

**Chapter 16.176**

**ENFORCEMENT OF THE DEVELOPMENT TITLE**

**Sections:**

- 16.176.010 Purpose.**
- 16.176.020 Enforcement Official and Inspections.**
- 16.176.030 Violations.**
- 16.176.040 Enforcement Procedures.**
- 16.176.050 Recovery of Enforcement Costs.**
- 16.176.060 Disposition of Fines and Fees.**

**16.176.010 Purpose.**

The purpose of this Chapter is to set forth provisions for the enforcement of this Title. (Ord. 606, 1999; Ord. 758, §2 (part), 2007)

**16.176.020 Enforcement Official and Inspections.**

Unless otherwise specified, the Director or his or her designee, is the Enforcement Official. The Enforcement Official is responsible for enforcing this Title. The Enforcement Official may, upon presentation of proper credentials, enter upon private or public property to obtain information relative to reported violations of this Title. Enforcement shall include, but not be limited to, investigating any reported violations of this title, determining if a violation exists, informing all responsible persons of violations, and ensuring that all violations are corrected in a timely manner. (Ord. 606, 1999; Ord. 758, §2 (part), 2007)

**16.176.030 Violations.**

It is a violation of this Title for a property owner or other person having control of a property to maintain or permit a nuisance on his property. Any use of land, structure, or subdivision which is in violation of this Title or in violation of permits

approved pursuant to the provisions of this Title, shall constitute a public nuisance and, if not made to conform, shall be subject to the enforcement procedures outlined in Section 16.176.040. In the alternative, the Enforcement Official may seek to correct violations of this Title under the provisions of Chapter 1.08 or 1.10 of this Title. (Ord. 606, 1999; Ord. 758, §2 (part), 2007)

**16.176.040 Enforcement Procedures.**

Unless otherwise specified, the Enforcement Official shall follow these procedures in the investigation and enforcement of violations of this Title:

A. Notice to Comply. When it is determined by the Enforcement Official that a violation of this Title exists, written notification of the nature of the violation shall be given by the Enforcement Official, by certified or registered mail, to the owner of the real property involved and anyone known to be in possession of the parcel. If no address of the owner appears on the last equalized assessment roll of the County, or is known to the Enforcement Official, then a copy of the notice shall be mailed to the owner at the address of the subject property. The failure of any person to receive notice shall not affect in any manner the validity of any proceedings taken under this Chapter. Written notice may be personally served by the Enforcement Official. The Enforcement Official personally serving the written notice must then execute a Declaration of Personal Service stating the date, time and place where the written notice was served, and stating the name of the person served. The notice must state that the owner must abate the condition which is a violation within thirty (30) days from notification. Except where shown to be otherwise, notification is presumed to have occurred on the day after the notice was mailed. The notice shall advise the recipient of the right to appeal, within thirty (30) days of notification, pursuant to Subsection B of this Section. If the Enforcement Official gives verbal

notice of a violation to the owner or violator, the Enforcement Official shall send the violator, and owner if someone other than the violator, written notice to comply via regular United States mail. The notice shall confirm the date given verbally for bringing the property into compliance. The Enforcement Official shall then execute a Declaration of Notification, declaring that he or she personally gave verbal notice of the violation to the owner or violator and mailed a written notice to comply. The declaration shall state the date, time, and place where the verbal notice was given. The time for complying will be calculated from the date that verbal notice was given. The Enforcement Official may reduce the thirty (30) days notice time if he or she determines that an imminent health, safety, or fire hazard exists.

**B. Right to Appeal.**

1. If the owner or anyone in possession objects to the enforcement agency's finding of a violation, the owner or person in possession may, within thirty (30) days of notification of the violation, file a written request for an office hearing to attempt to resolve the matter. The office hearing will be conducted by the Director or his/her designee. If the matter is resolved with a determination that a violation did occur or continues to occur on the subject property, the cost of the office hearing shall be added to the expenses incurred by the City in abating the nuisance and shall be billed to the owner as part of the Statement of Expense.

2. If the matter is not resolved at the office hearing, the person who filed the written request for an office hearing may file a written request to have the matter heard by the City Council. The written request for a hearing before the City Council must be filed within thirty (30) days of receipt of the decision of the designated hearing official. Receipt will be presumed to have occurred five (5) days after the decision was mailed. If the matter is resolved in favor of the City and against the owner, the costs incurred by the City in holding the office hearing

and the hearing before the City Council shall be added to the other costs of abatement and included in the Statement of Expense to be billed to the owner.

**C. Office Hearing.**

1. Upon timely receipt of a written request for an office hearing, the designated hearing official will set the matter for hearing at least five (5) days, but not later than twenty-one (21) days, from the date of receipt of the request for an office hearing. The designated hearing official will send written notice of the date, time, and place of the hearing to the person requesting the hearing, the owner if the owner did not request the hearing, the Enforcement Official, and any other party who has requested, in writing, such notification.

2. At the office hearing, the designated hearing official may sustain, modify, or reverse the decision of the Enforcement Official. The designated hearing official shall render a decision within ten (10) days of the hearing, unless the person requesting the hearing concurs with a longer period. Written notice of the decision of the designated hearing official shall be mailed, by registered or certified mail, to the person requesting the hearing, and the owner if the owner is not the person requesting the hearing.

**D. City Council Hearing.**

1. After timely receipt of a written request to have the matter heard by the City Council, the Clerk will set the matter for hearing at least ten (10) days, but not later than sixty (60) days, from the date of receipt of the request for hearing. The City Clerk will send written notice of the hearing to the person requesting the hearing, the Enforcement Official, and any other party who has requested, in writing, to receive such notice.

2. After hearing the matter, the City Council may sustain, modify, or reverse the decision of the designated hearing official. The City Council shall render its decision within ten (10) days of the hearing unless the person requesting the hearing concurs with a longer period. Notice of Decision

shall be mailed, by registered or certified mail, to the

16.176.040

person requesting the hearing, the owner if the owner did not request the hearing, and the Enforcement Official.

E. Summary Abatement. If the condition which is a violation has not been abated within thirty (30) days of notification, and if the owner or person in possession has not requested an office hearing, the Enforcement Official may cause the abatement of the nuisance.

F. Infraction. Responsible persons who fail to correct violations within the specified period shall be guilty of an infraction, and each successive day or portion thereof in violation shall constitute a new and separate offense. The Director may extend the thirty (30) day period if he or she determines that reasonable progress is being made to correct the violation. The first three (3) violations of the same section of this Title on the same property shall be considered infractions and shall be punished as follows:

1. For the 1st violation, a fine of one hundred (\$100.00) dollars.
2. For the 2nd violation, a fine of two hundred fifty (\$250.00) dollars.
3. For the 3rd violation, a fine of five hundred (\$500.00) dollars.

G. Misdemeanor. If the number of violations of the same section of this Title on the same property exceeds three (3), the responsible person(s) shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than one thousand (\$1,000.00) dollars, or by imprisonment in the County jail for a term of not more than six (6) months, or by both such fine and imprisonment.

H. Action by City Attorney. Nothing in Subsections A through G of this Section shall prevent the City Attorney from commencing a misdemeanor action pursuant to this Title. (Ord. 606, 1999; Ord. 758, §2 (part), 2007)

**16.176.050 Recovery of Enforcement Costs.**

The City shall be reimbursed for all time, services and materials needed to abate a violation of this Title.

A. Reimbursement. The hourly rate used to compute time spent to investigate, document, and abate a violation shall be the actual costs. The City is entitled to recover all costs associated with voluntary and involuntary abatement of violations.

B. Statement of Expense. A Statement of Expense shall be developed by the Enforcement Official. The Statement of Expense shall be an itemized statement explaining all costs incurred by the City in abating the violation. The Statement of Expense shall be mailed to the property owner with a demand for payment within thirty (30) days of the date the statement was mailed. The Statement of Expense shall advise the owner that he may request, in writing, an office hearing to appeal the costs set forth in the Statement of Expense. Such written request for an office hearing must be received by the Planning Department within thirty (30) days of the date the statement was mailed.

C. Office Hearing. The office hearing will be conducted by the Director or his/her designee. The designated hearing official shall give written notice of the date, time, and place of the hearing on the Statement of Expense. The hearing notice shall be mailed by registered or certified mail to the owner. At the hearing, the designated hearing official may approve, modify, or reject the Statement of Expense. Whether or not there was a violation of this Title shall not be an issue at the hearing. Only the amount of costs due to the City shall be an issue. The hearing official's written decision shall be mailed, by registered or certified mail, to the owner, within five (5) days of the hearing. The written decision shall advise the owner that he must pay the amount determined by the hearing official to be due within fifteen (15) days from the date the written decision was mailed. The written decision shall also advise

the owner that he may appeal the decision to the City Council by filing a written request for hearing with the City Clerk within fifteen (15) days of the date that the decision was mailed.

16.176.050

D. City Council Resolution. If the owner does not pay the amount due or request an office hearing within the time specified, or if the owner does not pay the amount due after an office hearing or request a hearing before the City Council, the Planning Department shall request placement on the consent of the City Council a resolution approving the amount due under the Statement of Expense or under the written decision of the hearing official. The resolution shall direct the San Joaquin County Auditor to cause a special tax to be assessed on the property tax of the subject property. Said assessment shall have the same priority as other taxes. A notice of release shall not be recorded with the office of the County Recorder until all assessments for the cost of abatement are paid. When the assessment in question is collected, it shall be credited to the planning department.

E. Appeal to City Council.

1. If the owner does not agree with the decision of the hearing official, he/she may file a written request to have the matter heard before the City Council. Such written request must be filed with the City Clerk within fifteen (15) days from the date the decision of the hearing official was mailed. At the hearing, the only issue shall be the amount of costs due to the City. The existence or nonexistence of a violation shall not be an issue. The City

Council may, by resolution approve, modify, or reject the Statement of Expense. Any amount determined by the City Council to be due under the Statement of Expense must be paid within fifteen (15) days from the date a copy of the Council's resolution is mailed to the owner.

2. If complete payment is received within the time specified, the claim for reimbursement shall be satisfied. However, if complete payment is not made within the time specified, a copy of the resolution, and the Statement of Expense, shall be forwarded to the Auditor of San Joaquin County. The Auditor shall cause a special tax to be assessed on the property tax of the affected parcel. Said assessment shall have the same priority as other taxes. A Notice of Release shall not be recorded in the office of the County Recorder until all assessments for the cost of abatement are paid. When the assessment in question is collected, it shall be credited to the Planning Department. (Ord. 606, 1999; Ord. 758, §2 (part), 2007)

**16.176.060 Disposition of Fines and Fees.**

All fines and fees imposed by the courts and collected under the provisions of this Chapter shall be paid into the City treasury, to the credit of the General Fund. (Ord. 606, 1999)