



City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE May 20, 2008

SUBJECT: Ordinance – Amending Article III of Chapter
14A of the Municipal Code Relating to
Public Nuisance Abatement

Report in Brief

The proposed Ordinance would amend the Woodland Municipal Code to clarify cost recovery for summary nuisance abatement and impose standards and procedures for conducting such abatement. It would also provide for the prevailing party to recover attorneys' fees.

Staff recommends the City Council adopt Ordinance _____ amending Article III of Chapter 14A of the Municipal Code.

Background

Council has previously received the proposed language at their meeting on May 13, 2008 with extensive background information and detail on the proposed Ordinance advantages. The Ordinance comes to you now for adoption.

Public Contact

Posting of the City Council agenda.

Recommendation for Action

Staff recommends the City Council adopt Ordinance _____ amending Article III of Chapter 14A of the Municipal Code

Prepared by: Sue Vannucci, Director of
Administrative Services and City Clerk

Mark G. Deven
City Manager

Attachment: Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF WOODLAND AMENDING ARTICLE III OF
CHAPTER 14A OF THE WOODLAND MUNICIPAL CODE RELATING TO PUBLIC
NUISANCE ABATEMENT**

The City Council of the City of Woodland, California, hereby finds and declares as follows:

WHEREAS, the Woodland City Council believes that enforcement of the Woodland Municipal Code, other ordinances adopted by the City, conditions of entitlements and terms and conditions of City agreements are matters of local concern and serve important public purposes;

WHEREAS, Article III of Chapter 14A currently permits the City of Woodland to recover its costs of abating public nuisances through summary abatement;

WHEREAS, Government Code section 38773.5 permits the City of Woodland to establish by ordinance a procedure for the administrative abatement of all public nuisances and permits the City to recover its costs thereof;

WHEREAS, Government Code section 38773.5 permits the City of Woodland to permit the prevailing party in any nuisance abatement action to recover their attorneys' fees;

WHEREAS, the City Council desires to clarify that the City may recover its costs of abating all public nuisances, through regular administrative or summary abatement; and

WHEREAS, the City Council desires to permit the prevailing party in any nuisance abatement action to recover its attorneys' fees.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODLAND
HEREBY ORDAINS AS FOLLOWS:**

SECTION 1: The purpose of this Ordinance is to amend Article III to Chapter 14A of the Woodland Municipal Code.

SECTION 2: The City Council enacts this Ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution.

SECTION 3: Article III of Chapter 14A of the Woodland Municipal Code is hereby amended to read in full as follows:

**ARTICLE III
NUISANCE ABATEMENT**

Sections:

**Sec. 14A-3-1 City abatement.
Sec. 14A-3-4 Cost of Abatement.**

Sec. 14A-3-2	Assessment of costs--Lien against property.
Sec. 14A-3-3	Summary abatement.
Sec. 14A-3-5	Violations.
Sec. 14A-3-6	Alternative enforcement.
Sec. 14A-3-7	Attorneys' fees and costs.
Sec. 14A-3-8	Severability.

Sec. 14A-3-1 City abatement.

- (a) If a declared nuisance is not completely abated by the owner or occupier of the premises within the time prescribed in an order to abate, the community development director or his or her agent is authorized and directed to cause the nuisance to be abated by a city personnel or private contract. In furtherance of this section, the community development director or his or her agent is expressly authorized to enter upon the premises for the purpose of abating the nuisance.
- (b) Where required by state or federal law, a warrant shall be obtained prior to entry onto premises for the purpose of abating the nuisance, unless written consent to enter is received from the owner or occupant of the premises or warrantless entry is otherwise permissible under state or federal law. Where a warrant is required, notice shall be given to the owner or occupant of the issuance of the warrant twenty-four hours prior to the entry, unless the warrant provides otherwise.

Sec. 14A-3-2 Cost of Abatement.

- (a) The community development director, or his or her designated agent, shall keep an account of the costs and expenses of abating such nuisance, and shall render a statement of such costs to the person or persons receiving the notice to abate.
- (b) Such person or persons receiving the notice abate shall be liable to the city for any and all costs and expenses to the city involved in abating the nuisance.
- (c) Costs and expenses as referred to in this section shall include but are not limited to, any and all direct costs related to personnel salaries and benefits, operational overhead, rent interest, fees for experts, consultants or contractors, legal costs or expenses including attorney fees, claims against the city arising as a consequence of the nuisance or violation, and procedures associated with collecting moneys due hereunder.

Sec. 14A-3-3 Assessment of costs--Lien against property.

The total cost for abating a nuisance shall constitute a special assessment against the premises to which it relates, and upon recordation in the office of the county recorder of a notice of lien, shall constitute a lien on the property for the amount of such assessment.

- (a) After such recordation, a copy of the lien may be turned over to the county auditor, who shall then enter the amount of the lien on the assessment rolls as a

special assessment. Thereafter, said amount 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 under foreclosure and sale in case of delinquency as provided by Government Code Section 38773.5 and as provided for ordinary municipal taxes.

- (b) After such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

Sec. 14A-3-4 Summary abatement.

Notwithstanding any other provision of this chapter to the contrary, whenever it is determined that a public nuisance is so imminently dangerous to life or other property that such condition must be immediately corrected or isolated, the community development director or his or her agent may institute the following procedures:

- (a) Notice. The community development director or his or her agent shall attempt to make contact through a personal interview, or by telephone, with the landowner or the person, if any, occupying or otherwise in real or apparent charge and control thereof. The community development director or his or her agent shall document all attempts to make contact. In the event contact is made, the community development director or his or her agent shall notify such person or persons of the danger involved and require that such condition be immediately removed, repaired or isolated so as to preclude harm to any person or property.
- (b) Abatement. In the event the community development director or his or her agent is unable to make contact as required by this section, or if the appropriate persons, after notification by the community development director or his or her agent, do not take action as specified by such official within seventy-two (72) hours, or a lesser period if deemed necessary, then the community development director or his or her agent may, with the approval of the city manager and in consultation with the city attorney if feasible, take all steps necessary to remove or isolate such dangerous condition, or conditions, with the use of City forces or a contractor retained pursuant to the provisions of this code. Provided, however, that summary abatement shall be limited solely to those matters which are imminently dangerous to life or other property, and additional abatement, if necessary, shall utilize the other enforcement provisions of this chapter.
- (c) Costs. The community development director or his or her agent shall keep an itemized account of the costs incurred by the City in removing or isolating such condition or conditions. Such costs may be recovered to the same extent and in the same manner that abatement costs are recovered pursuant to Sec. 14A-3-2 and Sec. 14A-3-3.

Sec. 14A-3-5 Violations.

- (a) The owner or occupier of any premises where a nuisance is found to exist, or who violates any order of abatement served as provided in this chapter, shall be guilty of an infraction. The community development director or his or her designee may issue citations for such infractions; provided, that a previous warning has been given. Upon conviction thereof, the violator shall be punished by a fine not exceeding one hundred dollars for a first violation, two hundred dollars for a second violation within one year, and five hundred dollars for each additional violation within one year.
- (b) Every day that any such violation continues shall constitute a separate offense.

Sec. 14A-3-6 Alternative enforcement.

Nothing in this chapter shall be deemed to prevent the city council from authorizing the city attorney to commence any other available civil or criminal proceeding to abate a public nuisance under applicable provisions of state law as an alternative to the proceedings set forth in this chapter.

Sec. 14A-3-7 Attorneys' fees and costs.

- (a) In any action, administrative proceeding or special proceeding commenced by the city to abate a public nuisance or to enjoin violation of any provision of this code, if the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees, the prevailing party shall be entitled to recover all costs incurred therein, including reasonable attorneys' fees and costs of suit. 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 city in the action or proceeding.
- (b) The city shall be considered a prevailing party entitled to attorneys' fees under subsection A of this section when it can demonstrate that:
 - (1) Its lawsuit was the catalyst motivating the defendant to provide the primary relief sought;
 - (2) The lawsuit was meritorious and achieved its result by "threat of victory"; and
 - (3) The city reasonably attempted to settle the litigation before filing the lawsuit.

Sec. 14A-3-8 Severability.

If any provision, clause, sentence or paragraph of this chapter, or application thereof to any person or circumstance be held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications and, therefore, the provisions of this chapter are declared to be severable.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 5: This Ordinance shall take effect thirty (30) days after its adoption and, within fifteen (15) days after its passage, shall be published at least once in a newspaper of general circulation published and circulated within the City of Woodland.

PASSED AND ADOPTED this _____ day of _____, 2008 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

David M. Flory, Mayor

ATTEST:

Sue Vannucci, City Clerk

APPROVED AS TO FORM:

Ann M. Siprelle, City Attorney