



CITY OF SACRAMENTO

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March 18, 1986

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Transportation and Community
Development Committee
City Council
Sacramento, California

**SUBJECT: Ordinance Amending Chapter 61 of the City
Code Relating to the Nuisance Code**

BACKGROUND

The procedures currently in effect are very cumbersome and time-consuming, both on the notices that must be given and on the appeal process. The current procedure for nuisance abatement of junk and debris is an initial seven-day notice of violation, then a reinspection to see if the nuisance has been abated. If it has not, then a notice of public nuisance is served with a 15-day time period in which to correct. If the nuisance is not corrected, a hearing notice is sent and a hearing is held. If the individual is not satisfied with the hearing officer's determination, he may appeal to the Housing Code Advisory and Appeals Board. If he is still not satisfied, he can appeal to the City Council. If the City Council upholds the Advisory and Appeals Board determination, then he can appeal to the Superior Court.

Under Chapter 61, Article VI, Section 61.601 et seq., the hearing notice and time requirements that currently exist must remain the same, pursuant to the California Vehicle Code. However, the appeal procedure to the Housing Code Advisory and Appeals Board, then to the City Council, and then to the courts is the same as exists for nuisance abatement for junk and debris, and can be changed to remove that appeal procedure to one direct appeal to the Superior Court.

The proposed change would simplify the notice and appeal process in that there would be one notice, one hearing, and no administrative appeals. In order for a dissatisfied individual to appeal, he would have to go directly to the Superior Court.

Some of the other changes are predicated upon changes in case and State law. One change that has been proposed is to require the hearing examiner to make findings of fact and render a decision. Another change is that there shall be a panel of hearing examiners who

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are not City employees. The reason for this change is that a property owner will not be able to claim bias of the hearing examiner, where he would be able to claim a possible bias where a City employee hears his case and a City employee worked up the case. There is just an inherent bias in having the City employee as the hearing officer.

RECOMMENDATION


It is recommended that the ordinance amending Chapter 61 be approved and submitted to the City Council.

Very truly yours,

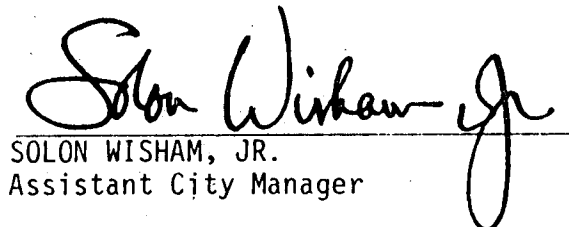

TAMARA L. MILLIGAN-HARMON,
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TLM/jmv

RECOMMEND APPROVAL:


MAC MAILES, Director
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APPROVED FOR COMMITTEE INFORMATION & APPROVAL:


SOLON WISHAM, JR.
Assistant City Manager

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ORDINANCE AMENDING CHAPTER 61 OF THE
CITY CODE RELATING TO THE NUISANCE CODE

CHAPTER 61

Chapter 61 of the Sacramento City Code is hereby amended to read as follows:

SACRAMENTO CITY CODE

NUISANCE CODE

CHAPTER 61

Article I

§61.1 to 61.100 Reserved.

§61.101 Title.

This chapter shall be known as the "Nuisance Code," may be cited as such, and will be referred to herein as "this code." (Ord. No. 3233, §2)

§61.102 Purpose.

- (a) It is the intent of the Council of the City of Sacramento in adopting this code to provide a comprehensive method for the identification and abatement of certain public nuisances within the City of Sacramento.
- (b) Provisions of this code are to be supplementary and complementary to all of the provisions of the City Code, 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 existing right or power of the City of Sacramento to abate any and all nuisances. (Ord. No. 3233, §2)

§61.103 Application.

The provisions of this code shall apply generally to all property throughout the City of Sacramento wherein any of the conditions, hereinafter specified, are found to exist; provided, however, that any condition which would constitute a violation of this code, but which is duly authorized under any city, state or federal law, shall not be deemed to violate this code. (Ord. No. 3233, §2)

"DIRTY" COPY

Article II. Enforcement

§61.201 Authority; "department head" construed.

- (a) The head of any city department or the health officer of the County of Sacramento, The Director of Planning and Development, hereinafter referred to as "department head", is hereby authorized and directed to use the provisions of this code for the purpose of abating those nuisances which exist as the result of violation of those ordinances for which his department has primary enforcement responsibility.
- (b) As used herein, the term "department head" shall include the authorized representatives of such department head, and the Fire Chief and his authorized representatives as concerns Section 61.401(i), and the Director of Public Works as concerns the enforcement of animal control, Section 61.401(q).

§61.202 Right of entry.

- (a) Whenever necessary to make inspection of any premises to enforce the provisions of this code, the department head may enter on such premises at all reasonable times to inspect the same or to perform any duty imposed upon him by this code.
- (b) Whenever practicable, the department head shall contact the occupant of such premises and inform him of the reasons for such entry onto such premises and to inform him of the reasons for such entry onto such property, and if the occupant is other than the owner, he shall, if practicable, contact such owner.
- (c) If entry onto any premises is interfered with by the owner or occupant of such premises, or by any third party, the department head shall have recourse to every remedy provided by law to secure his peaceable entry on such premises or perform the duties required by this code. (Ord. No. 3233, §2)

To the extent authorized by law, the department head may enter on such premises at reasonable times to make inspections.

§61.203 Responsibility for proper 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 or holder of any interest in property, other than as owner thereof, is required to maintain such property in the same manner as is required of the owner thereof, and the duty imposed by this section on the owner thereof shall in no instance relieve those persons herein referred to from the similar duty. (Ord. No. 3233, §2)

§61.204 Hearing examiner.

In order to hear cases brought by the department head under the provisions of this code, the City Manager City Council shall appoint one or more a panel of hearing examiners who shall serve at his pleasure, from which one hearing examiner on a rotating basis shall hear cases brought by the department head. Such examiners shall serve at the pleasure of the City Council. A hearing examiner may not be a city employee.

~~§61.205 Housing code advisory and appeal board.~~

~~An appeal from the decision of a hearing examiner, as hereinafter provided, shall be made to the housing code advisory and appeal board (hereinafter referred to as the board) as constituted under the provisions of chapter 49 of the Sacramento City Code. (Ord. 3233, §2)~~

~~§61.206~~ §61.205 Violations and penalties.

Any person, firm or corporation, whether owner, lessee, sublessor, sublessee or occupant of any premises who violates the provisions of this code shall be guilty of an infraction for each day such violation continues. (Ord. 3233, §2; Ord. 83-153, §43)

~~§61.207~~ §61.206 to 61.300 Reserved.

Article III. Definitions

§61.301 Generally.

For purposes of this code, the following words shall have the following specified meanings:

- (a) **Junk:** Any cast-off, damaged, discarded, junked, obsolete, salvage, scrapped, unusable, worn-out or wrecked object, thing or material composed in whole or in part of asphalt, brick, carbon, cement, plastic or other synthetic substance, fibre, glass, metal, paper, plaster, plaster of

paris, rubber, terra cotta, wool, cotton, cloth, canvas, organic matter or other substance, having no substantial market value or requiring reconditioning in order to be used for its original purpose.

- (b) **Junk yard:** Any premises from on or which any junk is abandoned, bailed, bartered, bought, brought, bundled, deposited, disassembled, disposed of, exchanged, handled, kept, packed, processed, scattered, shipped, sold, stored or transported, regardless of whether or not such activity is done for profit.
- (c) **Owner:** Owner of record of real property, occupant, lessee, or interested holder in same, as the case may be.
- (d) **Premises:** Any real property, or improvements thereon, as the case may be.
- (e) **Property:** Premises.
- (f) **Drive-in enterprise:** Any commercial enterprise such as a service station or drive-in restaurant upon which enclosed buildings occupy less than 25% of the lot area and where a primary method of providing goods and services to customers is by means of a drive-through service.
- (g) **Abandoned drive-in enterprise:** Any drive-in enterprise which has not been providing goods and services for at least 180 days. The term "abandoned drive-in enterprise" shall not include any enterprise all or a part of which has been lawfully converted to another use permitted by the zoning regulations and for which all necessary permits, licenses and other entitlements have been issued, so long as the premises are occupied and maintained for such use.
- (h) **Service station:** Any premises upon which the improvements are designed and built for the primary purpose of selling to or providing others with fuels for internal combustion engines of motor vehicles, whether or not providing related automotive maintenance and repair services. (Ord. 3233, \$2; Ord. 3856, \$3; Ord. 83-076, \$1)

§§61.302 to 61.400 Reserved.

Article IV. Nuisances Specified

§61.401 Generally.

It is hereby declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this city to maintain such premises in such a manner that any one or

more of the conditions or activities described in the following subsections are found to exist:

- (a) The keeping, storage, depositing, or accumulation on the premises for an unreasonable period of any personal property, including but not limited to abandoned, wrecked, dismantled or inoperative vehicles, automotive parts and equipment, appliances, furniture, containers, packing materials, scrap metal, wood, building materials, junk, rubbish, and debris, which is within the view of persons on adjacent or nearby real property or the public right-of-way and which constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to nearby property or property values; provided, however, that wood and building materials being used or to be used for a project of repair or renovation for which a building permit has been obtained may be stored for such period of time as is necessary expeditiously to complete the project.
- (b) The keeping, storage, depositing or accumulation of dirt, sand, gravel, concrete or other similar materials, for an unreasonable period, which constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to nearby property or property values.
- (c) The operation of a junk yard or automobile dismantling yard, except in an industrial zone pursuant to a special use permit.
- (d) Any abandoned drive-in enterprise.
- (e) Any dangerous, unsightly, or blighted condition which is detrimental to the health, safety or welfare of the public.
- (f) Any condition in violation of Chapter 9 of the Sacramento City Code (Uniform Building Code).
- (g) Any condition in violation of Chapter 6 of the Sacramento City Code (Animal control Law).
- (h) Any condition in violation of Appendix I of the Sacramento City Code (Zoning Ordinance).
- (i) Any condition in violation of Chapter 15 of the Sacramento City Code (Fire Protection). (Ord. 83-124, §1)
- (j) Any condition recognized in law or in equity as constituting a public nuisance. (Ord. 83-076, §1; Ord. 83-124, §1)

- (k) The maintenance of the exterior of any vacant or unoccupied building or the interior of any such building which is readily visible from any public street or adjacent parcel of property in a state of unsightliness so as to constitute a blighted condition detrimental to the property values in the neighborhood or otherwise detrimental to the public welfare.

Once proceedings have been commenced pursuant to this chapter to declare a building to be a public nuisance under this subsection, no such building shall be deemed to be in compliance with this chapter solely because such building thereafter becomes occupied. (Ord. 83-124, §1)

§§61.402 to 61.500 Reserved.

Article V. Abatement Generally

§61.501 Commencement of proceedings.

Whenever the department head has inspected or caused to be inspected any premises and has found and determined that such premises are in violation of this code, he shall commence proceedings to cause abatement of the nuisance as provided herein. (Ord. 3233, §2)

§61.502 Preliminary Hearing notice.

- (a) Except as otherwise provided herein, the The department head shall issue a preliminary notice directed to the record owner of the premises. The preliminary notice shall contain:
- (1) The street address and such other description as is required to identify the premises.
 - (2) A statement that the department head has found the premises to be a public nuisance as specified in this code, with a specific citation to the applicable section hereof, and to other sections of the City Code if applicable specifying the conditions which constitute the nuisance.
 - (3) A statement of the action required to be taken as determined by the department head. An order to the owner to appear before a hearing examiner at a stated time, but in no event less than twenty (20) calendar days after having mailed such notice, to show cause why the premises should not be declared a public nuisance and the same abated in accordance with this code.

(4) A statement requesting the owner, within fifteen calendar days, meet with or communicate with the department head for discussion of the abatement of the nuisance. A statement advising the owner that he has the option of voluntarily abating the nuisance prior to the date set for hearing. If the owner chooses voluntary abatement, such abatement must be completed prior to the hearing date. The owner must advise the department head in writing that he will abate the nuisance, and the date of completion. The department head will inspect the premises on the completion date, and if the nuisance has been abated, the hearing will be taken off calendar. The owner may request a continuance of the hearing pursuant to Section 61.505.

(b) The preliminary notice shall be sent certified mail, postage prepaid, addressed to the person who is named as the owner on the latest equalized assessment roll of the County of Sacramento using such address as may be shown by such assessment roll or such other address as may be known by the department head. The failure of any owner to receive the preliminary notice shall not affect in any manner the validity of any proceedings thereafter taken. (Ord. No. 3233, §2)

(b) The hearing notice, and any amended or supplemental notice, shall be served either by personal delivery or by mailing a copy by certified mail, postage prepaid, return receipt requested, upon the record owner at his/her/their address as it appears on the latest equalized assessment roll of Sacramento County or as known to the department head. A copy of the notice shall also be posted on the premises. (Ord. No. 3233, §2)

(c) Proof of service of the hearing notice shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. (Ord. No. 3233, §2)

§61.503 Hearing notice--Generally.

Whenever the department head has given written notice to the owner as set forth in the preceding section, but in no case less than fourteen calendar days after having mailed such notice, he may, when the owner has failed to respond or when it appears that negotiations with the owner to abate the nuisance are unsuccessful or not proceeding satisfactorily, issue an order hereinafter referred to as "the hearing notice" to the owner to appear before a hearing examiner to show cause why the premises should not be declared a public nuisance and the same abated by the city. The hearing notice shall be served, as hereinafter provided, not less than ten calendar days prior to the hearing date. (Ord. No. 3233, §2)

§61-504 Same--Contentor

The hearing notice shall direct the owner of the premises to appear before the hearing examiner at a stated time and stated place and show cause why such premises should not be declared a public nuisance and the nuisance abated in accordance with this code. The notice shall include sufficient detail to provide the owner with information as to the conditions constituting the alleged nuisance. (Ord. No. 32337 §2)

§61-505 Same--Service generally.

The hearing notice and any amended or supplemental notice shall be served upon the record owner and posted on the property, and one copy thereof shall be served on each of the following if known to the department head or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in the premises. The failure of the department head to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person duly served from any duty or obligation imposed on him by the provisions of this chapter. (Ord. No. 32337 §2)

§61-506 Same--Method of service.

Service of the hearing notice shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at his address as it appears on the latest equalized assessment roll of Sacramento County or as known to the department head. If no address of any such person so appears or is known to the department head, then a copy of the notice and order shall be so mailed addressed to such person at the address of any building located on the premises. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this code. Service by certified mail to the manner herein provided shall be effective on the date of mailing. (Ord. No. 32337 §2)

§61-507 Same--Proof of service.

Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the department head. (Ord. No. 32337 §2)

~~§61.500~~ §61.503 Hearings--Generally.

At the time fixed in the notice required by section 61.505, set for hearing, the hearing examiner shall proceed to hear the testimony of the department head, and testimony of the owner, and other competent persons respecting the condition of the premises, and other relevant facts concerning the matter. (Ord. No. 3233, §2)

~~§61.509~~ §61.504 ~~Same--Record~~, Record of oral evidence at hearing.

- (a) The proceedings at the hearing shall be reported by a phonographic tape recorder. If requested by any party there-to, a stenographic reporter shall also report the hearing, with the costs thereof to be borne by the person making such request. The department head may require a deposit from the person making the request to assure payment of such costs. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.
- (b) A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefore. Such fees and deposits may be established by the board, but shall in no event be greater than the actual or estimated cost involved. (~~Ord. No. 3233, §2~~) Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended.

~~§61.510~~ §61.505 ~~Same~~--Continuances.

The hearing examiner may, upon request of the owner of the premises or upon request of the department head, grant continuances from time to time for good cause shown, or upon his own motion. (Ord. No. 3233, §2)

~~§61.511~~ §61.506 ~~Same~~--Oaths; certification.

In any proceeding under this code, The a hearing examiner, or certified shorthand reporter the board, any board member or the secretary to the board, shall have power to administer the oaths and or affirmations and to certify to official acts. (Ord. No. 3233, §2)

~~§61.512~~ ~~Same~~--Reasonable dispatch.

The hearing examiner shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.
(~~Ord. No. 3233, §2~~)

~~§61.513~~ §61.507 Evidence rules.

Hearings need not be conducted according to the technical rules relating to evidence and witnesses. (Ord. No. 3233, §2) Government Code of the State of California, Section 11513, subsections (a), (b) and (c), as presently written or hereinafter amended, shall apply to hearings under Chapter 61 of the Sacramento City Code.

Oral evidence shall be taken only on oath or affirmation. (Ord. No. 3233, §2)

~~§61.515 Same--Hearsay evidence.~~

Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. (Ord. No. 3233, §2)

~~§61.516 Same--Admissibility of evidence.~~

Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely on the conduct of serious affairs, regardless of the existence of 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. (Ord. No. 3233, §2)

~~§61.517 Same--Exclusion of evidence.~~

Irrelevant and unduly repetitious evidence shall be excluded. (Ord. No. 3233, §2)

~~§61.518~~ §61.508 Rights of parties.

Each party shall have these rights, among others:

- (a) To call and examine witnesses on any matter relevant to the issues of the hearing;
- (b) To introduce documentary and physical evidence;
- (c) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
- (d) To impeach any witness regardless of which party first called him to testify;
- (e) To rebut the evidence against him;
- (f) To represent himself or to be represented by anyone of his choice. (Ord. No. 3233, §2)

(a) Each party may represent themselves, or be represented by any one of their choice.

(b) If a party does not proficiently speak or understand the English language, he may provide an interpreter, at the party's own cost, to translate for the party. An interpreter shall not have had any involvement in the issues of the case prior to the hearing.

~~§61.519~~ §61.509 Same--Official notice of facts.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this State or which may appear in any of the official records of the city or any of its departments. (Ord. No. 3233, §2)

~~§61.520~~ §61.510 Same--Inspection of premises.

(a) The hearing examiner may inspect the premises involved in the hearing prior to, during or after the hearing, provided that:

- (1) Notice of such inspection shall be given to the parties before the inspection is made;
- (2) The parties are given an opportunity to be present during the inspection; and
- (3) The hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom.

(b) Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record. (Ord. No. 3233, §2)

~~§61.521~~ Same--Form of decision.

§61.511 Form and contents of decision; finality of decision.

If it is shown by a preponderance of all the evidence that the condition of the premises constitutes a violation of this code, the hearing examiner may make an order which declares the premises to be a public nuisance and directs the owner to abate the nuisance and which notifies him that if the nuisance is not so abated it may be

abated by the city in such manner as may be ordered by the department head and the expense thereof make a lien on the premises involved or a personal obligation of the owner. The order shall contain or shall have attached thereto a brief and concise description of the conditions found to render the premises a public nuisance. The order shall require that abatement of the nuisance physically commenced not later than fifteen days after issuance of the order and be completed within such time as may be specified thereon, or, in the alternative, within such time as the department head shall determine to be reasonable under all of the circumstances. public nuisance:

- (a) The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall also require the owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of the decision, and that the abatement be completed within such time as specified by the hearing examiner, or in the alternative, within the time designated by the department head. The decision shall inform the owner that if the nuisance is not abated within the time specified, the nuisance may be abated by the city in such manner as may be ordered by the department head and the expense thereof made a lien on the property involved.
- (b) The decision shall also inform the applicant that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be forthwith delivered to the parties personally or sent to them by certified mail. The decision shall be final when signed by the hearing examiner and served as herein provided. (Ord. 3233, §2)

§61.522 Posting and mailing of order.

Upon issuance of the order, the department head shall post a copy thereof conspicuously on the premises involved and mail a copy to the persons entitled to the hearing notice under section 61.505 following the procedures therein set forth. The department head shall thereafter file affidavits of such posting and mailing with the hearing examiner. (Ord. No. 3233, §2)

§61.523 Appeals--From order of hearing examiner.

- (a) Any person entitled to a hearing notice under section 61.505, or the department head, may appeal the decision of the hearing examiner by filing with the secretary of the board within fifteen days after the date of the order a request that the matter be set for an appeal hearing by the board.

(b) A failure to appeal shall be deemed a waiver of the right to appeal.

(c) When the board receives from the secretary a request for appeal from a decision of the hearing examiner, it shall thereupon set a hearing date on the matter within thirty days of the date upon which the secretary received the request. The secretary shall thereupon notify the appellant that the board has set its hearing upon the matter. The notice by the secretary shall be by certified mail to the address of the appellant given in the appeal or to the address on file with the department heady or both.

(d) The secretary of the board shall notify the hearing examiner of the filing of such request and the hearing examiner shall transmit to the board his records pertaining to the decision being appealed. The filing of such an appeal shall automatically defer the effective date of any decision until the board has ruled on the appeal.

(e) The decision of the hearing examiner shall be presumed to be correct and the appellant shall have the burden of proof in the hearing before the board. If the board sustains the order of the hearing examiner requiring abatement of a nuisance, the period of commencement and completion of the abatement as specified in the order of the hearing examiner, if any, shall start from the date of such board action.

(f) The board may continue its hearings on such appeal from time to time. It may hear evidence from competent persons as may be desired. It may return the matter to the hearing examiner for further information or for further hearings.

The board may modify as it may deem proper any decision of the hearing examiner.

(g) Any decision so modified shall be returned to the hearing examiner and thereafter the hearing examiner and all concerned parties shall act under the modified order in the same manner as if the hearing examiner had issued the modified order himself. (Ord. No. 32337 §2)

§61-524 Same--From decision of board.

(a) Any person entitled to a hearing notice under section 61-505, or the department head, may appeal the decision of the board by filing with the city clerk within ten days after the final determination by the board on the matter, request that the matter be set for an appeal hearing by the city council.

(b) A failure to appeal shall be deemed a waiver of the right to appeal.

(c) When the council receives from the city clerk a notice request for an appeal hearing, it shall thereupon set a hearing date on the matter within thirty days of the date from which the appeal request was received. The clerk shall thereupon notify the appellant that the council has set its hearing upon the appeal and inform him that he will be heard in the matter. The notice by the clerk shall be by certified mail to the address of the appellant given in the appeal or to the address on file with the board or both.

(d) The city clerk shall notify the secretary of the board of the filing of the request for an appeal hearing, and the secretary of the board shall transmit the records of the board pertaining to the decision which is being appealed. The filing of such an appeal shall automatically defer the effective date of any decision until the council has ruled on the appeal.

(e) The decision of the board shall be presumed to be correct and the appellant shall have the burden of proof in the hearing before the council. If the council sustains the order of the board or the hearing examiner requiring abatement of a nuisance, the period of commencement and completion of the abatement as specified in the order, if any, shall start from the date of such council action.

(f) The board may continue its hearings on such appeal from time to time. It may hear evidence from competent persons as may be desired. It may return the matter to the hearing examiner for further information or for further hearings.

The board may modify as it may deem proper any decision of the hearing examiner.

(g) Any decision so modified shall be returned to the hearing examiner and thereafter the hearing examiner and all concerned parties shall act under the modified order in the same manner as if the hearing examiner had issued the modified order himself. (Ord. No. 32337 S2)

§61-525 Same--From decision of city council.

(a) Except as provided in subsection (b) of this section, any appellant having objection or feeling aggrieved at any proceedings taken by the city council in sustaining or modifying a decision of the board must bring an action in a court of competent jurisdiction within thirty days after

the action by the council in such matter, otherwise all objections will be deemed waived.

- (b) A department head shall be bound by the decision of the council. (Ord. No. 3233, §2)

§61.512 Service of the hearing examiner's decision.

Upon issuance of the decision, the department head shall post a copy thereof conspicuously on the premises involved and shall serve a copy on the record owner, in the same manner as set forth in Section 61.502(b), and one copy shall be served on each of the following, if known to the department head or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record, and the holder of any other estate or legal interest of record in the premises.

§61.526 §6.513 to §61.600 Reserved.

**Article VI. Special Procedure for
Abatement of Certain Vehicles**

§61.601 Purpose of article.

- (a) The provisions of this article are intended to provide a procedure for the abatement of abandoned, wrecked, dismantled or inoperative vehicles, and are enacted under the authority granted by the State of California, under Section 22660 of the Vehicle Code.
- (b) It is the intent of the council to provide that the abatement of public nuisances consisting of abandoned, wrecked, dismantled and inoperative vehicles may be carried on either concurrently with or separately from the abatement of other conditions, if any, constituting a public nuisance on any premises within the city, as deemed appropriate under the circumstances. (Ord. No. 3414, §1)

§61.602 Procedure--Same except as specified.

The procedure specified in this article shall be used in the case of a nuisance which consists solely of abandoned, wrecked, dismantled or inoperative vehicle(s) or parts thereof. (Ord. No. 3414, §1)

§61.603 Notice.

When the department head determines pursuant to his inspection conducted according to Section 61.202 of this code, that the conditions existing on the premises constituting a violation of the provisions

of this code are the result of the existence on said premises of any abandoned, wrecked, dismantled or inoperative vehicle(s), the department head may do the following:

- (a) Issue a notice of intention to abate and remove the vehicle(s) or parts thereof as a public nuisance, directed to the owner of the premises on which the vehicle(s) or parts thereof is located and the owner of the vehicle(s) or parts thereof. This notice shall contain:
 - (1) The street address and such other description as is required to identify the premises on which the vehicle(s) or parts thereof is located.
 - (2) The identity of the vehicle(s) or parts thereof to be abated.
 - (3) A statement that the department head has found the vehicle(s) or parts thereof to be a public nuisance as specified in this code with a special citation to the applicable section hereof, and to other sections of the city code if applicable, including sufficient detail to provide the owner with information as to the conditions constituting the alleged nuisance.
 - (4) A statement of the action required to be taken as determined by the department head, and that such action is to be completed within ten (10) days after the mailing of the notice.
 - (5) A statement providing for a hearing by the hearing examiner upon written request to the department head by the owner of the premises on which the vehicle(s) or parts thereof is located or by the owner of the vehicle(s) or parts thereof within ten (10) days after the mailing of the notice.
 - (6) A statement that failure either to take the action required or to request a hearing within the applicable ten (10) day period shall be deemed a waiver of such rights, and that the department head may proceed to abate the nuisance.
- (b) The notice shall be sent certified mail, postage prepaid, to the owner of the premises as shown on the latest equalized assessment roll of the County of Sacramento using such address as may be shown by said assessment roll or such other address as may be known by the department head and to the last registered and legal owner(s) of record, unless the vehicle(s) or parts thereof is in such condition that identification numbers are not available to determine

ownership. The failure of the department head to serve any person required hereunder to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person duly served from any duty or obligation imposed on him by the provisions of this chapter.

- (c) Upon issuance of the notice, the department head may provide additional notice by posting a copy thereof conspicuously on the vehicle(s) or parts to be abated.

~~§61.604~~ Same--Nuisance located on public property.

In cases where the vehicle(s) or parts thereof is located entirely on public property, the department head shall not be required to send notice to the public entity involved.

If, after otherwise following the procedure set forth in this article, the city is required to abate such nuisance on public property, the city shall assume the costs of administration and removal thereof. (Ord. No. 3414, §1)

~~§61.605~~ §61.604 Same--Right of owner of premises to disclaim responsibility for vehicle.

The notice shall include therein the following statement on the copy of the notice sent to the owner of the premises:

"As to any vehicle(s) or parts thereof listed herein, you may file with the hearing examiner a sworn written statement denying responsibility for the presence on your property of the vehicle(s) or parts thereof listed, together with your reasons for such denial.

This statement shall be construed as a request for a hearing by you which you need not attend. At the hearing, your statement will be considered by the hearing examiner in determining whether the cost of removing said vehicle(s) or part thereof will be assessed against your property as a lien in the event that removal of the vehicle(s) or parts thereof is undertaken by the city.

You need not file a sworn statement if you intend to attend the hearing, but you may do so if you wish. Such sworn statement will be considered only as to vehicle(s) or parts thereof, and will not be considered as to the existence of any other condition on your property which may be found to constitute a nuisance in this or any other proceeding." (Ord. No. 3414, §1)

~~§61.606~~ §61.605 Hearing notice.

Whenever the owner of the premises on which the vehicle(s) or parts thereof is located or the owner of the vehicle(s) or parts thereof requests a hearing (hereinafter called "requesting party"), the department head shall issue a hearing notice to the requesting party allowing that party to appear before a hearing examiner to show cause why the vehicle(s) or parts thereof is not a public nuisance and should not be abated by the city. The hearing notice shall be served upon the requesting party either personally or by mailing a copy of such notice by certified mail, postage prepaid, return receipt requested, not less than five (5) calendar days prior to the hearing date. (Ord. No. 3414, §1)

~~§61.607~~ §61.606 Hearing by hearing examiner.

At the time fixed in the notice required by section ~~61.606~~ 61.605, the hearing examiner shall proceed to hear the testimony of the department head, ~~and testimony of the requesting party,~~ and other competent persons requesting the condition of the vehicle(s) or parts thereof and other relevant facts concerning the matter. (Ord. No. 3414, §1)

~~§61.608~~ §61.607 Form of decision and contents of decision; finality of decision.

- (a) If it is shown by a preponderance of all the evidence that the condition of the vehicle(s) or parts thereof constitute a violation of this code, the decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented. The hearing examiner ~~may~~ shall issue an order which affirms the ~~determination of the department head~~ that the vehicle(s) or parts thereof ~~is~~ are a public nuisance and directs the owner to abate the nuisance, ~~and which notifies him that if the nuisance is not so abated, it may be abated by the city in such manner as may be ordered by the department head and the expense thereof may be made a lien on the property involved, unless the hearing examiner has determined found~~ that the owner of the premises is not responsible for the presence of the vehicle(s) or parts thereof on his property. The order shall identify the abandoned, wrecked, dismantled or inoperative vehicle(s) or parts thereof to be abated. The order shall require that abatement of the nuisance be physically completed five (5) days after issuance of the order or, in the alternative, within such time as the department head shall determine to be reasonable under all of the circumstances.
- (b) If the owner of the premises appears in person at the hearing or files a sworn written statement to deny

responsibility for the presence on his property of the vehicle(s) or parts thereof, the determination of the hearing examiner on this issue shall be included in the decision and order and sent to said owner. The decision shall also inform the requesting party that the time for judicial review is governed by California Code of Civil Procedure section 1094.6. Copies of the decision shall be forthwith delivered to the parties personally or sent to them by certified mail. The decision shall be final when signed by the hearing examiner and served as herein provided. (Ord. No. 3414, §1)

~~§61.609~~ Appeal from order of the hearing examiner.

- (a) The requesting party under section 61.606 or the department head may appeal the decision of the hearing examiner by filing with the secretary of the board within five (5) days after the date of the order a request that the matter be set for an appeal hearing by the board.
- (b) Except as specified in this section, the appeal procedure shall be the same as that set forth in section 61.523. (Ord. No. 3414, §1)

~~§61.610~~ Appeal from the decision of the board.

- (a) The requesting party under section 61.606 or the department head may appeal the decision of the board by filing with the city clerk within five (5) days after the final determination by the board on the matter, a request that the matter be set for an appeal hearing by the city council.
- (b) Except as specified in this section, the appeal procedure shall be the same as that set forth in section 61.524. (Ord. No. 3414, §1)

~~§61.611~~ Appeal from the decision of city council.

- (a) The requesting party under section 61.606 who objects or feels aggrieved at any proceedings taken by the city council in sustaining or modifying a decision of the board must bring an action in a court of competent jurisdiction within thirty (30) days after the action by the council in said matter, otherwise all objections will be deemed waived.
- (b) A department head shall be bound by the decision of the council. (Ord. No. 3414, §1)

~~§61.612~~ §61.608 Preventing rotation of abandoned, wrecked, dismantled and inoperative vehicles.

In the event the department head shall determine that the owner or person in possession of premises which have been declared a nuisance and ordered abated according to the provisions of this code, in whole or in part because of the existence thereof of any abandoned, wrecked, dismantled, or inoperative vehicle, has removed from said premises the vehicle or vehicles specifically identified and ordered abated by the department head in his notice issued pursuant to section 61.603 and has caused or permitted another vehicle or other vehicles to replace those removed or ordered removed, the department head shall:

- (a) Notify the owner of the premises that said act is in violation of the notice of the department head, and order the owner to remove such vehicle(s) or parts thereof; and
- (b) Notify the city attorney of the violation. The city attorney shall have recourse to every remedy provided by law to prevent the owner of the premises from placing or causing to be placed upon the premises any abandoned, wrecked, dismantled or inoperative vehicle. (Ord. No. 3414, \$1)

~~§61.613~~ §61.609 Inapplicability to certain vehicles.

The provisions of this article shall not apply to any vehicle(s) or parts thereof which

- (a) is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, or
- (b) is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer or a junkyard, provided such business is not unsightly or otherwise detrimental to the public health, safety or welfare. (Ord. No. 3431, \$1)

~~§61.614~~ §61.610 Abandoned vehicles--Abandonment prohibited.

No person shall abandon a vehicle upon public or private property without the express or implied consent of the owner or person in lawful possession or control of the property. Violation of this section shall be a misdemeanor. (Ord. No. 3414, \$1)

~~§§61.615~~ §§61.611 to 61.700 Reserved.

Article VII. Enforcement of Order of Hearing Examiner

§61.701 Generally.

After any order of ~~the~~ a hearing examiner made pursuant to this code shall have become final, no person to whom any such order is

directed shall fail, neglect or refuse to obey any such order.
(Ord. No. 3233, §2)

§61.702 Failure to obey order.

If, after any order of ~~the~~ a hearing examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the department head may institute any appropriate action to abate such conditions on the subject premises which constitute the public nuisance. (Ord. No. 3233, §2)

§61.703 Failure to ~~commence~~ complete work.

(a) Whenever the required abatement is not ~~commenced~~ completed within fifteen days after an order issued under this code becomes final or effective completed within the time so specified, the department head may, in addition to any other remedy herein provided, cause the nuisance to be abated, so as to put the premises in such a condition that no violation of this code exists thereon.

(b) The cost of such abatement shall be assessed against the property as a lien or made a personal obligation of the owner thereof as provided in article X of this chapter.
(Ord. No. 3233, §2)

§61.704 Extension of date for completion.

(a) Upon receipt of an application from the person required to conform to the order by a date fixed in the order, and an agreement by such person that he will comply with the order if allowed additional time, the department head may, in his discretion, grant an extension of time, not to exceed an additional one hundred twenty days, within which to complete such abatement, if the department head determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property.

(b) The authority of the department head to extend time is limited to the physical abatement of the nuisance or for such other purposes as may be reasonably required by the circumstances of the case, but such extension will not in any way affect or extend the time to appeal the order.
(Ord. No. 3233, §2)

§61.705 Interference with work prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city, or with any person who owns or holds any estate or interest in any premises on which a nuisance exists and which must be abated under the provisions of this code, whenever such officer, employee, contractor

or authorized representative of the city, or person having an interest or estate in such premises is engaged in the work of abating any nuisance as required by the provisions of this code, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this code. (Ord. No. 3233, §2)

§61.706 Partial completion of work; unsatisfactory progress of work.

- (a) If an owner has commenced the abatement required by the order, and such owner fails to complete any portion of such abatement within the time period specified in the order, or if no time period for completion is specified in such order and he has failed, in the opinion of the department head to make a reasonable progress on such abatement, the department head may refer the case to the hearing examiner for further hearing.
- (b) If the department head refers a case to the hearing examiner for further hearing, he shall give written notice of his action to all persons who are entitled to hearing notice under the provisions of section 61.505, such notice to be mailed not later than ten days prior to the hearing by the hearing examiner. (Ord. No. 3233, §2)

§61.707 Referral hearing.

- (a) The referral hearing shall be conducted in the same manner as the original hearing by the hearing examiner. If the hearing examiner determines that the owner has failed to complete any portion of the work required by his order within the time period specified by such order or has failed to make reasonable satisfactory progress on such work, if no time period is specified in the order, he may:
 - (1) Grant further extension of time to the owner to complete such abatement, or
 - (2) Order the department head to complete the abatement forthwith, or
 - (3) Take such other action as is deemed appropriate in the case.
- (b) An order issued by the hearing examiner from a referral hearing shall be served on the persons entitled to the notice of the referral hearing and it may be appealed from in the manner prescribed in this code. (Ord. No. 3233, §2)

~~§61.700~~ §61.706 to 61.800 Reserved.

Article VIII. Removal of Motor Vehicles and Transfer of Title

§61.801 Generally.

- (a) In the event the department head must cause to be removed a vehicle ordered abated pursuant to article VI of this chapter, the department head may cause the vehicle, or parts thereof, to be taken to a licensed scrapyard or automobile dismantler's yard.
- (b) Thereafter the licensed dismantler or owner of the commercial enterprise who receives possession of the vehicle from the city shall be deemed to be the sole owner of the vehicle by reason of involuntary transfer made pursuant to law. After a vehicle has been removed it shall not thereafter be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to Vehicle Code Section 5004. Licensed dismantlers or commercial enterprises acquiring vehicles removed pursuant to this article shall be excused from the reporting requirements of section 11520 of the Vehicle Code, and any fees and penalties which would otherwise be due the Department of Motor Vehicles are waived pursuant to section 22660 of the Vehicle Code; provided, that a copy of the order made pursuant to section 61.606 is retained in the business records of the dismantler or commercial enterprise. (Ord. No. 3233, §2)

§61.802 Notice to Department of Motor Vehicles.

Within five days after the date ~~or~~ of removal of the vehicle or parts thereof, notice shall be given to the ~~d~~Department of ~~m~~Motor ~~v~~ehicles identifying the vehicle or part thereof removed. There shall also be transmitted to the ~~d~~Department of ~~m~~Motor ~~v~~ehicles any evidence of registration available, including registration certificates of title and license plates, but not limited to, the registration card, certificates of ownership, or license plates. (Ord. No. 3233, §2)

§§61.803 to 61.900 Reserved.

Article IX. Summary Abatement

§61.901 Dangerous condition.

If, in the opinion of the department head, there exists a condition on any premises which is of such a nature as to be imminently dangerous to the public health, safety or welfare, which, if not abated according to the procedures of this code, would, during the pendency

of the proceedings, subject the public to potential harm of a serious nature, the same may be abated forthwith without compliance with the provisions of this code. (Ord. No. 3233, §2; Ord. No. 4012, §1)

§61.902 Approval of city attorney.

No ~~action~~ abatement shall be undertaken under this article unless it shall first be approved by the city attorney or his authorized representative. (Ord. No. 3233, §2)

§61.903 Lien or personal obligation.

The cost of abatement including all administrative costs of any action taken hereunder shall be assessed against the subject premises as a lien or made a personal obligation to the owner as provided in article X of this chapter; except, that in the event the ~~city council~~ courts shall decide the action taken under this article was improper, no lien shall be assessed. (Ord. No. 3233, §2)

§61.904 to 61.1000 Reserved.

Article X. Recovery of Cost of Abatement

§61.1001 Account of expense; filing of report; contents.

- (a) The city engineer shall keep an itemized account of the expense incurred by the city in abating nuisances under the provisions of this code. Upon the completion of the work of abatement, such engineer shall prepare and file with the city clerk a report specifying the work done, the itemized and total cost of the work, a description of the real property at which the work was performed, and the names and addresses of the persons entitled to notice pursuant to section 61.505.
- (b) The department head shall cause notice to be given to the ~~Department of~~ Motor ~~and~~ Vehicles within five (5) days after the date of removal identifying the vehicle(s) or parts thereof and any evidence of registration available, including, but not limited to, registration certificates of title or license plates.
- (c) In the event the hearing examiner finds, pursuant to a sworn statement of the owner of any premises or otherwise, that a vehicle which is ordered abated was placed on the premises without the consent of the owner, who did not later acquiesce to its presence on such premises, then the hearing examiner shall certify its finding to the city engineer, who shall not allocate the cost of the removal of such vehicle to the owner of the premises in his report filed with the clerk. (Ord No. 3414, §1)

§61.1002 Report transmitted to council.

Upon receipt of the report, the city clerk shall present it to the city council for consideration. The city council shall fix a time, date and place for hearing the report, and any protests or objections thereto. The city clerk shall cause notice of the hearing to be served by certified mail, postage prepaid, addressed to the persons entitled to notice as specified by the city engineer pursuant to section 61.1001. Such notices shall be given at least ten days prior to the date set for hearing and shall specify the day, hour and place when the council will hear and pass upon the report of the city engineer containing the proposed charge for abatement, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected thereby. (Ord. No. 3233, §2)