

ORDINANCE NO. 2187

AN ORDINANCE OF THE CITY OF CHULA VISTA REPEALING
AND ADDING CHAPTER 1.30 TO THE CHULA VISTA MUNICIPAL
CODE RELATING TO THE ABATEMENT OF PUBLIC NUISANCES

The City Council of the City of Chula Vista hereby
ordains as follows:

SECTION I: That Chapter 1.30 of the Chula Vista
Municipal Code is hereby repealed.

SECTION II: That Chapter 1.30 is hereby added to the
Chula Vista Municipal Code to read as follows:

ABATEMENT OF PUBLIC NUISANCE

Section 1.30.010. PURPOSE. This chapter is enacted
pursuant to Civil Code Section 3491 et seq. and Government Code
Section 38771 et seq., and is intended to be an alternative
procedure for the abatement of any public nuisance declared to be
a violation of any statute, regulation or ordinance enforced by
the City. It is intended to provide a uniform procedure for
notification, right of appeal and assessment of costs and
collection thereof for the abatement of public nuisances. The
procedure herein is supplemental to the general penalty provision
found in Chapter 1.20, and is intended to provide due process for
all those required to abate a public nuisance.

Section 1.30.020. DEFINITIONS. Whenever the following
words or phrases are used in this chapter, they shall have the
meaning prescribed below:

The "City Abatement Officer" shall be the City officer
responsible for enforcement of the City ordinances being violated
and who initially declares said violation to be a public nuisance.

Section 1.30.030. SUMMARY ABATEMENT POWER. Whenever
this Code or any other provision of law authorizes the City
Manager or any other city officer to declare a public nuisance,
the nuisance may be summarily abated by any reasonable means and
without notice or hearing when immediate action is necessary to
preserve or protect the public health or safety. Summary
abatement actions shall not be subject to the requirements of
this chapter and a City Abatement Officer shall not be prohibited
from summary abatement actions after initiation of proceedings
pursuant to this chapter if immediate action at any time becomes
necessary to preserve or protect the public health or safety.

In the event a public nuisance is summarily abated, the City Abatement Officer may nevertheless keep an account of the cost of abatement and bill the property owner therefor. If the bill is not paid within fifteen (15) days from the date of mailing, the Abatement Officer may proceed to obtain a special assessment and lien against the owner's property in accordance with the procedures set forth in Sections 1.30.130 through 1.30.170 of this chapter, except that, in addition to a review of the costs of abatement, the City Council shall also hear and determine any issues relative to the necessity for or manner in which the property was declared to be a public nuisance and summarily abated.

Section 1.30.040. SCOPE OF CHAPTER. Whenever a public nuisance is declared, it may be abated in accordance with the procedures provided in this chapter. Nothing in this chapter shall be construed to limit the right and duty of any City officer to take immediate action to preserve or protect public health or safety. The procedures set forth in this chapter are not exclusive but are cumulative to all other civil and criminal remedies provided by law. The seeking of other remedies shall not preclude the simultaneous commencement of proceedings pursuant to this chapter.

Section 1.30.050. NUISANCE DECLARED. A City Abatement Officer may declare a public nuisance for any reason specified in any City ordinance. Upon a public nuisance being declared, the City Abatement Officer shall issue a Notice and Order to Abate substantially in the following form:

NOTICE AND ORDER TO ABATE

NOTICE IS HEREBY GIVEN THAT (specify the condition constituting the nuisance)

is in violation of Section _____ of the (Chula Vista Municipal Code, or other applicable code or ordinance). The violation has been declared a public nuisance by the (City Abatement Officer) and must be abated immediately. The public nuisance is on property located at (insert address or other legal property description).

YOU ARE HERBY ORDERED TO ABATE SAID PUBLIC NUISANCE within (insert a reasonable number of days) () consecutive calendar days from the issuance of this order. The issuance date is specified below. You may abate the nuisance by (insert desired action which, if taken, will adequately remedy the situation).

If you fail to abate the public nuisance within the number of days specified, the City may order its abatement by public

employees, private contractor, or other means, and the cost of said abatement may be levied and assessed against the property as a special assessment lien or billed directly to the property owner.

YOU MAY APPEAL FROM THIS ORDER OF ABATEMENT but any such appeal must be brought prior to the expiration of the number of days specified above for completion of abatement. The appeal must be in writing; specify the reasons for the appeal; contain your name, address and telephone number; be accompanied by an appeal fee of _____ dollars (\$_____); and be submitted to the City Clerk at the following address:

City Clerk
276 Fourth Avenue
Chula Vista, California 92010
Tel. No. (619) 691-5041

One who is legally indigent may obtain a waiver of the appeal fee. Upon timely receipt of the appeal and accompanying fee, or waiver, the City Clerk will cause the matter to be set for hearing before the City Council sitting as the City Abatement Board and notify you of the date and location of the hearing.

If you have any questions regarding this matter, you may direct them to the city officer issuing this notice at the address or telephone number listed below.

ISSUANCE

DATE: _____

(Name, title, address and
telephone number of the
City Abatement Officer
issuing this notice)

Section 1.30.060. SERVICE OF NOTICE AND ORDER TO ABATE. The Notice and Order to Abate shall be served in the following manner.

A. By certified mail, addressed to the owner, or his or her agent, at the address shown on the last equalized assessment roll or as otherwise known, and addressed to anyone known to the City Abatement Officer to be in possession of the property at the street address of the property being possessed. Service shall be deemed to have been completed upon the deposit of said Notice and Order, postage pre-paid, in the United States mail; and,

B. By posting such Notice and Order to Abate conspicuously in front of the property on which, or in front of

which, the nuisance exists, or if the property has no frontage, upon any street, highway, or road then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the City Abatement Officer to be in possession of the property.

Section 1.30.070. APPEAL PROCEDURE. Any owner or other person in possession of the property may appeal any abatement proceeding commenced pursuant to this chapter to the City Council within the number of days allowed in the Notice and Order to Abate. The appeal shall be submitted in writing, specify the grounds upon which the appeal is taken, contain the name, address, and telephone number of the appellant, be accompanied by the payment of an appeal fee and be filed with the City Clerk. Timely appeal shall stay any further abatement action until the hearing is concluded. The City Clerk shall set the matter for hearing before the City Council and notify the parties in writing of the date and location of the hearing, at least ten (10) days prior to said date.

Section 1.30.080. APPEAL FEE: DETERMINATION OF AMOUNT/WAIVER OF PAYMENT/REFUND. The amount of the appeal fee shall be determined periodically by the City Council based upon the costs incurred by the City in processing an appeal pursuant to this chapter. The calculation shall include all costs of the City Abatement Officer, City Clerk, and the City Council but shall exclude actual costs for any work of abatement calculated pursuant to Section 1.30.120.

If the appellant claims an economic hardship in paying the appeal fee, he or she may admit an application for waiver of the appeal fee on forms provided by the City Clerk for that purpose. The forms shall be substantially similar to those required of litigants initiating court proceedings in forma pauperis pursuant to Section 68511.3 of the Government Code. The forms shall be executed under penalty of perjury and contain a declaration as to the truthfulness and correctness of the information contained therein. Upon submittal of the completed forms, the appeal fee shall be waived.

Failure to submit the waiver forms or pay the appeal fee in a timely manner shall cause the appeal request to be automatically denied. Enforcement of the order to abate may then proceed as if no appeal request had been submitted.

If the appeal fee is paid and the City Council finds there is no public nuisance, the appeal fee shall be refunded to the appellant without the payment of any interest which could have accrued.

Section 1.30.090. HEARING PROCEDURE. The hearing before the City Council shall be conducted in accordance with the following procedures:

A. Oral evidence shall be taken only on oath or affirmation. The City Council is authorized to issue subpoenas, administer oaths, and conduct the hearing.

B. Each party shall have these rights: to be represented by legal counsel; to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness; to testify in his or her own behalf. He or she may be called and examined as if under cross-examination.

C. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. 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 and irrelevant and unduly repetitious evidence shall be excluded.

D. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not proficiently speak the English language shall provide an interpreter, approved by the City Council conducting the proceeding as proficient in the English language and the language in which the witness will testify. The cost of the interpreter shall be paid by the party providing the interpreter.

E. The hearing may be continued from time to time upon request of a party to the hearing and upon a showing of good cause therefor.

Section 1.30.100. DETERMINATION OF THE CITY COUNCIL. At the conclusion of the hearing, the City Council shall allow or overrule any or all objections, and reverse, modify or affirm the determinations of the City Abatement Officer and may direct the City Abatement Officer to proceed and perform the work of abatement if not performed by the owner or the person in possession of the property within the prescribed time. The

decision shall be in writing, contain findings of fact and conclusions of law, and be filed with the City Clerk within five (5) working days of the conclusion of the hearing. A copy of the decision shall be sent to each party appearing at the hearing, and if no appearance was made by the appellant, to him or her by mail, at the address specified in the appeal. The decision of the City Council shall be final when filed with the City Clerk.

Section 1.30.110. TIME FOR COMPLIANCE. If the City Council decides that the Order to Abate should be enforced, the owner, his or her agent or person in possession of the property shall comply with the order within such period of time as may be therein prescribed, and in the absence of any prescribed time, within three (3) days from the date of final determination.

Section 1.30.120. NONCOMPLIANCE WITH ORDER TO ABATE. Upon the failure, neglect or refusal to properly comply with the Order to Abate within the prescribed time period, the City Abatement Officer may cause to be done whatever work is necessary to abate the public nuisance. An account of the cost of abatement shall be kept for each separate assessor's parcel involved in the abatement.

When the City has completed the work of abatement, or has paid for such work, the actual cost thereof, together with an administrative cost, including reasonable attorney's fees, shall be charged to the owner of the property. To this amount shall be added the appeal fee, if it was previously waived. The combined amounts shall be included in a bill and sent by mail to the owner, or his or her agent for payment, if not paid prior thereto. The bill shall apprise the owner that failure to pay the bill within fifteen (15) days from the date of mailing may result in a lien upon the property.

Section 1.30.130. REPORT AND NOTICE OF HEARING. If the bill is not paid within fifteen (15) days from the date of mailing, the City Abatement Officer shall render an itemized report in writing to the City Clerk for submittal to the City Council for hearing and confirmation. To the report shall be attached the names and addresses of all persons having any record interest in the property. At least ten (10) days prior to said hearing, the City Clerk shall give notice, by certified mail, of said hearing to the record owner of each assessor's parcel involved in the abatement, the holder of any mortgage or deed of trust of record, and any other person known to have a legal interest in the property. Said notice shall describe the property by street number or some other description sufficient to enable identification of the property and contain a statement of the amount of the proposed assessment.

Section 1.30.140. HEARING ON REPORT. At the time fixed for receiving and considering the report, the City Council shall hear it and any objections of any of the owners liable to be assessed for the work of abatement or any other persons who may have a legal interest in the property. The City Council shall add to the proposed assessment an amount equal to the cost of conducting the assessment confirmation hearing. The Council may also make such other modifications in the report as it deems necessary, after which, by resolution, the report shall be confirmed. The resolution and modified report of the City Abatement Board shall be final and conclusive.

Section 1.30.150. COST AS SPECIAL ASSESSMENT AND LIEN. A certified copy of the resolution shall be recorded by the City Clerk in the Office of the County Recorder. The amounts and the costs of abatement mentioned in the report as confirmed shall constitute a special assessment against such property and are a lien on the property for the amount of the respective assessment.

In addition to its rights to impose said special assessment, the City shall retain the alternative right to recover its costs by way of civil action against the owner and person in possession or control jointly and severally.

Section 1.30.160. TRANSMITTAL OF REPORT TO AUDITOR-INCLUSION IN TAX BILL. A copy of the report as confirmed shall be turned over to the County Auditor on or before the tenth (10th) day of August following such confirmation, and the Auditor shall enter the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The Tax Collector shall include the amount of the assessment on bills for taxes levied against the respective parcels of land.

Section 1.30.170. MANNER OF COLLECTION-LAW APPLICABLE. Thereafter, the amounts of the assessment shall be collected at the same time and in the same manner as City taxes are collected, and are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary City taxes. All laws applicable to the levy, collection and enforcement of City taxes are applicable to such assessments, except that if any real property to which such lien would attach has been transferred or conveyed to a bona fide encumbrancer for value has been created and attaches thereon prior to the date on which first installment of such taxes would become delinquent, then the lien which would otherwise be imposed shall not attach to such real property and the cost of abatement and the cost of enforcing abatement was confirmed, relating to such property, shall be transferred to the unsecured roll for collection.

Section 1.30.180. VIOLATIONS. It shall be unlawful for any person to interfere with the performance of the duties herein specified for the City Abatement Officer or any authorized officer or employee thereof, or to refuse to allow any such officer or employee or approved private contractor, to enter upon any premises for the purpose of abating the public nuisance or to interfere in any manner whatever with said officers or employees in the work of abatement. Any person violating any of the provisions of this chapter shall be deemed guilty of an infraction. Each day or portion of a day that any person violates or continues to violate this chapter constitutes a separate offense and may be charged and punished separately without awaiting conviction on any prior offense.

Any person convicted of an infraction under this chapter shall be punished by a fine not exceeding \$100 for the first violation; by a fine not exceeding \$200 for a second violation of the same provision of this chapter within one year; and by a fine not exceeding \$500 for each additional violation of the same provision of this chapter committed by that person on the same site within one year.

Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of a code being enforced pursuant to this chapter.

SECTION III: This ordinance shall take effect and be in full force upon the thirty-first day from and after its adoption.

Presented and Approved as to form by



D. Richard Rudolf, Assistant City Attorney

2339a

FIRST READ AT A REGULAR MEETING OF THE CITY COUNCIL OF THE
/ OF CHULA VISTA, CALIFORNIA, HELD January 13, 19 87, AND
FINALLY PASSED AND ADOPTED AT A REGULAR MEETING THEREOF HELD January 20,
19 87, BY THE FOLLOWING VOTE, TO-WIT:

AYES: Councilmen : McCandliss, Moore, Nader, Cox
NAYES: Councilmen : None
ABSTAIN: Councilmen : None
ABSENT: Councilmen : Malcolm

Gregory R. Cox

Mayor of the City of Chula Vista

ATTEST *Jennie M. Fulasz*
City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, JENNIE M. FULASZ, CMC, CITY CLERK of the City of Chula Vista, California,
DO HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
ORDINANCE NO. 2187, and that the same has not been amended or repealed.

DATED _____



City Clerk

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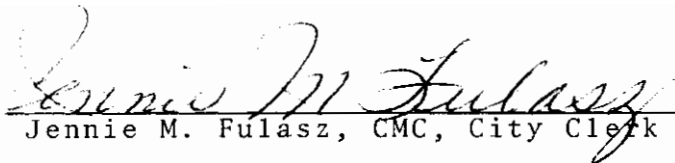
By a unanimous vote on January 20, 1987 (Councilman Malcolm was absent), the City Council placed the ordinance on second reading and adoption.

The current ordinance requires a 30-day written Notice of Violation followed by a second Notice of Hearing on the alleged nuisance before the City Council. This may be delayed by at least 15 days if the offender begins but does not complete the abatement of the nuisance. The ordinance further requires newspaper publication of the 10-day Notice of Hearing. Further, it requires Council determination of the public nuisance of a resolution to be served not later than 14 days following the decision.

This ordinance which adds a new Chapter 1.30 to the Municipal Code will make the time shorter in determining whether or not a public nuisance exists; clarifies the powers of the City officer declaring the existence of the nuisance; clarifies the public hearing procedure; and provides due process protection for the appellants with regard to the costs of abatement.

Copies of the ordinance are available at the office of the City Clerk, City Hall, 276 Fourth Avenue, Chula Vista.

Dated: 1/22/87


Jennie M. Fulasz, CMC, City Clerk

City Attorney
JH

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Jennie M. Fulasz
Jennie M. Fulasz, CMC, City Clerk

Tom -
for your OK!