

# STAFF REPORT

## *City Council Business Item*

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**DATE:** January 16, 2023

**TO:** Honorable Mayor and Council Members

**FROM:** Ryan Plotz, City Attorney

**THROUGH:** Merritt Perry, City Manager

**SUBJECT:** **Second Reading and Adoption of *Ordinance 2024-765*, Amending Chapter 8.16 of the Fortuna Municipal Code to Provide for Revised Nuisance Regulation and Abatement**

### **STAFF RECOMMENDATION:**

Conduct a second reading and adoption, by title only, of *Ordinance No. 2024-765*, which proposes revisions to the City's existing nuisance regulations.

### **EXECUTIVE SUMMARY:**

The City's current nuisance regulations, which were last revised in 1990, are contained in Chapter 8.16 of the Fortuna Municipal Code. The City Attorney has identified portions of the City's nuisance regulation that require revisions.

The proposed ordinance, if adopted, revises the nuisance regulations to make the following changes:

1. Provide a more expansive definition of conditions and conduct that constitute a nuisance;
2. Provide an option for summary abatement of conditions or conduct that pose an imminent risk to health and safety;
3. Provide for administrative fines;
4. Update cost recovery options; and
5. Re-name the nuisance regulations from "Property Maintenance" to "Neighborhood Preservation".

Staff recommends that the City Council introduce and conduct a first reading on Ordinance No. 2024-765. Staff would bring the ordinance back for a second reading and adoption in January.

### **DISCUSSION:**

The City has broad powers to regulate and provide for the abatement of conditions or conduct that are declared to be public nuisances. Abatement options include administrative abatement, summary abatement, court ordered abatement, or criminal prosecution. This authority comes from the California Constitution and statutory law, including the Government Code and the Civil Code.

The City's existing nuisance regulations were last revised in 1990 and require updating for several reasons.

*First*, the existing nuisance regulations are too limiting in the definition of what constitutes a public nuisance. The existing definition provides an inflexible listing of particular conditions of real property. (See Section 8.16.020 of the FMC for the City's current list.) The proposed ordinance revises the definition of public nuisance to be more expansive. The proposed ordinance declares all of the following to constitute a public nuisance:

- Activities prohibited by California Penal Code, Part 1, Title 10 and Sections 370, 371 and 11225. These sections cover conduct such as illegal gambling, human trafficking, or “anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood”;
- Any condition recognized in law or equity as constituting a public nuisance;
- Any dangerous, unsightly, or blighted condition that is detrimental to the health, safety or welfare of the public;
- Any condition that is in violation of any duly enacted ordinance of the Fortuna Municipal Code, or resolution or lawful order promulgated by authorized city officials;
- Any condition in violation of Chapter 17, Zoning Regulations, of the FMC;
- Anything defined as a nuisance pursuant to state and federal law, including, but not limited to, California Civil Code Section 3479 *et seq.*;
- Any condition in violation of the weed and rubbish abatement laws;
- Any vacant, unoccupied or abandoned building or structure that is not reasonably secured against uninvited entry or that constitutes a fire hazard, or is in a state of unsightly or dangerous condition so as to constitute a blighted condition detrimental to property values in the neighborhood or otherwise detrimental to the health, safety and welfare of the public;
- Any condition that constitutes an attractive nuisance, which include those objects or conditions that, by their nature may attract children or other curious individuals including, but not limited to, unprotected hazardous or unfilled pools, ponds, including pools or ponds that have not been properly barricaded;
- Any condition that constitutes a visual blight, including:
  - Lumber, junk, trash, debris, scrap metal, rubbish, packing materials, building materials;

- Abandoned, discarded or unused objects or equipment such as furniture, stoves, appliances, refrigerators, freezers, cans or containers, automotive parts and equipment;
  - Abandoned, wrecked, disabled, dismantled or inoperative vehicles or parts thereof except inoperative vehicles;
  - Stagnant water or excavations;
  - Any personal property, object, device, decoration, design, fence, structure, clothesline, landscaping or vegetation which is unsightly by reason of its condition or its inappropriate location;
  - The keeping, storage, depositing or accumulation of dirt, sand, gravel, concrete or other similar materials which constitutes visual blight or reduces the aesthetic appearance of the neighborhood or is offensive to the senses or is detrimental to nearby property or property values;
  - Any condition of a building or structure deemed to be unsafe or that in the discretion of the code compliance administrator or the department head, would constitute a threat to public safety, health, or welfare, or poses a security problem by reason of dilapidation, fire hazard, disaster, damage or other similar occurrence specified in this Code or any other applicable law;
  - Any condition of a building or portion thereof which constitutes a substandard building, as defined in Health and Safety Code Section 17920.3;
- Behavior constituting a violation of Cal. Penal Code §§ 407, 409, 415, 416, and 603 or other noise, explosions, destruction of property or audible conduct that is unreasonably loud, raucous, excessive or jarring to persons within the area of audibility in any zone of the city which disturbs the peace or quiet of any neighborhood; and
  - Any violation of the Fortuna Municipal Code.

The proposed ordinance also includes a provision declaring certain conduct occurring on public property to be a public nuisance. (See Section 8.16.040 (Unlawful nuisance on public property) of Exhibit A to the proposed ordinance.)

By providing a more expansive definition of public nuisance, the City has more effective enforcement options at its disposal to abate conditions and/or unlawful conduct.

*Second*, the proposed ordinance revises the abatement procedures to include a summary abatement option, which the existing regulations do not provide. Summary abatement allows the City to immediately (i.e., without prior notice and opportunity to cure) abate any nuisance which the city manager determines is imminently dangerous to the life, limb, health or safety of the occupants or users of the property or to the public.

*Third*, the proposed ordinance updates the penalties for violating the nuisance regulations by doing each of the following: (i) allows the City to choose between punishing violations as either an infraction or a misdemeanor and (ii) provides for a daily fine for continuing violations following a final order to abate in the amounts set forth in Section 8.16.270 of the proposed regulations.

### Environmental Review

The proposed ordinance is exempt from the California Environmental Quality Act (CEQA)

Guidelines Section 15061 based on the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The proposed ordinance would increase the ability of the City to assure code compliance within the City and would not have any potential for creation of a significant environmental impact.

**FISCAL IMPACT:**

None.

**RECOMMENDED COUNCIL ACTION:**

1. Receive staff report;
2. Take public comment;
3. Discuss and consider the proposed ordinance; and
4. Motion to conduct a second reading and adopt *Ordinance No. 2024-765*, and read by title only.

**ATTACHMENTS:**

- *Ordinance No. 2024-765, an Ordinance of the City Council of the City of Fortuna Amending Chapter 8.16 of the Fortuna Municipal Code to Provide for Revised Nuisance Regulation and Abatement and Determining the Ordinance to be Exempt from CEQA*