

ORDINANCE NO. 1399

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, UPDATING CHAPTER 8.20 REGARDING PUBLIC NUISANCE ABATEMENT AND COST RECOVERY PROCEDURES

THE CITY COUNCIL OF THE CITY OF PALM DESERT DOES ORDAIN AS FOLLOWS:

SECTION 1. Amendment to Municipal Code. Palm Desert Municipal Code Chapter 8.20 Public Nuisances is amended to read as follows:

“Chapter 8.20 PUBLIC NUISANCES

- 8.20.010 Purpose.
- 8.20.015 Definitions.
- 8.20.020 Unlawful property nuisances.
- 8.20.030 Service requirements.
- 8.20.040 Procedure for inspections.
- 8.20.050 Notice to Abate.
- 8.20.060 Notice to Abate appeals and hearings.
- 8.20.070 Abatement by City.
- 8.20.080 Summary abatement.
- 8.20.090 Recordation of Notice of Violation.
- 8.20.100 City’s right to recover nuisance abatement costs.
- 8.20.110 Scope of recoverable abatement costs.
- 8.20.120 Initiation of cost recovery process.
- 8.20.130 Report of abatement costs appeal hearing procedures.
- 8.20.140 Initiation of collection process.
- 8.20.150 Collection of costs as lien.
- 8.20.160 Collection of costs as a special assessment.
- 8.20.170 Enforcement.

#### 8.20.010 Purpose.

The purpose and intent of this Chapter is to provide regulations that will promote the sound maintenance of property and enhance conditions of appearance, habitability, occupancy, and safety of all structures and premises in the City, and to afford due process of law to any person who is directly affected by this process. It is the policy of the City to ensure all applicable laws are followed by the City in performance of this Chapter, including respect for constitutional protections, due process, and equal protection.

In order to further the stated goal of the City of Palm Desert and to protect its citizens and their property from conditions which are offensive or annoying to the senses, detrimental to property values and community appearance, or hazardous or injurious to the health, safety, or welfare of the general public, the City Council has determined that this Chapter pertaining to nuisance abatement is necessary to effectively abate or prevent the development of such conditions in the City.

This Chapter may not be applied, construed, or given effect in a manner that imposes upon the City any duty towards persons or property or that creates a basis for civil liability for damages, except as otherwise imposed by law. The City reserves the right to address abatement of nuisance in a variety of ways at its sole discretion while balancing the use of limited City resources.

#### 8.20.015 Definitions.

For the purposes of this Chapter, unless otherwise apparent from the context, certain words or phrases used in this Chapter are defined as follows:

“Abatement costs” means all costs, fees, and expenses, incidental or otherwise, including attorney’s fees and City staff time charges, incurred by the City in investigating and abating a public nuisance.

“Enforcement official” means any City employee or agent designated by the City Manager with the authority and responsibility to enforce any provision of this Code, including an officer employed by the City and an officer providing services to the City under contract.

“Hearing officer” means an impartial individual designated and authorized by this Chapter to hear and review appeals of a person receiving a notice, decision, or order issued under this Chapter.

“Person” means any natural person or legal entity, including any firm, partnership, association, corporation, organization or entity of any kind, or such person’s authorized representative.

“Responsible party” means any of the following:

1. A person who causes a code violation to occur;
2. A person who maintains or allows a code violation to continue, by his or her action or failure to act; or

3. A person who is the owner of, and a person who is a tenant, lessee or sublessee with the current right of possession of real property where a property-related code violation occurs or exists.

4. A person whose agent, employee, or independent contractor causes a code violation by its action or failure to act.

5. A person who is the on-site manager of a business, or a person actually or apparently in charge of the business.

6. The parent or the legal guardian of any person under the age of eighteen years of age, who causes a code violation by his or her action or failure to act.

For purposes of this subsection "person" includes a natural person or legal entity, and the owners, corporate officers, trustees, and general partners of a legal entity. There shall be a legal presumption that the record owner of a parcel according to the county's latest equalized property tax assessment rolls and a tenant, lessee or sublessee of a parcel has notice of any code violation existing on the premises.

For the purposes of this chapter, there may be more than one responsible Person for a code violation.

#### 8.20.020 Unlawful property nuisances.

It is unlawful and a public nuisance for any person owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain the property or allow the property to be maintained, with any of the following conditions:

A. Buildings or structures which are abandoned, partially destroyed or left in an unreasonable state of partial construction. For purposes of this subsection, an "unreasonable state of partial construction" is where any partially constructed building or structure, the building permits for which have expired, or substantially detracts from the appearance of the immediate neighborhood;

B. Unpainted buildings or structures that have dry rot, whose materials are warped or infested with termites, or any building or structure whose paint has become excessively cracked, or whose paint has peeled or blistered;

C. Exterior walls, fences, driveways or sidewalks which are maintained in a condition of deterioration or disrepair and which are defective or unsightly;

D. Broken windows, damaged doors or gates which constitute a hazard and an invitation to trespassers or vagrants;

E. Construction equipment, machinery or building materials of any type or description parked or stored on the premises which is visible to the general public except during excavation, construction or demolition operations conducted pursuant to an active building or grading permit for the premises;

F. Land graded without an appropriate city permit which causes erosion, subsidence or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety, and welfare or to be injurious or potentially injurious to adjacent properties;

G. Any excavation, pit, well or hole which is open to the public, or unguarded, or abandoned, such that the excavation, pit, well or hole may be dangerous to life;

H. Any dust, sand, gravel, trash, or other refuse and waste matter or debris which is allowed to interfere with the reasonable enjoyment of property by neighbors, or detrimentally affects property values in surrounding neighborhoods or community and/or resulting from construction activities within the city;

I. All outdoor stairs, porches, hand railings, balconies and awnings not adequately maintained in a safe and structurally sound condition;

J. Any swimming pool, spa, pond, fountain or other body of water which is, may become, or which has become polluted, stagnant, a breeding place for insects or otherwise hazardous, odorous or unsightly;

K. A building or structure that is marked or defaced with spray paint, dye or like substance in a manner commonly described as graffiti;

L. Any violation of any Palm Desert Municipal Code section, any violation of a Riverside County Code of Ordinances section adopted by the City, or any violation of the uniform codes adopted by the City including, but not limited to, the Uniform Building Code, Code for Abatement of Dangerous Buildings, Plumbing Code, Electrical Code, Mechanical Code, Swimming Pool Code, Fire Code, Health Code or Uniform Housing Code, as the same currently exist or as they may be hereinafter enacted or amended;

M. Premises so maintained as to cause the accumulation of polluted or stagnant water when such water causes a hazardous or unhealthy condition, breeding areas for insects, or erosion of foundation walls or soil;

N. Maintenance of property so out of harmony or conformity with the maintenance standards of adjacent properties as to interfere with the reasonable enjoyment of property by neighbors, and depreciate the aesthetic and property values of surrounding property;

O. The intentional outdoor burning of any material, structure, matter or thing, unless authorized by the city fire department or authorized representative by issuance of a permit to do so. There shall be no authorized burning on Friday, Saturday, Sunday or Government Code holidays;

P. To leave or permit any abandoned, unattended or discarded icebox, refrigerator, freezer or other container which has an airtight door or lid with a snap lock or other device which may not be released from the inside, to be left outside of any building or structure at any time;

Q. Stockpiling of fill dirt or other material without a permit;

R. The substantial lack of maintenance of grounds, landscape, shrubs, plants or vegetation within the city which are viewable by the general public from a public right-of-way or viewable from neighboring properties such that the property values of surrounding properties are reduced or such that the aesthetics of surrounding properties are detrimentally affected;

S. Landfills which contain organic materials, except as permitted by the chief building officer or director of public works;

T. The existence of the following on property such that the health, safety or general welfare is detrimentally affected or in such a manner that a public nuisance or fire hazard is created:

1. Lumber, junk, trash, debris, refuse, waste matter or other salvage materials visible from a public right-of-way or adjoining property,
2. Attractive nuisances dangerous to children, including abandoned, broken or neglected equipment and machinery, hazardous pools, and excavations,
3. Abandoned or discarded furniture, appliances, play equipment or other household fixtures or other equipment, stored so as to be visible from public right-of-way or from adjoining property,
4. Clotheslines in front yard areas or side yard areas of corner lots, clothes hung to dry on walls, fences, trees, bushes or inside opened garage or carport areas where such is viewable from the public right-of-way,
5. Abandoned, wrecked or inoperative vehicles of all types, and parts thereof,
6. Materials or items of any type stored on roof tops when visible from the public right-of-way,
7. Garbage or trash cans, containers or plastic bags stored in front or side yards, visible from the public right-of-way, or which cause offensive odors,
8. Gasoline, oil, grease, water or other materials which flow onto the public right-of-way, or the excessive accumulation of refuse and waste, grease and oil on any paved surfaces, buildings, structures, walls or fences,
9. Any tree, shrubbery or plant permitted to grow onto or over the public right-of-way such that pedestrian or vehicular traffic is impaired, or such that vehicle operators cannot clearly observe safety signs and signals,
10. Dead, decayed, diseased or hazardous trees, hedges, weeds, shrubs and overgrown vegetation, cultivated or uncultivated, which is likely to harbor rats, vermin or constitute an unsightly appearance, nuisance, fire hazard, or that is detrimental to neighboring properties or property values,

11. Refuse and waste matter, which by reason of its location or character, is unsightly and interferes with the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood, or which would materially hamper or interfere with the prevention or suppression of fire upon the premises. "Refuse and waste matter" means unused or discarded matter and material having no substantial market value and which consists of rubbish, garbage, weeds, palm fronds, leaves, grass, refuse, debris and matter of any kind, including but not limited to rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of metal (ferrous or nonferrous), furniture or parts thereof, inoperative vehicles or parts thereof, trimmings, cans, bottles, barrels and unapproved fill dirt or similar matter.

U. The existence of the following activities within a commercial or industrial zoning district:

1. Excessive noise levels beyond acceptable limits defined in Chapter 9.24.
2. Noxious odors or toxic fumes.
3. Vibrations or disturbances that disrupt the nearby properties.
4. Unauthorized outdoor storage or disposal of hazardous materials.
5. Excessive light pollution that negatively impacts neighboring properties.
6. Activities resulting in significant traffic congestion beyond normal capacity.
7. Any other activities or operations deemed by an enforcement official as causing a public nuisance.

Upon a finding of any nuisance in this subsection (U), an enforcement official may regulate or enjoin the hours of operation or the activities of businesses within the city commercial and industrial districts.

#### 8.20.030 Service requirements.

A. Except where this Chapter prescribes another procedure or the parties otherwise agree to an alternate means, any notice or document required to be served under this Chapter must be served by personal service or first-class mail.

B. Service is deemed effective on the date it is personally delivered or deposited in the mail.

C. Failure of any person to receive a document properly served under this Chapter does not affect the validity of the notice or document, service, or any action or proceeding under this Chapter.

D. The notices and documents that are authorized by this Chapter may be combined in the discretion of the City.

8.20.040 Procedure for inspections.

A. Whenever it is appropriate to make an inspection to enforce any of the provisions of this Chapter, or whenever an enforcement official has reasonable cause to believe that there exists in any building or on any property any public nuisances, the enforcement official may request entry to such building or property at all reasonable times to inspect the same and ascertain whether the provisions of this code or applicable state codes are being obeyed and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If such building or property is occupied, the enforcement official shall first present proper credentials or identification and request entry. If the building or property is unoccupied, the enforcement official shall make a reasonable effort to locate the owner or other persons having charge or control of the building or property and request entry. If entry is refused, the enforcement official shall have recourse to every remedy provided to secure entry, including, but not limited to, securing a court ordered inspection warrant pursuant to the procedures provided in state law, including California Civil Procedure Section 1822.50 *et seq.*, as it may be amended from time to time.

B. When an enforcement official shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant of the building or property shall fail or neglect, after proper request is made as provided in this section, to promptly permit entry therein by the enforcement official for the purpose of inspection and examination pursuant to this Chapter.

8.20.050 Notice to Abate.

A. Whenever an enforcement official determines that a nuisance, as designated in Section 8.20.030, is occurring or exists, he or she may issue a written order to any responsible party ("Notice to Abate").

B. A Notice to Abate issued pursuant to this section must contain the following information:

1. The address of the real property on which the alleged nuisance condition exists;
2. A description of the alleged nuisance conditions and the code section(s) prohibiting the alleged nuisance condition;
3. A brief description of the required corrective actions;
4. A reasonable compliance period in which to complete the nuisance abatement actions (with all required City approvals, permits and inspections, when applicable);

5. A statement that the City may record a Notice of Violation with the Riverside County Recorder's Office against the premises; and

6. The period and manner in which a responsible party may contest the Notice to Abate as set forth in Section 8.20.070.

C. Whenever the enforcement official intends to abate a public nuisance by demolition of a building or structure if the responsible party fails to comply, then the City must comply with the following additional requirements:

1. The Notice to Abate must contain a statement that the City intends to abate the nuisance with City personnel or contractors by demolition of a building or structure if the nuisance conditions are not repaired, rehabilitated, removed, terminated, or demolished within the compliance deadline set forth in the Notice to Abate; and

2. The City must serve the Notice to Abate on all secured lienholders of record with the Riverside County Recorder's Office.

D. Any Notice to Abate issued under this section must be served in the manner required under Section 8.20.040.

E. The provisions of this section do not apply in cases involving emergency or summary abatement under Section 8.20.090.

#### 8.20.060 Notice to Abate appeals and hearings.

A. Any person issued a Notice to Abate has a right to appeal the City's nuisance determination in accordance with this section. An appeal must be filed within fifteen (15) calendar days following the date of service of the Notice to Abate. A written notice of appeal must contain the following information: (i) the name and contact information of the appellant, and (ii) the grounds for appeal in sufficient detail to enable the hearing officer and City to understand the nature of the controversy. The failure of any person who has been served with a Notice to Abate to timely and properly file an appeal is a failure to exhaust administrative remedies.

B. The City Manager may select the hearing officer. The hearing officer must be selected in a manner that avoids the potential for pecuniary or other bias.

C. If a timely and proper appeal is filed, then the City Clerk must schedule the hearing no sooner than fifteen (15) calendar days and no later than sixty (60) calendar days from receipt of the notice of appeal, unless the parties waive such time limits. The failure to hold the hearing within this time period does not invalidate any action of the hearing officer. The City Clerk must notify the appellant in writing of the date, time, and location of the hearing at least ten (10) calendar days before the date of the scheduled hearing. The notice of hearing must be served in accordance with Section 8.20.040.

D. The City bears the burden of proof to establish a nuisance exists by a preponderance of evidence. The issuance of a Notice to Abate is prima facie evidence of



the existence of a violation. The scope of the appeal is limited to whether any nuisance condition identified in the Notice to Abate exists.

E. All parties have the right to present evidence and witnesses. The formal rules of evidence and discovery do not apply. The rules of privilege are effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. Oral evidence may be taken only on oath or affirmation. The appellant and respondent may represent themselves or be represented by anyone of their choice. No party has the right to cross-examine any other party or witness except for good cause shown to the satisfaction of the hearing officer. The appellant may bring an interpreter to the hearing at his or her sole expense. The City may, at its discretion, record the hearing by stenographer, court reporter, audio recording, or video recording.

F. The hearing officer's decision must be in writing, set forth the hearing officer's findings of fact and conclusions of law, order the abatement of any confirmed nuisance conditions within a deadline determined by the hearing officer to be reasonable, and include a statement that if the nuisance is not abated then it may be abated by the City. If the hearing officer determines that each and every nuisance condition described in the Notice to Abate is nonexistent, the Notice to Abate is deemed cancelled. The hearing officer must render a decision within fifteen (15) calendar days following the conclusion of the hearing. Failure of the hearing officer to render a decision within this time period does not invalidate any action of the hearing officer or automatically grant the appeal. The hearing officer's decision must be served in accordance with Section 8.20.040. The hearing officer's decision is the final administrative decision of the City regarding the Notice to Abate and is not subject to appeal to the City Council or any other board or commission of the City. The hearing officer's decision is final and effective on the date of service of the decision. The decision must contain the following statement: "The decision of the hearing officer is final and binding. Judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure section 1094.6 *et seq.*" Failure to seek timely judicial review pursuant to California Code of Civil Procedure section 1094.5 *et seq.* means all objections to the hearing officer's decision are waived.

#### 8.20.070 Abatement by City.

If a nuisance is not completely abated within the time prescribed by the Notice to Abate or, if appealed, in the hearing officer's decision, the City is authorized to abate a public nuisance by any other method authorized by law, such abatement may be performed through inspections and directives to remediate the violation or legal proceedings designed to secure enforcement of the city's municipal code or the city may commence the abatement work itself. The City and its agents are expressly authorized to enter the premises for such purpose. Except in cases involving an imminent hazard, entry onto any real property to abate a public nuisance must be pursuant to a warrant issued by a court of competent jurisdiction.

#### 8.20.080 Summary abatement.

A. If, in the reasonable opinion of the enforcement official, there exists a condition that constitutes an imminent threat of harm to public health or safety, or imminent hazard to real or personal property, the enforcement official may cause the conditions to be summarily abated in accordance with the following procedure. When determining whether a hazard is sufficiently imminent to warrant emergency abatement, the enforcement official may consider whether there is insufficient time to follow the administrative process for non-emergency abatements described in this Chapter.

B. If time permits, the enforcement official may attempt to contact the owner or occupant of the property to notify the responsible party that the condition must be immediately abated to eliminate the imminent hazard.

C. If the enforcement official is unable to make contact, or if after contact with the owner or occupant does not take action within the time prescribed by the enforcement official, he or she is authorized to take all actions necessary to eliminate or mitigate the hazardous condition, utilizing the City's own forces or private contractors.

D. Nothing in this Section prevents public safety officers from taking actions in emergency situations as they may deem necessary or appropriate in order to protect the public health, safety, and general welfare.

E. As soon as reasonably possible under the circumstances, following any summary abatement action by the City to abate an immediate hazard, the City must provide each responsible party with a "Notice of Summary Abatement." The Notice of Summary Abatement must be served in accordance with Section 8.20.040 and contain the following information:

1. A brief description of the condition and reasons why it constituted an imminent threat or hazard;
2. A brief description of the law prohibiting or pertaining to the imminent threat or hazard; and
3. A brief description of the actions the City took to abate the imminent threat or hazard.

F. The City's determination that a condition constituted an imminent threat or hazard may be appealed as set forth in Section 8.20.070.

G. The enforcement official must keep an itemized account of the costs incurred by the City in abating the public nuisance. The City is entitled to recover all abatement costs incurred in the abatement of an imminent threat or hazard in accordance with the procedures set forth in this Chapter.

#### 8.20.090 Recordation of Notice of Violation.

A. If a nuisance is not completely abated as determined by the City within the time prescribed by the Notice to Abate or, if appealed, in the hearing officer's decision, the City may record a Notice of Violation with the Riverside County Recorder's Office against the premises.

B. The City must record a Rescission of Notice of Violation with the Riverside County Recorder's Office within fourteen (14) business days of its determination that a violation or a public nuisance has been fully abated or corrected.

C. Upon recordation, the City must serve a copy of the recorded Notice of Violation or Rescission of Notice of Violation on each person having an ownership interest in the property in accordance with 8.20.040.

#### 8.20.100 City's right to recover nuisance abatement costs.

Whenever the City incurs abatement costs in abating a public nuisance or seeking to abate a code violation or public nuisance, the City is entitled to recover the abatement costs related to those code enforcement efforts in accordance with the procedure set forth in this Chapter. The City may commence cost recovery proceedings at any time.

#### 8.20.110 Scope of recoverable abatement costs.

Recoverable abatement costs include all costs, fees, and expenses, incidental or otherwise, including attorney's fees, incurred by the City in investigating and abating a public nuisance.

#### 8.20.120 Initiation of cost recovery process.

A. To initiate the process for recovery of abatement costs, the City must serve an itemized report of abatement costs on the responsible party identifying all abatement costs and demanding payment. The report must provide notice that any unpaid amounts may become a lien and special assessment against the property unless the City receives full and timely payment. The right to appeal and appeal procedures must be specified in the report.

B. The report of abatement costs must be served in accordance with Section 8.20.040. If the code violation or public nuisance is related to real property, then the report of abatement costs must be served upon each person with a recorded interest in the subject property.

C. Timely, full payment of the abatement costs must be remitted to the City within forty-five (45) calendar days following the date of service of the report of abatement costs.

D. Any person issued a report of abatement costs has a right to appeal the report of abatement costs in accordance with the procedures set forth in Section 8.20.070 (A).

#### 8.20.130 Report of abatement costs appeal hearing procedures.

A. Report of abatement costs appeal hearings and hearing officer determinations shall proceed in accordance with the procedures set forth in Section 8.20.070, except as otherwise provided in this Section.

B. The scope of the appeal is limited to the appropriateness of the amount of the abatement costs, and the hearing officer's decision may confirm, discharge, or modify the amount of costs.

C. The hearing officer's decision must be in writing, set forth the hearing officer's findings of fact and conclusions of law, and demand payment of any confirmed abatement costs within thirty (30) calendar days following the date of service of the hearing officer's decision. The hearing officer's decision is the final administrative decision of the City regarding the abatement costs.

D. Any confirmed abatement costs must be tendered to the City within 30 calendar days following the date of service of the hearing officer's decision.

#### 8.20.140 Initiation of collection process.

Upon expiration of forty-five (45) calendar days after the report of abatement costs, or thirty (30) calendar days after the hearing officer's decision in the event of an appeal, if the full amount of the final abatement costs has not been paid, any unpaid costs may be collected by the City in accordance with Sections 8.20.160 through 8.20.180.

#### 8.20.150 Collection of costs as lien.

A. Pursuant to Government Code section 38773.1, abatement costs may be levied by the City as a lien against the property on which the nuisance was abated. If the abatement costs have not been paid in full within the time required by this Chapter, the City may record a lien against the nuisance property for any unpaid amount. Before recording a lien, the City must serve each person with a recorded interest in the subject property with notice of the lien. In addition, any owner of record must be served in accordance with Government Code section 38773.1.

B. The nuisance abatement lien must be recorded in the office of the County Recorder of Riverside County, California; and from the date of recording, the nuisance abatement lien will have the force, effect, and priority of a judgment lien, and will continue in effect until discharged by the City.

C. The lien must specify the City as the agency for whose benefit the lien is established, the amount of the lien, the date of any abatement order (including a Notice to Abate and/or hearing officer's decision), the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

D. The nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment. All costs and expenses relating to the processing, recording and enforcement of the abatement lien, including recording fees, noticing costs and attorney fees may be added to the amount of the lien and will be secured thereby.

E. Upon payment or other satisfaction of the abatement lien, a notice of release of lien must be prepared and recorded by the City forthwith.

#### 8.20.160 Collection of costs as a special assessment.

A. Pursuant to Government Code section 38773.5, abatement costs may be levied by the City as a special assessment against the property on which the nuisance was abated. If the abatement costs have not been paid in full within the time required by this Chapter, the City may levy a special assessment against the real property on which the violation occurred. The City must serve each person with a recorded interest in the subject property with notice of the imposition of the special assessment. In addition, any owner of record must be served in accordance with Government Code section 38773.5. The notice must specify that the property may be sold after three years by the County Tax Collector for unpaid delinquent assessments.

B. The notice of special assessment is entitled to recordation with the Riverside County Recorder's Office. A copy of the notice of special assessment must be transmitted to the County Tax Assessor and Tax Collector, whereupon the Tax Assessor and Tax Collector must add the amount of the special assessment on the next regular bill for real estate taxes levied against the property identified in the notice of special assessment. Thereafter, the special assessment will be collected at the same time and in the same manner as ordinary municipal taxes are collected, and will be subject to the same penalties and the same procedure and sale in the case of delinquency as provided by law for ordinary municipal taxes. After recordation, the special assessment may be foreclosed on as a lien in the manner and means provided by law.

#### 8.20.170 Enforcement.

A. It is unlawful and declared a public nuisance for any person to violate any provision of this Chapter. It is unlawful and declared a public nuisance for any person to violate any hearing officer order or decision made under this Chapter.

B. Any person who violates any provision of this Chapter is guilty of a misdemeanor punishable by a fine of up to \$1,000, or by imprisonment in the County jail not exceeding six months, or by both, except the City Attorney or enforcement official may prosecute a violation of this Chapter as an infraction, in his or her discretion.

C. Upon entry of a second or subsequent civil or criminal judgment within a two-year period against an owner of a property responsible for a public nuisance and subject to this Chapter, the city is authorized to request that the court order the owner to pay treble the costs of abatement, except if any such judgment relates to an abatement of conditions pursuant to California Health and Safety Code § 17980.

D. Violation of this Chapter may be punished by issuance of an administrative citation fine, as set forth in Chapter 8.81 of this Code.

E. In addition to any other remedies set forth in this Code or otherwise provided by law, the City Attorney is authorized to bring a civil or equitable action, at his or her discretion, to seek the abatement of any violation of this Chapter, to recover the City's abatement costs, or to enforce any provision of this Chapter.

F. The prevailing party in any action, administrative proceeding, or special proceeding to abate a public nuisance, or in any appeal or other judicial action arising therefrom, shall be entitled to recover its reasonable attorneys' fees. Recovery of

attorneys' fees shall be limited to those actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding. In addition to the award of attorneys' fees pursuant to this subsection, the prevailing party in any action, administrative proceeding, or special proceeding to abate a public nuisance, or in any appeal or other judicial action arising therefrom, shall be entitled to recover its reasonable attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment.

G. Each and every day a violation is maintained, caused, aided, abetted, concealed, suffered, or permitted is a separate offense.

H. The regulations, remedies, procedures, and penalties provided by this Chapter are cumulative to each other and to any other available under City, State, or federal law."

SECTION 2. Severability. If any section, subsection, clause or phrase of this Ordinance or any part thereof is for any reason held to be invalid, unconstitutional, or unenforceable by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the Ordinance. The City Council declares that it would have passed each section, subsection, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase would be declared invalid, unconstitutional or unenforceable.

SECTION 3. CEQA. The City Council hereby finds and determines that this Ordinance is exempt from CEQA pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that the Ordinance would not have the potential or possibility for causing a significant effect on the environment. Specifically, the proposed changes to the Municipal Code are primarily technical and administrative in nature. The Ordinance would update the public nuisance determination, appeal, abatement, and cost recovery provisions. No construction is proposed and the amendments do not constitute any project approvals. In reviewing the Ordinance the City Council has exercised its independent judgment and has reviewed and considered the Ordinance in light of all testimony received, both oral and written. Therefore, based upon the entire administrative record, the City Council hereby determines that no further environmental review is required for the Ordinance.

SECTION 4. Publication. The City Clerk of the City of Palm Desert, California, is hereby directed to publish this Ordinance in the Desert Sun, a newspaper of general circulation, published and circulated in the City of Palm Desert, California, and shall be in full force and effective thirty (30) days after its adoption.

ADOPTED ON \_\_\_\_\_ 20\_\_.

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KATHLEEN KELLY

MAYOR

ATTEST:

\_\_\_\_\_  
ANTHONY J. MEJIA  
CITY CLERK

I, Anthony J. Mejia, City Clerk of the City of Palm Desert, California, do hereby certify that Ordinance No. \_\_\_\_ is a full, true, and correct copy, and was introduced at a regular meeting of the Palm Desert City Council on \_\_\_\_\_, 20\_\_\_\_, and adopted at a regular meeting of the City Council held on \_\_\_\_\_, 20\_\_\_\_, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:
- RECUSED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Desert, California, on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
ANTHONY J. MEJIA  
CITY CLERK