



City of Biggs

Agenda Item Staff Report for the Regular City Council Meeting: January 24, 2011 6:00PM

DATE: Originally Published: November 4, 2010
Amended and Republished: January 24, 2011

TO: Honorable Mayor and Members of the City Council

FROM: Pete Carr, City Administrator
Scott Friend, AICP, City Planner

SUBJECT: Modification of Biggs Nuisance Code (Discussion/Action)
Biggs Municipal Code Title 6, Health and Safety; Sections 6.25 and 6.27

Noticed public hearing to consider and provide First Reading of revised Biggs Municipal Code 6.25. Staff will present draft proposed text changes for Biggs' neighborhood nuisance abatement code. A Notice of Public Hearing has been re-published for the January 24, 2011 city council meeting supporting council consideration of a proposed amendment to Title 6, Public Health and Safety, Sections 6.25 - Health and Safety Nuisance Abatement and Section 6.27 - Neighborhood Nuisance Abatement

Background

In November of 2010, staff presented the Council with a draft amendment to Title 6, Public Health and Safety of the Biggs Municipal Code with the goals of merging existing Sections 6.25 - Health and Safety Nuisance Abatement and Section 6.27 - Neighborhood Nuisance Abatement. The intent of the draft changes is to eliminate Code redundancy, streamline enforcement timelines, establish new provisions for trash container storage and occupancy of structures not having functional utilities. This is the first reading of a revision to Biggs Municipal Code (BMC). This action follows staff reports and council discussion on the topic in September, October and November and on-going discussions with the Council sub-committee assigned to provide input and review the draft amendment text. Revisions to the text of the document can continue to be made this evening if determined necessary.

At the October City Council meeting, staff provided an overview of the recommended and suggested changes to the Code and provided clarification of certain items as requested by the Council. At the conclusion of that meeting, staff made additional changes to the draft amendment text as requested by the Council. Those concerns and clarifications have been incorporated into the document. At the November meeting, Council once again was presented with the draft amendment text for consideration.

Following further discussion of this matter, a Council sub-committee was established to focus additional effort on this matter. Following the November meeting, the City Administrator met with the members of the sub-committee to address remaining concerns and incorporate the Council's suggestions into the amendment.

Discussion

Council has repeatedly asked staff to follow up more affirmatively and to maintain a high level of action on neighborhood nuisance issues such as front yard debris, tall weeds, outdoor marijuana cultivation, dilapidated structures, inoperable vehicles and obstruction of right-of-way (ROW). Following this direction, staff has made enforcement improvement within the bounds of code limitations.

In August of 2010, staff was directed to draft an amendment to the code enabling more effective enforcement of nuisances, including provisions for the acceptable placement of solid waste receptacles, to assist in the advancement of the Council's direction. Staff believes that the draft text presented with this report for the Council's consideration advances the objectives of the Council toward the active pursuit of code violations while addressing existing code deficiencies, eliminating redundancy and streamlining enforcement timelines and processes. The draft text accomplishes and includes the following primary actions:

1. Consolidates BMC sections 6.25 and 6.27 to reduce code redundancy.
2. Adjusts the time allowance for abatement from 14 days to 10 days. Staff believes that this will assist in speeding up the compliance process. The result of this change would reduce total noticing and compliance time from the current 70-day process to approximately 40 days.
3. Replaces language directing action by the Planning Commission to the City Council.
4. Establishes a process for the issuance of Administrative citations.
5. Specifies placement of solid waste receptacles.
6. Retains discretion of city parks superintendent for approving mow strip landscaping plans while adding proposed enforceable definition of what constitutes acceptable landscaping and maintenance for mow strips in the city ROW.
7. Continues prohibition against parking on lawns, adds limitations to parking that extends into street areas.
8. Requires abatement of graffiti within 48 hours.
9. Provides additional fine and compliance requirement for those who repeat code violations within a 12-month period.
10. Regulates occupied residential buildings lacking utility services.

The primary focus of the Council sub-committee was related to provisions dealing with the placement of trash receptacles; maximum permitted paving of front- and side-yard areas used for parking; and, the establishment of code provisions addressing mow strip maintenance, planting and use.

Recommendation

Staff recommends that the Council discuss and consider the draft code changes and favorably consider a motion establishing that the action is exempt from CEQA and approving a first-reading of the text of the draft code amendment.

Fiscal Impact

Small, undetermined reduction in administrative costs due to tightened process.
Possibly small, undetermined increase in offsetting revenue to due recovery of fines.

Attachments:

- A. Revised text – Amended BMC Title 6, Section 6.25 (provided electronically)
- B. Ordinance 2011-_____
- C. California Environmental Quality Act (CEQA) - Notice of Exemption

ORDINANCE NO. 389

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIGGS AMENDING TITLE 6 – PUBLIC HEALTH AND SAFETY, TO COMBINE AND AMEND BIGGS MUNICIPAL CODE SECTIONS 6.25 – HEALTH AND SAFETY NUISANCE ABATEMENT AND SECTION 6.27 – NEIGHBORHOOD NUISANCE ABATEMENT.

The City Council of the City of Biggs does hereby ordain as follows:

Section 14.060.080 of the City of Biggs Zoning Code shall be amended to read as follows:

Chapter 6.25

HEALTH AND SAFETY AND NEIGHBORHOOD NUISANCE ABATEMENT

Sections:

- 6.25.010 Purposes.
- 6.25.020 Unlawful Property Nuisance – Private property.
- 6.25.030 Unlawful Property Nuisance – Public property.
- 6.25.040 Declaration of Public Nuisance.
- 6.25.050 Existence of Public Nuisance, Hearing and Voluntary Abatement.
- 6.25.055 Nuisance Abatement –Visible/Unsecured Odiferous Marijuana Cultivation.
- 6.25.060 Public Agency Inspections.
- 6.25.065 Administrative Public Nuisance Abatement by the City.
- 6.25.070 Summary Abatement.
- 6.25.080 Nuisance Abatement Lien.
- 6.25.085 Nuisance Abatement Fines.

6.25.010 Purposes.

The purposes of this Chapter are: (1) to protect the City's residents from threats to health and safety that result from specified nuisance conditions and (2) to promote an attractive and desirable community by identifying and providing a means to abate specified nuisance conditions that if permitted to continue, will cause substantial diminution of the enjoyment, use and value of affected properties. [Ord. 323 § 1, 2001]

6.25.020 Unlawful Property Nuisance – Private Property.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of private property in the city to maintain or to allow to be maintained such property in such manner that any of the following conditions which are visible from a public street or right-of-way and are found to exist thereon, except as may be allowed by this code:

(1) Unlawful Outdoor Storage.

- (a) The accumulation of abandoned, discarded, or dilapidated objects which constitutes a threat to the general public's health, safety or welfare, including but not limited to: junked, abandoned, wrecked, dismantled or inoperative vehicles; vehicle parts and equipment; machine parts; scrap material; appliances; furniture, household equipment and furnishings; shopping carts; containers, packing materials; scrap metal; scrap wood; plant cuttings; rubbish and/or debris.
- (b) Attractive nuisances, dangerous to those members of the public unable to discover the nuisance condition, or recognize its potential danger, including, but not limited to: abandoned, broken, neglected or unsupervised vehicles; machinery; equipment; refrigerators and freezers; pools, ponds and excavations; marijuana plants, the cultivation of which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property
- (c) The placement of items of business inventory, refuse containers, equipment, vehicles, or similar obstructions on the street or sidewalk without prior city approval.
- (d) The storage of firewood or other flammable materials used for heating purposes in excess of standards relating to the safe storage of combustible materials as determined by the city of Biggs Fire Department and the Uniform Fire Code.
- (e) Items stacked in a dangerous fashion both adjacent to and physically separated from publicly accessible areas.
- (f) The accumulation of dirt, sand, gravel, concrete, litter, debris or other similar material on the property which is visible from the street.
- (g) Materials stored or stacked on commercial or industrial property within the front or street side yard in such zoning districts, except where such storage is allowed by the city under a conditional use permit.
- (h) Unregistered vehicles or other articles of personal property which are left in a state of partial construction, dilapidation or disrepair for more than four months.

(2) Landscaping/Vegetation.

- (a) Dead, decayed, diseased or hazardous trees, weeds or other vegetation constituting a danger to public safety and welfare and/or constituting unsightly appearance detrimental to neighboring property or property values.
- (b) Overgrown vegetation likely to harbor rats, vermin and other nuisances resulting in potential health hazards.
- (c) Vegetation growing into the public right of-way, obstructing the necessary view of drivers on public streets, rights-of-way or private driveways.
- (d) Failure to comply with the requirements set forth in any city zoning approval or permit applicable to the premises.
- (e) Marijuana plants, the cultivation of which is visible from a public street or right-of-way or neighboring property, or the odor of which is detectable from a public street, right-of-way or neighboring property
- (f) Planting strips are to be landscaped with materials acceptable to the City Park Superintendent; materials include decorative bark or rocks, green grass, trees, drought resistant plants and shrubs. The mow strip must be maintained. Dead vegetation, dirt and base rock are not considered acceptable maintenance.
- (g) Sidewalks and mow strips are to be maintained to provide for safe passage. Placement and type of trees in mow strips are to be specified by City Parks Superintendent. Property owner is to maintain and replace any trees and landscaping in mow strips.

(3) Trash, Litter, Trimmings, Oil and Debris.

- (a) Pooled oil, water, or other liquid accumulation, flowing onto the street, or excessive accumulations of grease or oil on paved surfaces.
- (b) The accumulation of litter, debris, trimmings or trash stored, accumulated, or placed on private property, in a yard, or portion thereof, including sidewalks, gutters, driveways, parking lots or the public right-of-way, which is generated on, or as a consequence of the use or maintenance of the property.

(4) Trash Containers.

- (a) Trash containers without secure, firmly fitting covers or evidencing an overflow of trash and or other debris.
- (b) Except on normal trash pick-up days, trash, garbage or refuse cans, bins, boxes or other such containers shall be stored away from the public right-of-way and out of view, screened, or against a structure and no farther toward the street than the vertical plane of the front of the structure.

(5) Buildings and Structures.

- (a) Buildings dilapidated, abandoned, boarded up, partially destroyed, having broken windows or broken windows secured with wood or other materials for more than 30 days.
- (b) Buildings left in a state of partial construction for six months, absent compelling extenuating circumstances.
- (c) Buildings subject to demolition pursuant to applicable permit or other authority, for which demolition has not been diligently pursued.
- (d) Unsecured buildings constituting hazardous conditions or inviting or permitting trespassers and malicious mischief.
- (e) Unsecured or structurally damaged/unsound awnings or overhangs, porches or building appurtenances.
- (f) Occupied buildings lacking active city-provided electrical utility service. Exempt from this definition are buildings with a city-approved electricity system not requiring city-provided service. Exempt from this definition is the use of temporary electrical generation in the case of emergency or power loss, but only to the extent of the emergency and/or power loss.
- (g) Occupied buildings lacking active city-provided water service.
- (h) Occupied buildings lacking active city-provided sanitary sewer service.

(6) Fences and Gates.

Fences or other structures on private property abutting, fronting upon, or visible from any public street, which are unsafely leaning, fallen, decayed, or in an otherwise dilapidated, unsafe or unsightly condition.

- (7) Parking Limitations. Vehicles, whether motorized or non-motorized, shall not be:
- (a) Parked on or within any required setback or on any surface which has not previously been approved for parking purposes pursuant to applicable zoning code provisions. Therefore, parking on residential property is limited to parking on driveways and parking pads. Parking on lawns and on dirt is prohibited.
 - (b) Parked on any front lawn or landscaped area, or upon any other area with a ground surface that is not either paved or graveled; provided, however, that the total surfaced area (gravel or pavement) within the front and street side yards of an individual lot shall not exceed 700 square feet.
 - (c) Parked on the street perpendicular or diagonally to any residence unless the vehicle is parked on a legal circular driveway.
 - (d) Parked on driveways or parking pads where a portion of the parked vehicle also extends into the street.

(8) Right-of-Way.

Placing, permitting or allowing an accumulation of junk, rubbish, debris, or dead, decayed or overgrown vegetation in that area between the property line and the edge of street improvements of a given parcel. This section is intended to supplement and not stand in conflict with the provisions of Streets and Highways Code, entitled "Maintenance of Sidewalks."

(9) Cultivation of Marijuana.

The cultivation and/or storage of marijuana within the City of Biggs is hereby declared to be unlawful and a public nuisance; provided, however, that a qualified patient or primary caregiver may cultivate and/or store marijuana but only if such storage and/or cultivation is confined and limited to and within a fully enclosed and secured structure.

(10) Residential Vehicle Repair.

- (a) The performance of major repairs or dismantling of any motorized or non-motorized vehicle, boat, or part thereof, in a location visible from the street.

- (b) This section shall not be construed as prohibiting the registered owner of a motorized or non-motorized vehicle or boat, or part thereof, from performing minor repair of the vehicle in the driveway or other paved surface of a residence. However, the vehicle or boat must be registered to someone living in the residence and the duration of the repair shall not exceed 14 days. Proof of registration of any vehicle or boat on which minor repair is occurring shall be provided to any city of Biggs Police officer or code enforcement officer upon request.

(11) Graffiti.

Graffiti or other words, lettering or drawings, other than allowed advertisement, which remain on the exterior of any building or fence for more than 48 hours.

(12) Miscellaneous.

Any other condition or use of property which gives rise to a reasonable determination by the code enforcement officer that the condition or use represents a threat to the health and welfare of the public by virtue of its unsafe, dangerous or hazardous nature and/or if permitted to continue will cause the substantial diminution of the enjoyment, use of property values of such properties.

6.25.030 Unlawful Property Nuisance –Public Property.

It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any private property in the city to use, maintain or allow to be maintained for any purposes that would create any of the following conditions on adjacent or contiguous public property, except as may be allowed by this code:

(1) Outdoor Storage, Operations or Encroachment.

- (a) The tracking of mud, dirt, sand, gravel, and concrete onto the street or public right-of-way.
- (b) The spilling of debris, including trash, paper, wood, plant cuttings and other vegetation, onto the street or other public right-of-way.
- (c) The use of public property for storage of vehicles and/or other materials associated with business activity on the street, in the public right-of-way, or on other public property, except as may be allowed by this code.

- (2) Miscellaneous.

Any other condition or use of property which gives rise to a reasonable determination by the code enforcement officer that the effect of such use or condition on adjacent public property represents a threat to the health and welfare of the public by virtue of its unsafe, dangerous or hazardous nature and/or if permitted to continue will cause the substantial diminution of the enjoyment, use of property values of such properties. [Ord. 323 § 1, 2001]

6.25.040 Declaration of Public Nuisance.

Any private property, or use of private and/or public property, found to be maintained in violation of the foregoing sections is hereby declared to be a public nuisance and shall be abated by rehabilitation, removal, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the city from enforcing other city ordinances or abating public nuisances in any other manner provided by law. [Ord. 323 § 1, 2001]

6.25.050 Existence of Public Nuisance, Hearing, and Voluntary Abatement.

- (1) Enforcement of this Chapter. Except as otherwise provided in this chapter, the provisions of this chapter shall be administered and enforced by code enforcement officers.
- (2) Declaration of Nuisance. Whenever a code enforcement officer or designated City representative finds that a nuisance, as defined in this Chapter, exists on any premises located within the City, the officer or representative shall issue a Declaration of Nuisance to the property owner/occupier of the nuisance and directing said person(s) to abate the nuisance. The property owner shall be identified by the most recent tax assessor's roll.
- (3) Contents of Declaration. The Declaration described in 6.25.050(2) shall contain the following information:
 - (a) The name, address, parcel number, and phone number (if applicable) of the property owner;
 - (b) The City code violation citation section(s);
 - (c) A statement that the property owner/occupier shall have ten (10) days from the date of the Declaration to abate the declared nuisance by rehabilitation, repair, removal or demolition. If applicable, the Declaration may include a recommended abatement procedure.

- (4) Voluntary Abatement. The owner/occupier of property found to be a nuisance under the provisions of this Chapter, may abate the nuisance at any time within the designated abatement period by rehabilitation, repair, removal, or demolition. A City official shall be advised of the abatement and shall inspect the premises to insure that the nuisance has in fact been abated.
- (5) Failure to Voluntarily Abate a Declared Nuisance. If an owner/occupier of property declared to be a public nuisance fails to voluntarily abate the nuisance within the designated abatement period, the City shall cause to be issued a notice entitled, "NOTICE OF PUBLIC HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART."
- (6) Contents of Notice. The Notice described in 6.25.050(5) shall substantially follow the form included below:

NOTICE OF PUBLIC HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART

Notice is hereby given that on the ____ day of _____, 20__, the City of Biggs will hold a public hearing at the Biggs City Hall, located at _____, to determine whether the premises and/or a condition(s) thereon at Biggs, California, known and designated as _____ constitutes a public nuisance. If the premises, in whole or part, is found to constitute a public nuisance as defined by Chapter 6.25 of the Biggs Municipal Code, and if the same are not promptly abated by the owner, the nuisance(s) may be abated by municipal authorities, or the municipal authorities may take such other action as provided by law. The cost of rehabilitation, repair, removal or demolition, if done by municipal authorities at their discretion, will be assessed upon the premises and the cost will constitute a lien upon the land until paid. The alleged violation(s) consist(s) of the following:

The methods of abatement available are:

All persons having any objection to, or interest in, these matters are hereby notified to attend a hearing before the City of Biggs to be held on the ____ day of _____, 20__ at the hour of _____, when their testimony and evidence will be heard and given due consideration.

Dated:

- (7) Service of Notice. The Notice described in 6.25.050(6) shall be served on the owner of the property containing the alleged public nuisance at least ten (10) days prior to the date set for the public hearing. Service shall be made by personal service upon the owner or by certified mail. If there is no known

address for the owner, the notice shall be sent in care of the property address. "Owner" as used herein means any person(s) shown as the property owner on the latest equalized property tax assessment rolls, and any person having, or claiming to have, any recorded legal or equitable interest in, or to, the fee relating to the premises. In addition, notice of the hearing shall be posted upon the subject property at least five (5) calendar days before the hearing. The failure of any person to receive notice shall not affect the validity of the proceedings.

- (8) Hearing by Mayor or Council. The hearing shall be before the Mayor. However, in the discretion of the Mayor, the hearing may be convened before the City Council. At the time and place stated in the notice of hearing, the Mayor/Council shall hear and consider all relevant evidence, objections, or protests, and shall receive testimony from owners, witnesses, city personnel and interested persons relative to the alleged public nuisance and to the proposed abatement methods. The hearing may be continued from time to time. The hearing shall be public; however, if the owner/occupier believes that the hearing should not be public, the owner/occupier shall notify the Mayor of the reason(s) therefore at least three (3) days prior to the hearing. The request shall be considered.
- (9) Decision of Mayor/Council. Following the public hearing, the Mayor/Council shall consider all evidence and determine whether the premises, or any part of the premises, constitute a public nuisance as alleged. If the Mayor/Council finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, the Mayor/Council shall make written findings, and the Mayor shall sign an order, ordering the owner or other person(s) having charge or control of the premises to abate the nuisance by rehabilitation, repair, removal or demolition in the manner and by the means specifically set forth in the council order. The order shall also contain authorization for the City to abate the nuisance pursuant to this Chapter, if in the Mayor's/Council's discretion, it is determined that abatement by the City is warranted. The order shall set forth the times within which the work shall be commenced and completed and shall be mailed to the owner by certified mail and shall also be posted upon the premises.
- (10) Abatement by City. Upon expiration of the time for abatement provided for in the council order, the City shall inspect the premises for compliance with the order, subject to the requirements of Section 6.25.060, below. If, upon inspection or observation by the City, the nuisance has not been completely abated, and, subject to authorization by City Council, code enforcement officials or other designated City representatives shall cause the public nuisance to be abated through a civil, administrative, or other permissible procedure.

- (11) Right of Contractor for Removal. When the City has contracted with or granted a franchise to any person to carry out the purpose of this chapter, such person(s) shall be authorized to enter private or public property to remedy the violation thereby allowing the property to comply with this code.
- (12) Finding of No Public Nuisance. If the Mayor/City Council determines that the property owner is not responsible for the public nuisance, the City shall not assess removal and/or administration costs against the property owner.
- (13) Alternative Means of Enforcement. This Chapter is not the exclusive regulation of code violations. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the state, or any other legal entity or agency having jurisdiction. Nothing in this chapter shall be deemed to prevent the city from authorizing the city attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this Chapter.

6.25.055 Nuisance Abatement – Visible/Unsecured Odiferous Marijuana Cultivation.

- (1) Marijuana Cultivation/Storage Nuisance Circumstances.

Notwithstanding any provision in this Chapter, the abatement measures set forth in subsection (2) of this section shall be utilized in the following nuisance circumstances: marijuana plants, or the cultivation of marijuana plants, visible from the street or neighboring property; the odor of marijuana detected from the street or neighboring property; or the presence, cultivation and/or storage of marijuana, except within a fully enclosed and secured structure.

- (2) Abatement Procedure.

- (a) The city, through a code enforcement officer or other designees, shall issue a Declaration of Public Nuisance requiring abatement within 48 hours after the posting of that Declaration in a conspicuous place at the location of the nuisance. The Declaration shall contain the following information:

- (i) The location of the premises.

- (ii) A description of the specific condition(s) which represent a code violation, and the evidence relied upon to determine the existence of a code violation, except that the City may withhold the identity of a witness if that person requests and if such action is reasonable under the circumstances.

- (iii) The date and time when abatement must be completed to avoid any further action from the City.
 - (iv) A statement that, to avoid the imposition of a civil penalty under subsection (c) below, the offending condition(s) must be abated by the deadline set forth in the Declaration.
 - (v) A statement that, if the nuisance is not abated by the deadline set forth in the Declaration, the City will issue a Notice entitled, "NOTICE OF HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART," at which time the City will present evidence of the listed code violations and request the Mayor or, at the Mayor's discretion, the City Council, order the public nuisance be abated and impose a civil penalty of \$1,000 per day for each day that the nuisance remains unabated.
 - (vi) A statement that, in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the City elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the City in the action or proceeding.
- (b) Failure to voluntarily abate nuisance. If after the expiration of the notice period the nuisance has not been abated, the City shall issue a Notice, entitled, "NOTICE OF HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE." This Notice shall be in the substantially the same form as the Notice described in Section 6.25.050(6), above. The hearing shall be before the Mayor or, at the Mayor's discretion, the City Council, and shall be held not less than five (5) days after service of the Notice on the owner/occupier of the property. The hearing shall be public; however, if the owner/occupier believes that the hearing should not be public, the owner/occupier shall notify the Mayor of the reason(s) therefore at least three (3) days prior to the hearing. The request shall be considered.
- (c) Service of Notice. The Notice shall be served either personally, or by certified mail, the owner of the property and, if applicable, the occupier of the property. The Notice shall also be posted on the subject property.

- (d) Hearing on Notice. At the hearing, the City shall present evidence of unlawful cultivation of marijuana to the Mayor/City Council. The owner/occupier, if present, shall also be entitled to present evidence. Upon conclusion of the hearing, the Mayor/City Council shall prepare a written Order, which shall include findings of fact and an Order. If the Mayor/City Council finds a public nuisance exists, the Officer shall direct the owner/occupier to abate the public nuisance by a date certain. The order shall also contain authorization for the City to abate the nuisance pursuant to this Chapter, if in the Mayor's/Council's discretion, it finds that abatement by the City is warranted. The order shall set forth the times within which the work shall be commenced and completed and shall be mailed to the owner/occupier by certified mail.
 - (e) Abatement by City. If upon finding a violation of this Section exists, the owner/occupier fails to abate the nuisance as ordered by the Mayor/City Council, the City shall take steps to obtain and execute an Inspection/Administrative Abatement Warrant pursuant to this Chapter.
 - (f) Finding of No Public Nuisance. If the Mayor/City Council determines that the property owner is not responsible for the public nuisance, the City shall not assess removal and/or administration costs against the property owner.
- (3) Civil Penalties and Attorneys Fees.
- (a) Civil Penalty. Fines in the amount of up to \$1,000 per day shall be imposed upon the property owner/occupier as deemed in the above-described order for each day the property remains in violation of this section upon expiration of the time for abatement set forth in a final order by under section 6.25.055(2)(d) above. For good cause, the Mayor/Council may waive all or part of the penalty.[Ord. 385, 2010]
 - (b) Attorneys Fees. In any administrative or court proceeding to enforce the abatement order, the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the City elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the City in the action or proceeding.

6.25.060 Public Agency Inspections.

- (1) Inspection of Premises. Code enforcement officers shall request consent of the owner/occupier of private property located in the City believed to be in violation of this Chapter to enter and inspect for such violation(s). If consent is not freely given, code enforcement officers shall first obtain an inspection warrant pursuant to Code of Civil Procedure Sections 1822.50, et seq. prior to entry onto private property.
 - (a) Exception for Violations in Plain View. Nothing in this Chapter shall preclude code enforcement officers from performing warrantless inspections of areas in plain view of such officers.
 - (b) Exception for Pervasively Regulated Activities. Nothing in this Chapter shall preclude code enforcement officers from performing routine warrantless inspections of pervasively regulated activities.
 - (c) Exception for Open Fields. Nothing in this Chapter shall preclude code enforcement officers from performing warrantless inspections of open fields.
 - (d) Exception for Exigent Circumstances. Nothing in this Chapter shall preclude code enforcement officers from performing warrantless inspections under exigent circumstances.
- (2) Form of Inspection Warrant. The Inspection Warrant shall contain, at a minimum, the following information:

Form of Administrative Abatement Warrant. The City shall cause to be prepared an Administrative Abatement Warrant and Affidavit. The Warrant shall contain, at a minimum, the following information:

- (a) Description of Premises. The Warrant shall include a description of the property onto which the City seeks entry, including, if possible, the assessor's parcel number of the property, as well as the specific area(s) of entry on the subject property (i.e., yard, dwelling house, outside structures, etc.).
- (b) Purpose of Entry. The Warrant shall contain the City's purpose for entry onto the property (i.e., to inspect for Code violations, etc.).
- (c) Conditions of Entry. The Warrant shall contain the conditions of the City's entry onto the property, including, but not limited to:

- (i) Applicable Hours of Execution. The desired hours of execution of the Warrant.
 - (ii) Entry Without Owner Present. Whether the City shall be authorized to enter onto the property without the owner/occupier present.
 - (iii) 24 Hour Notice. Whether the City is required to provide 24 hour notice to the owner/occupier of the property.
 - (iv) Forcible Entry. Whether the City may execute the Warrant by means of force.
 - (d) Duration of Warrant. The Warrant shall contain the duration of the Warrant, including any extensions requested/given.
 - (e) Interference Punishable by Misdemeanor. The Warrant shall contain the following statement: "Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to Title 13 of Part 3 of the Code of Civil Procedure is guilty of a misdemeanor."
- (3) Form of Affidavit. The City shall cause to be prepared an Affidavit to support issuance of an Inspection Warrant containing a showing of cause for the entry and including any written exhibits to be presented to the Warrant Judge.
- (4) Combined Inspection/Administrative Abatement Warrant. The City may use a combined Inspection/Administrative Abatement Warrant form.
- (5) Procedure for Obtaining Inspection Warrant. The City shall submit the Inspection Warrant and supporting Affidavit to the Warrant Judge then on duty for issuance. Alternatively, or upon request of the Warrant Judge, the City may notice a hearing for presentation of evidence in support of issuance of the Warrant. If a hearing is desired, the City must provide notice to the owner/occupier of the subject property. The failure of the owner/occupier to appear at a noticed hearing shall not preclude issuance of an Inspection Warrant under this Chapter.
- (6) Execution of Warrant. The City shall execute the Inspection Warrant pursuant to the terms contained therein and applicable law. Upon execution of the Warrant, the City shall cause to be filed with the Warrant Judge a Return, which shall contain a declaration, under penalty of perjury, signed by the person who executed the Warrant, which includes the date and time and location of execution, whether the owner/occupier was present, and an inventory of any property seized, as well as a proof of service of the Return on the owner/occupier.

6.25.065 Administrative Public Nuisance Abatement by City

- (1) Administrative Abatement. If a public nuisance has been declared under Sections 6.25.050 or 6.25.055, and where the owner/occupier has failed to abate the nuisance and the City has been authorized to so abate, the City may follow the procedures set forth herein to abate the nuisance by the administrative process through the City's police power.
- (2) Administrative Abatement Warrant. Subject to the exceptions listed herein, prior to entering onto private property within the City of Biggs, the City shall obtain an Administrative Abatement Warrant pursuant to this section.
 - (a) Exception for Consent. Where the owner/occupier consents to the City's entrance onto the subject property, the City need not first obtain an Administrative Abatement Warrant.
 - (b) Exception for Violations in Plain View. Where the City is lawfully on the subject property, the City need not first obtain an Administrative Abatement Warrant to abate a public nuisance in plain view of the City official(s).
 - (c) Exception for Open Fields. The City need not first obtain an Administrative Abatement Warrant to abate a public nuisance which exists in an open field within the City's geographic boundaries.
 - (d) Exception for Exigent Circumstances. The City need not first obtain an Administrative Abatement Warrant to abate a public nuisance under exigent circumstances.
- (3) Form of Administrative Abatement Warrant. The City shall cause to be prepared an Administrative Abatement Warrant and Affidavit. The Warrant shall contain, at a minimum, the following information:
 - (a) Description of Premises. The Warrant shall include a description of the property onto which the City seeks entry, including, if possible, the assessor's parcel number of the property, as well as the specific area(s) of entry on the subject property (i.e., yard, dwelling house, outside structures, etc.).
 - (b) Purpose of Entry. The Warrant shall contain the City's purpose for entry onto the property (i.e., to abate the public nuisance of _____).
 - (c) Conditions of Entry. The Warrant shall contain the conditions of the City's entry onto the property, including, but not limited to:

- (i) Applicable Hours of Execution. The desired hours of execution of the Warrant.
 - (ii) Entry Without Owner Present. Whether the City shall be authorized to enter onto the property without the owner/occupier present.
 - (iii) 24 Hour Notice. Whether the City is required to provide 24 hour notice to the owner/occupier of the property.
 - (iv) Forcible Entry. Whether the City may execute the Warrant by means of force.
- (d) Duration of Warrant. The Warrant shall contain the duration of the Warrant, including any extensions requested/given.
- (e) Disposition of Property. The Warrant shall contain directions for the disposition of any property obtained.
- (f) Interference Punishable by Misdemeanor. The Warrant shall contain the following statement: "Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to Title 13 of Part 3 of the Code of Civil Procedure is guilty of a misdemeanor."
- (4) Form of Affidavit. The City shall cause to be prepared an Affidavit to support issuance of an Administrative Abatement Warrant containing a showing of good cause for the entry and including any written exhibits to be presented to the Warrant Judge.
- (5) Procedure for Obtaining Administrative Abatement Warrant. The City shall submit the Administrative Abatement Warrant and supporting Affidavit to the Warrant Judge then on duty for issuance. Alternatively, or upon request of the Warrant Judge, the City may notice a hearing for presentation of evidence in support of issuance of the Warrant. If a hearing is desired, the City must provide notice to the owner/occupier of the subject property. The failure of the owner/occupier to appear at a noticed hearing shall not preclude issuance of an Administrative Abatement Warrant under this Chapter.
- (6) Execution of Warrant. The City shall execute the Administrative Abatement Warrant pursuant to the terms contained therein and applicable law. Upon execution of the Warrant, the City shall cause to be filed with the Warrant Judge a Return, which shall contain a declaration, under penalty of perjury, signed by the person who executed the Warrant, which includes the date and time and location of execution, whether the owner/occupier was present, and

an inventory of any property seized, as well as a proof of service of the Return on the owner/occupier.

- (7) Alternative Means of Enforcement. This section is not the exclusive regulation of code violations. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereafter enacted by the state, or any other legal entity or agency having jurisdiction. Nothing in this section shall be deemed to prevent the city from authorizing the city attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this chapter.

6.25.070 Summary Abatement.

Nothing in this Chapter shall limit the City's authority to summarily abate a public nuisance which reasonably appears to pose an immediate threat to the health, safety and welfare of its citizens.

6.25.080 Nuisance Abatement Lien. [Gov. Code §38773.1]

- (1) Costs of Abatement Borne by Property Owner. In any action to determine the existence of and/or abate a public nuisance, the owner of the property declared to be a public nuisance shall be responsible for the City's costs incurred herein. Such costs shall constitute a lien on the subject property.
- (2) Notice of Lien. The City shall provide notice prior to the recordation of the lien to the owner of record of the parcel of land or which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.
- (3) Service of Notice. The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. 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 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062 of the Government Code.
- (4) Contents of Lien. A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

- (5) Recordation of Lien. A nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.
- (6) Discharge of Lien. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection 6.25.080(4) shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.
- (7) Foreclosure of Lien. A nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.
- (8) Recovery of Costs of Recording. A City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

6.25.085 Nuisance Abatement Fines

- (1) Issuance of the Declaration of Nuisance (6.25.050(2))
 - (a) \$0.00
 - (b) Frequent Violator: \$100.00
- (2) Issuance of Notice of Public Hearing (6.25.050(5))
 - (a) \$100.00
 - (b) Frequent Violator: \$200.00
- (3) After Mayor/Council Hearing (6.25.050(9))
 - (a) Up to \$250.00
 - (b) Frequent Violator: up to \$500.00
 - (c) In addition to the above: up to \$100 per day until abated
- (4) For the purposes of this section, Frequent Violator is an owner/occupier who has been issued more than one Declaration of Nuisance Notice in the preceding 12 months.

I HEREBY CERTIFY that the above and foregoing Ordinance was duly and regularly introduced and read at a regular meeting held on the 24th day of January, 2011, and was passed and adopted by the City Council of the City of Biggs at a regular meeting thereof duly held on the 28th day of February, 2011, by the following vote, to wit:

AYES: COUNCILMEMBER: _____

NOES: COUNCILMEMBER: _____

ABSENT: COUNCILMEMBER: _____

ABSTAIN: COUNCILMEMBER: _____

ATTEST:

APPROVED:

Roben Dewsnap
CITY CLERK

Roger L. Frith
MAYOR

NOTICE OF EXEMPTION

To: Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

From: City of Biggs
Planning Department
P.O. Box 1134 / 3016 Sixth Street
Biggs, CA 95917

County Recorder
Butte County
25 County Center Drive
Oroville, CA 95965

Project Title: **BMCA 2011-001.** An amendment to the Biggs Municipal Code Title 6 – Public Health and Welfare, Chapters 6.25 & 6.27.

Project Location: City of Biggs.

Assessor's Parcel Number(s): n/a (City-wide)

Project Description: An amendment to the Biggs Municipal Code to merge Chapters 6.25 [Health and Safety Nuisance Abatement] and 6.27 [Neighborhood Nuisance Abatement] to remove redundancy between the chapters, streamline the code enforcement process to reduce timelines for noticing and abatement, establish provisions of for the storage of trash receptacles, establish provisions addressing maintenance and planning of mow strips and establishing monetary penalties for repeat offenders.

Lead Agency: City of Biggs

Project Planner: Scott Friend, AICP

Exemption Status: Ministerial [Section 21080(b); 15268];
 General Rule [Section 15061(b)(3)];
 Categorical Exemption [Section 15305];
 Statutory Exemption;
 Declared Emergency (Sec. 21080(b)(3); 15269(a))
 Emergency Project (Sec. 21080(b)(4); 15269(b)(c))
 Other: Section 21169

REASONS WHY THIS PROJECT IS EXEMPT OR DOES NOT REQUIRE FURTHER ENVIRONMENTAL DOCUMENTATION:

This action has been determined to be exempt from CEQA review pursuant to Public Resources Code Section 15061(b)(3) (General Rule). The project is an amendment to the administrative and enforcement provisions of the City's Public Health and Safety Code (Biggs Municipal Code Title 6 Section 6.25) and will not result in any changes to the physical environment. Because it can be seen with certainty that there is no possibility that the proposed action may have a significant effect on the environment, the activity is not subject to CEQA. (Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21084, Public Resources Code).

City Planner
City of Biggs

By: _____
Scott Friend, AICP

Date: January 24, 2011