

Title 8

HEALTH AND SANITATION

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Chapter 8.04

SOLID WASTE\* \*\*

Sections:

- 8.04.010 Findings.
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\* For statutory provisions authorizing cities to contract for garbage and rubbish disposal and to prescribe terms for each services, see Health & Saf. Code § 4250.

\*\* Prior ordinance history: Ordinances: Ord. 442 Art. 1 §§ 1--5 and Art. 2 §§ 1 and 2, 406, 358, 288, 249, 221.

8.04.010 Findings. The city council finds and declares:

A. The accumulation of solid waste within the city is unhealthy and unsanitary.

B. A continuing program of consistent solid waste collection and disposal is necessary for the public health, safety and welfare, and the city council has the sole and exclusive control and enforcement authority for said program.

C. The benefit derived by each residence and business establishment from routine solid waste collection requires

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that each such residence and establishment owner be individually liable for disposal of all their solid waste, either by contracting for such service with city's franchised waste collector or by undertaking said service on his or her own behalf. (Ord. 479 (part), 1983).

8.04.020 Definitions. Sections 8.04.010 through 8.04.080 are known and may be cited as the "city solid waste ordinance." The following words and phrases, when used in Sections 8.04.010 through 8.04.080, shall for the purposes of Sections 8.04.010 through 8.04.080, have the meanings respectively ascribed to them by this section:

A. "Collection" means the act of collecting solid waste at the place of waste generation by an approved collection agent and is distinguished from "removal."

B. "Collection vehicle or equipment" includes any vehicle or equipment used in the collection of residential refuse or commercial solid waste.

C. "Composting" includes a controlled microbial degradation of organic wastes yielding a safe and nuisance free product.

D. "Garbage" includes all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of foodstuffs.

E. "Health officer" includes the health officer or other agent of the health department of county, and shall include duly authorized personnel of the state Department of Health Services in the enforcement of applicable state law, city ordinance, or state or county rule or regulation in aid thereof.

F. "Litter" includes any post-consumer solid waste which is not deposited in:

1. An authorized solid waste disposal site;
2. Appropriate and serviced storage containers; or
3. In other areas designated for disposal of solid wastes.

G. "Nuisance" includes 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, 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 the individual may be unequal, and which occurs as a result of the storage, removal, transport, processing or disposal of solid waste.

H. "Person" includes an individual, firm, association, copartnership, political subdivision, governmental agency, municipality, industry, public or private corporation or any other entity whatsoever.

I. "Putrescibles" includes wastes that are capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances because of odors, gases or other offensive conditions, and include materials such as food wastes, offal and dead animals.

J. "Recyclable material" means solid waste subject to recycling, such as newspapers, cleansed bottles, cleansed bimetal and aluminum cans and foil.

K. "Recycling" means the process by which salvaged materials become useable products.

L. "Refuse" includes garbage and rubbish.

M. "Removal" means the act of taking solid wastes from the place of waste generation either by an approved collection agent or by a person in control of the premises.

N. "Resources recovery" means the reclamation or salvage of wastes for reuse, conversion to energy or recycling.

O. "Rubbish" includes nonputrescible solid wastes such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, rubber byproducts or litter.

P. "Scavenging" means the uncontrolled or unauthorized removal of solid waste materials.

Q. "Solid waste contractor" means a solid waste hauler franchised by contract with the city council to provide for the collection and disposal of all solid waste and refuse for all residence and business establishments who choose not to perform this duty for themselves.

R. "Solid waste or wastes" includes all putrescible and nonputrescible solid and semisolid wastes, such as refuse, garbage, rubbish, paper, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes and other discarded solid and semisolid wastes, and also includes liquid wastes disposed of in conjunction with solid waste disposal sites but excludes:

1. Raw sewage collected and treated in a municipal or regional sewerage system; or

2. Materials or substances having commercial value which have been salvaged for refuse, recycling or resale.

S. "Vector" includes any insect or other arthropod, rodent or other animal capable of transmitting the causative agents of human disease, or disrupting the normal enjoyment of life by adversely affecting the public health and well-being. (Ord. 479 (part), 1983).

8.04.030 Franchise--Solid waste contractor. The city council may provide for solid waste collection and disposal by the granting of an exclusive or nonexclusive franchise for such purpose, subject to the terms and conditions which achieve the following objectives and purposes:

A. To provide the most consistent and responsible level of customer service without interruption or cause of action for customer complaints;

B. To offer and maintain the lowest and most cost-effective rates for minimum customer service.

Only those contractors who have entered into a franchise agreement with the city shall be permitted to perform solid waste collection services within the city. At the expiration of the term of any franchise agreement (including any extended term, if so authorized in a franchise agreement), the city council shall authorize and undertake a competitive bidding process prior to awarding any exclusive franchise for any succeeding terms. (Ord. 560 §2, 1993: Ord. 479 (part), 1983).

8.04.040 Compliance. It is unlawful for any person, enterprise or solid waste contractor to deposit, store, collect or dispose of or fail to collect or dispose of solid waste within the city except as provided in this chapter. (Ord. 479 (part), 1983).

8.04.050 Storage of waste--Containers. A. The owner, operator and/or occupant of any premises, business establishment, industry or other property, vacant or occupied, shall be responsible for the safe and sanitary storage of all solid waste accumulated on the property.

B. In all cases in which garbage and rubbish are combined, the standards for garbage shall prevail. The property owner or occupant shall store solid waste on his premises or property and shall require it to be stored or handled in such a manner so as not to promote the propagation, harborage or attraction of vectors, or the creation of nuisances.

C. The design of any new or expanded building or other facility shall provide for proper storage or handling which will accommodate the anticipated solid waste generation and which will allow for efficient and safe waste removal or collection. Such provision shall be a condition to the issuance of a building permit, and to the issuance of a use permit, when required, and determination of the adequacy by the city, unless otherwise exempted by planning officer.

D. Where the solid waste contractor furnishes storage containers, he is responsible for maintaining the containers in good clean condition (ordinary wear and tear expected.) Contractor shall plan with the property owner and/or occupant as to placement of storage containers to minimize traffic, aesthetic and other problems both on the property and for the general public to the satisfaction of the city pursuant to this chapter. Dumpsters containing wet garbage shall be cleaned and kept free from putrescible residue after each dump, pursuant to Health and Safety Sections 17315 and 17341.

E. Containers. Every property owner, tenant, lessee or occupant of any private dwelling house or premises, and every business or other person having refuse in the city, shall deposit all garbage and putrescible matter or mixed garbage and rubbish in containers which are nonabsorbent,

watertight, vector-resistant, durable, easily cleanable and designed for safe handling and which are designed for the containment of refuse.

1. Residences shall have metal or plastic containers not greater than thirty-two gallons in capacity with a filled weight not exceeding sixty pounds.

2. Business establishments shall have metal or plastic containers of the type specified for residential use in a number, not to exceed six, or metal bins or roll-off containers (debris boxes) of a type approved by the city. The city may require that a bin, roll-off or other type of container be used (even though the number of cans which would otherwise be used is not over six), whenever necessary to prevent an unhealthy or unsightly condition.

F. No person shall tamper with, modify, add to, remove from or deposit solid wastes in any container which is not provided for his or her use without the express permission of the containers owner. Violation of this section shall constitute a misdemeanor. (Ord. 479 (part), 1983).

8.04.060 Schedule of waste removal. A. Except as otherwise provided in this chapter, all solid waste shall be collected and disposed of not less than once each week.

B. Where a business establishment has a bin or roll-off container which, because of the amount and type of solid waste generated, does not require weekly service, the bin or roll-off container may be presented for collection on any reasonable periodic basis approved by the city, providing the same does not contain putrescible waste.

C. All food establishments shall provide for solid waste collection not less than twice weekly.

D. Where necessary to prevent an unsanitary or unsightly condition, the city may require that a resident or business establishment provide for solid waste collection more often than once per week.

E. If any person or business does not use the solid waste contractor's service, he must maintain his property and provide for removal and disposal in the same manner as though he subscribed to the service. (Ord. 479 (part), 1983).

8.04.070 Transportation of waste. A. All equipment of solid waste contractor used for collection and transportation of residential and commercial refuse shall be nonabsorbent, watertight, vector-resistant, easily cleanable and designed for safe handling. The equipment shall be maintained in excellent mechanical condition, supported by the submittal of quarterly vehicle inspection reports. The equipment shall also be cleaned in a frequency and in a manner determined by city to prevent the propagation or attraction of flies, rodents or other vectors and the creation of nuisances, and shall not be stored or parked on public streets.

B. All equipment and vehicles used for the collection and transportation of refuse, whether owned and operated by the solid waste contractor or a private person providing his own service, shall be subject to and made available for city inspection at any time upon city request.

C. Notwithstanding other provisions in this chapter, all solid wastes which are subject to collection and transport by the solid waste contractor shall become the property of the city solely for purposes of beneficial use in possible resource recovery by the city, after such time as the contractor takes possession thereof. (Ord. 479 (part), 1983).

8.04.080 Scavenging--Prohibition and enforcement.

A. Scavenging. Scavenging as defined in Section 8.04.010 is prohibited on any premises, public or private.

B. Rules and Regulations. Unless otherwise stipulated in this chapter, the health officer is authorized to make all necessary and reasonable rules and regulations covering refuse accumulation, collection, transportation and disposal, types of refuse containers and vehicles used for collection, for the operation and maintenance of sanitary methods of refuse disposal. All such rules and regulations shall be consistent with the provisions of Sections 8.04.010 through 8.04.070 and all resolutions and policies of the city council.

C. Violation--Penalty. A violation of provisions of Sections 8.04.010 through 8.04.080 constitutes a misdemeanor, and upon conviction thereof is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars or by both such imprisonment and fine.

D. Enforcement. The city director is designated as the enforcement agency for provisions of Sections 8.04.010 through 8.04.070, and is authorized to provide for necessary inspections and enforce the provisions of this chapter.

E. Abatement Proceedings--Option to Revoke Franchise. Violations of the provisions of this chapter constitute:

1. A Public Nuisance. In the case of any person, business or the solid waste contractor allowing the accumulation, collection, transport or disposal of solid waste in violation of this chapter and/or in any manner which creates a condition inimical to the public health, safety and welfare a public nuisance is deemed to have occurred. The city director and/or the health officer shall immediately commence all appropriate actions for the abatement, removal and enjoinder of the nuisance and the conditions or activities creating it, and the city director shall deliver written notice of the nuisance with a request to immediately correct, together with a demand for payment of a penalty of three hundred dollars for each occurrence if the violator is the franchised waste hauler, or prosecution for misdemeanor, if

the violator is a private individual. Upon the occurrences of three or more separate occurrences of a public nuisance by waste hauler within a six month period, the city council shall have the right to automatically revoke and terminate the franchise solid waste contract.

2. Customer Complaint Procedure--Infraction and Penalty. Any customer or subscriber of the solid waste contractor's service who is dissatisfied with or has a complaint regarding such service which may constitute a violation of the franchise contract or this chapter, shall bring his complaint to the immediate attention of the city director. The city director shall cause an investigation of the complaint, and may institute any reasonable sanctions he deems appropriate against the waste contractor upon finding an actual failure or violation. Such sanctions or fines shall not exceed the following:

a. "Warning" to solid waste contractor, giving notice of infraction or violation, and demand to correct. Three warnings in six months shall result in the levy of a penalty of three hundred dollars for each violation thereafter.

b. "Penalty" demanding payment of a fine of three hundred dollars for three or more warnings or a material violation which constitutes a public nuisance as defined in this section.

Appeal from any decision of the city director to the city council shall be available upon ten days written notice from the aggrieved party. Nothing in this chapter shall preclude the city, on its own initiative, from causing the investigation of any alleged or actual violation of either this chapter or the refuse collection contract, by the solid waste contractor and subsequently instituting these or any additional abatement proceedings.

3. Material Breach. Upon the occurrence of any public nuisances or other violations which result in the imposition of three or more penalties against the solid waste contractor within one year or upon any material breach or default of the franchise contract by the contractor, the city director shall give the contractor written notice of such breach or default and the right of the city council to immediately terminate the contract and revoke the grant of the franchise privilege to the contractor within thirty days thereof. In such event, city shall provide for the solid waste collection by any means available to it, including utilization of the defaulting contractor's equipment and/or contracting with another solid waste hauler; and any and all costs incurred by the city in so doing shall be paid by the defaulting contractor. (Ord. 479 (part), 1983).

Chapter 8.08INOPERATIVE VEHICLES\*Sections:

- 8.08.010 Definitions.
- 8.08.020 Nuisance when.
- 8.08.030 Chapter exemptions.
- 8.08.040 Chapter supplementary to other regulations.
- 8.08.050 Administration and enforcement.
- 8.08.060 Removal by authorized personnel.
- 8.08.070 Administrative cost determination.
- 8.08.080 Abatement--Authority.
- 8.08.090 Abatement--Notice.
- 8.08.100 Abatement--Hearing--Notice.
- 8.08.110 Abatement--Hearing--Procedure.
- 8.08.120 Abatement--Appeal.
- 8.08.130 Removal--When.

8.08.010 Definitions. As used in this chapter:

- A. "Highway" means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. "Highway" includes "street."
- B. "Owner of the land" means the owner of land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.
- C. "Owner of the vehicle" means the last registered owner and legal owner of record.
- D. "Public property" does not include "highway."
- E. "Vehicle" means a device by which any person or property may be propelled, moved or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks. (Ord. 313 §1, 1971; Ord. 293 §1(A--E), 1969).

8.08.020 Nuisance when. In addition to and in accordance with the determination made and the authority granted by the state of California under Section 22660 of the Vehicle

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\* For statutory provisions authorizing cities to provide for the abatement and removal of wrecked vehicles as public nuisances, see Vehicle Code §22660; for the provisions authorizing cities to declare what constitutes a nuisance and abate the same, see Gov. Code §38771 et seq.

Code to remove abandoned, wrecked, dismantled or inoperative vehicles or parts thereof as public nuisances, the legislative body of the city makes the following findings and declarations:

The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof on private or public property not including highways is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore the presence of an abandoned, wrecked, dismantled or inoperative vehicle or part thereof, on private or public property not including highways, except as expressly hereinafter permitted, constitutes a public nuisance which may be abated as such in accordance with the provisions of this chapter. (Ord. 293 §1(part), 1969).

8.08.030 Chapter exemptions. This chapter shall not apply to:

A. A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or

B. A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under provisions of law other than Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code and this chapter. (Ord. 293 §2, 1969).

8.08.040 Chapter supplementary to other regulations. This chapter is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles within the city. It supplements and is in addition to the other regulatory codes, statutes, and ordinances heretofore or hereafter enacted by the city, the state, or any other legal entity or agency having jurisdiction. (Ord. 293 §3, 1969).

8.08.050 Administration and enforcement. Except as otherwise provided herein, the provisions of this chapter shall be administered and enforced by the chief of police. In the enforcement of this chapter such officer and his deputies

may enter upon private or public property to examine a vehicle or parts thereof, or obtain information as to the identity of a vehicle and to remove or cause the removal of a vehicle or part thereof declared to be a nuisance pursuant to this chapter. (Ord. 293 §4, 1969).

8.08.060 Removal by authorized personnel. When the city council has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this chapter. (Ord. 293 §5, 1969).

8.08.070 Administrative cost determination. The city council shall from time to time determine and fix an amount to be assessed as administrative costs (excluding the actual cost of removal of any vehicle or part thereof) under this chapter. (Ord. 293 §6, 1969).

8.08.080 Abatement--Authority. Upon discovering the existence of an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, on private property or public property within the city, the chief of police has the authority to cause the abatement and removal thereof in accordance with the procedure prescribed herein. (Ord. 313 §2, 1971; Ord. 293 §7, 1969).

8.08.090 Abatement--Notice. A ten-day notice of intention to abate and remove the vehicle, or parts thereof, as a public nuisance shall be mailed by registered mail to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following forms:

"NOTICE OF INTENTION TO ABATE AND REMOVE AN  
ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE  
VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE

(Name and address of owner of the land)

"As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to (section of ordinance or municipal code) has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismantled or inoperative vehicle registered to \_\_\_\_\_, license number \_\_\_\_\_, which constitutes a public nuisance pursuant to the provisions of (ordinance or municipal code chapter number).

"You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within

10 days from the date of mailing of this notice, and upon your failure to do so the same will be abated and removed by the (city or county) and the costs thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located.

"As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within 10 days after the mailing of this notice of intention, request a public hearing and if such a request is not received by the (hearing body or officer) within such 10-day period, the (locally designated officer) shall have the authority to abate and remove said vehicle (or said parts of a vehicle) as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such 10-day period denying responsibility for the presence of said vehicle (or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be construed as a request for hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the vehicle or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing.

Notice Mailed \_\_\_\_\_ s/ \_\_\_\_\_  
(locally designated officer)

"NOTICE OF INTENTION TO ABATE AND REMOVE AN  
ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE  
VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE

(Name and address of last registered and/or legal owner of record of vehicle -- notice should be given to both if different)

"As last registered (and/or legal) owner of record of (description of vehicle - make, model, license, etc.), you are hereby notified that the undersigned pursuant to (section of ordinance or municipal code) has determined that said vehicle (or parts of a vehicle) exists as an abandoned, wrecked, dismantled or inoperative vehicle at (describe location on public or private property) and constitutes a public nuisance pursuant to the provisions of (ordinance or municipal code chapter number).

"You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within ten days from the date of mailing of this notice.

"As registered (and/or legal) owner of record of said vehicle (or said parts of a vehicle), you are hereby notified



the time for removal of the vehicle or parts thereof if, in its opinion, the circumstances justify it. At the conclusion of the public hearing, the hearing officer may find that a vehicle or parts thereof has been abandoned, wrecked, dismantled, or is inoperative on private or public property and order it removed from the property as a public nuisance and disposed of as hereinafter provided and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle or parts thereof and the correct identification number and license number of the vehicle, if available at the site.

If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that he has not subsequently acquiesced in its presence, the hearing officer shall not assess the costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.

If the owner of the land submits a sworn statement denying responsibility for the presence of the vehicle on his land but does not appear, or if an interested party makes written presentation to the hearing officer but does not appear, he shall be notified in writing of the decision. (Ord. 313 §4 (part), 1971; Ord. 293 §10, 1969).

8.08.120 Abatement--Appeal. Any interested party may appeal the decision of the hearing officer by filing a written notice of appeal with the hearing officer within five days after his decision.

Such appeal shall be heard by the city council which may affirm, amend, or reverse the order or take other action deemed appropriate.

The clerk shall give written notice of the time and place of the hearing to the appellant and those persons specified in Section 8.08.080.

In conducting the hearing the city council shall not be limited by the technical rules of evidence. (Ord. 313 §5 (part), 1971; Ord. 293 §11, 1969).

8.08.130 Removal--When. Five days after adoption of the order declaring the vehicle or parts thereof to be a public nuisance, five days from the date of mailing of notice of the decision if such notice is required by Section 8.08.100, or fifteen days after such action of the governing body authorizing removal following appeal, the vehicles or parts thereof may

be disposed of by removal to a scrapyard or automobile dismantler's yard. After a vehicle has been removed it shall not thereafter be reconstructed or made operable. (Ord. 313 §5(part), 1971: Ord. 293 §12, 1969).

Chapter 8.12WEED ABATEMENTSections:

- 8.12.010 Definitions.
- 8.12.020 Nuisance declaration and abatement.
- 8.12.030 Resolution declaring nuisance.
- 8.12.040 Notice to abate nuisances.
- 8.12.050 Hearing/abatement order.
- 8.12.060 Abatement by city.
- 8.12.070 Cost of abatement.

8.12.010 Definitions. For the purpose of this chapter, the following words shall have the meanings respectively ascribed to them by this section:

- A. "Weeds" means any of the following:
  1. Weeds which bear seeds of a downy or wingy nature;
  2. Any brush or weeds which attain such large growth as to become, when dry, a fire menace to adjacent improved property;
  3. Weeds which are otherwise noxious or dangerous;
  4. Dry grass, stubble, brush, litter or other flammable material which endangers the public safety by creating a fire hazard.
- B. "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and solid market and industrial wastes.
- C. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials. (Ord. 448 §1, 1980).

8.12.020 Nuisance declaration and abatement. The city council may declare by resolution as public nuisances, and abate, all weeds, rubbish and refuse as defined in this chapter and as the council may deem necessary for the health, safety and welfare of city residents. (Ord. 448 §2, 1980).

8.12.030 Resolution declaring nuisance. A. The resolution declaring a nuisance shall refer to the street address by its commonly known name and describe the property upon which the nuisance exists by giving its lot and block number according to the official assessment map.

B. At the time it adopts the resolution, the city council may also find and declare that weeds on specified

parcels of property are seasonal and recurrent nuisances which shall be abated in accordance with this chapter upon any second or subsequent occurrence within the same calendar year without further hearings.

C. The resolution declaring the weeds, refuse or rubbish to be a nuisance shall further state the time and place for hearing any objections to the proposed abatement. (Ord. 448 §3, 1980).

8.12.040 Notice to abate nuisances. A. Form. Notice to abate weeds, refuse or rubbish which have been declared public nuisances by resolution under Section 8.12.030 shall be written in substantially the same form as designated in California Government Code Section 39566.

B. Posting, Publication or Mailing.

1. After passage of the resolution, the superintendent shall cause notices to be conspicuously posted on or in front of the property on which the nuisance exists at least ten days prior to the time fixed for hearing objections. He shall post:

a. One notice to each separately owned parcel of property of not over fifty feet frontage;

b. Not more than two notices to any such parcel of one hundred feet frontage or less;

c. Notices at not more than one hundred feet apart if the frontage of a parcel is greater than one hundred feet.

2. In addition to or as an alternative to notification by publication the city council may cause a copy of the notice to be published at least twice in a newspaper published and circulated in the city, at least ten days prior to the time fixed by the council for hearing objections.

3. As alternative to posting or publishing, a copy of the resolution and the notice declaring a nuisance, may be mailed by the city clerk (upon the direction of the city council) to all persons owning property described in the resolution, pursuant to the method designated in California Government Code Section 39567.1. (Ord. 448 §4, 1980).

8.12.050 Hearing/abatement order. A. Hearing. At the time stated in the notices, the city council shall hear and consider all objections to the proposed removal of weeds, rubbish and refuse. By motion or resolution at the conclusion of the hearing, the council shall allow or overrule any objections and at that time shall acquire jurisdiction to proceed and perform the work of removal.

Any decision of the council is final.

B. Abatement Order. After conclusion of the hearing, the city council may order by motion or resolution, the

superintendent of public works or the fire chief to abate the nuisance by having the weeds, rubbish and refuse removed.

C. Abatement by Owner. Before the superintendent or fire chief arrives, any property owner may remove the nuisance at his own expense. (Ord. 448 §5, 1980).

8.12.060 Abatement by city. A. Entry to Abate. The superintendent or fire chief or any of their personnel may enter upon private property to abate the nuisance.

B. Cost Report. The superintendent or fire chief shall keep a report (itemized written account) of the cost of abatement on each separate parcel of land, which report shall be submitted to the city council for confirmation.

1. A copy of the report shall be posted at the city hall for at least three days prior to its submission to the council, with a notice of the time of submission.

2. At the fixed time for receiving the report, the council shall hear it with any objections of the property owners liable to be assessed for the abatement. The council shall modify and/or confirm the report by motion. (Ord. 448 §6, 1980).

8.12.070 Cost of abatement. A. The cost of abatement upon each parcel of land, constitutes a special assessment against that parcel, and after the assessment is made and confirmed, it constitutes a lien on the parcel.

B. After confirmation of the report, a certified copy shall be filed with the county assessor and tax collector on or before August 10th, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes, pursuant to California Government Code Sections 39580 through 39583. (Ord. 448 §7, 1980).

## Chapter 8.16

### NUISANCES GENERALLY

#### Sections:

- 8.16.000 Definitions.
- 8.16.010 Nuisances declared.
- 8.16.020 Property owner responsibilities.
- 8.16.030 Attorneys' fees.
- 8.16.040 Notice to abate nuisance conditions.
- 8.16.050 Manner of conducting abatement hearing.
- 8.16.060 Issuance of decision, findings and order.
- 8.16.070 Abatement by enforcement officer if nuisance is not abated.
- 8.16.080 Abatement by owner/responsible party.
- 8.16.090 Liability for abatement costs.
- 8.16.100 Lien procedure.
- 8.16.110 Special assessment procedure.
- 8.16.120 Order for treble costs of abatement.
- 8.16.130 Summary abatement.
- 8.16.140 Right of judicial review.
- 8.16.150 Remedies.

8.16.000 Definitions. Except as otherwise provided, the following words, terms and phrases used in this chapter are defined as set forth in this section:

- A. "Abate" means, but is not limited to, modifying, repairing, replacing, removing, securing, locking, demolishing, or otherwise remedying the condition in question by such means and to such extent as necessary;
- B. "Building" means any structure, (including but not limited to, any house, garage, duplex, apartment, condominium, stock cooperative, mobile home or other residential buildings or associated accessory structures) and any commercial, industrial or other establishment, warehouse, kiosk, sign or other structure affixed to or upon real property used as a dwelling or for the purpose of conducting a business, storage or any other activity;
- C. "City" means the City of Jackson;
- D. "City Council" means the City Council of the City of Jackson;
- E. "Code" means the Jackson Municipal Code;
- F. "Day" means calendar day;
- G. "Enforcement Officer" means the building official, city manager, code enforcement officer, fire chief, or police chief of the city, or their designees, when such persons have been

delegated in writing the authority to enforce and administer the particular provisions of this chapter at issue in a particular matter;

H. "Hearing Officer" means the hearing officer appointed by the city council or, if no officer is appointed, the city council. The hearing officer may be a city employee, but in that event the hearing officer shall not have had any responsibility for the investigation, prosecution or enforcement of this chapter and shall not have had any personal involvement in the proceeding to be heard within the past twelve months or possess any disqualifying interest in the outcome of the proceeding.

I. "Owner" means any person, his/her heirs, executors, administrators or assigns, agent, firm, partnership or corporation having or claiming any legal or equitable interest in the property in question as listed on the last available equalized tax assessment roll for Amador County;

J. "Property" means all residential, industrial, commercial, agricultural, open space and other real property, including but not limited to, front yards, side yards, driveways, walkways, alleys and sidewalks, and shall include any building or other structure, whether fixed or moveable, located on such property.

K. "Responsible party" means any individual or legal entity who is the owner, tenant, co-tenant, lessee, sub-lessee, occupant or other person with any right to possession of the real property, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes, permits or maintains a violation of this code, its adopted codes or applicable state codes.

8.16.010 Nuisances declared. The following are declared to be public nuisances in the city:

A. Any building, fence or other structure, tree or growth, which is located or encroaches upon or obstructs, any street, parkway, sidewalk, alley, lane, court, park or other public place;

B. Any structure partially destroyed by fire or otherwise or any unsafe building or structure which is liable to become a fire menace or cause injuries to any person;

C. Storing, keeping or maintaining weeds, dry or dead vegetation, papers or paper products, and other combustible and noncombustible refuse or waste;

D. Storing, keeping or maintaining: vehicle parts; scrap metal; bottles; cans; wire; firewood; boxes; containers; wood and building materials no longer usable for their intended purpose; tools; machinery; equipment or parts thereof; or abandoned, discarded or unused household furniture or appliances;

E. Storing, keeping or maintaining: rubbish; refuse; trash; junk; garbage; and other waste or discarded material, including but not limited to, the accumulation of asphalt, concrete, plaster, tile, rocks, bricks, crates, cartons, boxes, dirt, sand or gravel;

F. Any violation of the California Building Standards Code as adopted and amended by the city.

- G. The existence of any building which has not been used for its legal and intended purpose for a three hundred sixty-five-day period. Uses that occur within any three hundred sixty-five-day period and are of duration of less than thirty days shall, for the purpose of this chapter, not qualify as meeting the use requirements of this section. Time during which the building is either being actively remodeled, or marketed for either sale or rental, shall not be included in determining the period of nonuse;
- H. The existence of any condition dangerous to children or others, including but not limited to: unsecured structures; fences or portions of fences in disrepair, leaning and/or partially down; abandoned, broken, unprotected and/or unsecured equipment, machinery or household appliances; unprotected, unfenced and/or unsecured pools, ponds or excavations;
- I. The existence of any condition or use which unlawfully obstructs, injures or interferes with the free passage or use in the customary manner of property, any public park, street, highway, sidewalk, and any other portion of the public right-of-way;
- J. The existence of any body of stagnant water or other liquid in which mosquitoes or other insects may breed, or which may or does generate noxious or offensive gases or odors;
- K. The existence of sewage, chemical, petroleum commercial or industrial waste which has the potential to leak into the groundwater or may or does generate noxious or offensive odors;
- L. The existence of any barbed wire, razor ribbon, glass, nails or other sharp objects on, in, or affixed to any fence or wall, or any electric fences in or adjacent to a residential zoning district or property used for residential purposes;
- M. The existence of any sign, banner, balloon, flags, inflated advertising device and/or the display of retail or manufactured products on private property or in the public right-of-way, which is not in compliance with this code;
- N. The existence of graffiti on any building, fence, wall, equipment, motor vehicle, trailer, sign or other object on private or public property or in the public right-of-way;
- O. The existence of a use, business or activity in any zoning district that does not conform with the requirements of that zoning district in which it is located as set forth in this code; or which does not conform with any discretionary permit or review approval by the planning commission or city council; or which does not conform with any law, ordinance or regulations adopted by the city applicable to the property;
- P. The existence of smoke, fumes, gas, dust, soot, cinders or other particulate matter in such quantities as to render the occupancy or use of property uncomfortable to a person or persons;
- Q. The existence of any condition or use which poses a threat to the public health or safety;
- R. A violation of this code or applicable state law;

S. Any condition that constitutes a nuisance under Civil Code section 3479.

8.16.020 Property owner responsibilities. It shall be the duty of the owner, and of responsible party occupying or having charge or control of any parcel of land, improved or unimproved, to maintain such parcel of land free of any nuisance and/or nuisance conditions at all times. The same responsibility extends to the public rights-of-way or public land, related to any vehicle, vessel, structure, machinery, container, refuse, debris or other item found to be or having been under the charge or control of a property owner, responsible party, or last registered or documented owner. Any owner or responsible party shall be responsible for the removal or correction of any nuisance or nuisance conditions and the costs for such removal or correction.

8.16.030 Attorneys' fees.

A. Notwithstanding anything in this code to the contrary, the city may only recover its attorneys' fees in any action, administrative proceeding or special proceeding commenced by the city to abate a public nuisance, to enjoin violation of any provision of this code, including its adopted codes, or to collect a civil debt owing to the city, if the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In these cases, 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 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.

8.16.040 Notice to abate nuisance conditions.

A. When the enforcement officer finds that a nuisance condition exists upon any property in the city, he or she may, or upon the direction of the city council shall, serve a notice to abate upon the owner or responsible party in possession or having control of the property upon which the condition exists, directing him/her to abate or cause the nuisance condition(s) upon the premises to be abated on or before a specified compliance date. The notice shall also state that the responsible party may file a written request for a hearing with the city clerk to dispute the alleged conditions within ten days of the notice.

B. The enforcement officer shall post one copy of the notice in a conspicuous place on the property in question and shall deliver one copy of the notice to the owner or responsible party in possession or control of the property upon which the nuisance condition exists either in person or by certified mail, with a return receipt requested.

C. The failure of the owner or responsible party to actually receive the notice shall not affect in any manner the validity of any proceedings pursuant to this chapter. Moreover, if any certified letter is returned for lack of service, it shall be deemed to have been served.

D. In the event the responsible party files a timely request for hearing, the city clerk and hearing officer shall schedule the hearing. The hearing shall be conducted within thirty days of receipt of the request unless otherwise agreed to in writing by the parties. The city clerk shall send written notice of the location, time and date of the hearing at least ten days in advance of the hearing date.

E. In the event the responsible party fails to appeal the notice, the nuisance conditions shall be deemed confirmed. Such failure shall also constitute a failure to exhaust available administrative remedies.

8.16.050 Manner of conducting abatement hearing. In the event a hearing is timely requested pursuant to Section 8.16.040, the hearing shall be conducted pursuant to the following procedures:

A. At the time and place designated in the notice of hearing, the hearing officer shall hear and consider all relevant evidence, including but not limited to, applicable staff reports, oral evidence, physical evidence and documentary evidence regarding the alleged nuisance, and proposed method of abatement. The hearing may be continued from time to time.

B. Failure of the owner or responsible party to appear at the hearing shall be deemed a waiver of the right to a hearing and an admission by the owner or responsible party of the existence of the nuisance condition charged. In the event of such failure to appear, the hearing officer may order that the nuisance condition be abated by the enforcement officer. Such failure to appear shall also constitute a failure to exhaust available administrative remedies.

C. The city shall bear the burden of proof to demonstrate, by a preponderance of the evidence, that a nuisance exists and that the proposed mechanism for abatement is appropriate. The city need not demonstrate that the proposed mechanism for abatement is either the most appropriate or least expensive.

D. The hearing shall not be conducted according to the formal rules of evidence. Any relevant evidence shall be admitted if it is the type of evidence on 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 in courts of competent jurisdiction in this state. However, irrelevant or unduly repetitious evidence may be excluded.

E. Prior to conclusion of the hearing, if the owner or responsible party is present, the hearing officer may request the owner or responsible party to sign a consent to enter and perform work. The permission given shall be used only if the nuisance condition is determined to exist and is not abated by the schedule of correction specified in the hearing officer's decision.

F. If the owner or responsible party does not provide written consent, entry onto the property may be made by obtaining verbal permission from the owner or a responsible party, or by means of an inspection warrant, or by any other lawful manner.

8.16.060 Issuance of decision, findings and order.

A. Within ten days after the conclusion of the hearing, the hearing officer shall issue a written decision. The decision shall set forth the factual findings made by the hearing officer, a conclusion as to whether a nuisance condition exists, the manner of abatement, including an order that such nuisance (if one is found to exist) be abated by the city and a schedule of correction or the date by which the abatement shall be completed.

B. If the hearing officer determines that a nuisance exists which has not been corrected within the time period specified in the notice to abate nuisance conditions, the hearing officer shall so find in the decision, and may include in the decision any or all of the following:

1. An order to correct, including a schedule of correction where appropriate;
2. An order to pay administrative costs as provided in Section 8.16.090 of this chapter.

C. Failure to issue a decision in ten days shall not affect the validity of such decision.

D. The decision shall be mailed by certified mail with a return receipt requested to the owner and shall be mailed to the enforcement officer. A copy of a summary of the decision and any order it contains shall also be posted on the property by the enforcement officer in a conspicuous location.

8.16.070 Abatement by enforcement officer if nuisance is not abated. Upon receipt of the hearing officer's decision if: (i) no schedule of correction has been issued; or (ii) upon the failure of the property owner to comply with such schedule if a schedule was included, if the nuisance condition has not been abated the enforcement officer shall forthwith abate, or cause to be abated, the nuisance condition upon the premises. The enforcement officer is authorized to enter upon private property for this purpose, consistent with the provisions of the U.S. Constitution.

The cost of abatement shall become a personal obligation of the property owner and responsible party and may be collected in any legal manner, expressly including as lien or special assessment pursuant to the procedures set forth in this chapter.

8.16.080 Abatement by owner/responsible party.

A. Any owner or responsible party may, at his/her/its own expense and prior to the scheduled abatement hearing, abate a declared nuisance condition in accordance with the provisions of the notice sent by the enforcement officer; provided that all necessary permits are first obtained. If the enforcement officer determines that the nuisance condition has been abated prior to the hearing, the hearing proceedings shall be terminated. If any abatement

referenced in this section takes place after the specified compliance date, but prior to date set for hearing, termination of the hearing shall only take place upon the owner or responsible party's payment of outstanding penalties, administrative and/or abatement costs, including attorneys' fees if applicable.

B. Any owner or responsible party may also request the city to abate a declared nuisance condition on his/her/its property. However, the owner or responsible party making the request shall be responsible for the payment of all penalties, abatement costs and/or administrative costs, including attorneys' fees if applicable, incurred by the city. The request for the city to perform the abatement shall be in writing and include a written consent to enter and perform work. Any such request shall be deemed an agreement to pay for the costs of such abatement, including but not limited to any penalties, administrative costs, and an agreement that such costs may be collected as a lien or special assessment upon the property. The abatement hearing proceedings shall thereafter be terminated.

#### 8.16.090 Liability for abatement costs.

A. In addition to liability for the costs of abatement itself pursuant to Sections 8.16.070 and this section of this chapter, the owner and/or responsible party shall also be liable for any expenses and administrative costs incurred by the city, county or any related agency incurred after the initial inspection and identification of the nuisance.

B. The administrative costs may include any and all costs incurred by the city in connection with the matter before the hearing officer, including but not limited to, costs of investigation, city staffing costs incurred in preparation for the hearing and for the hearing itself, including but not limited to the fees and costs of the city's consultants, and costs for all re-inspections necessary to enforce the notice to abate nuisance conditions.

C. In the event that the city is entitled to recover its attorneys' fees and costs pursuant to Section 8.16.030, such fees and costs shall be collected at the same time and pursuant to the same procedures as administrative costs pursuant to this section.

D. The enforcement officer or other authorized city official shall keep an itemized report of the costs incurred by the city in the abatement of any public nuisance in addition to any accrued fees and penalties due. The responsible party may be invoiced for the total. If payment is not received, the itemized report shall be submitted in writing to the city clerk no sooner than twenty days of the invoice date. Any such report may include the abatement costs, fees and penalties for any number of properties and abatements, whether or not such properties are contiguous. In the event, the invoice is not paid within thirty days, the city may collect all such costs, penalties and interest through a lien or special assessment under Sections 8.16.100 and 8.16.110.

E. All abatement costs shall bear interest at the rate of ten percent per annum from the date of abatement.

8.16.100 Lien procedure. In the event the city decides to collect abatement costs as a lien, it shall impose such lien pursuant to this section:

A. Upon receipt of the itemized report, the city clerk, or his or her designee, shall serve notice of the lien in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 et seq. 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 ten days and publication thereof in a newspaper of general circulation in Amador County. The period of notice commences upon the first day of publication and terminates at the end of the tenth day, including therein the first day. Publication shall be made on each day on which the newspaper is published during the ten-day period.

B. The notice shall inform the owner of the pending lien and inform the property owner of the public hearing where the city council will consider imposing the itemized report as a lien against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and directing the city clerk to record a lien against the property in the Amador County Recorder's office and, from the date of recording, shall have the force, effect and priority of a judgment lien.

D. The lien shall identify:

1. The amount of the lien;
2. The city as the agency on whose behalf the lien is imposed;
3. The date of the abatement order or citation;
4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed; and
5. The name and address of the recorded owner of the parcel.

E. In the event that the lien is discharged, released or satisfied, through either payment or foreclosure, notice of the discharge containing the information specified in Subsection D shall be recorded by the city clerk.

F. A lien may be foreclosed by an action brought by the city for a money judgment.

G. The city may recover from the property owner any costs incurred in the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

8.16.110 Special assessment procedure. In the event the city decides to collect abatement costs as a special assessment, it shall impose such special assessment pursuant to this section:

A. The enforcement officer or other authorized city official shall keep an itemized report of the costs incurred by the city in the abatement of any public nuisance in addition to any accrued fees and penalties due. The property owner may be invoiced for the total. If payment is not received, the itemized report shall be submitted in writing to the city clerk no sooner

than fifteen days of the invoice date. Any such report may include the abatement costs, fees and penalties for any number of properties and abatements, whether or not such properties are contiguous.

B. If the invoice is not timely paid, the city clerk shall provide written notice to the property owner by certified mail, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall inform the owner of the pending special assessment, and the date, time and location of the public hearing where the city council will consider imposing the itemized report as a special assessment against the property. The hearing shall be conducted no less than ten days from service of the notice.

C. At the hearing and after considering the relevant evidence, the city council may adopt a resolution confirming the itemized report and assessing the report as a special assessment against the property. The city clerk shall then provide all documentation necessary to the county to enter such assessment. After entry, the assessment may 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 and sale in case of delinquency as provided for ordinary municipal taxes. The property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead transferred to the unsecured roll for collection.

D. Subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, the city may conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

E. Notices or instruments relating to the special assessment shall be entitled to recordation.

8.16.120 Order for treble costs of abatement. Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with the provisions of this chapter, except for conditions abated pursuant to section 17980 of the Health and Safety Code, relating to abandoned buildings, the court may order the owner to pay treble the costs of the abatement, as authorized by Government Code section 38773.7. Costs of abatement shall include, without limitation by reason of enumeration, all administrative costs of the city.

8.16.130 Summary abatement.

A. Any nuisance which the enforcement officer, determines is immediately or potentially dangerous to the life, health or safety of the occupants of the property or to the public, may be summarily abated in accordance with the procedures set forth in this section.

B. Actions taken to abate immediately or potentially dangerous nuisances may include, but are not limited to, repair or removal of the condition creating the danger and/or the restriction from use or occupancy of the property on which the condition exists or any other abatement action determined by the enforcement officer to be necessary. Where a residential rental property is involved, this may require the moving and relocation of the occupants by the owner and/or responsible party to other habitable temporary or permanent accommodations. Any temporary accommodations will be maintained by the owner and/or responsible party, at his/her/its expense, until the corrections are done to the vacated residential property so that it is habitable and the occupants are returned.

C. Notice of the summary abatement shall be provided to the owner or responsible party as provided for in this chapter the same day or as soon as practical. Such notice shall include a provision authorizing the owner or responsible party to dispute the existence of the nuisance conditions before the hearing officer. Any request for an appeal shall be filed in writing with the city clerk within ten days of the notice and shall be conducted in the same manner as all applicable procedures under Sections 8.16.040 through 8.16.060.

D. The costs and expenses for summary abatement, if not paid by the property owner within thirty days of the date of the invoice, shall be collected pursuant to the procedures set forth in Sections 8.16.090 through 8.16.110 this chapter.

8.16.140 Right of judicial review. Except as otherwise provided by law, any person aggrieved by any administrative decision of a hearing officer pursuant to this chapter, may obtain judicial review of the administrative decision in the superior court by filing with the court a petition for writ of mandate pursuant to Section 1094.6 of the Code of Civil Procedure.

8.16.150 Remedies. The remedies provided in this chapter are nonexclusive. The City prosecute any violation and abate any nuisance pursuant to any criminal, civil or other administrative remedies available to the City.

Chapter 8.24TOBACCO SALES RESTRICTIONSSections:

- 8.24.010 Definition of words and phrases.
- 8.24.020 Prohibition.
- 8.24.030 Non-retaliation.
- 8.24.040 Conflict with other applicable laws.
- 8.24.050 Violation--Enforcement.

8.24.010 Definition of words and phrases.

A. "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

B. "City" means the city of Jackson.

C. "Employee" means any person who is employed by any employer in consideration for direct or indirect wages or profit, and any person who volunteers his services for a non-profit entity.

D. "Minor" means any individual who is less than eighteen years old.

E. "Non-profit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational character-building, political, social or other similar purpose, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a non-profit entity within the meaning of this section.

F. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

G. "Self-service merchandising" means open display of tobacco products and point-of-sale tobacco-related promotional products that the public has access to without the intervention of an employee.

H. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing or other manner of ingestion".

I. "Tobacco retailer" shall be any person or governmental entity that operates a store, stand,

booth concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.

J. "Tobacco vending machine" means any electronic or mechanical device or appliance that operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.

K. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased. (Ord. 621 §1, 2001).

8.24.020 Prohibitions. A. No person or business shall engage in the sale of tobacco products without first posting a plainly visible sign at the point of purchase of tobacco products which has the wording similar to: THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW AND SUBJECT TO PENALTIES. PHOTO IDENTIFICATION IS REQUIRED OF PURCHASERS APPEARING TO BE 26 AND YOUNGER. The letters of the sign shall be at least one-quarter inch high.

B. No person, business, tobacco retailer, owner, manager or operator of any establishment subject to the ordinance codified in this chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification of customers appearing to be twenty-six and younger for the purpose of establishing the purchaser's age as eighteen years or greater, unless the seller has some other reasonable basis for determining buyer's age.

C. It shall be unlawful for any person, business or tobacco retailer to sell, permit to be sold, offer for sale or display for sale any tobacco product by means of self-service merchandising or by means other than vendor-assisted sales. Exception: Any business which primarily sells tobacco products and tobacco related products (a tobacco retailer store) is exempt from this section if persons under the age of eighteen are prohibited from entering the tobacco retailer store.

D. No person, business, tobacco retailer or other establishment shall sell or offer for sale cigarettes or other tobacco or smoking products not in the original packaging provided by the manufacturer and with all required health warnings.

E. No person, business or tobacco retailer shall locate, install, keep, maintain or use or permit the location, installation, keeping, maintenance or use on his, her, or its premises any tobacco vending machine for purposes of selling or distributing any tobacco product. (Ord. 621 §1, 2001).

8.24.030 Non-Retaliation. A. No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant agrees to abide by the provisions of this chapter.

B. No person shall intimidate or threaten any reprisal or effect any reprisal for the purpose of retaliating against another person because such other person seeks to attain compliance with provisions of this chapter. (Ord. 621 §1, 2001).

8.24.040 Conflict with other applicable laws. This chapter shall not be interpreted or constructed to permit tobacco vending machines and distribution of tobacco product samples where they are otherwise restricted by other applicable laws. Nor shall this chapter be construed to cause for breach of any pre-existing private contract, or cause for interference with regulations imposed by state or federal law or relation to interstate commerce. (Ord. 621 §1, 2001).

8.24.050 Violation--Enforcement. Any person, business or tobacco retailer who violates any provision of this chapter shall upon conviction thereof, be guilty of a misdemeanor as defined in Section 1.20.010 of this code. The owner, operator or manager of any public place or place of employment within the preview of this chapter shall comply herewith. Such owner, operator or manager shall further post or cause to be posted all signage required by this chapter. (Ord. 621 §1, 2001).