



# CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Introduction of ordinance addressing property maintenance and the designation of certain kinds of nuisances.

MEETING DATE: October 16, 1991

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration and possible introduction of attached property maintenance/nuisance ordinance.

**BACKGROUND INFORMATION:** Over the past three months, there has been substantial Council discussion and study of a property maintenance/nuisance ordinance, as called for in the new General Plan. A Mayor's Committee of interested persons comprised of representatives of the public and real estate business community was formed. The Committee was chaired by Mayor Pro Tempore James Pinkerton and staffed by representatives from the Police Department, Fire Department, Community Development Department, City Attorney, and City Clerk. After two meetings and some suggested modifications, there now appears to be a consensus among Committee members on the attached draft.

The purposes of the ordinance are to control conditions affecting the health, safety and welfare of the public, to prevent blight, and to protect property values. Admittedly, it may represent additional expense to some property owners. However, the experience of other cities with similar ordinances seems to have been positive with the burdens outweighed by the benefits. The ordinance attached is similar to those in place elsewhere.

As previously discussed, Lodi has already adopted certain Uniform Codes (Housing, Building, Fire, etc.) which address most situations of a pure health and safety nature. This ordinance would be complimentary to those codes, covering situations where the concerns are also aesthetic. Examples would include:

APPROVED. \_\_\_\_\_

**THOMAS A. PETERSON**  
City Manager

REC'D AND FILED

Introduction of ordinance addressing property maintenance  
and the designation of certain kinds of nuisances.

October 16, 1991

Page Two

- ° Accumulations of dirt or debris not constituting a fire or health hazard
- ° Broken or discarded furniture or appliances
- ° Shopping carts
- ° Mattresses
- ° Machinery [other than vehicles) or personal property which has been abandoned, dismantled or left in a state of construction or repair
- ° Miscellaneous junk not amounting to a fire or health hazard
- ° Front yard clothes lines or clothes hanging in front yards
- ° Boxes, lumber, fire wood or other salvaged materials
- ° Accumulations of recyclable materials such as cans or bottles
- ° Unpainted buildings or buildings with the majority of paint gone or deteriorated.
- ° Dilapidated fences.

Because of the cost and staff requirements involved, no attempt was made to include a provision for periodic inspection of buildings, as some other cities have done. Enforcement would remain primarily on a complaint basis.

Some changes have been made since the earlier draft ordinance was distributed to the Council. For example, dilapidated fences are now covered, and the penalty provisions have been added to provide increasing fines for subsequent violations. The Board to which decisions of the City Manager would be appealed has been changed from the Council to the Planning Commission, which more frequently works with such appeals involving real property.

I believe the attached draft complies with Council directions received at the August 28, 1991 meeting and addresses most if not all the concerns expressed by the various parties involved.

**FUNDING:** Unknown.

Respectfully submitted,



---

Bob McNatt  
City Attorney

ORDINANCE NO. 1528

AN ORDINANCE OF THE LODI CITY COUNCIL  
ADDRESSING PROPEXTY MAINTENANCE AND THE DESIGNATION  
OF CERTAIN KINDS OF NUISANCES

---

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Chapter 15.30 is hereby added to the Lodi Municipal Code to read as follows:

Chapter 15.30

PROPERTY MAINTENANCE AND THE DESIGNATION OF CERTAIN KINDS OF NUISANCES

Sections:

- 15.30.010 "Findings and Intent".
- 15.30.020 Definitions.
- 15.30.030 Nuisances Prohibited.
- 15.30.040 Declaration of Public Nuisance.
- 15.30.050 Abatement Procedure: Notification of Nuisance.
- 15.30.060 Administrative Hearing--Generally.
- 15.30.070 Notice of Hearing.
- 15.30.080 Administrative Hearing--By City Manager or Designee.
- 15.30.090 Nuisance Finding--No Appeal .
- 15.30.100 Appeal Procedure.
- 15.30.110 Appeal Hearing Procedure.
- 15.30.120 Decision by Planning Commission.
- 15.30.130 Service of Order to Abate.

Sections:

- 15.30.140 Filing Appeal of Planning Commission's Decision--Time Limit.
- 15.30.150 Abatement by City.
- 15.30.160 Demolition Restrictions.
- 15.30.170 Notice of Intent to Demolish.
- 15.30.180 Record of Cost of Abatement.
- 15.30.190 Assessment Lien.,
- 15.30.200 Notice of Lien.
- 15.30.210 Violations and Penalties.

15.30.010. "Findings and Intent".

A. The Lodi City Council hereby finds and declares that the regulations in this chapter are necessary in order to:

- (1) control or eliminate conditions which are detrimental to health, safety and welfare;
- (2) preserve the quality of life and alleviate certain socioeconomic problems created by physical deterioration of property; and
- (3) protect property values and further certain aesthetic considerations for the general welfare of all residents of the City of Lodi.

B. This chapter is not intended to repeal amend or in any way impair other laws or regulations applicable to property in the City of Lodi, as they now exist or may later be amended, nor to affect or modify any deed restriction or covenant running with the land which is more restrictive.

15.30.020. Definitions.

(a) "Back yard" shall mean that portion of property between a building and the back property line.

(b) "Building" shall mean any structure used or intended for supporting or sheltering of any use or occupancy of any nature.

(c) "City" shall mean the City of Lodi.

(d) "City Manager" shall mean the City Manager or the City Manager's designee.

(e) "Front yard" shall mean that portion of property between the street and a building.

(f) "Owner" shall mean any person owning property, as shown on the last equalized assessment roll for city taxes and also includes the lessee, tenant or other person having control or possession of the property, unless otherwise specified.

(g) "Person" shall mean any individual, partnership, corporation, association or other organization, however formed.

(h) "Property" shall mean all real property within the City of Lodi including but not limited to front yards, side yards, back yards, driveways, walkways, and sidewalks and shall include any building located upon such property.

(i) "Side yard" shall mean that portion of any property between a building and the side property lines.

15.30.030. Nuisances Prohibited.

It shall be unlawful and an infraction for any person owning, leasing, renting, occupying or having charge or possession of any property within the City to maintain or allow to be maintained such property in any such manner that any of the following conditions are found to exist thereon, except as may be allowed by any other provision of law:

- A. Accumulations of dirt, litter or debris;
- B. Clothes lines or clothes hanging in front yards, side yards, or from porches, balconies or windows, provided however, that clothes lines **and** clothes hanging in rear yards shall be permitted;
- C. Accumulations of packing boxes, lumber, salvaged materials, fire wood, or similar materials in the front yard or visible from a public right of way;
- D. Attractive nuisances dangerous to children including abandoned, broken, or neglected equipment, machinery, refrigerators and freezers, hazardous or unmaintained pools, ponds, and excavations;
- E. Broken, discarded or dilapidated furniture, household equipment, or furnishings, or shopping carts on the exterior of the front or side yards;
- F. Overgrown vegetation likely to harbor rats, vermin or other nuisances dangerous to public health, safety, and welfare, or

obstructing a necessary view of drivers on public streets or private driveways ;

G. Dead, diseased, decayed or hazardous trees, weeds or other vegetation constituting unsightly appearance, which is either dangerous to public health or safety, or detrimental to neighboring properties or property values ;

H. Vehicle parts or other articles of personal property which are abandoned or left in a state of partial construction or repair;

I. Buildings which are abandoned, boarded up, partially destroyed, or left in a state of partial construction for an unreasonable period of time, and buildings which are unpainted or where the paint on the exterior of the building is mostly worn off.

J. Fences in a dilapidated, partially destroyed or deteriorated condition.

15.30.040. Declaration of Public Nuisance.

**Any** property found to **be** maintained in violation of the foregoing section **is** hereby declared to be a public nuisance **and** shall be abated by rehabilitation, removal, demolition, or repair pursuant to the procedures **set** forth herein. The procedures for abatement herein **shall** not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances or regulations or abating public nuisances in any other manner provided by law.

15.30.050. Abatement Procedure: Notification of Nuisance.

Whenever the City Manager determines that any property within the City is being maintained contrary to one or more of the provisions

contained in this chapter, the City Manager shall give written notice ("Notice to Abate") to the owner of the property stating the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than seven (7) calendar days, for correcting the violations, and may also set forth suggested methods of correcting the same. This notice shall be served upon the owner in accordance with the provisions of Section 15.30.070 covering service by mail or in person.

15.30.060. Administrative Hearing -- Generally.

In the event the owner shall fail, neglect or refuse to comply with the "Notice to Abate", the City Manager shall conduct an administrative hearing to ascertain whether the condition complained of in the notice violates this chapter, and therefore constitutes a public nuisance.

15.30.070. Notice of Hearing.

A notice of hearing shall be served upon the owner as defined herein not less than seven (7) calendar days before the time fixed for hearing. Notice of hearing shall be served in person, by first class mail, or by certified mail to the owner's last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the City Manager (or City Manager's designee) to ascertain whether certain property situated in the City of Lodi known and designated as (street address) \_\_\_\_\_, in said City, and more particularly described as {assessor's parcel number) \_\_\_\_\_ constitutes a public nuisance subject to abatement by the methods suggested or described in this notice. If the condition(s) described in this notice, in whole or in part, are found to constitute a public nuisance as defined in Lodi Municipal Code Section 15.30.030 and are not properly abated by the owner, such nuisance may be abated by municipal authorities, in which case the cost of the abatement will be assessed upon such property and such costs, together with interest thereon, will constitute a lien upon such property until paid. In addition, you may be cited for violation of the provisions of the Lodi Municipal Code and subject to a fine.

Said alleged conditions consist of the following:

---

---

---

---

The method(s) of abatement are:

---

---

---

---

All persons having an interest in the matters covered by this notice may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ .

\_\_\_\_\_  
City Manager

Date and Time of Hearing \_\_\_\_\_

Location of Hearing \_\_\_\_\_

15.30.080. Administrative Hearing -- By City Manager or Designee.

At the time stated in the notice, the City Manager or City Manager's designee shall hear and consider all relevant evidence, objections or protests relative to such alleged public nuisance and to the proposed method(s) of abatement which may include clean up, rehabilitation, repair, removal or demolition of such property, or such other methods which the City Manager may deem appropriate. The hearing may be continued from time to time.

If the City Manager finds that such public nuisance does exist and that there is sufficient cause to abate the nuisance by rehabilitation, demolition, removal or repair, the City Manager shall prepare a Findings and Order which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. The order shall include reference to

the right to appeal set forth in Section 15.30.100 of this chapter. A copy of the Findings and Order shall be served on all owners of the subject property in accordance with the provisions of Section 15.30.070. In addition, a copy of the Findings and Order shall be forthwith conspicuously posted on the property.

15.30.090. Nuisance Finding -- No Appeal.

In the absence of an appeal by owner, the property shall be rehabilitated, repaired, removed, or demolished in the manner and means specifically set forth in the Findings and Order. In the event the owner fails to abate the nuisance as ordered, the City Manager shall cause the nuisance to be abated by City employees or private contract. The costs shall be billed to the owner as specified in Section 15.30.150 of this chapter. The City Manager may authorize City employees or the City's contractors to enter property for such purposes. However, nothing in this section shall be deemed to abrogate the requirement of a warrant for entry into any place where owner would have a reasonable expectation of privacy.

15.30.100. Appeal Procedure.

A. The owner may appeal the City Manager's Findings and Order to the Planning Commission by filing an appeal with the City Clerk within seven (7) calendar days of the date of service of the City Manager's decision. The appeal shall contain:

1. A specific identification of the subject property;
2. The names and addresses of all appellants;

3. A statement of appellant's legal interest in the subject property ;

4. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;

5. The date and signatures of all appellants; and

6. The verification of at least one (1) appellant as to the truth of the matters stated in the appeal.

B. As soon as practicable after receiving the appeal, the City Clerk shall set a date for the Planning Commission to hear the appeal which date shall **be** not less than seven (7) calendar days nor more than thirty (30) calendar days from the date the appeal was filed. The City Clerk shall give each appellant written notice of the time and the place of the hearing at least five (5) calendar days prior to the date of the hearing, either by causing a copy of such notice to **be** delivered to the appellant personally or **by** mailing a copy thereof, postage prepaid, addressed to the appellant at his address **shown** on the appeal. Continuances of the hearing may be granted by the Planning Commission on request of the owner for good cause shown, or on the Planning Commission's own motion.

15.30.110. Appeal Hearing Procedure.

A. All hearings shall be tape recorded.

B. Hearings need not be conducted according to the technical rules of evidence.

C. 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. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

D. Oral evidence shall be taken only on oath or affirmation.

E. Irrelevant and unduly repetitious evidence shall be excluded.

15.30.120. Decision by Planning Commission.

Upon the conclusion of the hearing, the Planning Commission shall determine whether the property or any part thereof, as maintained, constitutes a public nuisance. If the Planning Commission so finds, the Planning Commission shall adopt a "findings and order" declaring such property to be a public nuisance, setting forth its findings and ordering the abatement of the same by having such property rehabilitated, repaired, removed or demolished in the manner and means specifically set forth in the findings and order. The findings and order shall set forth the time within which such work shall be completed by the owner, in no event less than thirty (30) days. The decision and order of the Planning Commission shall be final.

15.30.130. Service of Order to Abate.

A copy of the findings and order of the Planning Commission ordering the abatement of said nuisance shall be served upon the

owner(s) of the property in accordance with the provisions of Section 15.30.070. Upon abatement in full by the owner, the proceedings hereunder shall terminate.

15.30.140. Filing Appeal of Planning Commission's Decision--Time Limit.

Any action appealing the Planning Commission's decision and order shall be commenced within thirty (30) calendar days of the date of service of the decision.

15.30.150. Abatement by City.

A. If such nuisance is not abated as ordered within the abatement period, the City Manager shall cause the same to be abated by city employees or private contract. The City Manager is expressly authorized to enter upon said property for such purposes. The cost, including incidental expenses, of abating the nuisance shall be billed to the owner and shall become due and payable thirty (30) days thereafter. The term "incidental expenses" means and includes, but is not limited to, personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the nuisance; the actual expenses and costs of the **City** in the preparation of notices, specifications and contracts, and in inspecting the work; and the costs of printing and mailing required hereunder.

B. A person shall not obstruct, impede, or interfere with the City Manager, or his representative, or with any person who owns, or holds any interest or estate in any property in the performance of any

necessary act, preliminary to or incidental , carrying out an abatement order issued pursuant to Sections 15.30.080 and 15.30.120 of this chapter.

15.30.160. Demolition Restrictions.

No property shall be found to be a public nuisance under Section 15.30.030(1) and ordered demolished unless the order is based on competent sworn testimony and it is found that in fairness and in justice there is no way other than demolition reasonably to correct such nuisance.

15.30.170. Notice of Intent to Demolish.

A copy of any order requiring abatement by demolition under Section 15.30.080 or 15.30.130 shall be forthwith recorded with the San Joaquin County Recorder.

LIEN PROCEDURE

15.30.180. Record of Cost of Abatement.

The City Manager shall keep an account of the cost, including incidental expenses, of abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing to the City Council showing the cost of abatement, including the rehabilitation, demolition or repair of said property, including any salvage value relating thereto; provided that before the report is submitted to the City Council , a copy of the same shall be posted for at least five (5) days upon or in front of such

property, together with a notice of the time when said report shall be heard by the City Council for confirmation. A copy of the report and notice shall be served upon the owners of said property in accordance with the provisions of Section 15.30.070 at least five (5) calendar days prior to submitting the same to the City Council. Proof of the posting and service shall be made by affidavit filed with the City Clerk.

15.30.190. Assessment Lien.

A. The total cost for abating such nuisance, as so confirmed by the City Council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the County Recorder of a Notice of Lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

B. After such confirmation and recordation, a certified copy of the City Council's decision shall be filed with the San Joaquin County Auditor-Controller on or before August 1st of each year, whereupon it shall be the duty of the Auditor-Controller to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be **subject** to the same penalties and the **same** procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment.

C. In the alternative, after such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

15.30.200. Notice of Lien.

Such notice of lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN  
(Claim of City of Lodi)

Pursuant to the authority vested by the provisions of Section \_\_\_\_ of City of Lodi Ordinance No. \_\_\_\_\_, the City Manager of the City of Lodi did on or about the \_\_\_\_ day of \_\_\_\_, 19\_\_\_\_, cause the property hereinafter described to **be** rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property; and the City Council of the City of Lodi did on the \_\_\_\_ day of \_\_\_\_, 19\_\_\_\_, assess the cost of such rehabilitation, repair or demolition upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Lodi does hereby claim a lien on such rehabilitation, repair, or demolition in the amount of **said** assessment, to wit: the sum of \$\_\_\_\_, and the same shall be a lien upon said real property until the same has been paid in **full** and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Lodi, County of San Joaquin, State of California, and particularly described as follows:

(description)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
City Manager  
City of Lodi

=====  
15.30.210. Violations and Penalties.

Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1. A fine, not exceeding \$100, for first violation;
2. A fine, not exceeding \$200, for a second violation of this chapter within 1 year;
3. A fine, not exceeding \$500, for each additional violation of this chapter within 1 year.

~~SECTION 2.~~ All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. 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

\_\_\_\_\_  
DAVID M. HINCHMAM  
Mayor

Attest:

ALICE M. REIMCHE  
City Clerk

State of California  
County of San Joaquin, **ss.**

I, Alice M. Keimche, City Clerk of the City of Lodi, do hereby certify that Ordinance **No.1528** was introduced at a regular meeting of the City Council of the City of Lodi held October 16, 1991 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 1991 by the following vote:

|           |                   |
|-----------|-------------------|
| Ayes:     | Council Members - |
| Noes :    | Council Members - |
| Absent:   | Council Members - |
| Abstain : | Council Members - |

I further certify that Ordinance No. 1528 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

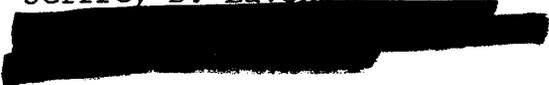
BOBBY W. McNATT  
City Attorney

(3)  
ORD1528/TXTA.01V

RECEIVED

1991 SEP -4 AM 9 57

ALICE M. REINICHE  
October 13, 1991  
CITY CLERK  
CITY OF LODI

Jeffrey D. Lavond  


Dear Council Members,

I am writing to register my opposition to the proposed city ordinance on 'anti-ugly' or Trash ban.

Some questions must be answered before you enact such freedom denying ordinances.

1) Is this a city wide problem or just in certain areas?

If it is not a city wide problem it should be corrected in another manner. For instance; address by address, block by block ordinance, or Fire Department Regulations.

I say this is not a city wide problem!

2) What is "Trash"? One man's trash is another man's art (or Treasure). For instance; there is a home in Lodi (I am sure you are aware) that has a cactus garden out front with a life-size plastic horse; not my idea of a "Treasure", and I wouldn't want to live next to it, but I Love it. I love it because it emphasizes the "Charm" of Lodi. Where everything is a little unique.

Dublin, that other city with a "Trash Law", is very stagnant and without feeling. Everything is the same, clean to the point of being sterile. No charm -- No personality.

I vehemently oppose this ordinance!

Do not kill Lodi. It has life, vigor. Do not stifle free thinking, free expression, free living; a place to raise a family!

The ordinance is not a solution. Possible solutions might include;

- 1) A City Trash Day: **An** annual event, where anything and everything put out on the curb will be picked **up FREE**.
- 2) How about city groups (Churches, Boy Scouts, Rotary Clubs) cleaning **up** areas in need of care?

I'm sure the creativity of Lodi's City Council can imagine numerous alternatives to the costly and time consuming legislation. When a community is called upon to act for the common good, few will refuse.

Sincerely,

