

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Introduction of Ordinance No. 98-1662 Amending Title 15 – “Buildings and Construction” by Adding Chapter 15.31 to the Lodi Municipal Code relating to Weed and Refuse Abatement

MEETING DATE: August 5, 1998

PREPARED BY: City Attorney

RECOMMENDATION: That the City Council introduce ordinance number 1662.

BACKGROUND: The proposed ordinance provides a clear, concise and consistent process for the abatement of weeds within the city. The proposed ordinance would help to eliminate any confusion created by the City's current procedure, which can be confusing and cumbersome.

The City currently performs the abatement of weeds twice annually using procedures set forth in State statutes. The proposed ordinance would clarify and streamline this abatement process.

Currently each parcel proposed for weed abatement must come before the Council at least twice. First, for a declaration of public nuisance and second to approve the amount of any lien. Under the proposed ordinance, weeds are generally declared to be a public nuisance, thus eliminating the need for repetitive, separate declarations by the Council. But, fairness is still ensured because a person aggrieved by an erroneous abatement order by staff is provided an opportunity to appeal that order promptly, prior to the City or the property owner incurring any abatement expense. Thus, while the initial hearing before the Council would no longer be a matter of routine, such a hearing may be held should extenuating circumstances arise. Under the proposed ordinance the Council will continue to affirm the abatement costs incurred prior to the imposition of a lien. All property owners who may become liable for such costs will be notified of the hearing and their right to attend and register any protest.

The proposed ordinance also provides for the summary abatement of weeds posing an immediate threat to public health, safety or welfare and the recovery of costs incurred by the city for such summary abatements.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney

APPROVED: _____


H. Dixon Flynn -- City Manager

ORDINANCE NO. 1662

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF LODI AMENDING TITLE 15 "BUILDINGS AND
CONSTRUCTION" OF THE LODI MUNICIPAL CODE BY
ADDING CHAPTER 15.31 RELATING TO WEED AND
REFUSE ABATEMENT

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. Lodi Municipal Code Title 15 – "BUILDINGS AND CONSTRUCTION" is hereby amended by adding Chapter 15.31 relating to Weed and Refuse Abatement, to read as follows:

Chapter 15.31

WEED AND REFUSE ABATEMENT

Sections:

15.31.010	Short Title
15.31.020	Findings by City Council
15.31.030	Enforcement Officer Designated
15.31.040	Definitions
15.31.050	Removal of Weeds and Refuse Required; Notice Provisions
15.31.060	Notice by City Clerk
15.31.070	Hearing
15.31.080	Entry by City on Lots
15.31.090	Payment of Costs; Lien on Property
15.31.100	Refunds
15.31.110	Cost of Abatement
15.31.120	Hearing on Costs
15.31.130	Summary Abatement
15.31.140	Costs of Abatement when work Performed by Contractor

15.31.010 Short Title:

This chapter shall be known and may be cited as the "Weed and Refuse Abatement" Ordinance.

15.31.020 Findings by City Council:

The City Council hereby finds that weeds and refuse, as defined in this chapter, on lots or parcels within the City, constitute public nuisances.

15.31.030 Enforcement Officer Designated:

The Fire Chief of the City is hereby designated as the Enforcement Officer, whose duty it shall be to administer and enforce provisions of this chapter, except as otherwise provided herein.

15.31.040 Definitions:

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. Weeds. Any weeds or grasses which when mature bear seeds of a downy or wingy nature, or which because of having attained, or which may attain, such a large growth that when dry shall become a fire or safety hazard, or which are otherwise noxious or dangerous to health.

B. Refuse. Any waste matter, litter, trash, rubbish, debris, grass clippings, tree or shrub trimmings, and dirt which is, or when dry may become a hazard to health, or which is offensive to the senses and/or detrimental to the attractiveness of the surroundings.

C. Lot. A lot, parcel, tract, or piece of land, improved, or unimproved, including the sidewalk area abutting or adjoining such lot, parcel, tract or piece of land, and the parkways or areas lying between any abutting sidewalk and the curb or street line, or between the abutting property ownership line and any street line.

D. Private Lot. Any lot as above defined not owned and in the possession of a governmental agency or entity.

15.31.050 Removal of Weeds and Refuse Required; Notice Provisions:

A. Whenever weeds or refuse, as defined in §15.31.040 of this code are situated upon any private lot, the enforcement officer shall cause notice to be posted upon or in front of such property requiring that any such weeds be destroyed or removed and any such refuse be removed by the owner or occupant within fourteen (14) days from and after the date of such posting. In the event such weeds or refuse are not so destroyed or removed within such period of time, or if a hearing is timely requested as provided for in §_____, within the time therein provided for, the enforcement officer shall forthwith cause the same to be destroyed or removed, and he or she and other employees of the City and any contractors for the City may enter upon the property for such purpose. Such notice shall be in the following form, the heading to be in letters not less than one (1") inch in height.

“NOTICE TO DESTROY WEEDS AND TO REMOVE REFUSE”

Pursuant to Chapter 15.31 of the Lodi Municipal Code, notice is hereby given that weeds and/or refuse are situated upon this lot, and are a public nuisance. Said weeds are required to be destroyed or removed from this lot, and the public nuisance thus abated, within fourteen (14)

days after the date of this posting, unless within ten (10) days after said posting date a person interested in this lot files in writing with the City Clerk of the City of Lodi a request for hearing before the City Council to consider objections to this abatement order. Said hearing shall be at the next regularly scheduled City Council meeting, or any adjournment thereof, after the filing of said request. The date, time and place may be obtained from the City Clerk. If a hearing is so requested, said public nuisance is required to be abated within fourteen (14) days after the date of said posting, or within five (5) days after the decision of the Council, whichever is later, unless a longer period is directed by said Council.

If said public nuisance is not abated as required, the City of Lodi will abate or cause it to be abated, and the costs thereof shall be immediately due and payable and shall be assessed against this lot and become a lien thereon. A hearing before the City Council to consider objections to said costs will be held on _____, 19_____. Said costs can be obtained from the City Clerk ten (10) days before said hearing date.

Said Chapter 15.31 is available in the office of the City Clerk.

Dated and posted:

CITY OF LODI

By: _____
Public Official

B. Such notice shall be posted in front of or on the front portion of each separately owned parcel according to the last equalized assessment roll then available to the City. In the event that the parcel fronts on two (2) or more streets, one (1) posting shall be sufficient. In the event that such weeds or refuse have not been caused to be removed or destroyed by the City within sixty (60) days after the date notice is posted on the property, a new notification shall first be posted.

15.31.060 Notice by City Clerk.

In addition to the notice above provided for, the City Clerk, within three (3) business days after the posting of such notices on the property, shall send a written notification, through the United States mail, first class, postage prepaid, to the owner of the subject property as shown upon the last equalized assessment roll then available to the City, which shall describe the property on which the notice has been posted, by street address, property description, or by reference to a nearby address of other property, or by any other description sufficient to identify the property. Such notice shall thereupon repeat the wording of the notice so posted, including the date thereof and the

name of the public official so posting. Notwithstanding the requirements of this section, the failure to send the written notice herein provided for or any defect therein shall not invalidate any proceedings under this chapter.

15.31.070 Hearing.

Any person with an interest in any property on which a "Notice to Destroy Weeds and to Remove Refuse" sign has been posted may, within ten (10) days of such posting, request a hearing before the City Council with respect to the abatement order. Such request shall be in writing, and shall identify the property and the interest of the person making such request for a hearing. It shall be automatically scheduled for the next regular City Council meeting, at which the Council shall hear and consider all objections to the abatement order. It shall be the responsibility of the party requesting the hearing to ascertain from the City Clerk the date, time and place of the hearing. The hearing may be continued from time to time. By motion or resolution at the conclusion of the hearing, the Council shall allow or overrule any objections. The decision of the Council shall be final and conclusive, and the burden shall be upon the objecting party to show that the abatement order is improper. In holding such hearing, the Council need not adhere to formal rules of evidence. In the event the objections are overruled, the owner and/or occupant will cause such abatement within five (5) days after the date of such hearing or within fourteen (14) days from and after the date such notice was posted, whichever is later, unless a longer period is permitted by the City Council in its motion or resolution overruling such objections.

15.31.080 Entry by City on Lots.

The enforcement officer, and any employees of the City, and any contractors with the City, are hereby authorized to enter upon any lot in the City for the purpose of posting notices under §15.31.050, and for the purpose of entering to destroy or remove weeds and to remove refuse.

15.31.090 Payment of Costs; Lien on Property.

Each cost so confirmed by the Council in accordance with §15.31.120 shall be billed forthwith to the property owner of the lot at his or her address as shown by the last equalized county assessment roll then available to City, or at such other address as may have been furnished to City by the owner in connection with abatement proceedings, excepting those as to which such Council action occurs after July 1 and before August 10 of any year. However, the failure to furnish such bill will not invalidate the lien herein provided. The cost of abatement on each lot shall constitute a special assessment against that lot, and from the date of the Council action pursuant to §15.31.120 is hereby made a lien upon such lot. To the extent such assessments have not been paid by July 1 of the particular year (whether or not billed to the property owner), a certified copy of all assessment reports adopted by the City Council and not theretofore forwarded to the County Auditor shall be forwarded to him or her on or before August 10. All such assessments which so constitute a lien shall be collected in the same manner as general city property taxes are collected and shall be contained on the tax bill therefor as prepared and mailed by county officials.

15.31.100 Refunds.

The Council may order refunded all or part of an assessment paid pursuant to this chapter if it finds that all or part thereof was erroneously levied. No refund shall be made unless a written claim is filed with the City Clerk on or before December 10 of the tax year next following that in which the work resulting in the assessment was purportedly done. The claim shall be verified by the person who paid the assessment, or his or her guardian, executor or administrator, and shall set forth the basis for the claim. The Council shall hold a hearing with respect thereto at its next regular meeting scheduled at least ten (10) days after the filing of the claim, or at any adjourned session thereof, and claimant shall not be entitled to special notice thereof. The hearing may be continued from time to time. No refund shall be made of penalties or interest.

15.31.110 Cost of Abatement.

The enforcement office shall keep a record of the cost of abatement on each separate lot wherein the City, or its contractors, abate any nuisance under this chapter. He or she shall quarterly submit to the City Clerk a written report showing such cost as to each such lot on which such abatement has been completed for at least ten (10) days prior to the filing of such report with the City Clerk, but may include the costs of more recent abatements. Such written reports shall be filed with the City Clerk no later than January 2, April 2, July 2, and October 2 of each year.

15.31.120 Hearing on Costs.

At the Council meeting next regularly scheduled at least eleven (11) days following the date on which such written report is to be filed with the City Clerk, or at any adjourned session thereof, the City Council shall conduct a hearing with respect to such costs contained in the written report of the enforcement officer. Any property owner or other person interested in a lot as to which a cost is proposed to be assessed may be heard and present such evidence in opposition to the proposed assessment as that person desires. The Council shall make its determination to each objection by motion, and, except to the extent that it may uphold any objection in whole or in part, or may decrease or eliminate any assessment on its own motion, shall adopt and confirm the written report of the enforcement officer by motion or resolution. The determination of the Council shall be final.

15.31.130 Summary Abatement.

The enforcement officer, upon a written determination filed with the City Clerk that weeds or refuse on any private lot constitute an immediate threat to the public health, safety and welfare, may enter or authorize other City employees or its contractors to enter on such private lot and forthwith destroy or remove such weeds and remove such refuse without notice of any nature. The resulting cost shall be payable by the same persons, in the same manner, and shall be a lien upon such lot and collectible as such all as provided in the preceding and succeeding sections of this chapter. Written notice of the hearing to be held pursuant to §15.31.120 shall be mailed to the owner of record of such lot as appears from the last equalized county assessment roll

then available, by first class mail, at least seven (7) days before the date of such hearing.

15.31.140 Costs of Abatement when Work Performed by Contractor.

Costs of abatement, if done by a contractor, shall be the cost to the City, plus a reasonable amount on account of City's overhead attributable thereto. In the event City crews perform the work, cost and reasonable overhead for City personnel and equipment shall be applied. The City shall, by resolution, adopt labor and equipment rates to be utilized in determining costs when City crews perform the abatement work and a percentage overhead factor to be applied thereto and to contract costs.

Section 2 - No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 3 - Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

Section 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 5. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this ____ day of _____, 1998

JACK A. SIEGLOCK
Mayor

Attest:

ALICE M. REIMCHE
City Clerk

State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1662 was introduced at a regular meeting of the City Council of the City of Lodi held _____, 1998 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 1998 by the following vote:

AYES: Council Members -

NOES: Council Members -

ABSENT: Council Members -

ABSTAIN: Council Members -

I further certify that Ordinance No. 1662 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney