings of fact, based upon the evidence, to support the decision and by such same findings shall make a determination and conclusion with respect to the alleged public nuisance. If a determination is made that a public nuisance exists, the commission or designated officer shall declare such premises to be a public nuisance and order the abatement of the same by the property owner within a specified time not to exceed thirty days. The order shall set forth a statement of the particulars which render the premises a public nuisance. Such decision shall contain a detailed and precise list of needed correction or abatement methods and a statement that the occupant, lessee or another person in possession or charge or any mortgagee, beneficiary under any deed of trust, or other person having an interest or estate in such premises, may at his/her own risk, abate the nuisance. The commission or designated officer is authorized to grant reasonable extensions, not to exceed thirty days, on the time period for abatement based upon a proper showing of extenuating circumstances made before the date of the order of abatement.~~

~~B. Failure of the owner or other persons having any interest in the affected premises to appear at or be represented at the hearing shall in no way affect the validity or the prescribed conduct of the hearing. A copy of the order of abatement shall be posted upon the premises involved and shall be served upon the owner of record in the same manner as the notice to abate pursuant to Section 18.74.100. The city clerk shall immediately, after passage of said order, cause to be filed in the office of the county recorder of Orange County a certified copy of said order of abatement.~~

~~C. The decision of the commission or designated officer shall be considered the final and conclusive action in the matter.~~

~~D. The city council reserves the right upon its own motion to conduct a de novo review of any determination of the commission or designated officer. When the council passes such a motion, the order of abatement shall be suspended pending the review of the determination.~~

~~§ 18.74.180. Immediate hazards.~~

~~Any activity or condition which poses a serious threat to the public's health or safety shall be determined and declared by the city manager, police chief or fire chief to be an immediate hazard which would, if not immediately suppressed, seriously endanger public health or safety. In such event, the city manager, police chief or fire chief may take immediate action to abate the hazard, without notice to the owner, lessee, person having custody or charge of the premises involved, or any other interested person, and without the necessity of a hearing thereon by the planning commission. However, such immediate action shall be limited to such action as is reasonably necessary to eliminate the immediate hazard. Any further action to abate a nuisance which does not pose an immediate serious threat to public health and safety shall be taken only in accordance with the procedures set forth in this chapter.~~

~~§ 18.74.190. Costs—Report.~~

~~The director, city manager or any private contractor authorized to abate the nuisance, shall keep an account of the cost (including incidental expenses) of abating any nuisance or immediate hazard on each separate lot or parcel of land where the work has been done, and upon completion of the abatement, shall cause to be prepared and filed with the city clerk an itemized report specifying the following:~~

~~A. The work performed; and~~

~~B. The cost of the work by rehabilitation, demolition, or repair of the property, buildings or structure, including any salvage value relating thereto and incidental expenses; and~~

~~C. A description of the real property, pursuant to the provisions of this chapter, uponwhich the nuisance or immediate hazard was located; and~~

~~D. The names and addresses of the persons entitled to notice pursuant to the provisions of this chapter; and~~

~~E. The assessment against each lot or parcel of land proposed to be levied to pay the cost thereof. Any such report may include work performed on any number of parcels of property, whether or not contiguous to each other. The term "incidental expenses" includes, but is not limited to, the expenses and costs of the city in the preparation of notices, specifications and contracts, inspection of the work, reports of title search and the costs of printing, mailing and serving papers required under this chapter.~~

~~§ 18.74.200. Costs—Notice of hearing.~~

~~Upon filing of the report by the director, or city manager with the city clerk, the city clerk shall transmit it to the city council and the city council shall fix the day, hour and place when it will hear and pass upon the report, together with any objections or protests which may be raised by any property owner liable to be assessed for the cost of such abatement, and any other interested persons. At least ten days before the date set for hearing, the city clerk shall cause copies of the report and a notice of the filing of the report, containing a description of the property sufficient to enable the persons served to identify it and specifying the day, hour and place when the city council will hear and pass upon the report, and any objections or protests thereto, to be posted and served in the manner and upon the persons set forth in Sections 18.74.100 and 18.74.120. Proof of posting shall be made by affidavit of the city clerk or assistant city clerk. A copy of the notice shall be published once at least ten days prior to the date set for the hearing in a daily newspaper published and circulated within the city.~~

~~§ 18.74.210. Costs—Hearing.~~

~~Any person interested in and affected by the proposed assessment may file written protests or objections with the city clerk at any time prior to the hour and date set for the hearing on the report. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. Upon the day and hour fixed for the hearing, the city council shall hear and pass upon the report, together with any objections or protests which may be raised by any property owner liable to be assessed for the cost of abatement, and other interested persons. The city council may make such correction, revision or modification in the report as it may deem just, and when the city council is satisfied with the correctness of the assessment, the report as submitted, or as revised, corrected or modified, together with the assessment, shall be confirmed by resolution. Prior to recordation of the lien, notice shall be given to the owner of record of the parcel of land on which the nuisance is maintained, based upon the last equalized assessment roll or the supplemental roll, whichever is the most current. If the owner of record, after diligent search, cannot be found, the notice may be served by publication thereof in a newspaper of general circulation published in Orange County pursuant to Section 6062 of the Government Code. The decision of the city council on the report and the assessment and on all protests or objections shall be final and conclusive. The city council may adjourn the hearing from time to time.~~

~~§ 18.74.220. Special assessments.~~

~~The amount of the cost of abating the nuisance or the immediate hazard upon each lot or parcel of land, including incidental expenses, as confirmed by the city council, constitutes a special assessment against each such lot or parcel of land, and as thus made and confirmed shall also become the personal obligation of the owner of each such lot or parcel of land. Such confirmed cost shall thereafter bear interest at the legal rate of interest until paid. Such confirmed special assessment, after notice and recordation, shall also constitute a special lien against such property for the amount of such assessment until paid.~~

~~§ 18.74.230. Notice of lien.~~

~~Upon confirmation of the assessment, the city clerk shall cause to be filed in the office of the county recorder, Orange County, California, a notice of lien in substantially the following form:~~

~~Notice of Nuisance Abatement Lien Claim of the City of La Habra~~

~~Pursuant to the authority contained in Chapter of the La Habra Municipal Code, the City Council of the City of La Habra did the following: 1) Issued an abatement order on the day of , 20 ; 2) Caused a nuisance to be abated on the real property hereinafter ascribed on the day of , 20 ; and 3) Assessed the cost of such abatement upon said real property hereinafter described by adopting Resolution No. on the day of , 20 . Of said costs, there remains unpaid to the City of La Habra the sum of Dollars ($), and therefore the City of La Habra does hereby claim a special lien upon said real property in the amount of~~

~~$ together with interest calculated thereon at the legal rate of interest from the~~

~~day of , 20 . Until said amount has been paid in full and this lien discharged of record.~~

~~The real property hereinabove mentioned and upon which a lien is hereby claimed is that certain parcel or parcels of real property situated in the City of La Habra, Orange County, California, and more particularly described as follows:~~

~~(Street Address)~~

~~(Legal Description)~~

~~(Assessor's Parcel Number)~~

~~The name and address of the record owner of the parcel on which the lien is imposed is as follows:~~

~~(Owner's Name)~~

~~(Owner's Address)~~

~~Dated this day of , 20 , at City of La Habra, California.~~

~~By: City Manager~~

~~Attest:~~

~~City Clerk~~

~~(Notarial Acknowledgement)~~

~~§ 18.74.240. Collection of costs of abating the nuisance.~~

~~The cost of abating a nuisance and related administrative expenses, including but not limited to any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien, may be collected by either of the following means:~~

~~A. After the confirmation and recordation of such report of costs and assessment, a certified copy of such confirmed special assessment, which remains unpaid, shall be filed with the assessor and tax collector of Orange County acting for the city in order that such officials may enter the amount of the assessment on the appropriate assessment book opposite the description of the particular parcels of land and respective lots. Thereafter such assessment shall be collected at the same time in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and interest, and the same procedure under foreclosure and sale in case of delinquency, as provided by law for ordinary municipal taxes. All laws and ordinances applicable to the levy, collection and enforcement of municipal taxes are made applicable to such special assessment. However, 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 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.~~

~~B. After the confirmation of such report of costs and assessment, a certified copy of the cost of abatement and related administrative expenses shall be recorded in the grantor/grantee index of the county recorder's office of Orange County, which shall have the force, effect and priority of a judgment lien. This method of collection is only available when service was effectuated in accordance with Section 18.76.100 of this chapter. The lien may also be foreclosed by a judicial or other sale in the manner and means provided in Government Code Section 38773.1 or otherwise provided for by law.~~

~~C. Instead of making the cost of abating a nuisance a lien upon the real property, the city may make the cost the personal obligation of the property owner, tenant or other person creating, causing, committing or maintaining the nuisance. In such a case, all of the procedures of this chapter shall apply except those specifically related to the assessment of the property.~~

~~§ 18.74.250. Discharge, release or satisfaction of lien.~~

~~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 Section~~

~~18.76.220 shall be recorded by the city clerk. The nuisance abatement lien and the release of the lien shall be indexed in the grantor/grantee index.~~

~~§ 18.74.260. Second or subsequent civil or criminal judgment.~~

~~Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated, except for conditions abated pursuant to Section 17980 of the Health and Safety Code, the court may order the owner to pay treble the costs of the abatement.~~

~~§ 18.74.270. Unlawful interference.~~

~~It is unlawful for any person to obstruct, impede or interfere with any officer, agent or employee of the city or with any person who owns or holds any estate or interest in any premises, or any portion thereof, upon which there is a nuisance which has been ordered to be abated, or with any person to whom such premises have been lawfully sold pursuant to the provisions of this chapter, when any such officer, agency employee, purchaser or person having an interest or estate in such premises is engaged in abating a nuisance or immediate hazard thereon, or in performing any necessary act preliminary to or incidental to such work, or authorized or directed pursuant thereto.~~

~~§ 18.74.280. Removal of tax benefit.~~

~~If, after declaration of a public nuisance, the manager or his/her designee finds the subject property to contain substandard housing and this housing is generating revenue income, he/she may, within the time period and in the manner specified, pursuant to Section 24436.5 of the Revenue and Taxation Code, file a notice of noncompliance with the taxpayer and later with the State Franchise Tax Board in an effort to eliminate tax deductions.~~

~~§ 18.74.290. Code enforcement fees.~~

~~A. There is imposed upon each person who receives a notice of violation, notice of correction, notice and order, demand letter, or letter of correction of any provision or ordinance codified in this code, adopted building codes, or state law, a reinspection fee, in such amounts as set forth from time to time by resolution of the city council, which may be addressed for each inspection or reinspection conducted when the particular violation for which an inspection or reinspection is scheduled is not fully abated or corrected as directed by, and within the time and manner as directed by, and within the time and manner specified in the notice or letter.~~

~~B. The fee shall not apply to the original inspection to document the violations and shall not apply to the first or second scheduled compliance inspection made after the issuance of a notice or letter, whether or not the correction has been made. If a notice or letter has been previously issued for the same violation and the property has been in compliance with the law for less than six months, then the violation shall be deemed a continuation of the original case and all inspections or reinspection including the first inspection for the repeated offense shall be charged a reinspection fee.~~

~~C. This fee is intended to compensate for administrative costs for unnecessary inspections, and not for enforcement of the law. Any reinspection fees imposed shall be separate and apart from any fines or penalties imposed for violation of the law, or costs incurred by the city for the abatement of a public nuisance. As used herein the term "administrative costs" is intended to include staff time involved in conducting inspections.~~

~~§ 18.74.300. Violation—Penalty.~~

~~Any violation of the provisions of this chapter shall be deemed to be an infraction, and punishable as such, notwithstanding the fact that at the discretion of the city attorney or the district attorney, the violation of any section of this chapter may be filed as a misdemeanor. The complaint charging such violation shall specify whether the violation is a misdemeanor or an infraction. Each day a violation of any provision of this chapter shall continue it shall be a new and separate violation.~~