

Chapter 5.16 Public Nuisance Abatement

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5.16.010 Definitions. a. Abatement means the removal, stoppage, prostration, or destruction of that which causes or constitutes a nuisance, whether by breaking or pulling it down, or otherwise destroying, or effacing it, or by any other method or means.

b. Appeals Board means the City Council or another commission, board, or person designated or appointed by resolution of the City Council with authority to conduct appeals under this Chapter.

c. Building Inspector means the person designated in writing who has been adequately trained and is determined to be a qualified inspector for the purposes of determining the structural safety of a structure.

d. Department means the Department of Public Safety or another department or division of the City designated in writing by the City Manager to have the authority, in whole or in part, to enforce this chapter.

e. Owner means the owner of record based on the Kenai Peninsula Borough assessor's record or any person with legal, financial or equitable interest in the property on which the alleged public nuisance exists at the time of the violation.

f. Property means any real property, premises, structure or location on which a public nuisance is alleged to exist.

g. Public nuisance means any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; or any tree, pole, smokestack; or any excavation, hole, pit, basement, cellar, sidewalk subspace, dock, wharf or landing dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, damage or injury to any one or more persons in the City, in any one or more of the following particulars:

1. By reason of being a menace, threat or hazard to the general health and safety of the community.
2. By reason of being a fire hazard.
3. By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.

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5.16.010(4)—5.16.030(b)

4. By reason of lack of sufficient or adequate maintenance of the property, or being vacant, or the accumulation of

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junk or waste material of any kind or description, any of which depreciates the appraised value of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.

h. Summary abatement means abatement of the nuisance by the City, or a contractor employed by the City, by removal, repair, or other acts without notice to the owner, agent, or occupant of the property except for the notice required by this chapter.

5.16.020 Summary Abatement. a. Whenever the existence of a public nuisance, as defined in this chapter, comes to the attention of the Department, the Department may promptly cause to be inspected the property on which it is alleged that such public nuisance exists. Should the Department find that a public nuisance exists, and that the public health, safety or welfare may be in immediate danger, then summary abatement procedures shall be implemented and the Department may cause the nuisance to be removed or abated. The Department may notify the Building Inspector if the public nuisance involves a building that appears structurally unsafe. The Building Inspector, upon being notified by the Department shall cause the building on which it is alleged such public nuisance exists to be inspected and submit a written report of such inspection and the findings to the Department.

b. When summary abatement is authorized, prior notice to the owner, agent or occupant of the property is not required, but will be attempted. Following summary abatement, the Department shall cause to be posted on the property liable for the abatement a notice describing the action taken to abate the nuisance.

5.16.030 Abatement in Other Cases; Notice, etc. a. If, after inspecting the property on which the nuisance is reported, the Department declares the existence of a public nuisance, but the nature thereof is not such as to require the summary abatement of such nuisance, then, regular abatement procedures shall be followed. Photographs and reports of the findings and inspections shall be made and filed with the Department.

b. The Department shall determine the person who, from the records in the Recorder's office, appears to be the titled owner of the property and immediately cause a written notice to be served on such person by personal service or by leaving a copy of the notice at the usual place of residence or business of such owner, or address of such owner shown in the Recorder's records, or by copy mailed to such owner at such place or address by United States certified mail return receipt. If service of such written notice is unable to be accomplished by any of the methods described above, the Department shall cause a copy of the notice to be published in a newspaper of general circulation in the City, once a week for two consecutive weeks, and shall further cause a copy of the notice to be left with the person, if any, in possession of such property on which it is alleged such public nuisance exists, or if there is no person in possession thereof, the Department shall cause a copy of the notice to be to be posted at such structure, location or premises. The Department shall also determine from the Recorder's office who the lienholder of the property, if any, as documented therein, is and cause a written notice to be served on such lienholder by United States mail return receipt.

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(Homer 12/07)

5.16.030(c)—5.16.050(d)(3)

c. The aforesaid notice to the owner, and lienholder, if any, of the property shall state clearly and concisely the findings of the Department with respect to the existence of a public nuisance. The notice shall further state that unless the owner thereof shall cause the abatement of the public nuisance, pursuant to the orders contained in the Department's notice, the public nuisance shall be abated by the City at the expense of the owner.

d. Any person who is the recorded owner of the premises, location or structure at the time an order pursuant to this chapter is issued and served upon him, is responsible for complying with that order, and liable for any costs incurred by the City therewith, notwithstanding the conveyance of the person's interests in the property to another after such order was issued and served.

e. The fact that the property is boarded up or otherwise enclosed is not a defense to the determination that a public nuisance exists.

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5.16.040 Abatement by owner. a. Within thirty days after the posting and mailing of a notice to abate a nuisance, the owner, agent of the owner, or person in possession of the affected property shall remove and abate such nuisance or show that no nuisance in fact exists. Such showing shall be made by filing a written statement, under oath or affirmation, describing in detail the facts and circumstances that show that no nuisance exists. The statement shall be filed with the Department.

b. The Department, upon written application by the owner within the thirty day period after the notice has been served, may grant additional time for the owner to effect the abatement of the public nuisance, provided that such extension is limited to a specific time period.

5.16.050 Appeal procedures; hearing. a. The owner or occupant of the property who has been served with a notice pursuant to this Chapter that a public nuisance exists and that it must be abated within thirty days may within seven calendar days after receipt of such notice make a written demand to the Department for a hearing on the question of whether a public nuisance in fact exists. The hearing shall be held within 14 calendar days following receipt by the Department of the written demand and at least two days' notice of the hearing shall be given to the person who made the written demand for the hearing. The date of the hearing may be postponed for good cause.

b. The hearing shall be conducted by the Appeals Board. Such Appeals Board may amend or modify the notice or order, or extend the time for compliance with the Department's order by the owner by such date as the majority of the Appeals Board may determine.

c. The owner, agent of the owner, occupant and lienholder, if any, of the subject property shall be given the opportunity to present evidence to the Appeals Board in the course of the hearing.

d. In those instances where the nuisance has been abated by the City, the Appeals Board shall have discretion to waive the cost of abating a nuisance, in whole or in part, if, in the course of the hearing reviewing the decision, the Appeals Board finds that any of the following did not conform to the provisions of this Chapter:

1. The notice to remove the nuisance;
2. The work performed in abating the nuisance; or
3. The computation of charges.

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(Homer 12/07)

5.16.060—5.16.070(d)

5.16.060 Abatement by city. a. If any public nuisance is not abated at the expiration of time stated in the notice or order, or within such additional time as the Department or Appeals Board may grant, the Department shall have the authority to enter upon the property and abate the public nuisance found thereon. In abating such nuisance, the Department may go to whatever extent may be necessary to complete the abatement of the public nuisance and if it is practicable to salvage any material derived in the abatement, the Department may sell the salvaged material at private or public sale at the best price obtainable and shall keep an accounting of the proceeds thereof.

b. The proceeds, if any, obtained from the sale of any material salvaged as a result of an abatement of a public nuisance by the Department shall be deposited to the General Fund of the City and any deficit between the amount so received and the cost of the abatement, plus overhead charges, penalties, and interest is a special assessment and lien against the property in question. Such deficit shall be collected as any other assessment by the City; however, any other alternative collection method may be utilized by the City to recoup the deficit. Should the proceeds of the sale of such salvaged material exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the public nuisance was abated when a proper claim to the excess is established.

c. In abating a public nuisance, the Department may call upon any of the City departments or divisions for whatever assistance shall be deemed necessary or may by private contract cause the abatement of the public nuisance.

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d. The Department shall, after completing the removal and abatement, file a statement of costs with the Finance Director.

5.16.070 Notice of assessment; appeal of charges.

a. Upon receipt of the statement of costs from the Department, the Finance Director shall mail to the owner of the property upon which the public nuisance has been abated notice of the amounts set forth in the statement plus an additional amount for overhead charges and penalty, as provided in this chapter, and stating that the City proposes to assess against the property the amount set forth in the notice and that objections to the proposed assessment must be made in writing and received by the Finance Director within twenty days from the date of mailing such notice. Upon the expiration of the twenty day period, if no objections have been received by the Finance Director, the Finance Director shall cause a notice of the lien to be recorded against the property.

b. If objections of either the property owner or their representative are received by the Finance Director prior to the expiration of the twenty day period, the Finance Director shall refer the matter to the Department for administrative review.

c. Upon conclusion of its administrative review, the Department shall make a written determination that the amount of the charges shall be canceled, reduced, or remain the same. A copy of this determination shall be furnished to the person making the objections together with a notice of such person's right to appeal to the Appeals Board.

d. If no appeal of a determination by the Department is filed within the time period allowed, a copy of the determination will be furnished to the Finance Director who shall then cause a notice of the lien to be recorded as provided in subsection (a).

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(Homer 12/07)

5.16.070(e)—5.16.080

e. If a timely appeal is received by the Appeals Board, a hearing shall be scheduled and held on the matter. If, after the hearing, the Appeals Board determines that the proposed assessment does not comply with subsection (g) herein, the Appeals Board shall so certify to the Finance Director and the proposed assessment shall be canceled. If, after the hearing, it is determined that the proposed assessment or any part of it is proper and authorized, the Appeals Board shall so certify to the Finance Director who shall record a notice of the lien in the amount as determined appropriate by the Appeals Board, as provided in subsection (a).

f. The determination of the Appeals Board is a final administrative decision. It is appealable to superior court and is not appealable to the City Council.

g. (1) The Department, in administrative review, or the Appeals Board, on appeal, may reduce or cancel a proposed assessment if it is determined that:

i. Any of the following did not conform to the provisions of this Chapter:

a. The notice to remove the nuisance; or

b. The work performed in abating the nuisance; or

c. The computation of charges; or

ii. The owner of the property was eligible for a waiver of costs under Section 5.16.090.

(2) The Department, in administrative review, or the Appeals Board, on appeal, may reduce a proposed assessment by eliminating the civil penalty portion if it is determined that:

i. The current owner was not in possession of the property at the time the notice required in Section 5.16.030 was posted; or

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ii. The owner did not receive the notice to remove the nuisance, did not have knowledge of the nuisance and could not, with the exercise of reasonable diligence, have had such knowledge.

h. If, after a notice of lien has been recorded, there is a written request of an owner who alleges that the owner did not receive notice of the proposed assessment, the Finance Director shall refer the matter for review pursuant to subsection (b).

i. The lien may be canceled or reduced by the Department, in administrative review, or the Appeals Board, on appeal, if it is determined that the owner did not receive notice of the proposed assessment, did not previously have knowledge of the lien or of the nuisance abatement work constituting the basis of the lien, could not, in the exercise of reasonable care or diligence, have had such knowledge, and in addition, that the circumstances are such that a reduction or cancellation of the charges would have been appropriate had the matter been reviewed pursuant to this Section prior to assessment. Upon receipt of a certification from the Appeals Board, pursuant to subsection (e), the Finance Director shall cancel or reduce the lien if required by the determination of the Department or the Appeals Board.

5.16.080 Personal liability of owner. The person or persons who own the property at the time at which the notice required under Section 5.16.030 is posted shall be personally liable, jointly and severally, for the amount of the assessment including all interest, civil penalties, and other charges.

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(Homer 12/07)

5.16.090—5.16.100

5.16.090 Cost of abatement; low income, elderly persons.

a. Notwithstanding the other provisions of this Chapter, the cost of abating a nuisance shall be waived for low income and elderly persons, if upon application it appears to the Department that the conditions set forth in subsection (b) are met.

b. To be eligible for waiver of nuisance abatement costs a person must be classified as "low income," as defined by the Department, or

c. Be more than 65 years of age and:

1. A person living alone, whose total income for the preceding calendar year did not exceed one and one-half (1-1/2) times the maximum amount a Social Security recipient at age 65 may have earned in that year without having any benefits withheld; or

2. The head of a household which household received a total income for the preceding calendar year that did not exceed two and one-quarter (2-1/4) times the maximum amount a Social Security recipient at age 65 may have earned in that year without having any benefits withheld.

d. Additionally, all persons wishing to qualify for waiver of nuisance abatement costs must:

1. Furnish proof of the age and income requirements as set forth above in the manner and form designated by the Department;

2. Must own, or be in the process of purchasing the property from which the nuisance is abated; and

3. Be living on the property from which the nuisance is abated.

e. The removal of the nuisance in question must have been required by the Department and the person requesting the waiver of costs must have been officially notified by the Department to remove the nuisance.

f. Applications for waiver of nuisance abatement costs shall be filed with the Department. on forms supplied by the

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City within ten days after receipt of a notice to remove a nuisance or a work order notice unless the Department extends the time for good cause shown. All information required to be given on such form shall be supplied and verified by the applicant.

g. The maximum amount that may be waived under this Section for any one parcel of real property or any one person shall be \$500 per calendar year.

h. No overhead charge or civil penalty shall be imposed for any real property for which a waiver, pursuant to this Section, shall have been approved.

5.16.100 Overhead charge, civil penalties. a. Whenever a nuisance is abated by the City, the owner of the property in question shall pay the actual costs of the abatement plus an overhead charge of 15 percent of the actual costs for administration. The Department shall keep an accurate account of all expenses of abatement and calculate the applicable overhead charge.

b. Whenever a nuisance is abated by the City, the owner of the property in question shall pay a civil penalty in addition to the actual costs and overhead charge. The civil penalty for abating a nuisance is \$300 for the first nuisance abated. For each subsequent nuisance that is abated by the City within two consecutive calendar years concerning property owned by the same person, the civil penalty shall be fifty percent of the cost of abatement or \$500, whichever is more. The civil penalty shall be imposed without regard to whether the nuisances abated by the City involve the same real property or are of the same character.

[1] 3 For statutory provisions authorizing municipalities to condemn and abate public nuisances, see A.S. 29.35.210. Prior ordinance history: Ordinances 3-600.1, 69-6 and 70-1.

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