

**ORDINANCE NO. 718**

**AN ORDINANCE OF THE CITY OF ROHNERT PARK, CALIFORNIA,  
AMENDING CHAPTER 1.24 of THE ROHNERT PARK MUNICIPAL CODE  
(NUISANCE ABATEMENT)**

WHEREAS, the City of Rohnert Park's ("City's") existing nuisance abatement ordinance is located at Chapter 1.24 of the City's Municipal Code; and

WHEREAS, the City wishes to enumerate more completely the activities that will constitute nuisances subject to abatement; and

WHEREAS, the City wishes to add provisions for administrative citations; and

WHEREAS, the City wishes to provide for on-site residential managers in some instances; and

WHEREAS, the City wishes to adopt provisions permitting summary abatement of nuisances and cost recovery for nuisance abatement; and

WHEREAS, a duly-noticed public hearing regarding the proposed amendments to Chapter 1.24 of the Rohnert Park Municipal Code was held by the City Council on November 23, 2004; and

WHEREAS, the proposed amendments to Chapter 1.24 will be beneficial to and not detrimental to the public health, safety, and welfare, in that they would be consistent with the overall intent of the City to promote the health, safety, economic, aesthetic, and general welfare of the citizens of the City and to protect neighborhoods against nuisances, blight, and deterioration; and

WHEREAS, a duly noticed public hearing regarding this amendment to Chapter 1.24 was held by the City Council on November 23, 2004; and

WHEREAS, the amended Chapter 1.24 will be beneficial to and not detrimental to the public health, safety, and welfare, in that it will be consistent with the overall intent of the city to promote the health, safety, economic, aesthetic, and general welfare of the citizens of the City and will protect neighborhoods against nuisances, blight, and deterioration;

NOW THEREFORE, the City Council of the City of Rohnert Park does ordain as follows:

Section 1. Chapter 1.24 of the Rohnert Park Municipal Code is amended to read as follows:

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1.24.010 Purpose and Intent.

The City of Rohnert Park has a history and reputation for well-kept properties; and property values and the general welfare of the community are founded, in part, upon the appearance and maintenance of private properties. The purpose of this chapter is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the City, and to protect neighborhoods against nuisances, blight and deterioration by establishing requirements for all building exteriors, whether residential or non-residential, or structures of whatever kind, and establishing requirements for the maintenance of all land, whether improved or vacant. Owners and occupants of some properties within the City permit conditions to exist which are below the minimum conditions required by this ordinance and therefore injurious and detrimental to the public health, safety, and welfare of residents of the City and contribute substantially and increasingly to the deterioration of residential neighborhoods and commercial areas. Abatement of conditions less than those required by this ordinance will promote the health, safety, and welfare of the residents of the City because maximum use and enjoyment of property in close

proximity to other property depends upon maintenance of both properties. This chapter shall apply to all buildings, structures and land within the City without regard to use, date of construction or alterations.

1.24.020 Definitions Used Within This Chapter.

- A. "Building" and "structure" mean and include, but are not limited to, any house, garage, carport, duplex, apartment, condominium, mobile home, storage shed, any commercial establishment, warehouse, fence, wall, or other structure affixed to or upon real property, or any assemblage of materials on private property of another for the purpose of human habitation.
- B. "City" means the area within the territorial city limits of the City of Rohnert Park and all territory outside the City over which the City has jurisdiction by virtue of any constitutional or charter provisions, or any ordinance or law.
- C. "City Manager" means the City Manager, the Assistant City Manager, or any person or persons designated by the City Manager to act in his or her stead in connection with this chapter.
- D. "Enforcement Officer" means the City Manager, or any person designated by the City Manager to enforce the provisions of this Code. Such employees may be employed in any City department.
- E. "Hearing Officer" means the City Manager, or any person designated by the City Manager to preside over administrative enforcement hearings held pursuant to this chapter. However, such employee shall not preside over any hearing in which such employee also serves as enforcement officer.
- F. "Immediate hazard or threat" means the declaration of an intention or the ability to cause harm, danger or risk to the safety of persons or property.
- G. "Inoperative Vehicle" means any vehicle that cannot operate safely or legally upon the street or highways of the state and includes any vehicle that does not have current valid registration. With respect to a motor vehicle, in addition to the foregoing, inoperative vehicle means a vehicle that is not then capable of self-propulsion.
- H. "Owner" and "property owner" as used in this chapter, and unless otherwise required by the context, shall mean the owner or owners of record of real property as shown on the latest equalized assessment roll of Sonoma County, or as otherwise known to the planning director or such other city official as may be designated by the city manager by virtue of more recent and reliable information.
- I. "Person" means any natural person, firm, association, business, or organization, corporation, partnership, trust, estate, or any other legal entity recognized by law as the subject of legal rights or duties.

- J. "Property" means any parcel of land which is identified in the secured roll of the Sonoma County Assessor, all residential, commercial and other real property, including but not limited to front yards, side yards, backyards, driveways, walkways, alleys, sidewalks, and shall include any building or structure whether fixed or moveable, located on such property.
- K. "Property Owner" means the record owner of real property as listed in the most current equalized assessment roll as maintained by the Sonoma County Assessor.
- L. "Public Nuisance" means any act which is declared to be a nuisance by the provisions of Civil Code section 3480 of the State of California, or by any other provisions of the laws of the State of California, or of this Code. In addition, a nuisance is hereby declared to include any violation of this Code, and any condition of property which renders any property within the City of Rohnert Park harmful to property or persons who may occupy or go upon such property.
- M. "Responsible Party" means any occupant, lessor, lessee, manager, licensee, or other person having control over a structure or parcel of land. A responsible party may be a property owner.
- N. "Violation" means a violation of Civil Code 3480 by any property owner or any responsible party.
- O. "Visual Blight" means any unreasonable or unlawful condition or use of premises or of a building exterior which by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring premises, is detrimental to the surrounding area and the property of others, or is detrimental to the health, safety, and welfare of individuals residing within the community.

ARTICLE I                      NUISANCES ENUMERATED.

1.24.030    Unlawful Property Nuisances.

It shall be unlawful and declared a public nuisance for any person owning, renting, leasing, occupying or having charge or possession of any property in the City of Rohnert Park, to maintain such property in such a manner that any of the following conditions are found to exist thereon:

- A. Fire hazards as defined in the Uniform Fire Code;
- B. Refuse and waste matter which by reason of its location and character is in such a condition of deterioration that it constitutes visual blight, or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or detrimentally affects property in the surrounding neighborhood or community;
- C. Polluted or stagnant water which, because of its nature or location, constitutes an unhealthy or unsafe condition;

- D. Maintenance of property in such condition of deterioration or disrepair that the same causes visual blight, or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to nearby properties including, but not limited to:
1. Buildings which are abandoned, partially destroyed for a period of at least six (6) months, or left in an unreasonable state of partial construction. An "unreasonable state of partial construction" is defined as any unfinished building or structure that has been in the course of construction two years or more and where the appearance or other conditions of said unfinished building or structure constitutes visual blight, or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to nearby properties.
  2. Unpainted buildings and those having dry rot, warping, or termite infestation. Any building on which the condition of existing paint has become so deteriorated as to permit substantial decay, checking, cracking, peeling, chalking, dry rot, warping, or termite infestation on 50% or more of the building.
  3. Buildings with missing doors or windows containing broken glass or no glass at all where the window is a type which normally contains glass. Plywood or other materials used to cover such window space or doors, if permitted under this Code, shall be painted in a color or colors compatible with the remainder of the building.
  4. Building exteriors, walls, fences, gates, driveway, sidewalks, walkways, or alleys which for at least 72 consecutive hours are maintained in such condition as to become so defective, unsightly, or in such a condition of deterioration or disrepair that the same constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to nearby properties.
  5. The accumulation of dirt, litter, or debris in vestibules, doorways, or the adjoining sidewalks, passages, or breezeways of a building for 72 consecutive hours or more.
  6. Any appliance, tool, equipment, furniture, furnishing, or other item of personal property not normally kept outside including but not limited to, any couch, love seat, sofa, sofa bed, recliner, hassock, upholstered chair, mattress, bed springs, box springs, bed frame, headboard, desk, dresser, bureau, cabinet, television, radio, stereo, stove, refrigerator, freezer, dishwasher, washing machine, dryer, shopping cart, sink, toilet, or similar items, whether or not any such item is broken or abandoned, resting or being stored on the premises stored either (a) so as to be visible from a public street, alley, or from any adjoining property for at least 72 consecutive hours, or (b) so as otherwise to constitute a harborage for

rodents or pests or a detriment to health, safety and welfare of nearby properties, the neighborhood or the city. Nothing herein shall preclude the placement of stacked firewood for use on the premises.

7. Attractive nuisances dangerous to children and other persons, including, but not limited to, abandoned, broken, or neglected household appliances, equipment and machinery, unfenced or unmaintained pools, ponds, and excavations.
8. Construction or packing materials or supplies, including but not limited to, lumber, drywall, roofing tile, cement, nails, pallets, plywood, scrap lumber, or other building materials, products, or supplies; electrical, irrigation, or plumbing supplies; provided, however, that a reasonable quantity of these materials and supplies is excluded from this definition during active construction upon the subject property. A project shall be deemed active if there is obvious change to the accumulation or to the project in any thirty (30) day period.
9. Construction equipment or machinery of any type or description parked or stored on property for at least 72 consecutive hours when it is readily visible from a public street, alley, or adjoining property except while excavation, construction or demolition operations covered by an active building permit are in progress on the subject property or an adjoining property or where the property is zoned for the storage of construction equipment or machinery.
10. An accumulation of aluminum cans, newspapers, plastic bottles, glass, cardboard or cardboard boxes, or an accumulation of other recyclable materials that has been stored in public view for at least 72 consecutive hours and is visible from a public street, alley or from any adjoining property.
11. Improper maintenance of any sign or failure to remove any sign which advertises a business or product which is no longer sold on the property.
12. Storage of any wrecked, disabled, inoperative, salvaged or dismantled vehicle, vessel, equipment trailer, house trailer, camper shell, boat, or boat trailer as defined in Health and Safety Code section 18010, or other vehicle or major vehicle parts stored or parked in front yards, driveways, side yards, sidewalks or walkways for at least 72 consecutive hours visible from a public street, unless they are stored or parked pursuant to the provisions of this Code;
13. Firewood longer than thirty-six (36) inches in length and greater than twenty-four (24) inches in diameter; all firewood that is not stacked;
14. Property, including, but not limited to, building exteriors which are maintained for at least 72 consecutive hours in such a condition as to be

detrimental to the public health, safety, or general welfare, or in such a manner as to constitute a public nuisance as defined by Civil Code Section 3480.

15. Dead, decayed, diseased, or hazardous trees, weeds, and overgrown or uncultivated vegetation which are allowed to remain on property for at least 72 consecutive hours, which are a hazardous condition to pedestrian or vehicular traffic or which are likely to harbor rats, vermin, or constitute visual blight, or which may cause a danger to public safety.
16. The placement of clotheslines in front yards and the drying of laundry or washed articles on front porch stair railings, or the placement of washed articles on fences, hedges, or other supporting structures located in front yards for the purpose of drying them where the foregoing are visible from any public street, alley, or from any adjoining property.
17. Any wall, sign, fence, gate, hedge, or structure maintained in such a condition of deterioration or disrepair as to constitute a hazard to persons or property, or that constitutes visual blight, or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to nearby properties.
18. Any property with pooled oil accumulation, oil flowing onto public rights-of-way or adjacent property, or excessive accumulations of grease or oil on paved surfaces, buildings, walls, or fences.
19. Any yard area, visible from a public street, alley or from any adjoining property, the non-maintenance of which causes excessive dust, or which contains the accumulation of debris, or constitutes visual blight, or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to nearby properties. This paragraph shall not be construed to require the use of water or the installation of drought-resistant vegetation to tenant landscaping during any period in which the city has declared a drought.
20. Graffiti which remains on the exterior of any building, fence or other structure for at least 72 consecutive hours and is visible from a public street, alley or any adjoining property.
21. The keeping, storing, depositing or accumulation on the premises for an unreasonable period of time dirt, sand, gravel, concrete, or other similar materials that constitutes visual blight, or reduces the aesthetic appearance of the neighborhood, or is offensive to the senses, or is detrimental to nearby properties, except when uses for current excavation, construction or demolition projects for which an active building permit has been obtained.

22. The leaving of any garbage can or refuse container in the front or side yard area for more than 24 hours after collection day where such can or container is visible from a public street, alley, or from any adjoining property, except as permitted by another section or chapter of this code.
23. Buildings, uses or conditions: (1) that violate the National Electrical, or Uniform Building, Plumbing, Mechanical, Fire, or Housing Codes as adopted by or imposed on the City of Rohnert Park; (2) that violate the City's zoning ordinance; or (3) that violate any other provision of local, state or federal law relating to health, safety or environmental protection.
24. Any obstructions, impediments, or excavations that interfere with the ordinary use by the public of any public street, way, or sidewalk except when and as permitted pursuant to this Code or State law;
25. Any violation of the Rohnert Park Municipal Code expressly declared to be a public nuisance.

#### 1.24.040 Residential Rental Units.

It is declared a public nuisance for any person or entity owning, leasing, renting, occupying, or having charge or possession of any residential dwelling, property or unit(s) in the city to maintain such residential rental dwelling, property or unit(s) in such a manner as to permit his/her/their tenant(s), any member of the tenant's household or their children or their guests or their visitors while on the premises, to create or permit a violation of Section 1.24.030 of this chapter, or to violate or permit the violation of any house rule or lease provision required pursuant to this chapter.

A violation of Section 1.24.030 of this chapter, or of any house rule or lease provision required pursuant to this chapter shall include, but shall not be limited to, any criminal or other activity on or near such premises that threatens the health, safety, or right of peaceful enjoyment of the premises of the other residents or adjacent property owners and /or drug related or criminal activity on or near such premises, wherein the owner is aware of the aforesaid violation(s) and fails to take all reasonable action(s) or to make reasonable expenditure(s) to correct the violation(s) within a reasonable period of time, which shall be designated as thirty (30) days after notice. Such violation may, in the city's discretion, be abated pursuant to this chapter and in addition pursuant to the procedures for abatement which are conferred upon the city by Civil Code Section 3494, Code of Civil Procedure Section 731, Health and Safety Code Sections 11570-11579, Government Code Section 38773 and other lawful authority.

Further, any person or entity owning, leasing out, renting out, occupying, or having charge or possession of any residential dwelling, property or unit(s) in the city shall be responsible for the administrative costs or any other costs of the city in abating or causing the owner or other person responsible for the property to abate a violation of this chapter. Such costs may be recouped by the city pursuant to the provisions of this chapter or any other method provided by this code or other provisions of law or statute.



1.24.050 On-site Residential Manager.

Any residential rental dwelling, property or complex having sixteen (16) or more rental units shall have an on-site resident manager reasonably available during normal business hours.

1.24.060 House Rules.

Each owner or manager of each residential rental dwelling, property or unit(s) shall comply with the following:

- A. Provide each tenant, pursuant to the compliance schedule required by Section 1.24.070, with a written agreement, in the form of a lease, rental agreement or, for any tenancy of less than one (1) year, other enforceable written contract, signed by the tenant and owner, or his/her agent, or his/her designee, which rental agreement shall include a copy of Rohnert Park Municipal Code section 1.24.030 and house rules containing the following language:

House Rules

1. The tenant (s), all household members, children, guests, and visitors, shall refrain from activities that violate city codes, state codes or statutes, constitute a public nuisance, or disturb the peace.
2. The tenant(s) acknowledge(s) responsibility for his or her (their) actions and for the actions of household members, children, guests, or visitors while on the leased premises.
3. The tenant(s), all household members, children, guests, or visitors are prohibited from engaging in any illegal activities on or near the leased premises, including, but not limited to:
  - (a) Any criminal or civil activity that threatens the health, safety, or right of peaceful enjoyment of the premises by other residents or adjacent property owners; or
  - (b) Any drug-related or criminal activity on or near the leased premises.
4. By signing the lease to which these House Rules are attached, the tenant(s) are on notice that any disturbance, criminal activity, or violation of these House Rules attributable to any tenant(s), household members, children, guests, or visitors shall constitute a material lease violation and shall be cause for immediate termination of tenancy and eviction from the unit.
5. The property manager will assign and control all parking and common areas to ensure that activities occurring there do not

constitute a public nuisance, disturbance of the peace, disturbance of quiet enjoyment of the occupants of the property or neighboring properties, or a violation of any federal, state, or local law, including, but not limited to, fighting, littering, consumption of alcohol or of any illegal drug, narcotic or controlled substance, prostitution, brandishment of any weapon, urination, defecation, or intoxication.

- B. A copy of the signed lease agreements, or addenda containing the information required under this section, and house rules shall be kept in the office of the property manager. All lease agreements, rules and regulations shall be either in English or Spanish, according to the tenant(s) native language, or shall be explained to the tenant(s) by an interpreter signing an affidavit.
- C. A copy of the house rules in English and Spanish shall be posted in all common areas such as laundry rooms, lobbies, hallways, and community rooms.

1.24.070 Schedule.

- A. Each owner or manager of a residential dwelling, property or unit(s) which is rented or leased to, or occupied by, a residential tenant or tenants shall comply with the requirements of Section 1.24.060 according to the following schedule:
  - 1. For each residential rental property, dwelling or unit(s) which is rented or leased to, or occupied by, a new tenant or tenants subsequent to the effective date of this ordinance, the owner or manager shall require the incorporation of all the information required by Section 1.24.060 in a written lease or addendum at such time as the property, dwelling or unit(s) is rented or leased to, or occupied by, such new tenant or tenants.
  - 2. For each residential rental property, dwelling or unit(s) which is occupied pursuant to a written lease in effect as of the effective date of this ordinance, the owner or manager shall not be required to incorporate the information required by Section 1.24.060 in a new lease or addendum until such time as the existing tenancy is terminated and the property, dwelling or unit(s) is rented or leased to, or occupied by, a new tenant or tenants. Notwithstanding the foregoing, however, for each such residential rental property, dwelling or unit which is rented or leased to or occupied by, an existing tenant or tenants pursuant to a written lease in effect as of the effective date of this ordinance, the owner or manager shall provide each such existing tenant with a copy of the house rules within sixty (60) days of the effective date of this ordinance.
  - 3. For each residential rental property, dwelling or unit(s) which is occupied as of the effective date of this ordinance on a month-to-month or other

holdover basis, the owner or manager shall be required to incorporate the information required by Section 1.24.060 in a new lease or lease addendum within thirty (30) days or the earlier of either:

- (a) Notification to the existing tenant of any change in the terms or conditions of such month-to-month or other holdover tenancy, including but not limited to any rent modification; or
- (b) One (1) year subsequent to the effective date of this ordinance.

1.24.080. Responsibility for property maintenance.

- A. Every owner of real property within the city 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, tenant, or holder of any interest in real property, other than the owner thereof, who had assumed responsibility for the maintenance of such property under terms of a written lease, rental agreement, or other contractual arrangement, and to the extent of that legal responsibility for maintenance shall produce for inspection the document establishing such obligation.

ARTICLE II ENFORCEMENT.

1.24.100 Violation.

Any person, firm, corporation or other entity, whether owner or responsible party of any premises, that violates the provisions of this chapter or any order issued pursuant to this chapter, shall be subject to any or all of the following:

- A. Such person shall be guilty of an infraction;
- B. Such person shall be prosecuted in a civil action brought by the city to enjoin any nuisance, violation of this chapter or violation of any other ordinance of the city;
- C. Such person shall be subject to summary or administrative abatement of the nuisance by the city, and be subject to fees and costs imposed by the city pursuant to the summary or administrative abatement procedures set forth in this chapter or any other provision of law; and
  - (1) Every day that any such violation continues shall constitute a separate offense.
  - (2) Nothing in this chapter shall prevent the city council from authorizing the city attorney or other authorized legal

representative to commence any available administrative, civil or criminal proceeding to abate a nuisance pursuant to all applicable provisions of law as an alternative and in addition to any enforcement proceedings, including the imposition of fines, penalties, fees, and costs pursuant to the City's administrative citation procedures set forth in this chapter.

- (3) All remedies set forth in this chapter are cumulative and may be pursued alternatively or in combination with one another. Provisions of this chapter are to be supplementary and complementary to all of the city ordinances, state law and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit any exercising right or power of the city to abate any and all nuisances.

#### 1.24.110 Right-of-Entry.

- A. Whenever it is necessary to make an inspection of any premises to enforce the provisions of this chapter, and to the extent authorized by law, an enforcement officer may enter on such premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by this code, subject to the requirements of the Fourth Amendment of the United States Constitution and any other provisions of applicable law.
- B. Whenever practicable, the enforcement officer shall contact the occupant of the premises prior to entry and inform the occupant of the reasons for such entry onto the premises, and if the occupant is other than the owner, the enforcement officer shall also, if practicable, contact such owner. If entry is interfered with by the owner or occupant, such enforcement officer shall have recourse to every remedy provided by law to secure peaceable entry.
- C. When the enforcement officer or his or her designated representative has obtained an inspection warrant or other remedy provided by law to secure entry, no owner or occupant shall fail to promptly permit entry thereon by the enforcement officer or his designated representative for the purposes permitted by this chapter.

#### 1.24.120 Preliminary Notice.

- A. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of a provision of this chapter has occurred, the enforcement officer shall have the authority to cause the owner and any responsible party to be notified of the existence of such condition on the premises and shall direct such parties to abate the nuisance.
- B. The notice shall contain the following information:

1. The names and addresses of the owner and responsible parties, if any, in violation of this chapter and the street address, legal description or other description of the premises where the violation is present;
2. A statement specifying the condition(s) which constitute a nuisance and the specific code section(s) which have been violated;
3. A request to correct the violation(s) within a certain time frame, which time frame shall be determined in the sole discretion of the enforcement officer, but which, in no event, shall be less than ten calendar days after the date of the notice;
4. A statement explaining the range of penalties for failure to abate the nuisance; and
5. The name and phone number of a contact person at the city should the recipient desire to explain why the premises should not be declared a public nuisance and why penalties should not be assessed.
  - (a) A copy of the notice provided for in this section shall be served by first class U.S. mail to the owner, at the address appearing on the last equalized assessment roll of Sonoma County and upon any responsible party, including the occupant of the premises, if any.
  - (b) The failure of any owner or other person to receive such notice or the failure of such notice to strictly comply with this section shall not affect in any manner the validity of any proceedings taken hereunder.

1.24.130 Service of notices; failure to receive notice.

- A. All written notices required to be given under the provisions of this Chapter may be served in the following manner:
  1. By personal delivery, or
  2. To the property owner, by mailing a copy of the notice by U.S. mail, postage prepaid, to his or her address shown on the last equalized assessment roll available on the date the notice is prepared, and to other responsible parties at their address as known to the City or at the property address. Service shall be deemed complete five days after deposit in the U.S. mail.
- B. The failure of any person to receive any notice required under this Chapter and properly served or mailed shall not affect the validity of any proceedings undertaken under this Chapter.

1.24.140 Notice of Violation and Order to Abate.

- A. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of a provision of this chapter has not been abated after the city has sent a preliminary notice in accordance with section 1.24.120 and the time frame specified in the preliminary notice has expired, the enforcement officer shall have the authority to cause the owner and any responsible party to be notified that a violation of this chapter has not been abated and ordering such parties to abate the nuisance within a date certain or attend a hearing at which a hearing officer will determine whether the nuisance shall be abated by the city at the expense of the responsible party.
- B. The notice of violation and order to abate shall contain the following information:
1. The names and addresses of the owner and responsible parties, if any, in violation of this chapter and the street address, legal description or other description of the premises where the violation is present;
  2. A statement specifying the condition(s) which constitute a nuisance and the specific code section(s) which have been violated;
  3. A statement that the owner and responsible parties, if any, had been previously notified of the violation and requested to correct it;
  4. A statement that the recipient has ten calendar days from the date of the notice to voluntarily abate the nuisance, or if the enforcement officer determines that ten days is insufficient to abate the nuisance, a statement specifying a date certain by which the nuisance must be abated;
  5. A statement that a hearing will be held, including the date and time of the hearing, if the nuisance is not voluntarily abated by the specified date;
  6. A statement that if the owner of responsible party fails to abate the nuisance within the time prescribed in the preliminary notice or fails to appear at the hearing; the city will abate the nuisance at the expense of the owner and responsible parties and the costs of such abatement may be charged against the premises as a lien or special assessment;
  7. A statement informing the recipient of his or her right to appeal the hearing officer's determination to the city manager by filing with the city manager within ten days of the date of the notice and order, a written statement: (i) requesting a hearing before the city manager; (ii) explaining why the premises should not be declared a nuisance and abated at the expense of the parties and why the costs of such abatement should not become a charge against the premises; and (iii) providing an address for further communications.

8. A copy of the notice provided for in this section shall be served upon the owner of the premises, any occupants of the premises and any other responsible party.
9. The person giving such notice shall file a copy thereof in the office of the enforcement officer together with an affidavit or certificate stating the time and manner in which such notice was given. The failure of any owner or other party to receive such notice shall not affect in any manner the validity of any proceedings taken hereunder.

#### 1.24.150 City to Abate; Notice of Hearing.

In the event the owner fails to comply with the preliminary notice and order to abate issued in accordance with section 1.24.120 and the City Manager or his designee determines that the facts and circumstances of the nuisance require City action to abate the nuisance by City employees or private contract, a hearing shall be noticed and conducted. The notice shall contain at a minimum, the date, time and place of the hearing and an order to show cause why the City should not be allowed to enter the property to abate the defined nuisances in a defined manner, and why the City should not be allowed to assess the costs thereof to the owner. In addition, the notice shall advise the owner that if legal action is instituted by either the owner or City in any manner relating to the abatement of the nuisance, the prevailing party may seek recovery of its costs and attorneys' fees.

#### 1.24.160 Abatement of Nuisance Prior to Scheduled Hearing.

Any owner or responsible person may, at their own expense and prior to the scheduled hearing, abate a declared nuisance in accordance with the provisions of the notice of violation and order to abate issued in accordance with section 1.24.140, provided that all necessary permits are first obtained. If the enforcement officer determines that the nuisance has been abated, the proceedings under this chapter shall be terminated, except that the owner or responsible person shall be liable for any costs, including incidental expenses, incurred by the City for administration, code enforcement or abatement by the City, until the date of termination of proceedings under this chapter.

#### 1.24.170 Manner of Conducting Hearing.

- A. At the time and place designated in the notice of violation and order to abate issued in accordance with section 1.24.140, the appointed hearing officer, shall hear and consider all relevant evidence, including, but not limited to, applicable staff reports, oral, physical and documentary evidence regarding the alleged nuisance and proposed method of abatement. The hearing may be continued from time to time.
- B. The enforcement officer shall bear the burden of proving by a preponderance of the evidence that a public nuisance in the form of a violation of any requirement or provision of this chapter exists.
- C. Oral evidence may be heard on oath or affirmation.

- D. The owner or any responsible person may be represented by anyone of their choice or may represent themselves.
- E. The hearing shall not be conducted according to the formal rules of evidence. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable 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 such evidence over objection in civil actions in courts of competent jurisdiction in this state. However, irrelevant or unduly repetitious evidence shall be excluded.
- F. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence.
- G. The parties in the hearing shall have the following rights:
1. To call and examine witnesses on any matter relevant to the issues of the hearing;
  2. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
  3. To impeach any witness regardless of which party first called such witness to testify;
  4. To rebut evidence against such parties;
  5. To request the hearing officer to take official notice of any fact which would be subject to judicial notice by the courts of this state.
- H. Within ten (10) days after the conclusion of the hearing, the hearing officer shall issue a written decision and where applicable, an order of abatement. This decision shall set forth the factual findings made by the hearing officer, a conclusion as to whether a public nuisance in the form of a violation of any requirement or provision of this chapter exists, and the manner and time of abatement. If the hearing officer determines that a nuisance does exist, the hearing officer shall include in his or her determination an order to abate the nuisance within ten days of service of the written determination or within such time as the hearing officer deems reasonable. If the City Attorney determines that the violation implicates a First Amendment right, the order shall provide that the order is suspended until the responsible party exhausts his or her judicial remedies. The written determination shall further state that if the nuisance is not abated within the time provided, the nuisance shall be abated by the City at the parties' expense and the expenses may be made a lien or special assessment against the property. In the case if a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, a reasonable time not to exceed six months shall be provided to remedy or correct the violation prior to the imposition



of fines or penalties. In determining what is a reasonable time, the City may consider the estimate of local professionals including licensed contractors. If the hearing officer determines that a nuisance exists which is likely to recur after abatement, the owner may be directed to take adequate precautions for a period of time not to exceed one year so that the nuisance will not recur. The decision of the hearing officer is final with no right of appeal to any City employee, officer or legislative body. Copies of the decision shall be sent to the owner, responsible person and the enforcement officer and the city clerk.

#### 1.24.180 Abatement by Owner.

The owner or responsible party may at his or her own expense, abate the nuisance in the time and manner presented in the preliminary notice, notice of violation and order to abate or written determination of the hearing officer, whichever is applicable. If an enforcement officer determines that the nuisance has been properly abated, then proceedings pursuant to this chapter shall be terminated, provided, however, that the city may in its discretion, proceed with recovery of such abatement costs as it may have incurred prior to abatement by the owner. Nothing in this chapter shall relieve any owner or other responsible party of the obligation of obtaining any required permit to do any work incidental to such abatement.

#### 1.24.190 Abatement by City — Debt of Owner.

- A. In all cases where the city has determined to proceed with abatement, upon the date set forth for abatement of the nuisance in the notice and order or determination of the hearing officer, whichever is applicable, the city shall acquire jurisdiction to abate said condition at the expense of the owner and/or responsible party as herein provided. The city is authorized to cause the nuisance to be abated by city forces or by private contract. To that end, the persons authorized to abate the nuisance may enter upon private property in a manner consistent with the United States and California Constitutions.
- B. Upon the abatement of such condition or any portion thereof by the city, all the expenses thereof shall constitute a civil debt owing to the city jointly and severally by the owner and/or responsible parties. The debt shall be collectible in the same manner as any other civil debt owing to the city and may be made a special assessment or lien upon the property pursuant to the provisions set forth in this chapter.

#### 1.24.200 Summary Abatement.

- A. Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or when immediate action is required to prevent or mitigate the loss or impairment of life, health, property or essential public services, any enforcement officer or his or her authorized representative shall have the authority to summarily and without notice abate the same. The abatement shall include all

actions necessary to secure the premises to prevent further occurrence of the nuisance.

- B. The expense of summarily abating a nuisance shall be a charge against the persons creating, causing, committing or maintaining it. The City may make the expense of abatement of the nuisance a lien against the property on which it is maintained and a personal obligation against the owner in accordance with the provisions of this code.
- C. Any owner or responsible party of any premises summarily abated pursuant to this section, may request an appeal hearing before the city council on whether the premises should have been declared a public nuisance and summarily abated by filing a written request with the city manager. Such request must be filed within ten days of the summary abatement of the premises. The appeal hearing shall be conducted pursuant to the provisions of this chapter.

#### 1.24.210 Abatement Cost Records.

- A. Where the enforcement officer is required to cause the abatement of a public nuisance pursuant to the provisions of this chapter, he or she shall keep or cause to be kept an accounting of the cost incurred, including all time spent by city and contract personnel in addressing and abating the nuisance, incidental expenses of such abatement and attorney fees, if the city elects, at the initiation of the abatement proceedings to seek recovery of its own attorney fees. Upon conclusion of such abatement, the enforcement officer shall submit an itemized statement of costs to the city clerk. Costs of abatement shall begin to run from the date of the notice to abate, except in cases of summary abatement, in which case costs of abatement shall begin to run from the date the enforcement officer became aware of the nuisance requiring summary abatement.
- B. The city may seek reasonable attorney fees incurred for an abatement action and related proceedings in those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorney fees. If the city elects to seek recovery of its own attorney fees, attorney fees may be recovered by the prevailing party in said action or proceeding.
- C. Time spent by city personnel shall, in addition to an employee's hourly rate of pay, include city's customary overhead expenses for provision of benefits and use of office space. Time spent by contract personnel shall be charged at actual cost to the city.
- D. The term "incidental expenses," as used in this section, includes, but is not limited to, the actual expenses of the city in the preparation of notices, specifications, and contracts, inspection of the work and costs of printing and mailings required by this chapter. "Attorney fees" shall include fees and expenses of outside counsel

and time spent by the city attorney and his or her staff, calculated like other city personnel.

1.24.220 Hearing Before City Council – Report on Costs.

- A. Upon receipt of the statement of costs, the city clerk shall set for hearing before the city council the matter of the report of costs. The city clerk shall cause notice of the time and place of such hearing to be given to the owner of the property to which the same relates, any responsible party and to any other interested persons who request notice, by United States mail, postage prepaid, addressed to such person(s) at his or her last known address, at least ten days in advance of such hearing and shall provide owner with a copy of the statement of costs.
- B. At the time and place fixed for receiving and considering the statement of costs and expenses of the abatement, the city council shall hear and pass upon the statement, together with any specific objections or protests raised by any of the persons liable to be assessed for the costs of abating such nuisance. The city council may make such revisions, corrections, or modifications to the statement as it may deem just or necessary. The hearing may be continued from time to time.
- C. Upon conclusion of the hearing, the city council shall adopt a resolution determining the costs of abatement. The city council may also require, by resolution, that the costs be collected by a nuisance abatement lien or special assessment upon the subject property. The decision of the city council shall be final and conclusive.

1.24.230 Nuisance Abatement Lien.

If the city makes the cost of abatement a lien against the property on which the nuisance is maintained, the city shall:

- A. Provide notice prior to the recordation of the lien to the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplement roll, whichever is more current; and
- B. Follow the procedure for nuisance abatement liens set forth in Government Code section 38773.1.

1.24.240 Special Assessment.

If the city makes the abatement costs a special assessment against the property on which the nuisance is maintained, the city shall:

- A. Provide notice of the special assessment, by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records, at the time of imposing the assessment, which notice shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments; and

- B. The city shall follow the procedures set forth in Government Code section 38773.5.

1.24.250 Treble Costs of Abatement.

The city council provides that a court may order the owner of property responsible for a condition that may be abated in accordance with this chapter to pay treble the costs of abatement pursuant to Government Code section 38773.7.

1.24.280 Limitation on Filing Judicial Action.

Pursuant to Code of Civil Procedure section 1094.5, any action appealing the city's final decision and order shall be commenced within ninety (90) calendar days of the date of service of the decision.

ARTICLE III. ADMINISTRATIVE CITATIONS.

1.24.300 Administrative citation.

- A. Whenever an enforcement officer charged with the enforcement of this code determines that a violation of any provision has occurred, the enforcement officer shall have the authority to issue an administrative citation in accordance with Government Code section 53069.4 to any person responsible for the violation.
- B. Each administrative citation shall contain the following information:
  - 1. The date of violation;
  - 2. The address or a definite description of the location where the violation occurred;
  - 3. The provision(s) violated and a description of the violation;
  - 4. The amount of the fine for the violation;
  - 5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
  - 6. An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;
  - 7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the procedure for requesting a hearing; and
  - 8. In the case of a continuing violation pertaining to building, plumbing, electrical or other similar structural or zoning issues that do not create an immediate danger to health or safety, a reasonable time not to exceed six months shall be provided to remedy or correct the violation prior to

imposition of fines or penalties. In determining what is a reasonable time, the City may consider the estimate of local professionals, including licensed contractors.

9. The name and signature of the enforcement officer.

C. Applicability.

1. This Chapter provides for administrative citations, fines, and hearing procedures which are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violations of this Code.

2. In the case of a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, a reasonable time not to exceed six months shall be provided to remedy or correct the violation prior to imposition of fines or penalties. In determining what is a reasonable time, the City may consider the estimate of local professionals including licensed contractors.

1.24.310 Administrative fines.

A. The amounts of the fines for violations imposed pursuant to this chapter shall be set forth in the schedule of fines established by resolution of the city council.

B. The schedule of fines shall specify any increased fines for repeat violations of the same or similar provision by the same person within thirty-six months from the date of an administrative citation.

C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

1.24.320 Payment of fines.

A. The fine shall be paid to the city within thirty days from the date of the administrative citation.

B. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the administrative citation.

1.24.330 Hearing request.

A. Any recipient of an administrative citation may contest that there was a violation or that he or she is the responsible party by filing with the city clerk in writing a request for a hearing within fifteen calendar days from the date of the administrative citation.

- B. The person requesting the hearing shall be notified in writing of the time and place set for the hearing at least ten calendar days prior to the date of the hearing.
- C. If the enforcement officer submits a written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report shall be served by certified mail, return receipt requested on the person requesting the hearing no less than three calendar days prior to the date of the hearing.

1.24.340 Administrative citation hearing.

An administrative citation hearing shall be held by the hearing officer in the manner and form set forth in section 1.24.170 of this chapter for nuisance abatement hearings.

1.24.350 Hearing officer decision.

- A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall state in the decision the reasons for that decision. The decision of the hearing officer shall be final.
- B. If the hearing officer determines that the administrative citation should be upheld, the hearing officer shall determine the amount of the fine to be imposed, and shall specify a date by which the fine is to be paid to the city.
- C. The recipient of the administrative citation shall be served a copy of the hearing officer's written decision by certified mail, return receipt requested.

1.24.360 Late payment charges.

Any person who fails to pay to the city any fine imposed pursuant to the provisions of this chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines.

1.24.370 Recovery of administrative citation fines and costs.

The city may collect any past-due administrative citation fine or late payment charge by use of any and all available legal means.

1.24.380 Notices.

- A. The administrative citation and all notices required to be given by this chapter shall be served on the responsible party in substantially the same manner as set forth in this chapter.
- B. Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

1.24.390 Appeal.

Any person affected by the decision of the hearing officer regarding the disposition of an administrative citation may appeal the decision to the Superior Court of Sonoma County within 20 days of the decision or service thereof. The appeal shall be governed by the provisions of Government Code Section 53069.4."

Section 2. California Environmental Quality Act. In accordance with Public Resources Code section 21080(c), a negative declaration has been prepared for this Ordinance..

Section 3. Effective Date. This Ordinance shall be in full force and effective 30 days after its adoption and publication or posting as required by law.

DULY AND REGULARLY INTRODUCED this 11th day of January, 2005, and adopted this 25th day of January, 2005 by the following vote:

AYES: (4) Four Councilmembers Flores, Smith, Vidak-Martinez, and Mayor Mackenzie

NOES: (0) None

ABSENT: (1) One Councilmember Spradlin

ABSTAIN: (0) None

CITY OF ROHNERT PARK

Mayor Jake Mackenzie

ATTEST:

City Clerk Judy Hauff



APPROVED AS TO FORM:

Interim City Attorney Gabrielle P. Whelan