

Chapter 32A

PROPERTY MAINTENANCE AND ABATEMENT OF NUISANCES*

Sections:

32A-1 Purpose.

- (a) It is the intent of the Board of Supervisors of the County of Butte in adopting this Chapter to provide a comprehensive method for the identification and abatement of public nuisances within the County of Butte.
- (b) The provisions of this Chapter shall apply generally to all property throughout the unincorporated area of the County of Butte wherein any of the conditions hereinafter specified are found to exist; provided, however, that when any condition which would constitute a violation of this Chapter is duly authorized under any applicable County, State or Federal law, it shall not be deemed to violate this Chapter.
- (c) The provisions of this Chapter are to be supplementary and complementary to all of the provisions of the Butte County Code, applicable State law and any law cognizable at common law or in equity. Nothing herein shall be read, interpreted or construed in any manner so as to limit any existing right or power of the County of Butte or any other authorized governmental entity to enforce County ordinances, abate any and all nuisances, or employ any remedy available at law or in equity.
- (d) The further purpose of this Chapter is to remove conditions of property hereinafter described and declared to be public nuisances which have a blighting influence on properties in the vicinity and/or are detrimental to the health, safety and/or welfare of the residents of the County and particularly residents of the urbanized areas of and entry points into the County of Butte.

(Ord. No. 3824, § 5, 7-23-2002)

32A-2 Condition creating public nuisance.

- (a) Public Nuisance. A public nuisance shall be deemed to exist when any of the following conditions or circumstances are present:
 - (1) Anything which is injurious to health, poses a significant potential to cause economic and/or physical injury or damage to persons or property, or constitutes a significant detriment to the prevention or suppression of fire, or significantly interferes with the provision of emergency services to the public.
 - (2) Anything which is indecent or offensive to the senses, or an obstruction to the free use of property so as to unreasonably interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in the customary manner of any navigable lake, river, bay, stream, canal, or basin or of any public park, square, street or highway and at the same time affects an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals and/or property may be unequal.
- (b) Exclusion of Legitimate Agricultural Operations:
 - (1) It is the declared policy of this county to conserve and protect and encourage extensive as well as intensive agricultural production. Where nonagricultural land uses extend into agricultural areas or exist side by side, agricultural operations often become the subject of nuisance complaints. As a result, agricultural operations are sometimes forced to cease operations, and many others are discouraged

from making investments in farm improvements. It is the purpose and intent of this section to reduce the loss to the county of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be in violation of the Butte County Code or any county resolution or regulation. This section is not to be construed as to any way modify or abridge the state law set out in the California Civil Code relative to nuisances but rather is only to be utilized in the interpretation and enforcement of the provisions of this Code and county regulations and practices.

- (2) No agricultural activity, operation, or facility, or appurtenances thereof, conducted or maintained in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, private or public, due to any changed condition in or about the locality, after the same has lawfully been in continuous operation for more than three (3) years, if it was not a nuisance at the time it began.
 - (3) Subsection (b)(2), above, shall not apply if the agricultural activity, operation, or facility, or appurtenances thereof obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin, or any public park, square, street, or highway.
 - (4) This subsection (b) shall not invalidate any provision contained in the California Health and Safety Code, Fish and Game Code, Food and Agricultural Code, or Division 7 (commencing with section 13000) of the Water Code, if the agricultural activity, operation, or facility, or appurtenances thereof, constitute a nuisance, public or private, as specifically defined or described in any such provision.
 - (5) For purposes of this section, the term "agricultural activity, operation or facility, or appurtenances thereof" shall include but not be limited to the cultivation and tillage of the soil; dairying; the production, cultivation, growing and harvesting of any agricultural commodity, including preparation for market, delivery to storage or to market; or to carriers for transportation to market.
- (c) Other Exclusions:
- (1) Lawfully stored personal property kept for a lawful business purpose on the premises of a junk dealer holding a current, valid license issued pursuant to the provisions of Chapter 11 of this Code, and enclosed by a fence of a type and height recommended by the Planning Commission and included in their instructions to applicant, as provided in section 11-13, and as finally determined by the Board of Supervisors; and
 - (2) Lawfully stored personal property, the total amount of which covers not more than one hundred (100) square feet of the area of any parcel.
- (d) Burden of Proof of Public Nuisance: Where a condition or circumstance exists that is deemed to be a public nuisance the burden of proof shall rest with the official or agency making the allegation or determination and shall be based on a preponderance of the evidence as follows:
- (1) Evidence supporting an allegation of the existence of a public nuisance as defined in subsection (a)(1), above, as related to health and safety issues, shall demonstrate that the condition or circumstance poses a threat or detriment to surrounding property, or that reasonable measures have not been instituted to prevent injury to persons through the physical containment or restriction of access to the condition or circumstance, or that it could significantly contribute to the breeding of vectors or the spread of disease, or that it poses a significant fire hazard, or that access to residences, businesses, public buildings or any other place where emergency services may be required has been impaired.
 - (2) Evidence supporting an allegation of the existence of a public nuisance, as defined in subsection (a)(2), above, shall demonstrate that a reasonable person would consider the condition or circumstance to be indecent or offensive to the senses or otherwise detrimental and that the alleged nuisance is, in fact, public in nature as it relates to the community, neighborhood or location where the condition or circumstance exists. In addition, the existence of a condition or circumstance that is not a health or safety hazard as defined in subsection (a)(1), above, and that is otherwise screened from public view,

and does not emit offensive odors or sound (except as would reasonably occur from agricultural operations excluded in subsection (b) (2), above, or from activity occurring upon any property in the County zoned "S/E," Sports and Entertainment Zone, as described in Butte County Code Section 24-223, where all county, state and federal laws have been complied with, so that such activity occurring on property zoned "S/E" has been conducted in a lawful manner) beyond the property boundaries, shall not be considered to be a public nuisance.

- (e) Abatement of Public Nuisance: Abatement of a condition or circumstance that is alleged to be a public nuisance shall be encouraged to be on a voluntary basis on the part of the violator or, when necessary, performed by official action. Where the condition or circumstance poses a serious and immediate threat to health or safety as defined in subsection (a)(1), above, summary abatement shall be permitted. Otherwise, abatement by official action shall only be carried out after a determination has been made, through the prescribed hearing process, that a public nuisance exists and the determination has not been appealed within the specified period of time. Policy regarding mandatory abatement shall provide the accused with an opportunity to effect the abatement after being so ordered at the hearing, and prior to any official action to abate.

(Ord. No. 3824, § 5, 7-23-2002)

32A-3 Director of development services.

The Director of Development Services. Is hereby designated to enforce this Chapter. Whenever a public nuisance as defined herein exists anywhere within the unincorporated limits of the County of Butte, the Director of Development Services, or his or her designee, may allege such condition to be a public nuisance and may exercise such powers that may be necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter.

(Ord. No. 3824, § 5, 7-23-2002)

32A-4 Duty.

- (a) No person or entity shall cause, permit, maintain, conduct or otherwise allow a public nuisance as defined in this Chapter to exist within the unincorporated limits of the County of Butte. It shall be the duty of every owner, occupant, and person that controls any land or interest therein within the unincorporated area of the County of Butte to remove, abate, and prevent the reoccurrence of the public nuisance upon such land.
- (b) Exception: When an owner, occupant, or person otherwise legally in control of a parcel, as specified in subsection (a), above, on which a violation of the provisions of this Chapter is determined to exist did not cause, permit, or otherwise allow the existence of the violation and cannot legally abate said violation but has reasonably taken action to do so within the provisions of applicable law, said person(s) shall not be held accountable for the violation.

(Ord. No. 3824, § 5, 7-23-2002)

32A-5 Procedure for abating public nuisances generally.

- (a) Whenever the Director of Development Services determines that a public nuisance exists he or she, or his or her designee, shall request in writing that the public nuisance be abated within seventy-two (72) hours. If the condition(s) continue beyond that seventy-two (72) hour period, the Director of Development Services, or his or her designee, may set the matter for hearing. If the matter is set for hearing, the Director of Development Services or his or her designee, shall post the property upon which the public nuisance exists and shall mail,

with a proof of service, notices to those persons known to be in possession of the property, if any, and to persons shown on the latest County tax roll to be the owners of the property at least ten (10) days prior to the hearing, unless thirty (30) days or other notice is required by Health and Safety Code section 17980 or other state law. Both the mailed and posted notice shall be in substantially the following form:

NOTICE OF NUISANCE ABATEMENT HEARING

The owner(s) and occupant(s) of real property described on the latest equalized Butte County tax roll as A.P. No. _____ and having a street address of _____ is (are) hereby notified to appear before a Hearing Officer of the County of Butte at _____ on _____, 20____, at the hour of _____ o'clock _____ m., to show cause, if any there be, why the use of said real property should not be found to be a public nuisance and abated pursuant to the Butte County Code. The Department of Development Services has determined that conditions exist on the above property which constitute a public nuisance and violate Butte County Code section(s) _____, as follows: _____. After hearing, if a violation is found to exist, the cost of abating such violation, including, but not limited to, the cost of the Hearing Officer, the cost of prior time and expenses associated with bringing the matter to hearing, attorneys' fees, the cost associated with any appeals from the decision of the Hearing Officer, the cost of judicially abating the violation, the cost of labor and material necessary to physically abate the violation, and the cost of securing expert and other witnesses may become a lien against the subject property and may also be assessed against the property in the same manner as taxes. If an abatement lien is recorded, it will have the same force and effect as an abstract of judgment which is recorded as a money judgment obtained in a court of law. If you fail to appear at the hearing or if you fail to raise any defense or assert any relevant point at the time of hearing, the County will assert, in later judicial proceedings to enforce an order of abatement, that you have waived all rights to assert such defenses or such points.

In preparing for such hearing, you should be aware that if an initial showing is made by the County, sufficient to persuade the Hearing Officer that a public nuisance exists on your property, you will then have the burden of proving that no public nuisance exists on your property. Therefore, you should be prepared to introduce oral and documentary evidence proving why, in your opinion, your use of the property is not a public nuisance as defined in the Butte County Code. A copy of the Butte County Code Chapter relating to abatement hearings is enclosed to assist you in the preparation of your presentation.

If an initial showing sufficient to persuade the Hearing Officer that a public nuisance exists on your property is made by the Code Enforcement Officer, your failure to sustain the burden of showing that no public nuisance exists on the property may result in an administrative decision ordering the abatement of uses or conditions on your property which are found to be a public nuisance and may also result in a later judicial order to the same effect.

Further, if the Hearing Officer finds that a public nuisance exists on your property and you fail to abate the nuisance promptly, the County may abate the nuisance. If the County abates the nuisance, you may be responsible for the actual costs of the abatement, including the costs to the County of the administrative hearing and attorneys' fees, and such costs may be specially assessed against your parcel by the Auditor-Controller's Office and added to the your tax bill as a special assessment. Such special assessments have the same priority, for collection purposes, as other county taxes and, if not paid, may result in a forced sale of your property. You are also hereby notified that the County will seek recovery of attorneys' fees incurred in any abatement hearing and that attorneys' fees may be recovered by the prevailing party.

Finally, if the Hearing Officer finds that a public nuisance exists on your property, a violation of the Butte County Code, the County will contend that you are bound by such finding at any subsequent judicial action to enforce the Hearing Officer's order.

IMPORTANT: READ THIS NOTICE CAREFULLY. FAILURE TO APPEAR AND RESPOND AT THE TIME SET FORTH IN THIS NOTICE WILL LIKELY RESULT IN ADMINISTRATIVE AND/OR JUDICIAL ABATEMENT AND TERMINATION OF

USES OF OR CONDITIONS ON YOUR PROPERTY WHICH THE DIRECTOR OF DEVELOPMENT SERVICES
CONTENDS ARE IN VIOLATION OF THE BUTTE COUNTY CODE.

Dated: _____

BUTTE COUNTY DIRECTOR OF DEVELOPMENT SERVICES

By: _____

Enclosure: Butte County Code Chapter 32A

- (b) All hearings conducted under this Chapter shall be held before a Hearing Officer designated pursuant to the protocol set forth in that document entitled the "Butte County Administrative Hearing Officer Program." The Program is based upon an alphabetical rotation through attorneys currently under contract through the Program.
- (c) At the time and place set for the hearing, the Hearing Officer shall review the Director of Development Services' decision ordering cessation of the alleged public nuisance to determine whether such decision conforms to law and is supported by substantial evidence. The Hearing Officer shall hear testimony and receive written and/or documentary evidence relating to the alleged violation. Additional procedural rules may be adopted by resolution of the Board of Supervisors. The Hearing Officer shall tape record the hearing or engage the services of a certified court reporter to record the hearing and shall preserve the record of the hearing and all photographs and demonstrative and documentary evidence introduced at the time of the hearing for a period of three (3) years.
- (d) Within thirty (30) days after the hearing is closed, the Hearing Officer shall render his or her written decision relating to the existence or nonexistence of the alleged public nuisance. If a violation is found to exist, the decision shall include a statement of the Abatement and Administrative Costs incurred by the County or estimated costs to abate the violation and shall also order that the owner of the property, or persons known to be in possession of the property, abate the violation within a reasonable time, not to exceed thirty (30) days. The decision shall contain findings of fact and conclusions of law. A copy of the decision shall be mailed by certified mail, return receipt requested, to the person or persons shown on the last County tax roll to be the owners of the property which is the subject of the hearing and the occupant of such parcel, if any. All other persons noticed pursuant to this section shall be mailed a copy of the decision by first class mail, postage prepaid.
- (e) The decision of the Hearing Officer shall be final on the date the certified mail set forth in subsection (d) above, is deposited in the mail. The Hearing Officer shall notify the Clerk of the Board of Supervisors of his or her decision, the date upon which the decision became final and the last date upon which an appeal may be made. If the Board of Supervisors does not receive an appeal within twelve (12) days of the date the Hearing Officer's decision becomes final, the Board shall be deemed to have ratified and adopted the Hearing Officer's decision. If it is the decision of the Hearing Officer that a public nuisance exists, the owner of the property shall be responsible for paying all of the County's Abatement Costs and Administrative Costs, including but not limited to, those cost items set forth in the notice required by subsection (a) above.
- (f) Within the twelve (12) day period referred to in subsection (e) above, the owner or occupant of the property, the Director of Development Services, or any other interested person may appeal the decision of the Hearing Officer to the Board of Supervisors of the County of Butte if such individual or entity does all of the following:
 - (1) Delivers a written appeal to the Clerk of the Board of Supervisors within the twelve (12) day appeal period; and
 - (2) Delivers to the Clerk of the Board of Supervisors within the twelve (12) day appeal period the appeal fee in the sum of Fifty Dollars (\$50.00).
- (g) Within fifteen (15) days of being notified by the Clerk of the Board of Supervisors, the appellant shall deposit with the Clerk of the Board an amount of money equal to the estimated cost of transcribing the oral

proceedings before the Hearing Officer and the cost of duplicating seven (7) copies of the administrative record, including all exhibits introduced at the hearing. The appellant shall be responsible for the cost of the appeal and record; provided, however, if the Board upholds the appeal and finds that no violation exists then the costs of the appeal shall be borne by the County.

- (h) In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal based solely on the administrative record and transcript of the hearing. The Board shall review the record, transcript and evidence and then adopt, reject or modify the decision of the Hearing Officer.
- (i) In the event of an appeal to the Board of Supervisors, the Board shall decide the appeal within ninety (90) days after receipt of the administrative record. Notice of the Board's decision shall be mailed to the property owner, the Director of Development Services, the Hearing Officer and those persons receiving notice pursuant to this section.
- (j) Notwithstanding any other provisions of this Code, if a final decision of the Hearing Officer or the Board of Supervisors finds that a violation exists and the public nuisance is not voluntarily abated within the time prescribed, the Director of Development Services or his or her designee may abate the public nuisance pursuant to a warrant issued by a court of competent jurisdiction. The owner of the property shall be responsible for paying all of the County's Abatement Costs and Administrative Costs, including but not limited to, those cost items set forth in the notice required by subsection (a) above. The Director of Development Services or his or her designee shall keep an accounting of the Abatement and Administrative Costs to perform each abatement. Upon completion of the abatement, the Director of Development Services or his or her designee shall post the property and send a bill to the owner, and any persons known to be in possession of the property, requesting payment of the County's Abatement and Administrative Costs. The bill shall also state that failure to pay the Abatement and Administrative Costs within fifteen (15) days from service of the bill may result in the recording of a lien and the placement of a special assessment against the property.

If the County's Abatement and Administrative Costs are not paid within fifteen (15) days from service of the bill, the Director of Development Services shall render an itemized report to the Clerk of the Board of Supervisors for submittal to the Board of Supervisors for hearing and consideration regarding the proposed lien and special assessment. The report shall include the names and addresses of the owner of record and any persons known to be in possession of the property. The report shall also include the date the abatement was ordered, the work performed, the date the abatement was completed, a description of the property subject to the lien and special assessment, and an itemized account of the County's Abatement and Administrative Costs. At least fifteen (15) days prior to said hearing, the Clerk of the Board of Supervisors shall give notice, with an affidavit of service, of said hearing to all persons named in the Director of Development Services' report and the Director of Development Services or his or her designee shall post the property with a copy of the notice. The notice shall describe the property by assessor's parcel number and street number or other description sufficient to enable identification of the property and contain a statement of the amount of the proposed lien and special assessment. The notice shall also contain a statement that the Board will hear and consider objections and protests to the proposed lien and special assessment at the designated time and place.

- (k) At the time and place fixed in the notice, the Board of Supervisors shall hear and consider the proposed lien and special assessment together with objections and protests thereto. At the conclusion of the hearing, the Board of Supervisors may make such modifications and revisions to the proposed lien and special assessment as it deems just and may order that the proposed lien and special assessment be recorded by the Director of Development Services and specially assessed against the property by the Auditor-Controller's Office. The lien shall have the same force, priority and effect as a judgment lien and the special assessment shall have the same priority as other County taxes.
- (l) The notice of abatement lien shall, at a minimum, identify the record owner or possessor of the property, set forth the date upon which abatement of the nuisance was ordered or deemed ordered by the Board of Supervisors, describe the real property subject to the lien, set forth the amount of the Abatement Costs and

Administrative Costs incurred to date and, if applicable, the date upon which the abatement was completed. If the abatement has not yet been completed, the notice shall so state and shall also indicate that the lien is a partial lien and that additional Abatement Costs will be incurred in the future.

It is the intent of the Board of Supervisors that Abatement Costs and Administrative Costs incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all Abatement Costs and Administrative Costs have been incurred and the abatement is complete, the Department of Development Services shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and the recorder's document number of the original notice.

- (m) The decision of the Hearing Officer or Board of Supervisors may be recorded by the Director of Development Services. In the event of such recordation and in the further event that the violation is corrected, a notice of such correction shall be recorded. The Director of Development Services is authorized to prepare and record a notice of correction. Correction of the violation shall not excuse the property owner's liability for costs incurred during the administrative abatement process (Abatement Costs and Administrative Costs as defined in section 32A-7 of this chapter). If the property owner has not fully compensated the County for costs incurred during the administrative abatement process, a notice of correction shall not be recorded unless the fee specified in section 41-9 of this code has been paid. Payment of the fee specified in section 41-9 of this section does not excuse the property owner's liability for costs incurred during the administrative abatement process (Abatement Costs and Administrative Costs as defined in section 32A-7 of this chapter).
- (n) The County may, in its discretion, commence a judicial action to enjoin a violation of this chapter without the necessity of first going through the administrative procedures set forth herein.

(Ord. No. 3824, § 5, 7-23-02; Ord. No. 3944, § 4, 11-21-06; Ord. No. 3966, § 1, 6-12-07)

32A-6 Alternative hearing procedure.

If all Hearing Officers are unavailable to conduct hearings for any reason, the Board of Supervisors shall conduct nuisance abatement hearings. Should the Board of Supervisors conduct said hearings all notice provisions and hearing procedures set forth herein shall apply. The decision of the Board of Supervisors shall be final.

(Ord. No. 3824, § 5, 7-23-02)

32A-7 Abatement costs and administrative costs.

- (a) The term "Abatement Costs" means any costs or expenses reasonably related to the abatement of conditions which violate the Butte County Code, and shall include, but not be limited to, enforcement, investigation, attorneys' fees, collection and administrative costs, and the costs associated with the removal or correction of the violation.
- (b) The term "Administrative Costs," shall include the cost of County staff time reasonably related to enforcement, for items including, but not limited to, site inspections, travel time, investigations, telephone contacts and time spent preparing summaries, reports, notices, correspondence, warrants and hearing packets. The time expended by Development Services and Auditor-controller staff, to calculate the above costs and prepare itemized invoices, may also be recovered.
- (c) In any action, administrative proceeding, or special proceeding to abate a nuisance, attorneys' fees may be recovered by the prevailing party. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

(Ord. No. 3824, § 5, 7-23-02; Ord. No. 3966, § 2, 6-12-07; Ord. No. 4000, § 1, 3-24-09)

32A-8 Non-Exclusive remedy.

This Chapter is cumulative to all other remedies now or hereafter available to abate or otherwise regulate or prevent public nuisances.

(Ord. No. 3824, § 5, 7-23-02)