

ATTACHMENT #1

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS AMENDING CHAPTER 8.08 OF THE CITY OF INDIAN WELLS MUNICIPAL CODE RELATING TO NUISANCE ABATEMENT AND ADDING CHAPTER 1.28 OF THE INDIAN WELLS MUNICIPAL CODE RELATING TO NUISANCE ABATEMENT COST RECOVERY

WHEREAS, the City of Indian Wells, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, the City is authorized by California Constitution, Article XI, Section 7 to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, Government Code sections 38773.1 and 38773.5 provide that a city may, by ordinance, provide for the recovery of nuisance abatement costs, including attorneys' fees, in any action, administrative proceeding, or special proceeding to abate a nuisance; and

WHEREAS, the City places a high value on protecting community character, land values, and the general public, health, safety and welfare, and has previously adopted numerous ordinances to help ensure such protection; and

WHEREAS, public nuisances, as designated by the Indian Wells Municipal Code, occur regularly, and occasionally require the City to take abatement action at significant cost and expense; and

WHEREAS, the City's attorney fees incurred to abate public nuisances can be substantial and should be borne by the violator; and

WHEREAS, various provisions of the Indian Wells Municipal Code provide for nuisance abatement and cost recovery; and

WHEREAS, the purpose of this Ordinance is to enhance the clarity, simplicity, and user-friendliness of the City's nuisance abatement and cost recovery provisions in order to make the City's code enforcement efforts more efficient and effective; and

WHEREAS, the purpose of this Ordinance is to further modernize the code enforcement and nuisance abatement tools to help protect the public health, safety and welfare, and to ensure cost recovery to the fullest extent as authorized by law; and

WHEREAS, the City Council finds that the adoption and implementation of the procedures and standards set forth below for the identification and abatement of public nuisances, whether or not posing an immediate threat to public health and safety, is within the City's power and authority to protect the public health, safety, and welfare of the City's residents; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. IWMC Amendment. Chapter 8.08 [Nuisance Abatement Procedures] of the Indian Wells Municipal Code is hereby amended and restated to read in its entirety as provided in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 3. IWMC Addition. Chapter 1.28 [Nuisance Abatement Cost Recovery] of the Indian Wells Municipal Code is hereby added to read in its entirety as provided in Exhibit B, attached hereto and incorporated herein by reference.

SECTION 4. Effect of Restatement. All restated, unamended provisions of the Indian Wells Municipal Code that are repeated herein are repeated only to aid decision makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

SECTION 5. CEQA. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because the Ordinance is not a CEQA "project" pursuant to State CEQA Guidelines section 15378(b)(5), which provides that organizational and administrative activities of governments that will not result in physical environmental impacts are not CEQA projects, and here the proposed amendments refine and clarify Municipal Code provisions and correct clerical errors. Further, the City Council finds that State CEQA Guidelines section 15061(b)(3) exempts those activities for which it can be seen with certainty that there is no potential to result in significant environmental effects. The Ordinance has no potential to result in physical change to the environment, directly or indirectly, as the Ordinance only provides for summary abatement procedures for nuisances and does not propose nor authorize any action that would have the potential to cause a physical change in the environment, directly or indirectly. Further, the Ordinance has no potential to result in physical change to the environment, directly or indirectly, as the Ordinance merely removes the current requirement under the Municipal Code that involuntary abatement procedures have an automatic hearing. Accordingly, the City Council directs staff to file a notice of exemption within five days of the adoption of this Ordinance.

SECTION 6. Effective Date. This ordinance takes effect 30 days after its adoption.

SECTION 7. Certification. The City Clerk of the City of Indian Wells shall certify to the adoption of this Ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the City in a manner permitted under section 36933 of the Government Code of the State of California.

SECTION 8. Severability. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would adopt this resolution irrespective of the invalidity of any portion thereof.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on the ____ day of _____, 2024.

GREG SANDERS
MAYOR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR ORDINANCE NO. _____

I, Angelica Avila, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Ordinance No. ____, having been regularly introduced at the meeting of July 18, 2024, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ of _____, 2024 said ordinance was passed and adopted by the following stated vote, to wit:

and was thereafter on said day signed by the Mayor of the City of Indian Wells.

AYES:
NOES:

ATTEST:

APPROVED AS TO FORM:

ANGELICA AVILA
CITY CLERK

TODD LEISHMAN FOR
BEST BEST & KRIEGER LLP
CITY ATTORNEY

EXHIBIT "A"

Chapter 8.08 [Nuisance Abatement Procedures] of the Indian Wells Municipal Code Amendment

Title 1 GENERAL PROVISIONS

Chapter 1.28 NUISANCE ABATEMENT COST RECOVERY

1.28.010 Purpose.

The purpose of this section is to establish a procedure for recovery of costs as authorized by Government Code sections 38773.1 and 38773.5 and to afford due process of law to any person who is directly affected by this process. It is the policy of the City to ensure that all applicable laws are followed by the City in performance of this Chapter, including respect for constitutional protections, due process, and equal protection.

1.28.020 Definitions.

For the purposes of this Chapter, unless otherwise apparent from the context, certain words or phrases used in this Chapter are defined as follows:

"Abatement costs" means all costs, fees, and expenses, incidental or otherwise, including attorney fees and City staff time charges, incurred by the City in investigating and abating a public nuisance.

"Hearing officer" means any person authorized by this Chapter to hear and review appeals under this Chapter.

"Person" means any natural person or legal entity, including any firm, partnership, association, corporation, trustee, trust, organization, or entity of any kind, or such person's authorized representative.

"Responsible party" means any of the following:

1. A person who causes a code violation to occur;
2. A person who maintains or allows a code violation to continue, by his or her action or failure to act; or
3. A person who is the owner of, or who has a recorded interest in, real property where a property-related code violation occurs or exists.

1.28.030 City's Right to Recover Nuisance Abatement Costs.

Whenever the City incurs abatement costs in abating a public nuisance or seeking to abate a code violation or public nuisance, the City is entitled to recover the abatement costs related to those code enforcement efforts in accordance with the procedure set forth in this Chapter. The City may commence cost-recovery proceedings at any time.

1.28.040 Scope of Recoverable Abatement Costs.

Recoverable abatement costs include all costs, fees, and expenses, incidental or otherwise, including attorney fees, incurred by the City in investigating and abating a public nuisance.

1.28.050 Service Requirements.

(a) Except where this Chapter prescribes another procedure or the parties otherwise agree to an alternate means, any notice or document required to be served under this Chapter must be served by personal service or first-class mail.

(b) Service is deemed effective on the date it is personally delivered or deposited in the mail.

(c) Failure of any person to receive a document properly served under this Chapter does not affect the validity of the notice or document, service, or any action or proceeding under this Chapter.

1.28.060 Initiation of Cost-Recovery Process.

(a) **Report of Abatement Costs.** To initiate the process for recovery of abatement costs, the City must serve an itemized report of abatement costs on the responsible party identifying all abatement costs and demanding payment. The report must provide notice that any unpaid amounts may become a lien and special assessment against the property unless the City receives full and timely payment.

(b) **Service of Report of Abatement Costs.** The report of abatement costs must be served in accordance with Section 1.28.050. If the code violation or public nuisance relates to real property, then the report of abatement costs must be served on each person with a recorded interest in the subject property.

(c) **Payment.** Timely, full payment of the abatement costs must be remitted to the City within 45 calendar days following the date of service of the report of abatement costs.

(d) **Right to Appeal.** Any person issued a report of abatement costs has a right to appeal the report of abatement costs in accordance with this subsection (g). An appeal must be filed within 15 calendar days following the date of service of the report of abatement costs. The right to appeal and procedures must be specified in the report. A written notice of appeal must contain the following information: (1) the name and contact information of the appellant, and (2) the grounds for appeal in sufficient detail to enable the hearing officer and City to understand the nature of the controversy. The failure of any person who has been served with proper notice to timely file an appeal is a failure to exhaust administrative remedies.

1.28.070 Hearing Procedures.

(a) **Selection of Hearing Officer.** The City Manager may select the hearing officer. The hearing officer must be selected in a manner that avoids the potential for pecuniary or other bias.

(b) **Scheduling and Noticing of the Hearing.** If a timely and proper appeal is filed, the City Clerk must schedule the hearing no sooner than 15 days and no later than 60 days from receipt of the notice of appeal, unless the parties waive such time limits. The failure to hold the

hearing within this time period does not invalidate any action of the hearing officer. The City Clerk must notify the appellant in writing of the date, time, and location of the hearing at least 10 days before the date of the scheduled hearing. The notice of hearing must be served in accordance with Section 1.28.050.

(c) **Issue on Appeal.** The scope of the appeal is limited to the appropriateness of the amount of the abatement costs, and the hearing officer's decision may confirm, discharge, or modify the amount of costs.

(d) **Evidence, Witnesses, and Recording.** The appeal hearing is a hearing de novo on the issue specified in subsection (c) above. All parties have the right to present evidence and witnesses. The formal rules of evidence and discovery do not apply. The rules of privilege are effective to the same extent that they are now or may hereafter be recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. Oral evidence may be taken only on oath or affirmation. The appellant and respondent may represent themselves or be represented by anyone of their choice. No party has the right to cross-examine any other party or witness except for good cause shown to the satisfaction of the hearing officer. The appellant may bring an interpreter to the hearing at the appellant's sole expense. The City may, at its discretion, record the hearing by stenographer, court reporter, audio recording, or video recording.

(e) **Decision of the Hearing Officer.** The hearing officer's decision must be in writing, set forth the hearing officer's findings of fact and conclusions of law, and demand payment of any confirmed abatement costs within 30 calendar days following the date of service of the hearing officer's decision. The hearing officer must render a decision within 15 days following the conclusion of the hearing. Failure of the hearing officer to render a decision within this time period does not invalidate any action of the hearing officer or automatically grant the appeal. The hearing officer's decision must be served in accordance with Section 1.28.050. The hearing officer's decision is the final administrative decision of the City regarding the abatement costs. The hearing officer's decision is effective on the date of service of the decision. The decision must contain the following statement: "The decision of the hearing officer is final and binding. Judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure section 1094.6 et seq."

(f) **Payment of Confirmed Costs.** Any confirmed abatement costs must be tendered to the City within 30 calendar days following the date of service of the hearing officer's decision.

1.28.080 Initiation of Collection Process.

Upon expiration of 45 days after the report of abatement costs, or 30 days after the hearing officer's decision in the event of an appeal, if the full amount of the final abatement costs has not been paid, any unpaid costs may be collected by the City in accordance with Sections 1.28.090 through 1.28.110.

1.28.090 Collection of Costs as Lien.

(a) In accordance with Government Code section 38773.1, abatement costs may be levied by the City as a lien against the property on which the nuisance was abated. If the abatement costs are not been paid in full within the time required by this Chapter, the City may record a lien against the nuisance property for any unpaid amount. Before recording a lien, the City must serve each person with a recorded interest in the subject property with notice of the

lien. In addition, any owner of record must be served in accordance with Government Code section 38773.1.

(b) The nuisance abatement lien must be recorded in the office of the County Recorder of Riverside County, California; and from the date of recording, the nuisance abatement lien will have the force, effect, and priority of a judgment lien, and will continue in effect until discharged by the City.

(c) The lien must specify the City as the agency for whose benefit the lien is established, the amount of the lien, the date of any 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.

(d) The nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment. All costs and expenses relating to the processing, recording and enforcement of the abatement lien, including recording fees, noticing costs and attorney fees may be added to the amount of the lien and will be secured thereby.

(e) Upon payment or other satisfaction of the abatement lien, a notice of release of lien must be prepared and recorded by the City forthwith.

1.28.100 Collection of Costs as a Special Assessment.

(a) In accordance with Government Code section 38773.1, abatement costs may be levied by the City as a nuisance abatement lien against the property on which the nuisance was abated. If the abatement costs have not been paid in full within the time required by this Chapter, the City may levy a special assessment against the real property on which the violation occurred. The City must serve each person with a recorded interest in the subject property with notice of the imposition of the special assessment. In addition, any owner of record must be served in accordance with Government Code section 38773.5. The notice must specify that the property may be sold after three years by the Tax Collector for unpaid delinquent assessments.

(b) The notice of special assessment is entitled to recordation with the Riverside County Recorder's Office. A copy of the notice of special assessment must be transmitted to the County Tax Assessor and Tax Collector, whereupon the Tax Assessor and Tax Collector must add the amount of the special assessment on the next regular bill for real estate taxes levied against the property identified in the notice of special assessment. Thereafter, the special assessment will be collected at the same time and in the same manner as ordinary municipal taxes are collected, and will be subject to the same penalties and the same procedure and sale in the case of delinquency as provided by law for ordinary municipal taxes. After recordation, the special assessment may be foreclosed on as a lien in the manner and means provided by law.

1.28.110 Other Cost Recovery Remedies.

The remedies and procedures provided by this Chapter are cumulative to each other and to any other available under city, state, or federal law. In addition to any other remedies set forth in this Code or otherwise provided by law, the City Attorney is authorized to bring a civil action, at the City Attorney's discretion, to recover the City's abatement costs.

1.28.120 Recovery of Attorney fees.

Recovery authorized. Any violation of this municipal code is hereby determined to constitute a public nuisance. The prevailing party in any judicial action, administrative proceeding, or special proceeding to abate a nuisance may recover its incurred attorney fees, provided that the City elected, at the initiation of such individual action or proceeding, to recover its own attorney fees. In no judicial action or administrative proceeding may an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the City in the judicial action or administrative proceeding. A judicial action includes, but is not limited to, any civil action, inspection or abatement warrant, administrative proceeding, or appeal from an administrative proceeding. Any recovery of attorney fees for abatement of a nuisance must be in accordance with this section.

1.28.130 Judicial Review

The decision of the hearing officer is not subject to appeal to the City Council or any other board or commission of the City. Once the hearing officer's decision is final, the appellant may bring a judicial action to contest such a decision in accordance with the Code of Civil Procedure section 1094.6. Failure to do so means all objections to the hearing officer's decision are waived.

EXHIBIT "B"

Chapter 1.28 [Nuisance Abatement Cost Recovery] of the Indian Wells Municipal Code Addition

Title 8 HEALTH AND SANITATION

Chapter 8.08 NUISANCE ABATEMENT PROCEDURES

8.08.010 Purpose.

The purpose and intent of this Chapter is to provide regulations that promote the sound maintenance of property and enhance conditions of appearance, habitability, occupancy, and safety of all structures and premises in the City, and to afford due process of law to any person who is directly affected by this process. It is the policy of the City to ensure all applicable laws are followed by the City in performance of this Chapter, including respect for constitutional protections, due process, and equal protection.

This Chapter may not be applied, construed, or given effect in a manner that imposes upon the City any duty towards persons or property or that creates a basis for civil liability for damages, except as otherwise imposed by law. The City reserves the right to address abatement of nuisance in a variety of ways at its sole discretion while balancing the use of limited City resources.

8.08.020 Definitions.

For the purposes of this Chapter, unless otherwise apparent from the context, certain words or phrases used in this Chapter are defined as follows:

"Abatement costs" means all costs, fees, and expenses, incidental or otherwise, including attorney's fees, incurred by the City in investigating and abating a public nuisance.

"Enforcement official" means any City employee or agent of the City with the authority to enforce any provision of this Code.

"Hearing officer" means any person authorized by this Chapter to hear and review appeals under this Chapter.

"Person" means any natural person or legal entity, including any firm, partnership, association, corporation, organization or entity of any kind, or such person's authorized representative.

"Responsible party" means any person who maintains, causes, aids, abets, conceals, suffers, or permits a violation of this article, and includes any person having legal title to any real property in the City.

8.08.030 Scope.

The provisions of this Chapter apply to all real property in the City except those parcels owned by the City of Indian Wells.

8.08.040 Responsibility to Administer and Enforce this Chapter.

The administration and enforcement of this Chapter is the responsibility of the enforcement official, unless otherwise expressly stated herein.

8.08.050 Service Requirements.

(a) Except where this Chapter prescribes another procedure or the parties otherwise agree to an alternate means, any notice or document required to be served under this Chapter must be served by personal service or first-class mail.

(b) Service is deemed effective on the date it is personally delivered or deposited in the mail.

(c) Failure of any person to receive a document properly served under this Chapter does not affect the validity of the notice or document, service, or any action or proceeding under this Chapter.

8.08.060 Nuisances Designated.

It is declared unlawful and a public nuisance for any person owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain the property or allow the property to be maintained, with any of the following conditions:

(a) Drainage Problems. Land, the topography, geology or configuration of which, whether in natural state or as a result of grading operations, excavation or fill, causes erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety, and welfare or to adjacent properties.

(b) Abandoned or Damaged Buildings. Buildings that are abandoned, partially destroyed, or permitted to remain unreasonably in a state of partial construction.

(c) Openings in Vacant Structures. The failure to close by such means as is acceptable to the Director of Community Development all doorways, windows, and other openings into vacant structures.

(d) Unpainted Buildings. Unpainted buildings causing dry rot, warping, and termite infestation.

(e) Broken Windows. Broken windows, which constitute hazardous conditions and invite trespassers and malicious mischief.

(f) Overgrown Vegetation. Overgrown weeds, grass, and vegetation.

(g) Dead, Decayed, or Diseased Vegetation. Dead, decayed, diseased, or hazardous trees, weeds, and other vegetation that is: (1) constituting unsightly appearance, or (2) dangerous to public safety and welfare, or (3) detrimental to nearby property or property values.

(h) Miscellaneous Debris. Packing boxes, lumber, trash, dirt, and other debris either inside or outside buildings and visible from public streets for unreasonable periods.

(i) Intentional Neglect. Neglect of premises: (1) to spite neighbors, or (2) to influence zone changes, or (3) to cause detrimental effect upon nearby property or property values.

(j) Detriment to Public Health, Safety and General Welfare. Maintenance of premises in such condition as to be detrimental to the public health, safety, or general welfare or in such manner as to constitute a public nuisance as defined by Civil Code section 3480.

(k) Detriment to Property Value. Property maintained in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same causes appreciable diminution of the property values of surrounding properties or is materially detrimental to proximal properties and improvements.

(l) Detrimental to Enjoyment or Use of Property. Maintenance of premises so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties.

(m) Diminution of Tax Receipts. Property maintained, in relation to others, so as to establish a prevalence of depreciated values, impaired investments, and social and economic maladjustments to such an extent that the capacity to pay taxes is reduced and tax receipts from such particular area are inadequate for the cost of public services rendered therein.

(n) Violation of City Building Code. Any violation of the City Building Code, Chapter 16.12 of this Code, as amended.

(o) Fire Hazard. All dry, dead shrubs, dead trees, combustible refuse and waste, or any material growing around the streets, sidewalks or upon private property within the City, which by reason of its size, manner or growth or location constitutes a fire hazard to any building, improvements, crops or other property, or when dry, will in reasonable probability constitute a fire hazard.

(p) Polluted Water. Any swimming pool, pond or other body of water which is abandoned, unattended, unfiltered, or not maintained, resulting in the water becoming polluted. "Polluted water," for the purpose of this Chapter, means water contained in a swimming pool, pond, or other body of water, which includes, but is not limited to, bacterial growth, including algae, remains of rubbish, refuse, debris, papers, or any other foreign matter which, because of its nature or location, constitutes an unhealthy, unsafe or unsightly condition.

(q) Outdoor Burning. The intentional outdoor burning of any material, structure, matter, or thing, is a public nuisance. For the purpose of this subparagraph (q) the term "any material, structure, matter, or thing" includes but is not limited to rubbish, garbage, weeds, palm fronds, refuse, debris, and matter of any kind including but not limited to rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of metal, ferrous or nonferrous, furniture or parts thereof, inoperative vehicles, vehicle bodies, trimmings from plants or trees, cans, bottles, barrels or similar matter.

(r) Refuse and Waste Matter. Refuse and waste matter, as defined in this subsection, which by reason of its location and character is unsightly and interferes with the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood or community, or which materially hamper or interfere with the prevention or suppression of fire upon the premises. "Refuse and waste matter," for the purpose of this Chapter, means unused or discarded matter and material having no substantial market value, and which consists of rubbish, garbage, weeds, palm fronds, refuse, debris, and matter of any kind, including but not limited to, rubble asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials,

crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of metal, ferrous or nonferrous, furniture or parts thereof, inoperative vehicles, vehicle bodies and/or trimmings from plants or trees, cans, bottles, barrels or similar matter.

(s) Signs. Any sign in violation of the City Sign Ordinance, Title 17 of this Code.

(t) Violation of California Fire Code. Any violation of the California Fire Code, Chapter 16.32 of this Code, as amended.

(u) Violation of International Property Maintenance Code. Any violation of the International Property Maintenance Code, as amended.

(v) Violation of Zoning Code. Any violation of the zoning ordinance of the City, Title 21 of this Code, as amended.

(w) Dust, Sand, Gravel, or Trash. Any dust, sand, gravel, trash, or other debris that is visible from public or private real property, or constitutes a fire or safety hazard.

(x) Dust Control on Vacant Land Not Yet Treated with One or More City Approved Dust Control Measures. "City approved dust control measures," for the purposes of this subsection, include, but are not limited to, the planting and maintenance of landscape or vegetation, or a proper chemical treatment, so as to control blowing dust from the site. Land located within the natural preserve (NPR) zone is exempt from this provision.

(y) Palm Trees.

(1) Dead or decayed palm fronds hanging parallel to the tree trunk, and noncommercial fruit, and flowers/pollen hanging from palm trees (e.g., date palms, fan palms, etc.) have a detrimental effect on adjacent properties and the community. Such debris must be trimmed from such trees at least once each year as soon as possible after the pods on the tree open up, but not later than June 30th of each year for date trees, and not later than July 30th of each year for fan palms or Washingtonian palms.

(2) Upon receiving a written complaint, the enforcement official may cause the tree or trees to be trimmed before the date specified in Section 8.08.010(y)(1) if it is deemed that the tree is having a detrimental effect on an adjoining property.

(z) Vehicle Repair on Residential Premises. Other than the repair or replacement of flat tires on re-charging of batteries or other emergency repairs. Vehicle repairs on lots zoned or used for residential purposes must take place within an enclosed structure. Repair work must be limited to noncommercial vehicles currently registered pursuant to the California Vehicle Code to the owner or lessee of the property or a member of the owner or lessee's immediate family, which must be limited to parents, grandparents, spouse, and children related by blood, marriage or adoption. Notwithstanding any provisions herein to the contrary, the following vehicle repairs may take place in other than an enclosed structure: (i) the repair or replacement of tires, (ii) recharging of batteries, and (iii) emergency repairs. The repair of vehicle must be limited to those hours set forth in Indian Wells Municipal Code section 9.06.047. Any repairs made in public view must be completed within a two hour period of time. Storage of parts and or inoperable vehicles in public view is prohibited.

(aa) Vectors.

(1) Any property, excluding water, that has been artificially altered from its natural condition so that it now supports the development, attraction or harborage of vectors. The presence of vectors in their developmental stages on a property is prima facie evidence that the property is a public nuisance.

(2) Any water that is a breeding place for vectors. The presence of vectors in their developmental stages in the water is prima facie evidence that the water is a public nuisance.

(3) Any activity that supports the development, attraction or harborage of vectors, or that facilitates the introduction or spread of vectors. "Vector" as used herein means any animal capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates. "Public Nuisance" as used herein does not include agricultural operations that are designed and managed consistent with the accepted standards and practices for controlling fly development, as defined in Health and Safety Code section 2062(b).

(bb) Any violation of the Indian Wells Municipal Code is a public nuisance.

8.08.070 Notice to Abate.

(a) Whenever an enforcement official determines that a nuisance, as designated in Section 8.08.060, is occurring or exists, he or she may issue a written order to any responsible party ("Notice to Abate").

(b) A Notice to Abate issued pursuant to this section must contain the following information:

(1) The address of the real property on which the alleged nuisance condition exists;

(2) A description of the alleged nuisance conditions and the code section prohibiting the alleged nuisance condition;

(3) A brief description of the required corrective actions;

(4) A compliance period in which to complete the nuisance abatement actions (with all required City approvals, permits and inspections, when applicable);

(5) A statement that the City may record a Notice of Violation with the Riverside County Recorder's Office against the premises;

(6) The period and manner in which a responsible party may contest the Notice to Abate as set forth in Section 8.08.080; and

(c) Whenever the enforcement official intends to abate a public nuisance by demolition of a building or structure if the responsible party fails to comply, then the City must comply with the following additional requirements:

(1) The Notice to Abate must contain a statement that the City intends to abate the nuisance with City personnel or contractors by demolition of a building or structure if the nuisance conditions are not repaired, rehabilitated, removed, terminated, or demolished within the compliance deadline set forth in the Notice to Abate; and

(2) The City must serve the Notice to Abate on all secured lienholders of record with the Riverside County Recorder's Office.

(d) Any compliance order issued under this section must be served in the manner required under Section 8.08.050.

(e) The provisions of this Section do not apply in cases involving emergency or summary abatement under Section 8.08.110.

8.08.080 Appeals and Hearings.

(a) **Right to Appeal.** Any person issued a Notice to Abate has a right to appeal the City's nuisance determination in accordance with this section. An appeal must be filed within 15 calendar days following the date of service of the Notice to Abate. A written notice of appeal must contain the following information: (i) the name and contact information of the appellant, and (ii) the grounds for appeal in sufficient detail to enable the hearing officer and City to understand the nature of the controversy. The failure of any person who has been served with a Notice to Abate to timely and properly file an appeal is a failure to exhaust administrative remedies.

(b) **Selection of Hearing Officer.** The City Manager may select the hearing officer. The hearing officer must be selected in a manner that avoids the potential for pecuniary or other bias.

(c) **Scheduling and Noticing of the Hearing.** If a timely and proper appeal is filed, then the City Clerk must schedule the hearing no sooner than 15 days and no later than 60 days from receipt of the notice of appeal, unless the parties waive such time limits. The failure to hold the hearing within this time period does not invalidate any action of the hearing officer. The City Clerk must notify the appellant in writing of the date, time, and location of the hearing at least 10 days before the date of the scheduled hearing. The notice of hearing must be served in accordance with Section 1.28.050.

(d) **Issue on Appeal.** The City bears the burden of proof to establish a nuisance exists by a preponderance of evidence. The issuance of a Notice to Abate is prima facie evidence of the existence of a violation. The scope of the appeal is limited to whether any nuisance condition identified in the Notice to Abate exists.

(e) **Evidence, Witnesses, and Recording.** All parties have the right to present evidence and witnesses. The formal rules of evidence and discovery do not apply. The rules of privilege are effective to the same extent that they are now or hereafter may be recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. Oral evidence may be taken only on oath or affirmation. The appellant and respondent may represent themselves or be represented by anyone of their choice. No party has the right to cross-examine any other party or witness except for good cause shown to the satisfaction of the hearing officer. The appellant may bring an interpreter to the hearing at his or her sole expense. The City may, at its discretion, record the hearing by stenographer, court reporter, audio recording, or video recording.

(f) **Decision of the Hearing Officer.** The hearing officer's decision must be in writing, set forth the hearing officer's findings of fact and conclusions of law, order the abatement of any confirmed nuisance conditions within a deadline determined by the hearing officer to be reasonable, and include a statement that if the nuisance is not abated then it may be abated by the City. If the hearing officer determines that each nuisance condition described in the Notice to

Abate is nonexistent, the Notice to Abate is deemed cancelled. The hearing officer must render a decision within 15 days following the conclusion of the hearing. Failure of the hearing officer to render a decision within this time period does not invalidate any action of the hearing officer or automatically grant the appeal. The hearing officer's decision must be served in accordance with Section 8.08.050. The hearing officer's decision is the final administrative decision of the City regarding the Notice to Abate. The hearing officer's decision is effective on the date of service of the decision. The decision must contain the following statement: "The decision of the hearing officer is final and binding. Judicial review of this decision is subject to the provisions and time limits set forth in California Code of Civil Procedure section 1094.6 et seq."

8.08.090 Abatement by City.

If a nuisance is not completely abated within the time prescribed by the Notice to Abate or, if appealed, in the Hearing Officer's decision, the City is authorized to abate a public nuisance by City staff or private contractor. The City and its agents are expressly authorized to enter the premises for such purpose. Except in cases involving an imminent hazard, entry onto any real property to abate a public nuisance must be pursuant to a warrant issued by a court of competent jurisdiction.

8.08.0100 Emergency or Summary Abatement.

(a) If, in the reasonable opinion of the enforcement official, there exists a condition that constitutes an imminent threat of harm to public health or safety, or imminent hazard to real or personal property, the enforcement official may cause the conditions to be summarily abated in accordance with the following procedure. When determining whether a hazard is sufficiently imminent to warrant emergency abatement, the enforcement official may consider whether there is insufficient time to follow the administrative process for non-emergency abatements described in this Chapter.

(b) If time permits, the enforcement official may attempt to contact the owner or occupant of the property to notify the responsible party that the condition must be immediately abated to eliminate the imminent hazard.

(c) If the enforcement official is unable to make contact, or if after contact with the owner or occupant does not take action within the time prescribed by the enforcement official, he or she is authorized to take all actions necessary to eliminate or mitigate the hazardous condition, utilizing the City's own forces or private contractors.

(d) Nothing in this Section prevents public safety officers from taking actions in emergency situations as they may deem necessary or appropriate in order to protect the public health, safety and general welfare.

(e) As soon as reasonably possible under the circumstances, following any summary abatement action by the City to abate an immediate hazard, the City must provide each responsible party with a "Notice of Summary Abatement." The Notice of Summary Abatement must be served in accordance with Section 8.08.050 and contain the following information:

(1) A brief description of the condition and reasons why it constituted an imminent threat or hazard;

(2) A brief description of the law prohibiting or pertaining to the imminent threat or hazard; and

(3) A brief description of the actions the City took to abate the imminent threat or hazard.

(f) The City's determination that a condition constituted an imminent threat or hazard may be appealed as set forth in Section 8.08.080.

(g) The enforcement official must keep an itemized account of the costs incurred by the City in abating the public nuisance. The City is entitled to recover all abatement costs incurred in the abatement of an imminent threat or hazard in accordance with the procedure set forth in Chapter 1.28 of this Code.

8.08.0110 Recordation of Notice of Violation.

(a) If a nuisance is not completely abated as determined by the City within the time prescribed by the Notice to Abate or, if appealed, in the Hearing Officer's decision, the City may record a Notice of Violation with the Riverside County Recorder's Office against the premises.

(b) The City must record a Notice of Rescission of Notice of Violation with the Riverside County Recorder's Office within 10 business days of its determination that a violation or a public nuisance has been fully abated or corrected.

(c) Upon recordation, the City must service a copy of the recorded Notice of Violation or Notice of Rescission on each person having an ownership interest in the property.

8.08.0120 Cost Recovery.

Whenever the City incurs abatement costs in abating a public nuisance or seeking to abate a code violation or public nuisance, the City is entitled to recover the abatement costs related to those code enforcement efforts in accordance with the procedure set forth in Chapter 1.28 of this Code.

8.08.0130 Combination of Notices.

The notices that are authorized by this Chapter may be combined in the discretion of the City.

8.08.0140 Enforcement.

(a) It is unlawful and declared a public nuisance for any person to violate any provision of this Chapter. It is unlawful and declared a public nuisance for any person to violate any order of a Hearing Officer made under this Chapter.

(b) Any person who violates any provision of this Chapter is guilty of a misdemeanor punishable by a fine of up to \$1,000, or by imprisonment in the County jail not exceeding six months, or by both, except the City Attorney or enforcement official may prosecute a violation of this Chapter as an infraction, in his or her discretion.

(c) Violation of this Chapter may be punished by issuance of an administrative citation fine, as set forth in Chapter 1.20 of this Code.

(d) The City Attorney is authorized to bring a civil or equitable action, at his or her discretion, to seek the abatement of any violation of this Chapter or enforcement of any provision of this Chapter.

(e) Each and every day a violation is maintained, caused, aided, abetted, concealed, suffered, or permitted is a separate offense.

(f) The regulations, remedies, procedures, and penalties provided by this Chapter are cumulative to each other and to any other available under City, State, or federal law.