

ORDINANCE CODE PART IV, CHAPTER 1
PUBLIC NUISANCES

(Added by Ord. No. 3019, effective 2-18-93)

ARTICLE 1. GENERAL PROVISIONS

**LEGISLATIVE
AUTHORIZATION
TITLE**

SECTION 4-01-1000 (formerly Section 4000). Pursuant to the authority granted it by Section 25845 and Section 25845.5 of the Government Code of the State of California, the Board of Supervisors does enact this Chapter which shall be known, and may be cited, as the Pubic Nuisance Ordinance.

PURPOSES

SECTION 4-01-1005 (formerly Section 4001).

- (a) It is the purpose of this Chapter to protect the health, safety and welfare of the residents of the County of Tulare through the prevention of public nuisances in the County. It shall be construed liberally to that end.
- (b) It is the intention of the Board of Supervisors to minimize the burden placed upon property owners and taxpayers in carrying out the purposes set forth in subsection (a) above. Accordingly, those methods of abatement are to be favored which are least costly and which are most directly related to protecting the public health, safety and welfare.

**NOT EXCLUSIVE
REGULATION**

SECTION 4-01-1010 (formerly Section 4002). This Chapter is not the exclusive regulation of public nuisances. It shall supplement and be in addition to the other regulating statutes and ordinances heretofore or hereafter enacted by the State, the County, or any other legal entity or agency having jurisdiction.

APPLICATION

SECTION 4-01-1015 (formerly Section 4003). This Chapter applies to all real property owned by an individual, firm, partnership, joint venture, association, corporation, estate or trust. In addition, it applies to any real property owned by the United States and any agency of the United States, the State of California and any agency of the State, any city, and a public district or political subdivision of the State of California insofar as it is legally possible to enforce this Chapter, or any portion thereof, against such entities.

DEFINITIONS

SECTION 4-10-1020 (formerly Section 4004). Except where the context otherwise requires, the following definitions shall govern the construction of the Chapter:

- (a) "Agent" means a person or entity acting on behalf of and subject to

the control of the owner of real property or of a person legally in possession of the real property.

- (b) "Board" means the Board of Supervisors of the County of Tulare.
- (c) "Cost of abatement" means the direct cost to the County of abating a public nuisance.
- (d) "Cost of Administration" means the cost to the County of performing the various administrative acts required under this Chapter with regard to the abatement of a public nuisance, including, without limitation, the costs of investigating such nuisance, but not including the actual cost of abatement.
- (e) "County" means the County of Tulare, acting by and through the Board of Supervisors, the County Executive, or any appropriate County department.
- (f) "Owner" means the person in whom is vested the ownership, dominion, or title of real property.
- (g) "Real property" includes all the surface or subsurface areas described in the most recently recorded deed or deeds relating to such property and all improvements on the real property.

ARTICLE 3 (formerly Article 2). NUISANCE

DECLARATION OF NUISANCE

SECTION 4-01-1070 (formerly Section 4005). The following is hereby declared to be a public nuisance which may be abated in accordance with the provisions of this Chapter:

Anything which is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin, or any public park, street, or highway, and affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of annoyance or damage inflicted upon individuals may be unequal, or any condition which is specifically declared to be a public nuisance by any statute or ordinance.

INSPECTION WARRANT

SECTION 4-01-1075 (formerly Section 4005.1). Where there is a report of the existence of a public nuisance or other reason to believe that a public nuisance exists on certain real property, but the owner or person legally in possession of the real property refuses consent to inspect it, or

where circumstances justify the failure to seek consent to inspect, the County may proceed to obtain an inspection warrant pursuant to California Code of Civil Procedure Sections 1822.50 et seq. to enter and inspect such real property.

EXCEPTIONS

SECTION 4-01-1080 (formerly Section 4055.2). No inspection warrant shall be required where there is an immediate threat or danger to the public health or safety and immediate abatement of a public nuisance is justified as provided in Section 4015 of this Chapter.

OWNER'S DUTY

SECTION 4-01-1085 (formerly Section 4006). It is the duty of every owner of real property within the unincorporated area of Tulare County to prevent a public nuisance described in Section 4005 of this Chapter from arising on, or existing upon, his or her real property.

ARTICLE 5 (formerly Article 3). NOTICE OF NUISANCE

**DETERMINATION
OF NUISANCE:**

SECTION 4-01-1140 (formerly Section 4007). Whenever the County determines that a public nuisance described in Section 4005 of this Chapter exists upon any real property within the County, the County shall first notify the owner of the real property of such determination. Notice shall also be provided to any tenant or other person legally in possession of the property known, or reasonably believed, by the County to be in legal possession.

NOTICE

**NOTICE:
CONTENTS**

SECTION 4-01-1145 (formerly Section 4008). The notice provided in Section 4007 of this Chapter shall:

- (a) Identify the owner of the real property upon which the nuisance exists, as the name appears on the records of the County Assessor.
- (b) Provide a description of the real property sufficient to give its location.
- (c) State that the County has determined that a public nuisance exists on the real property, and identify the public nuisance.
- (d) State the facts upon which that determination was based.
- (e) State that the owner or any person affected by the determination may within ten (10) calendar days after mailing, posting or personal delivery of the notice make a request in writing to the County department which issued the notice for appeal of the determination that a public nuisance exists, or to show that for some other reason the condition should not be abated in accordance with the provisions of this Chapter.

- (f) State that unless the owner or any person in lawful possession of the real property voluntarily abates the public nuisance by legal means, or requests an appeal of the determination that a public nuisance exists within ten (10) calendar days after the date the notice was mailed, posted or delivered, the County may abate the public nuisance. It shall also state that the cost of abating the public nuisance, including the applicable cost of administration, may be specially assessed against the real property and collected at the same time and in the same manner as ordinary County taxes are collected pursuant to Government Code Section 25845.

**NOTICE:
MAILING:
PERSONAL
DELIVERY:
POSTING:
RECORDING:**

SECTION 4-01-1150 (formerly Section 4009). The notice required by Section 4007 of this Chapter shall be served by personal delivery or registered mail to the person to be served. The owner may be served by mail at his or her address as it appears on the last equalized assessment roll, except that, if the records of the County Assessor show that the ownership has changed since the last equalized assessment roll was compiled, notice shall be mailed to the new owner. If service cannot with diligent effort be accomplished by personal delivery or by mail, notice may be given by posting copies of the notice along the subject real property not more than one thousand (1,000) feet apart, but in no event shall fewer than two (2) signs be posted. A copy of the notice shall concurrently be recorded in the Official Records of the County.

ARTICLE 7 (formerly Article 4). APPEAL TO THE DEPARTMENT

**APPEAL:
DEPARTMENT
NOTICE**

SECTION 4-01-1200 (formerly Section 4010).

- (a) Any person affected by the determination of the County that a public nuisance exists may first appeal that determination by filing a written request with the County department that issued the determination on or before the tenth (10th) calendar day following the date of mailing, personal delivery or posting of the notice required by Section 4007. At the time of filing the request for appeal, the person making the request shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The determination that a public nuisance exists shall be final unless an appeal is requested in a timely manner.
- (b) The head of the County department, or his or her designee, shall give notice to the person requesting the appeal of the date, time and place when the appeal will be heard, which date shall not be less than five (5) calendar days after the date of mailing the notice.

- (c) At the hearing on the appeal, the head of the County department which issued the determination that a public nuisance exists, or his or her designee, shall review the determination, any and all relevant documents and testimony, and such other relevant evidence shall be presented. The parties may be represented by legal counsel. Testimony shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness; and, to rebut evidence. The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon 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. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privileges shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Irrelevant and unduly repetition evidence shall be excluded. At the conclusion of the hearing, the person hearing the appeal may affirm, reverse or modify the determination that a public nuisance exists. The decision shall be made in writing and shall be mailed to the person requesting the appeal at the address provided in Section 4009 of this Chapter, unless otherwise requested in writing by the party to be served. The notice of decision shall also include a description of the right to appeal the decision as provided in Section 4011 of this Chapter.

ARTICLE 9 (formerly Article 5). APPEAL TO THE BOARD

**APPEAL:
BOARD OF
SUPERVISORS
NOTICE:**

SECTION 4-01-1250 (formerly Section 4011). The person who requested the appeal to the department may appeal the decision of the department to the Board, subject to the provisions of Section 165 of the Ordinance Code. An appeal to the Board shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after mailing of the notice of decision on the departmental appeal. An appeal to the Board shall specifically set forth the grounds of the appeal. At the time of filing the appeal, the appellant shall pay a fee in the amount adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The Clerk of the Board shall mail notice to the appellant of the date and time that the Board will meet to hear the appeal, which date shall be not

less than five (5) calendar days after the date of mailing the notice.

**HEARING ON
APPEAL:**

SECTION 4-01-1255 (formerly Section 4012).

DETERMINATION

- (a) At a time fixed by the Clerk of the Board, the Board shall meet to review the appeal from the determination that a public nuisance exists. The owner may appear and be heard on the matter.
- (b) The written determination that a public nuisance exists shall be admitted into evidence. The owner shall bear the burden of proving that the determination is not accurate.
- (c) The hearing shall be conducted in the manner prescribed in Section 165 of the Ordinance Code of Tulare County.

ARTICLE 11 (formerly Article 6). ABATEMENT

**ABATEMENT:
BY OWNER**

SECTION 4-01-1305 (formerly Section 4013). Any owner may voluntarily abate a nuisance described in Section 4005 of this Chapter at any time prior to commencement of abatement by the County. The County shall have discretion to request such voluntary correction or abatement prior to proceeding with the formal abatement procedures provided by this Chapter.

**ABATEMENT:
ENTERING
PRIVATE
PROPERTY**

SECTION 4-01-1310 (formerly Section 4014). If a public nuisance is not voluntarily corrected or abated by the owner, and if no request for appeal has been made as provided in Section 4010 and Section 4011, respectively, or if the decision after an appeal to the Board so provides, the County may cause the public nuisance to be abated. The County or its agents who are to perform the work may enter upon the real property on which the public nuisance exists for the purpose of abating the nuisance at all reasonable times.

**ABATEMENT:
EMERGENCIES**

SECTION 4-01-1315 (formerly Section 4015). Regardless of the provisions of Section 4014 of this Chapter, if it appears to the County that a public nuisance represents an immediate threat or danger to the public health or safety, the County may abate such public nuisance to the extent necessary to eliminate such threat or danger to the public health or safety without following the notice and hearing requirements set forth in Articles 3, 4 and 5 of this Chapter.

ARTICLE 13 (formerly Article 7). PAYMENT OF COSTS

ACCOUNTING

SECTION 4-01-1375 (formerly Section 4016). Any County department which abates a public nuisance pursuant to this Chapter shall keep an

accounting of the cost of each abatement, and shall prepare a report in writing showing the cost of abatement and the applicable cost of administration. If real property under more than one ownership has been included in an overall abatement project, the account shall show such costs for the property owned by each owner separately. The County shall mail a copy of the accounting, and a notice explaining the owner's right to appeal the accounting as provided in Section 4017 of this Chapter, to the owner of the affected real property at the address provided in Section 4009 of this Chapter, unless the owner has otherwise requested in writing.

**APPEAL ON
ACCOUNTING:
NOTICE**

SECTION 4-01-1380 (formerly Section 4017). The owner of the affected real property may appeal for a modification of the accounting to the Board of Supervisors. Any appeal to the Board shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after mailing of the notice and accounting. An appeal shall specifically set forth the grounds of the appeal. At the time of filing the appeal, the appellant shall pay a fee adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The Clerk of the Board shall mail notice to the appellant of the date and time that the Board will meet to hear the appeal, which date shall be not less than five (5) calendar days after the date of mailing the notice.

**APPEAL ON
ACCOUNTING:
HEARING**

SECTION 4-01-1385 (formerly Section 4018).

- (a) At a time fixed by the Clerk of the Board, the Board shall meet to review the appeal on the accounting. The owner may appear and be heard on the questions whether the accounting and the costs included are accurate and reasonable.
- (b) The report of the accounting shall be admitted into evidence. The owner shall bear the burden of proving that the accounting is not accurate or reasonable.
- (c) The hearing shall be conducted in the manner prescribed in Section 165 of the Ordinance Code of Tulare County.

MODIFICATIONS

SECTION 4-01-1390 (formerly Section 4019). The Board shall make such modifications in the accounting as it deems necessary based on the evidence at the hearing and thereafter shall confirm the accounting by resolution.

**LIABILITY
FOR COST OF
ABATEMENT:
SPECIAL**

SECTION 4-01-1395 (formerly Section 4020). The applicable owner of the real property shall be liable for the cost of the abatement, including the cost of administration, as so determined. The Board may order that the cost of abating public nuisances pursuant to this Chapter, and the

**ASSESSMENT
AND LIEN**

applicable cost of administration, be placed upon the County tax roll by the County Auditor as special assessments against any applicable real property, or placed on the unsecured roll, and collected at the same time and in the same manner as ordinary county taxes are collected. The Board may also order that a notice of abatement lien is to be recorded as to any applicable real property until such costs have been paid in full.

**LIABILITY
FOR COST OF
ABATEMENT:
CONDITIONS**

SECTION 4-01-1400 (formerly Section 4021). The Board may order that the payment of the cost of abating nuisances pursuant to this Chapter, and the applicable cost of administration, become a condition precedent to the issuance of any and all pending or future permits or entitlements for use requested from the County by any person found responsible for the payment of such costs.

**SECOND OR
SUBSEQUENT
ABATEMENT:
TREBLE
DAMAGES**

SECTION 4-01-1405 (formerly Section 4022). As authorized by Government Code Section 25845.5, upon a second or subsequent determination within a two-year period that an owner of property is responsible for a condition that may be abated in accordance with this Chapter, except for conditions abated pursuant to Section 17980 of the Health and Safety Code, the owner shall be liable for treble the costs of the abatement.