

ORDINANCE NO. 23-

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING CHAPTER 5, ARTICLE 7 OF THE HAYWARD MUNICIPAL CODE REGARDING COMMUNITY PRESERVATION BY AMENDING SECTION 5-7.00 RELATING TO FINDINGS AND PURPOSE, AMENDING SECTION 5-7.10 RELATING TO DEFINITIONS, AMENDING SECTION 5-7.20 RELATING TO PUBLIC NUISANCE, AMENDING SECTION 5-7.30 RELATING TO ADMINISTRATIVE CITATIONS AND ADDING SECTION 5-7.140 RELATING TO CUMULATIVE REMEDIES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Section 5-7.00 of the Hayward Municipal Code is amended to read as follows:

**SEC. 5-7.00 FINDINGS AND PURPOSE.**

The City Council finds and declares the following:

- a. Regulations set forth in this Article are necessary in order to eliminate conditions on properties in the City which are detrimental or threaten injury or damage to the health, safety, and welfare of residents thereof, to neighboring occupants or properties, and the municipal welfare.
- b. It is the responsibility of property owners, lenders, trustees, or others with possessory, equitable, or legal interests in real property and the buildings or structures to maintain, secure, and prevent these properties from becoming a burden to the neighborhood and community or a threat to public health, safety and welfare.

Section 2. Section 5-7.10 of the Hayward Municipal Code is amended to read as follows:

**SEC. 5-7.10 DEFINITIONS.**

For the purposes of this Article, certain words and phrases are defined and shall be construed as set out in this section. Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

- a. BUILDING shall mean any structure used or intended for supporting or sheltering any use or occupancy.

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- b. COSTS shall mean and include, but not be limited to, personnel costs, both direct and indirect; cost incurred in documenting the nuisance and/or violation; fines; fees; penalties; abatement and abatement related costs; the actual expenses and costs of the City in the preparation and dissemination of notices, specifications, and contracts and in inspecting the work; and the costs of printing and mailing the notices required hereunder and the actual expenses and costs of imposing a lien or special assessment if that become necessary.
  - c. ENFORCEMENT OFFICER shall mean any employee or official appointed and designated by the City Manager to administer the provisions of this Article. For this purpose, he/she shall have the authority to issue citations, and he/she may enter upon any portion of the premise for the purpose of inspection and enforcement.
  - d. FIREWORKS shall mean all “Fireworks” as described under California Health and Safety Code Section 12505 and 12511 and “Safe and Sane Fireworks “as described under California Health and Safety Code Section 12529
  - e. GRAFFITI shall mean the unauthorized letters, words, symbols, figures, and marks placed on buildings and objects on a private property, public property or the public right-of-way by using paint or marking with ink, chalk, crayon, dye or other similar substances, or by cutting or scraping with any tool or instrument
  - f. HEARING OFFICER shall mean the City Manager or his/her designee authorized to conduct hearings pursuant to this Article.
  - g. INOPERATIVE shall mean any vehicle that: (1) cannot be immediately started and driven under its own power on the streets and highways or (2) is in an unsafe condition or (3) is in any other condition specified in the California Vehicle Code which prohibits its placement and/or movement on the public streets or highways.
  - h. LIEN shall have the meaning set forth in Government Code Section 38773.1, or its successor.
  - i. NUISANCE shall mean anything or condition which threatens injury or damage to the health, safety, welfare, or property of members of the public, which obstructs the free use of property of others or interferes with the comfortable enjoyment of life or property.
  - j. OWNER shall mean any person, persons, organization, or legal entity owning property as shown on the last equalized assessment roll for City taxes and also includes the lessee, tenant or other person having control or possession of the property unless otherwise specified.
  - k. PLANTER STRIP shall mean the area between the curb and sidewalk on the street frontage.
  - i. PROPERTY shall mean all real property, improved or unimproved, including but not limited to residential, industrial, commercial, agricultural, open space and other real

property. The area of such property includes front yards, front porch, rear yards, side yards, driveways, carports, walkways, alleys and sidewalks, and shall include any building or other structure, whether fixed or moveable, located on such property.

- m. RESPONSIBLE PARTY shall mean the owner, agent, manager, lessee, tenant or any other person having control or possession of the property, whether for residential, industrial, commercial or other purpose.
- n. SPECIAL ASSESSMENT shall have the meaning set forth in Government Code Section 38773.5, or its successor.
- o. STATE HOUSING LAW shall mean Division 13, Part 1.5 (commencing at Section 17913) of the California Health and Safety Code, and Article 1(commencing at Section 1), Chapter 1, Title 25 of the California Code of Regulations.
- p. VACANT PROPERTY shall have the meaning as set forth in Article 29 Vacant Property Ordinance of the Hayward Municipal Code.

Section 3. Section 5-7.20 of the Hayward Municipal Code is amended to read as follows:

**SEC. 5-7.20 PUBLIC NUISANCE.**

It shall be unlawful for any responsible party owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain or to allow to be maintained such property in a condition detrimental to public health, safety, or general welfare or in a condition which violates any code or ordinance adopted by the City. Every owner of real property within the City shall manage that property in such a manner to avoid violation of this code. The property owner shall be responsible for violations thereof, regardless of any contract or agreement with any third party regarding the property. Where there are multiple property owners, the property owners shall have joint and several liability. The existence of any of the following conditions on the property is hereby declared to be detrimental to public health, safety, or general welfare and thus constitutes a public nuisance, including, but not limited to:

- a. Accumulation of garbage, junk, litter, bins, boxes, construction debris, bags, dirt, used motor oil, salvage materials, scrap metal, bottles, cans and wire, paint cans, or other debris kept on the property other than recycling materials contained in an enclosed non-habitable structure or appropriate containers, or other debris;
- b. Any Violation of State Housing Laws or Codes established to prevent health and safety hazards and substandard conditions in buildings and parts thereof used for human habitation. To include but not limited to the presence of conditions deemed to be substandard in accordance with California Health and Safety Code Section 17920.3.
- c. Broken or discarded furniture, household furnishings, appliances, equipment, or other items intended for inside use;
- d. Fences with broken boards, rotted posts, or fences that are leaning, dilapidated, or in disrepair that are visible from the public right-of-way or when associated with a vacant property found not to be in compliance with fence standards established in Article 29 Vacant Property Ordinance;
- e. Fuel tanks, storage cylinders for any type of gas, or other such containers which are not located in an enclosed structure, connected to a gas barbeque or attached to a recreational vehicle, camper, or camping trailer;
- f. Graffiti on public or private property;
- g. The storage of construction materials on a construction site for more than thirty (30) days where there is no on-going construction activity;
- h. Washers, dryers, refrigerators, freezers or other appliances or similar items on the property that is in view of the public right-of-way;
- i. Clotheslines or clothes hanging in front yards, side yards, porches, or balconies; however, clotheslines and clothes hanging in rear yards are permitted;

- j. Buildings or structures including, but not limited to walls, windows, fences, signs, retaining walls, driveways, walkways, roofing materials, or other objects which are broken or deteriorated or present a risk to public safety, including but not limited to peeling, flaking, blistering, or otherwise deteriorated paint, where twenty-five percent (25%) or more of any painted surfaces of the building's exterior observable from public view is peeling; or lacks weather protection due to lack of paint.
- k. Occupied buildings whose doors or windows are boarded up or covered with tarps or similar opaque material, except as otherwise directed by the City's Building Official or designee;
- l. Violation of any adopted code or regulation or contract as established under the City of Hayward Municipal Code. To Include but not limited to: Chapter 5 – Health and Sanitation, Chapter 9 - Building Regulations, and Chapter 10 – Planning, Zoning and Subdivisions;
- m. Unoccupied buildings which are unsecured or neglected or in violation of Article 29 – Vacant Property Ordinance;
- n. Materials such as tarps or similar non-permanent articles on roofs for more than thirty (30) days;
- o. Attractive nuisances or any dangerous machinery or conditions including, but not limited to, abandoned, broken or neglected equipment, tools and vehicle repair equipment;
- p. Overgrown trees or vegetation that obstruct public right- of-way or sidewalk or obscure the necessary view of drivers or pedestrians on public streets or private driveways; or weeds that exceed four (4) inches in any yard or planter strip; overgrown or unsightly vegetation or weeds which may harbor rats, vermin, or other rodents;
- q. Dead trees or dead plant material;
- r. Operable boats, trailers, and other vehicles of similar kind and use stored in the front yard on the property which are not entirely located on the designated paved driveway area that provides direct access to the garage from the street, perpendicular to the street or unless the driveway is curved;
- s. Inoperable, wrecked, dismantled, partially repaired or abandoned boats, trailers, cars, motorcycles, and/or other vehicles of similar kind and use on the property that are not stored in an enclosed structure;
- t. Unmounted campers or camper shells visible from the public right-or-way which are left in the rear, side, front yard areas;
- u. Automobile(s), truck(s), boat(s), trailer(s), and other vehicle(s) of similar kind and use which are displayed for sale on any parking lot or unimproved property, except for authorized vehicle dealer sales lots;

- v. Commercial vehicles, as defined by the California Vehicle Code, that are parked or stored in any residential district, except vehicles operating in the normal course of business;
- w. Any sleeping or living in any vehicle, or any violation of Article 17 – Camping or Storage of Personal Property;
- x. Any structure or condition in violation of Section 10-1.2735.i, of this code (Recycling Facilities and Recycling Collection Facilities).
- y. Any use or discharge of any fireworks, bomb, or explosive preparation of any nature whatsoever on private property within the limits of the City of Hayward in accordance with HMC SEC. 3-3.00 unless lawfully permitted by the City of Hayward Police Chief, Fire Chief or City Manager.

Section 4. Section 5-7.30 of the Hayward Municipal Code is amended to read as follows:

#### **SEC. 5-7.30 AUTHORITY AND ENFORCMENT**

- a. Enforcement: Compliance with these regulations shall be enforced by the City Manager or designee. The designated Code Enforcement Official is authorized and directed to use the provisions of this Article and the Hayward Municipal Code for abating violations of the conditions defined by this Article as a public nuisance or abating the unlawful conditions defined in this Article.
  - 1. Nothing in this chapter shall be construed to limit any right or remedy otherwise available in law or equity to any party harmed by a blighted property, nor shall this chapter in any way limit the city 's right to enforcement under any other provision of this Code or create a duty or obligation on the part of the city to enforce this chapter.
- b. Inspections: The Enforcement Official as designated by the City Manager pursuant to Section 1-3.06 shall have authority to inspect any building or premises whenever necessary to secure compliance with, or prevent a violation of, any provision of this code. All inspections, with the exception of those inspections conducted at the public right-of-way, shall be at the consent of the property owner or tenant in legal possession of the property at the time of inspection or by Court approved Inspection warrant pursuant to Section 5-7.50.
  - 1. Right of Entry: Upon presentation of proper credentials, the Enforcement Official, after having obtained the consent of the owner or occupant, may enter at reasonable times during daylight hours and for probable cause, any building, structure, or premises in the City to perform any duty imposed upon him/her by this code.

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- i. Except in emergency situations, the Enforcement Official shall not enter any building, structure, or premises without the consent of the owner or occupant thereof, unless he/she possesses an inspection warrant obtained and issued in the manner provided by sections 1822.50 et seq. of the Code of Civil Procedure of the State of California or any amendments thereto to or replacements thereof.
      - ii. Except as hereinabove permitted, no person shall hinder or prevent the Enforcement Official while in the performance of the duties described above, from entering upon, and into any building, structure, or premises under his jurisdiction, at all reasonable hours during daylight hours and for probable cause, for the purpose of inspecting the same to determine whether or not the provisions of this code are observed therein.
    - c. Notice and Order: In lieu of an Administrative Citation, if the City designee or Enforcement Inspector determines that a property is in violation of the provisions of this Article or the Hayward Municipal Code, a Notice and Order may be issued and mailed via 1st class mail pursuant to Article 7, of the City of Hayward General Provisions Code, unless otherwise authorized under Summary Abatement, Section 5-7.65 or any other manner provided by law. The Notice and Order will include the following information:
      1. Correction Notice Content as required by SEC. 1-7.15 of Article 7, of the City of Hayward General Provisions Code.
      2. A listing of All violations and necessary corrective actions to be completed by the specified date of no less than three (3) and not more than Thirty (30) calendar days from the date of Notice and Order
      3. Notification that non-compliance may result in a City abatement in accordance with the provisions set forth in this Article and Hayward Municipal Code.
      4. Notification that all inspection/abatement costs, penalties, and any other applicable fees will be assessed upon the property, and if not paid, will constitute a lien or special assessment.
      5. The right to appeal through an administrative hearing requires submission of an Administrative Hearing form within ten (10) calendar days of the initial notice of violation and payment of a required hearing fee as adopted in the City's Master Fee Schedule.
      6. Indication that if the nuisance is abated by the City, the costs thereof will be assessed upon the property, and if not paid, will constitute a lien or special assessment upon the property until paid.
      7. A description of any costs the City Council may adopt by resolution from time to time relating to the enforcement of this Article.
    - d. Administrative Citation: Whenever an Enforcement Officer finds that a provision of this Code has been violated, including, but not limited to, a failure to comply with a Notice and Order, conditions imposed by any agreement, entitlement, permit, license or

environmental document issued or approved by or on behalf of the City or failure to comply with any County, State or Federal laws the violation of which constitutes a public nuisance, such Enforcement Officer is authorized to issue administrative penalties, fees and fines as defined under Chapter 1 – General Provisions -Article 7 and Cumulative Remedies under Chapter 5 Article 7 of the Hayward Municipal Code.

1. Notification of such penalties and fees may be issued to the responsible party or property owner by Administrative Citation or other notification of penalties and fees the contents of such notifications shall be consistent with requirements as listed in Section 1-7.04 – Administrative Citation Content.

Section 5. Section 5-7.140 of the Hayward Municipal Code is added to read as follows:

**SEC. 5-7.140 - CUMULATIVE REMEDIES.**

- a. Failure to comply as ordered will result in the issuance of penalty fees in accordance with the City of Hayward Master Fee Schedule. In addition, the Enforcement Officer may take all steps necessary to cause the same to be abated by such City employees or City authorized private contractor(s) to enter upon subject property. All City abatement expenses, including but not limited to, administrative costs and nuisance condition abatement costs shall be billed to the owner and shall become due and payable thirty (30) days thereafter. Failure to pay may result in a lien or special assessment being placed on the property after a hearing on the matter if requested as provided in Chapter 5, Article 7 of this Code.
- b. Any persons in violation of any provision of the Community Preservation Ordinance is chargeable of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code and/or abatement pursuant to Chapter 5, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. All inspection, fines and penalties fees for violation of the Community Preservation Ordinance shall be as established by resolution of the City Council in the Master Fee Schedule for the City of Hayward Code Enforcement Division.

Section 6. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.



Section 7. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2023, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2023, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

\_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward