

ORDINANCE NO. 94-07

AN ORDINANCE OF THE CITY OF AMERICAN CANYON
ESTABLISHING NEIGHBORHOOD PRESERVATION
CRITERIA AND ABATEMENT PROCEDURES

The City Council of the City of American Canyon does ordain as follows:

Section 1. The American Canyon Municipal Code is hereby amended by enacting, adopting and adding a new chapter to Title 11, (Peace, Morals and Safety) to be numbered and read as follows:

CHAPTER 11.02

NEIGHBORHOOD PRESERVATION

11.02.001. Findings and Determination

The City Council hereby finds and determines that the restrictions in this chapter are necessary to promote the health, safety and general welfare of the public; to protect the integrity and character of residential neighborhoods and districts; to protect the appearance of the Highway 29 corridor; to prevent the devaluation of property values; and, to enhance and protect the liveability, social and economic conditions of the City.

11.02.002. Declaration of Public Nuisances

A. Any property, building or other improvements found to be maintained in violation of any one or more of the provisions of Section 11.02.004 of this code is declared to constitute a public nuisance and shall be abated by rehabilitation, repair, removal or demolition pursuant to the procedures set forth in this chapter.

B. Any property, building, or other improvement found to be maintained in such condition as to constitute a public nuisance as defined anywhere in this Code, the statutes of the State of California or in the common law is declared to constitute a public nuisance subject to abatement under the procedures in this chapter.

11.02.003. Chapter Not Exclusive

A. This chapter does not exclusively regulate the conditions and use of property within the City. This chapter shall supplement and be in addition to other provisions of this Code and to other statutes, ordinance or regulations existing or subsequently enacted by the City, the State or any other legal entity or agency having jurisdiction.

B. The procedures for abatement set forth in this chapter are not exclusive and are in addition to any other provisions provided in this Code or by State law for the abatement of public nuisances.

11.02.004. Classification of Nuisances

It shall be unlawful for any person owning, leasing, occupying, or having charge or possession of any property in the City to maintain or permit such property to be maintained in such a manner that any of the following conditions are found to exist thereon and to be of such magnitude as to be injurious or potentially injurious to the public health, safety and welfare or to have a tendency to degrade the appearance and property values of surrounding property or to cause damage to public rights-of-way:

A. Property Conditions

1. Overgrown, diseased, dead or decayed trees, weeds or other vegetation which:

- a. Constitute a fire hazard or a condition considered dangerous to the public health, safety and general welfare due to a variety of factors, including, but not limited to, impairment of vehicular traffic or obstruction of vehicular line of site or the ability to clearly observe safety signs and signals;
- b. Are likely to harbor rats, vermin or other pests.

This provision identifies conditions which may be deemed to constitute a nuisance within portions of the City that are partially or fully developed because of the potential to adversely affect the public health, safety and welfare and to degrade the appearance and property values of surrounding property. Due to the diminished potential for such adverse effects, such condition would not constitute a nuisance when existing on grazing lands or large undeveloped parcels except when such conditions exist on properties immediately adjacent to developed property. American Canyon Fire Protection District standards for weed abatement continue to apply to property City-wide.

2. Accumulations of debris, rubbish, and trash in the front or side yard areas visible from the public right-of-way or which constitute a health or fire hazard.

3. Storage, so as to be visible at ground level from a public street or adjoining property for unreasonable periods or as a part of a continuing practice, any of the following:

- a. Abandoned, inoperative, wrecked or dismantled motor vehicles of any kind, and abandoned, inoperative, wrecked or dismantled trailers, campers or boats.
- b. Broken or discarded household furnishings and fixtures, appliances, boxes and cartons, play equipment, toys and similar materials.
- c. Discarded, wrecked, or inoperable machinery and tools.
- d. Salvage materials, scrap metal or building and construction materials, including, but not limited to, dirt, sand, gravel, concrete, tile, rocks, bricks, and similar materials except when associated with agricultural uses or ongoing landscape projects.

4. Garbage or trash cans which cause offensive odors to neighbors or containers stored in front or side yards which are visible from public streets unless all of the following conditions exist: a. The garbage/trash container(s) are stored within a defined area that is maintained in a neat and orderly condition. b. All trash is stored completely within a designated container, the container is covered, and no trash has spilled over or has fallen on the ground in the immediately surrounding area. c. The trash cans/containers are stored behind the front wall plane of the dwelling.

5. Conditions which, due to their accessibility to the public, may prove hazardous or dangerous, including, but not limited to:

- a. Unused and/or broken equipment such as ice boxes and refrigerators;
- b. Abandoned wells, shafts or basements;
- c. Hazardous or unprotected pools, pits, ponds, or excavations;
- d. Machinery which is inadequately secured or protected;
- e. Accumulations of lumber, refuse and waste matter, or discarded materials, including, but not limited to, building and construction materials.

6. Parking or storing construction equipment or machinery except during excavation, construction or demolition operations conducted pursuant to a building or grading permit or when associated with ongoing agricultural/non commercial landscaping activities.

7. Parking of any motor vehicle, including a recreational vehicle, trailer, camper or boat on lawns or other landscaped areas within portions of the property visible from a public street where such areas are not paved or otherwise surfaced to allow parking. Allowable surface materials may include gravel, brick, grasscrete, concrete pavers, or similar materials that define the parking area and minimize erosion potential.

8. Parking of any motor vehicle, including a recreational vehicle, trailer, camper or boat on property adjacent to Highway 29 for the purpose of offering the same for sale to the general public where a "for sale" or similar sign is displayed on or in the vehicle, trailer, camper or boat which is visible to traffic on Highway 29 and constitutes or tends to constitute a traffic safety hazard or an unsightly appearance.

B. Structural Conditions

Structures or buildings, both permanent and temporary, or other improvements, including, but not limited to walls and fences, which are subject to any of the following conditions:

1. Are structurally unsafe, either entirely or in part;
2. Constitute a fire hazard;
3. Have faulty weather protection, including but not limited to crumbling, cracked, missing broken or loose exterior plaster or other siding, roofs, foundations or floors (including lack of paint or other protective finish), broken or missing windows or doors;
4. Have dry rot or warped materials, or are infested with termites.
5. Are abandoned, partially destroyed or left unreasonably in a state of partial construction. State of partial construction means building and structures which are partially constructed when the building permit for such construction has expired;
6. Are unoccupied and have been left unlocked or otherwise open or unsecured from intrusion by persons, animals or the elements;
7. Have exterior walls, fences, driveways, or sidewalks which are in hazardous condition, hinder free access to public sidewalks or are in such a state of disrepair as to be unsightly.

11.02.005. Inspection

A. Authorized Representatives

The City Manager and the Director of Planning or their designated representatives are authorized to make inspections and take such actions as may be required by this chapter to abate public nuisances.

B. Inspection of Premises

Whenever there is a reasonable cause to believe that a condition, activity, or use of property exists which constitutes a public nuisance, the City Manager or Director of Planning or a designated representative may seek to enter the premises at a reasonable time for the purpose of inspection. If the premises are occupied, entry shall be requested and proper credentials shall be presented. If the premises are unoccupied, a reasonable effort shall be made to locate the property owner. If entry is refused or if the property owner cannot be located after a reasonable time, a 24-hour written notice of intent to inspect shall be left at the premises. The notice shall state that the property owner or occupant of the property has the right to refuse entry and if such entry is refused, the City may seek assistance from a court of competent jurisdiction to obtain entry to inspect the premises.

11.02.006. Summary Abatement of Immediate Dangers

Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, the City Manager or his or her designee may order, without notice or judicial action, the immediate abatement of the public nuisance. The expenses of such abatement shall be collectible as provided in this Chapter.

11.02.007. Notice to Abate Public Nuisance

A. Contents of Notice

Whenever the City Manager or the Planning Director or his or her designee finds that a nuisance, as declared in Section 11.02.003, exists on any property located within the City, he or she shall give written notice to the owner and to any tenant or occupant or other person having charge or possession of the property. The notice shall:

1. Describe the property sufficient to identify the location of the public nuisance;

2. Identify the nuisance and reference the sections(s) of this code that have been violated;
3. Direct abatement of the nuisance by a specified date;
4. State the available methods of abatement;
5. Contain a statement of the hearing rights of the owner or occupant of the property on which any public nuisance is located; and
6. Indicate that if no request for hearing is made or that if after a hearing an order of abatement is issued, and the nuisance is not properly abated, then the City may abate the nuisance and charge the expenses as a personal obligation and/or a special assessment or lien against the property.

The amount of time allowed to abate a nuisance shall be determined by considering the severity of nuisance and its effect on the health, safety, welfare and aesthetics of the community.

B. Service of Notice

A notice to abate shall be mailed, by registered or certified mail, to the owner and occupant of property, or shall be served upon the owner or occupant in person. The notification shall be sent to the owner at the address appearing on the latest tax assessment roll and if there is no such address, then in care of the property address. In addition to personal service or service by registered or certified mail, notice to abate shall be posted on 2 conspicuous places on the affected property attested to by affidavit of City Official. Service shall be deemed complete at the time the notice is personally served or deposited in the mail with the correct amount of postage affixed and is posted on the affected property as described. The failure of any owner or other person to receive such notice shall not affect in any manner the validity of any proceedings taken hereunder.

C. Property Owner Definition

The term "property owner" or "owner" as used in this chapter, shall mean the owner or owners of record of real property as shown on the last Napa County equalized assessment roll or supplemental roll, whichever is more current.

11.02.008. Request for Hearing

The City Council shall hold a public hearing to determine that a public nuisance exists upon the written request of the owner or occupant of the property

for which a Notice to Abate has been issued. The request shall be made to the City Clerk within 10 days from the date of personal service or within 15 days from the date of mailing of the Notice to Abate. The request for hearing shall state the grounds upon which the hearing is requested. The matter shall be scheduled for hearing and the City Clerk shall notify the owner or occupant requesting the hearing of the same, not less than five days prior to such hearing, unless such notice is waived in writing by the person requesting the hearing.

11.02.009. Hearing by the City Council

At the time and place stated in the Notice of Public Hearing, the City Council shall hear and consider all relevant evidence, objections or protests, and shall receive testimony from owners, occupants, witnesses, city personnel and interested persons relative to the alleged public nuisance and to the proposed abatement measures. The hearing may be continued from time to time.

11.02.010. Decision of the City Council

A. Following the public hearing, the City Council shall consider all evidence and determine whether the property, or any part of the property, constitutes a public nuisance as alleged. If the City Council finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, the City Council shall prepare a statement of findings and an order, which shall specify the nature of the nuisance, and order the owner or other person having charge or control of the premises to abate the nuisance, the method of abatement and the time within which the work shall be commenced and completed.

B. A copy of the statement of findings and order shall be served on the property owner and any occupant in the manner provided in Section 11.02.007.

11.02.011. Limitation on Filing Judicial Action

Any court action to review the City Council statement of findings and order shall be commenced within 30-days of the date of service of the statement of findings and order and the same shall contain the statement advising of this time limit on seeking court review. After the expiration of 30-days from the date of service of the statement of findings and order, all objections to the decision shall be deemed waived.

11.02.012. Abatement by Property Owner

The property owner, or person having charge or control of the property, may at his/her own expense abate the nuisance as prescribed by the Notice to Abate or the Order of the City Council, if any, prior to the expiration of the abatement period set forth in the Notice or the Order. If and when an owner or occupant undertakes to abate any such nuisance, the Planning Director or his/her

designated representative may impose such conditions as are necessary to protect the public health, safety and welfare. Any necessary permits and/or approvals shall be obtained by the owner or occupant. After the property has been inspected by the Planning Director or his/her designated representative, and the nuisance has been fully abated in accordance with the Notice to Abate or Order, the proceedings shall terminate. The City Manager or the Planning Director or his/her designated representative may extend the abatement period specified in the Notice to Abate or any Order to abate upon a showing of good cause.

11.02.013. Abatement by the City

A. Failure to Abate

If a declared nuisance is not completely abated by the owner or person having charge or control of the property within the time prescribe in the Notice to Abate or after a public hearing, in the City Council Order, if any, the City Manager or his/her designee shall cause the same to be abated by City employees or private contract. The City Manager or his/her designated representative is expressly authorized to enter upon the property for the purpose of abating the nuisance.

B. Abatement of Motor Vehicles

Abatement of any motor vehicle registered or subject to registration with the Department of Motor Vehicles shall be carried out in conformance with the provisions of the Vehicle Code and Ordinance No. 92-19 of the City establishing the American Canyon Traffic Code and any amendments thereto.

C. Cost of Abatement Constitute Civil Debt

Upon the abatement of the public nuisance, or any portion thereof, by the City, all the costs, including incidental expenses shall be a civil debt owing to the City jointly and severally by the persons who have been given notice as provided in this chapter, except for any persons which the City Council concludes pursuant to proof at the hearing to confirm the costs of abatement are not persons properly charged with responsibility of abatement. The costs shall be billed to the owner or occupant and shall be collectible in the same manner as any other civil debt owing the City.

11.02.014. Record of Cost of Abatement Notice and Hearing to Confirm

A. The City Manager or his/her designee shall keep an account of the costs, including incidental expenses, of abating such public 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 said report is submitted to the City Council, a copy of the same together with a notice of the time when said report shall be heard by the City Council for confirmation, shall be served upon the owner of the property in accordance with the provisions of Section 11.02.007 of this Code at least 10 days prior to submitting the same to the City Council. Proof of said service shall be made by affidavit filed with the City Clerk.

B. At the time fixed for hearing, the City Council shall consider the correctness or reasonableness of the costs included in the accounting together with any protests or objections as may be offered against it, and shall correct, modify, or amend the same, after which, by motion, the accounting as submitted, corrected, modified or amended shall be confirmed. The hearing may be continued from time to time.

C. The term "incidental expenses" shall include, but not be limited to, the personnel costs, both direct and indirect, including attorneys' 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.

11.02.015. Assessment Lien

A. The total cost for abating such nuisance, as 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 confirming the abatement costs shall be filed with the Napa County Auditor-Controller on or before August 1st each year, whereupon, it shall be the duty of the County Auditor-Controller to add the amounts of the respective assessments to the next regular tax bill 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 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 assessments.

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.

11.02.016. Nuisance Abatement Lien

As an alternative to the Assessment Lien procedure contained in Section 11.02.014 the total cost for abating such nuisance, as confirmed by the City Council, may be collected pursuant to the procedures set forth in Government Code Section 38773.1 as a nuisance abatement lien.

A. Prior to the recordation of any nuisance abatement lien, the City shall provide notice of the same to the owner of record of the parcel or lot on which the nuisance is maintained as shown on the last equalized assessment roll or the supplemental roll, whichever is more current.

B. The notice shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the County of Napa pursuant to Government Code Section 6062.

C. The Notice of Nuisance Abatement lien shall specify the amount of the lien, that the City is the agency on whose behalf the lien is imposed, the date the Notice to Abate was served or the date on which the City Council issued its order to abate, if any, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.

D. After recordation of the nuisance abatement lien, the City may foreclose the lien by an action brought by the City for a money judgement.

11.02.017. Alternative Actions Available

A. Nothing in this Chapter shall be deemed to prevent the City Council or the City manager from ordering the City Attorney to commence a civil or criminal proceeding to abate a public nuisance under applicable civil or penal code provisions as an alternative to the proceedings as set forth herein.

B. Pursuant to Government Code Section 38773.7, upon the entry of a second or subsequent civil or criminal judgement within a two-year period finding that property owner is responsible for a public nuisance subject to abatement pursuant to this Chapter, the City shall be entitled to an order of the court requiring the owner to pay treble the costs of the abatement.

11.02.018. Violations - Penalties

A. The owner or other person having charge or control of any property, building or structure who maintains any condition described as a public nuisance in Section 11.02.004 or who fails to abate a nuisance within the time periods specified in a Notice to Abate or any City Council Order to Abate is guilty of an infraction pursuant to Section 1.01.200 of this Code.

B. Any occupant or person in possession of any such building or structure who fails to vacate such building or structure in accordance with an order given pursuant to this chapter is guilty of an infraction pursuant to Section 1.01.200 of this Code.

C. Any person who obstructs, impedes or interferes with any authorized representative or agent of the City or with any person who owns or holds any estate or interest in a building which has been ordered to be vacated, repaired, rehabilitated or demolished, or with any person to whom such building has been lawfully sold pursuant to the provision of this Code whenever any such person is engaged in proceedings involving the abatement of a nuisance is guilty of an infraction pursuant to Section 1.01.200 of this Code.

D. Section 1.01.200 provides that each day of violation constitutes a separate offense and may be separately punished and that third and subsequent violations may be prosecuted as a misdemeanor.

E. The penalty for any violation of any provision of this Chapter shall be as follows:

1. A fine not exceeding fifty dollars (\$50) for first violation;
2. A fine not exceeding one hundred dollars (\$100) for a second violation within one year;
3. A fine not exceeding two hundred and fifty dollars (\$250) for a third or any subsequent violation within one year;
4. Any violation determined to be a misdemeanor may be subject to a fine not exceeding five hundred dollars (\$500).

Section 2. Severability

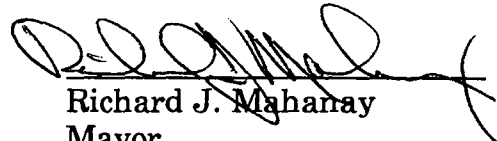
If any provisions of this Ordinance, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 3. Effective Date

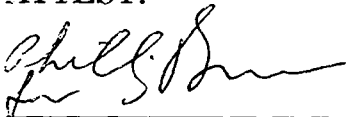
This Ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage.

Approved and adopted this 5th day of May, 1994, by the following vote:

AYE Councilmembers: Orlando, Winters, Mayor Pro Tem Anderson, and Mayor Mahanay
NOES: Councilmembers:
ABSENT: Councilmembers: Bennett

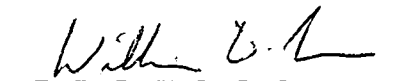

Richard J. Mahanay
Mayor

ATTEST:



Ronald L. Kiedrowski
City Clerk

APPROVED AS TO FORM:



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City Attorney

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File No: 199/6

May 12, 1994

VIA TELECOPIER & FIRST-CLASS MAIL

Mr. Ronald L. Kiedrowski
City Manager
City of American Canyon
2185 Elliott Drive
American Canyon, California 94589-1331

Re: Your Communication Dated May 10, 1994; Appeal of
Neighborhood Preservation Ordinance

Dear Mr. Kiedrowski:

This communication responds to your letter dated May 10, 1994 wherein you indicated that you have received an "appeal" of the adoption of the Neighborhood Preservation Ordinance (the "Ordinance") by the City Council at its meeting of May 5, 1994 from Messrs. Cecil B. Shaver and Clyde Bruce.

In your capacity as City Clerk, you may advise Messrs. Shaver and Bruce that there is no action that can be taken as there is no provision in the City's Municipal Code for "appeal" from the adoption of an ordinance by the City Council. Members of the public could, under common law, request Council reconsideration of the Ordinance, supporting such a request with information previously not presented to the Council. It would be within the discretion of the Council as to whether that request would be heard. If such a request is made, we would advise that there is no requirement for the Council to grant the request for reconsideration as there is no City Municipal Code provision authorizing that procedure, but that the Council could under case law reconsider the matter on the new matters presented.

Mr. Ronald L. Kiedrowski
May 12, 1994
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As was explained to two members of the group who presented opposition to the Ordinance during the recess of the Council meeting on May 5, 1994, and to Mr. Shaver by telephone on May 10, 1994, the procedure for members of the public to challenge the adoption of an ordinance can be by way of referendum. It was indicated that the procedures for referendum are located in the Election Code and that those procedures must be followed precisely to effectuate that right.

It is respectfully pointed out that as City Attorney our client is the City and not individual members of the public. This communication, however, is a public document and may be reviewed by members of the public.

In summary, it can be generally noted that there is no appeal of the City Council's final adoption of the Ordinance. Under common law, members of the public could request reconsideration of the adoption of the Ordinance by the City Council, or they could proceed by way of referendum under the prescribed statutory procedure to have the matter placed on the ballot to decide whether the matter should become law.

Should you have further specific questions, please contact our office.

Very truly yours,



William D. Ross

WDR:nac
cc: Each Council Member