

ORDINANCE NO. 1059

AN ORDINANCE OF THE CITY OF LOS BANOS AMENDING TITLE 10, CHAPTER 2 OF THE LOS BANOS MUNICIPAL CODE "WATER CONSERVATION IN LANDSCAPING" IN ITS ENTIRETY AND ADDING CHAPTER 3 RELATING TO COMMUNITY PRESERVATION

The City Council of the City of Los Banos does ordain as follows:

Section 1. The City Council of the City of Los Banos does hereby amend Title 10, Chapter 2 of the Los Banos Municipal Code in its entirety to read as follows:

Sections:

- 10-2.01 Title and purpose.**
- 10-2.01.05 Definitions.**
- 10-2.02 Applicability.**
- 10-2.03 Standards of landscape design/implementation.**
- 10-2.04 Landscape plan specifications.**
- 10-2.05 Irrigation plan specifications.**
- 10-2.06 City maintained irrigation and landscaping.**
- 10-2.07 Maintenance.**
- 10-2.08 Provisions for existing landscapes.**
- 10-2.09 Public education.**
- 10-2.10 Model homes.**
- 10-2.11 Fees.**
- 10-2.12 Inspection.**
- 10-2.13 Administrative remedies.**

Sec. 10-2.01 Title and purpose.

(a) This chapter shall be known as the "Los Banos Landscape Ordinance."

(b) Purpose. The ordinance codified in this chapter is adopted to promote the values and benefits of landscapes while recognizing the need to invest water and other resources as efficiently as possible; to promote use of existing structures within the Park and Recreation Department for designing, installing, and maintaining water efficient landscapes in new projects and to utilize provisions for water management practices and water waste prevention as established by the Park and Recreation Commission. § 1. Ord. 863. eff. February 5, 1993

Sec. 10-2.01.05 Definitions.

For the purpose of this chapter, the words hereinafter listed shall have the meaning set forth in this section.

“Amendment” means any material added to the soil to alter the pH or improve the physical properties of the soil.

“Anti-drain or check valve” means a valve to hold water in the system so it minimizes drainage from the higher elevation sprinkler heads.

“Application rate” means the depth of water applied to a given area, usually measured in inches per hour

“Applied water” means the portion of water supplied by the irrigation system to the landscape.

“Automatic controller” means a mechanical or solid state timer, capable of operating valve stations to set the days and length of time of a water application.

“Bubbler” means an irrigation head that delivers water to the root zone by “flooding” the planted area, usually measured in gallons per minute. Bubblers exhibit a trickle, umbrella, or short stream pattern.

"Backflow prevention device" means a safety device used to prevent pollution or contamination of the water supply due to the reverse flow of water from the irrigation system.

"Community Development Department" means the Community Development Department of the City.

“Conversion factor” means a number that converts the maximum landscape water allowance from square feet to gallons per square foot per year.

“Cycle” means the complete operation of an irrigation controller station.

"Director of Parks and Recreation" means Director of Parks and Recreation of the City.

“Director or Public Works” means the Director of Public Works of the City.

“Drip irrigation” means surface or subsurface irrigation systems which apply water through low volume emitters.

“Establishment period” means the first ninety (90) days after lawn and plant installation is completed.

"Estimated applied water use" means the portion of the estimated total water use that is derived from applied water. The estimated applied water use shall not exceed the maximum applied water allowance.

"Estimated total water use" means the annual total amount of water estimated to be needed to keep the plants in the landscaped area healthy. It is based upon such factors as the local evapotranspiration rate, the size of the landscaped area, the types of the plants, and the efficiency of the irrigation system.

"Evapotranspiration" means the quantity of water evaporated from adjacent soil surfaces and transpired by plants during a specific time.

"Flow rate" means the rate at which water flows through pipes and valves (gallons per minute or cubic feet per second).

"Friable condition" shall mean the preparation of the soil to an easily crumbled or loosely compacted condition 12" deep whereby the root structure of newly planted material will be allowed to spread unimpeded.

"Grading" means earthwork performed to alter the natural contours of an area.

"High water using or nondrought-tolerant plant" means a plant that will require regular irrigation for adequate appearance, growth and disease resistance.

"Hydrozone" means a portion of the landscaped area having plants with similar water needs that are served by a valve or set of valves with the same schedule. A hydrozone may be irrigated or non-irrigated. For example, a naturalized area planted with native vegetation that will not need supplemental irrigation once it is established as a non-irrigated hydrozone.

"Infiltration rate" means the rate of water entry into the soil expressed as a depth of water per unit of time (inches per hour).

"Landscaped area" means the entire parcel less the building footprint, driveways, non-irrigated portions of parking lots, hardscapes such as decks and patios, and other non-porous areas. Water features are included in the calculation of the landscaped area. Areas dedicated to edible plants, such as orchards or vegetable gardens, are not included.

"Landscape irrigation audit" means a process to perform site inspections, evaluate irrigations systems, and develop efficient irrigation schedules.

“Landscape Documentation Package” means the combined drawings, calculations, and required forms prescribed in this ordinance and necessary for review and approval by the Public Works Department.

“Lateral line” means the water delivery pipeline that supplies water from the source to the emitters or sprinklers from the valve or outlet.

“Main line” means the pressurized pipeline that delivers water from the water source to the valve or outlet.

"Maximum applied water allowance," for design purposes, means the upper limit of annual applied water for the proposed landscaped area.

“Median” means a planted area which separates two roadways or divides a portion of a road into two or more lanes.

“Moderate water using or semi-drought-tolerant plant” means a plant that can survive throughout the year with occasional irrigation.

"Mulch" means any commercially prepared organic material left loose and applied to the soil surface intended for the beneficial purpose of reducing evaporation, retaining moisture, retarding weed growth, or preventing erosion.

“Operating pressure” means the pressure at which a system of sprinklers is designed to operate usually indicated at the base of a sprinkler.

“Overspray” means water which is delivered beyond the landscaped area, wetting pavements, walks, structures, or other nonlandscaped areas.

"Parks and Recreation Commission" means the Parks and Recreation Commission of the City.

“Plant factor” means a factor that when multiplied by reference evapotranspiration estimates the amount of water used by plants.

“Precipitation rate” means the rate of water arriving at the soil surface via rainfall or an irrigation system discharge, expressed as a depth of water per unit of time (inches per hour).

"Rain Sensing Device" means a system which automatically shuts off the irrigation system when it rains.

"Recreational area" means areas of active play such as sports fields, school yards, picnic grounds, or other areas with intense foot traffic intended for play.

"Recycled water," "reclaimed water," means treated wastewater of a quality suitable for nonpotable uses such as landscape irrigation; not intended for human consumption.

"Reference evapotranspiration" means the evapotranspiration rate for a particular geographical area, such as the city.

"Soil moisture sensor" means an instrument for measuring the moisture content of the soil and capable of interruption of the irrigation cycle sensor when excessive or inadequate moisture is detected.

"Rehabilitated landscape" means any planting area in which at least 50 percent of the landscape area is replaced or modified. Examples include a change of landscape, installations of a new irrigation system, and grading modifications.

"Runoff" means water which is not absorbed by the soil to which it is applied. Runoff usually occurs when water is applied at too great a precipitation rate, when water is applied to saturated soils, or when water is applied to a steep slope.

"Soil Test" means a representative sample of soil taken from the site and analyzed by a soils laboratory. The Soil Test shall include recommendations for amending the soil for landscape suitability.

"Turf" means a surface layer of earth containing mowed grass with its roots. Annual bluegrass, Kentucky bluegrass, Perennial rye grass, Red fescue, and Tall fescue are cool-season grasses. Bermuda grass, Kikuyu grass, Seashore paspalum, Saint Augustine grass, Zoysia grass, and Buffalo grass are warm-season grasses. (§ 1, Ord. 863, eff. February 5, 1993)

"Valve" means a device used to control the flow of water in the irrigation system.

"Water Conservation Statement" means a one-page checklist summary of the water conservation effort for project.

Sec. 10-2.02 Applicability.

This section shall apply to all new and rehabilitated landscaping for public agency projects and private development projects that require a permit including developer-installed landscaping in single-family and multi-family projects. This section shall not apply to homeowner-provided landscaping at single-family and multi-family projects. (§ 1, Ord. 863, eff. February 5, 1993)

10-2.03 Standards of landscape design/implementation.

(a) Plan preparation. Applicant shall conform to City landscape design standards as approved by the Park and Recreation Commission and must submit a Landscape Documentation Package to the city in compliance with the requirements of this chapter.

Three (3) copies of the landscape submittal package shall be submitted for review and approval by the Public Works Director or his/her representative, in accordance with the standards of landscape design set forth in this chapter. Landscape Plans shall be drawn to a scale no smaller than one (1) inch equals twenty (20) feet. Maximum sheet size on all drawing shall be twenty-four (24) inches by thirty-six (36) inches ("D" size).

(b) The package must be prepared by a landscape architect licensed by the state and it must include the following items. Irrigation plans may be prepared by a Certified Irrigation Designer.

1. General Requirements

- a. Project title, street address, parcel number, vicinity map and zoning.
- b. Owner's name, address and telephone number.
- c. Plan preparer's name, address and telephone number with stamp and signature of preparer.
- d. Adjacent property uses.
- e. Street names, driveways and property lines.
- f. Existing and proposed structures.
- g. Natural features, including but not limited to, rock outcroppings and existing trees.
- h. Total landscape area square footage calculation.
- i. North Arrow and scale of plans.

2. Planting Plan

- a. Plant Legend
- b. Water Features
- c. Soil analysis and recommendations
- d. Details of Construction and Standard Notes

3. Irrigation Plan

- a. Irrigation legend
- b. Irrigation schedule
- c. Irrigation standard notes
- d. Details of Construction and Standard Notes

4. Grading Plan

- a. finished configurations and elevations of the landscaped area.

5. Irrigation Audit Schedule

6. For projects in excess of 10,000 square feet of landscape area:

- a. Water Conservation Statement
- b. Calculation of maximum applied water allowance
- c. Calculation of the estimated applied water use

7. Certification of substantial completion (to be submitted after installation of the landscape)

(c) Runoff and overspray. Soil types and infiltration rate shall be considered when designing irrigation systems. All irrigation systems shall be designed to avoid runoff, low head drainage, overspray, or other similar conditions where water flows into adjacent property, non-irrigated areas, walks, roadways or structures. Proper irrigation equipment and schedules, including features such as repeat cycles, shall be used to closely match application rates to infiltration rates therefore minimizing runoff.

(d) Water features. Recirculating water shall be used for decorative water features unless a natural stream or manmade water distribution system is available.

(e) Certification. Upon completion of the landscape installation, applicant shall direct a certified irrigation auditor to conduct an irrigation audit. A copy of the irrigation audit shall be supplied to the Public Works Department.

(f) Planter Construction. All planter areas shall have a permanent border as approved by the Public Works Director to contain the mulch, plants and groundcover. All planters adjacent to buildings or structures shall be designed so as to avoid irrigation water intrusion into or on that adjacent building or structure. The minimum width of a planter bed shall be two (2) feet wide. Planter areas less than (2) two feet wide may be filled with decorative cobble, or mulched 3" deep.

(g) A minimum of two (2) inches of mulch shall be added in nonturf areas to the soil surface after planting. Sheet plastic and other non-porous material shall not be placed under mulch.

(h) The use of turf as a plant material will not be permitted in traffic median strips or parking lot strips. Turf is not permitted between curbs and sidewalks less than five (5) feet wide. Turf is not permitted on slopes exceeding 1:3. On slopes exceeding 1:6 a level buffer zone of eighteen (18) inches is required between bermed turf areas and any hardscape (i.e., streets, walkways, etc.)

(i) Compacted Soils. The landscape areas shall be cultivated and amended to a friable condition with attention given to the areas surrounding a building site.

10-2.04 Landscape plan specifications.

The Landscape Plan shall be submitted as part of the landscape documentation package according to City Standards as approved by the Parks and Recreation Commission and shall include the following:

1. Planting Plan shall include the following:
 - a. Landscape materials, trees, shrubs, ground cover, turf, and existing vegetation. A plant legend with symbols shall be clearly drawn and plants labeled by botanical name, common name, container size, spacing and quantities of each group of plants indicated;
 - b. Plant Selection and Grouping.
 - i. Plant selection shall be from the city approved plant list, providing the estimated applied water use recommended does not exceed the maximum applied water allowance and that the plants meet the specifications set forth in this section.
 - ii. Plants having similar water use shall generally be grouped together in distinct hydrozones. However, high and low water using plants shall not be grouped together in the same hydrozone.
 - iii. The selection of plant materials should include both evergreen and deciduous trees, shrubs, and attractive erosion-preventing ground cover. Attention shall be given to climatic adaptability, appearance, height, spread, growth rate, soil type, moisture requirements, potential root damage, disease, pest susceptibility, function, and degree of maintenance required. Plants shall be so spaced and sized that, when mature, they will fill the planter area.
 - c. Pools, spas, ponds, water features, fences and retaining walls
 - d. A calculation showing the square footage of each hydrozone and the total landscaped area
 - e. Designation of special recreational areas that may require additional irrigation water.
2. Grading Plan. Grading Plan drawn to the same scale and format as the Planting Plan and satisfying the following conditions shall be submitted as part of the submittal requirements.
 - a. The Grading Plan shall indicate finished configurations and elevations of the landscaped area, including the height of graded slopes, drainage patterns and finish grade. It should also include existing spot elevations at the base of each existing shrub or tree that will remain, including proposed elevation changes within their drip lines.
 - b. The Grading Plan may be incorporated into the planting plan if sufficient information is provided in a clear manner.
3. Water Features.
 - a. Recirculating water shall be used for all decorative water features.
4. Soil Test for horticultural suitability shall be required at time of landscape package submittal. Soils shall be prepared and/or amended as recommended

- a. In the event that a soil sample of the proposed finish grade cannot be reasonably obtained during the landscape design stages the applicant shall submit a Soil Test with recommendations after finished grade is completed but prior to irrigation system installation.
 - b. Test results shall determine soil texture, pH, total soluble salts, percentage of organic matter and approximate soil infiltration rate.
5. Details of Construction and Standard City of Los Banos Planting Notes shall be included with the Planting Plan.

10-2.05 Irrigation plan specifications.

Irrigation Plan. An irrigation plan consistent with irrigation standards approved by the Park and Recreation Commission shall be submitted as part of the landscape documentation package. The irrigation system shall be designed to be consistent with the planting design hydrozones. The irrigation plan shall be separate from the landscape plan, but use the same format. The scale shall be the same as that used for the landscape design plan and include the following:

1. Static water pressure available, maximum demand of the system in gallons per minute or gallons per hour, available flow rate in gallons per minute, and design operating pressure (psi) for the system.
2. Irrigation Legend. The irrigation plan shall accurately and clearly identify in a legend the equipment specified on the plan:
 - a. Point of Connection.
 - i. location and size,
 - ii. reclaimed water may also be used as an alternate irrigation water source if it is supplied through a dual distribution system that conforms to County of Merced Health Department standards.
 - iii. Reclaimed water irrigation systems shall be installed with equipment clearly indicating a reclaimed water system.
 - b. Water Meters. Separate landscape water meters shall be installed for all newly installed or renovated projects subject to this chapter (except single-family homes). All irrigation equipment throughout all projects must be connected to the landscape water meter.
 - c. Controllers. Automatic electronic controllers shall be required for all irrigation systems and must be able to accommodate all aspects of the design. At a minimum the controller shall have the capability to create dual or multiple programs, include three cycle start times per program, have a battery backup to protect the program in the case of power failure, and contain a rain switch to interrupt the program in the case of rain.
 - d. Valves. Electronic valves are required for all irrigation systems. A valve may irrigate a maximum of one hydrozone of plants with similar water use.
 - e. Sprinkler Heads and Emitters. Heads and emitters shall have compatible application rates within each control valve circuit. Show performance data

for irrigation heads and emitters including discharge rates, effective diameter, and operating pressure. Pop-up sprinklers shall have a minimum four (4) inch pop-up height in turf areas, six (6) inch pop-up height in shrub area. Sprinkler coverage shall be one hundred (100) percent. Heads shall be placed at a maximum of fifty (50) percent of the diameter of throw (head to head). Sprinkler heads must have matched precipitation rates within each control valve circuit. System should be designed for minimum runoff and over-spray onto non-irrigated areas. Sprinklers on fixed risers adjacent to pedestrian areas are not permitted.

- f. Anti-drain (Check) Valves shall be installed at strategic low points throughout the plan to avoid low-head drainage.
 - g. Rain Sensing Devices. Rain sensing override devices are required.
 - h. Soil Moisture Sensing Devices. Soil moisture sensing devices are recommended on all irrigation systems.
 - i. Irrigation piping. All irrigation lines must be sized. Schedule 40 PVC pipe for mainline and laterals under two (2) inch diameter, and Class 315 pipe for mainline and laterals over two (2) inch diameter is required under all paved areas. Piping must be installed (in sleeves under all paved areas) at a minimum depth of eighteen (18) inches cover over the top of pipe for lateral irrigation lines and a minimum of twenty-four (24) inches cover over the top of pipe for mainline. Emitter distribution tubing may be located at grade. Each tree well shall have one (1) bubbler with three (3) foot minimum tree deep-root watering tube located at base of each tree.
 - j. Quick-coupling valves shall be placed adjacent to points of connection and at intervals of 200' maximum.
3. Irrigation Schedule. An annual irrigation schedule shall be required and will include:
- a. an establishment period (first ninety (90) days) and post-establishment period. Post-establishment schedules will be divided into four (4) quarters: winter, spring, summer and fall. The schedule will include any temporarily irrigated areas. Watering schedules must be in compliance with current City of Los Banos water scheduling requirements.
 - b. Landscape irrigation shall be scheduled during non-daylight hours to reduce irrigating during times of high wind or high temperature.
4. Details of Construction and Standard City of Los Banos Irrigation Notes shall be included with the Irrigation Plan.
5. Water Conservation Concept Statement. For projects with a landscape area in excess of 10,000 square feet each landscape documentation package shall include a cover sheet referred to as the Water Conservation Concept Statement. It shall serve as a checklist to verify that the elements of the landscape documentation package have been completed. It shall also include water use calculation using the following formula:
- a. Maximum Applied Water Allowance (in gallons per year) or MAWA = $(ET_o) (.8) (LA) (0.62)$ where the reference ET_o (evapotranspiration at 50.0 inches per year) multiplied by the ET adjustment factor (.8), the

- b. Estimated Applied Water Use (in gallons per year) or EWU. (EWU) shall not exceed the Maximum Applied Water Allowance (MAWA).
 - c. $EWU = (ET_o) (PF) (HA) (.62) / (IE)$ where the Estimated Water Use (in gallons per year) equals the reference evapotranspiration (50.0 inches per year) multiplied times the Plant Factor, the Hydrozone Area (in square feet), the Conversion Factor (0.62) divided by the Irrigation Efficiency of the proposed irrigation system.
 - d. $ET_o = 50.0$ the reference evapotranspiration rate for Los Banos (in inches per year)
 - e. PF = Plant factor. See charts in this chapter.
 - f. HA = Hydrozone area (in square feet)
 - g. 0.62 = Conversion factor (from inches to gallons)
 - h. IE = Irrigation efficiency. See charts in this chapter.
 - i. Plant Factors. For the purpose of this chapter, the following plant factors shall be used for each type of plant material. These figures are based on average plant densities and average microclimate conditions.

i. Recirculating water features	1.0
ii. Uncovered pools and spa's	0.8
iii. Cool season grasses	0.8
iv. Warm season grasses	0.7
v. Shrubs and groundcovers	0.5
vi. Covered pools and spas	0.5
vii. Low water use plants	0.2
 - j. Irrigation Efficiency. For the purpose of this chapter, the following irrigation efficiency numbers shall be used for each of the following irrigation equipment categories.

i. Drip Emitters	0.90
ii. Bubblers	0.85
iii. Stream sprinklers (rotors)	0.75
iv. Spray sprinklers	0.62
6. Precipitation may not be used as a source of water in this calculation.
7. Portions of landscaped areas in public and private projects such as parks, playgrounds, sports fields, golf courses, or school yards where turf provides a playing surface or serves other recreational purposes are permitted to request an increase in the maximum applied water allowance. A statement shall be included with the landscape design plan, designating areas to be used for such purposes and specifying any needed amount of additional water above the maximum applied water allowance because of high plant factors (but not due to irrigation inefficiency). Such requests shall be evaluated and, if the plan uses water efficiently throughout the project, approved by the Public Works Director.

Sec. 10-2.06 City maintained irrigation and landscaping.

All proposed landscaping and irrigation systems to be maintained by the City shall be designed and constructed in accordance with all of the requirements of this chapter. Such systems shall meet standards approved by the Park and Recreation Commission. (§ 1, Ord. 863, eff. February 5, 1993)

10-2.07 Maintenance.

A regular maintenance schedule shall be included in the Water Conservation Statement and include the following:

(a) Landscapes shall be maintained to ensure water efficiency. A regular maintenance schedule shall include, but not be limited to: checking, adjusting, and repairing irrigation equipment; resetting the automatic controller; aerating and dethatching turf areas; replenishing mulch; fertilizing; pruning, and weeding in all landscaped areas.

(b) Whenever possible, repair of irrigation equipment shall be done with the originally specified materials or their equivalents.

(c) A schedule of landscape irrigation audits, for all but single-family residences, shall be submitted to the City with irrigation plan specifications and at a minimum:

(1) Comply with the California Landscape Water Management Program as described in the Landscape Irrigation Auditor Handbook, the entire document, which is hereby incorporated by reference. (See Landscape Irrigation Auditor Handbook, Department of Water Resources, Water Conservation Office (June 1990) version 5.5);

(2) Provide for landscape irrigation audits to be conducted by certified landscape irrigation auditors at least once every five (5) years. (§ 1, Ord. 863, eff. February 5, 1993)

(3) Whenever a landscaping and irrigation plan is required by this Code, or as a condition of an action authorized by this Code, it shall be a violation of this Code if a property owner fails to maintain said property in accordance with that approved landscape or irrigation plan. An administration citation process may be issued by Code Enforcement for failure to comply with the code provisions.

(4) Plant Maintenance. Plant material shall be maintained in a healthy condition. Unhealthy plants shall be replaced. Planters shall be kept free of all weeds, debris and trash.

Sec. 10-2.08 Provisions for existing landscapes.

All existing landscaped areas to which the City provides water that are one acre or more, including golf courses, green belts, common areas, multi-family housing, schools, businesses, parks and publicly owned landscapes shall have a landscape irrigation audit at least every five (5) years. At a minimum, the audit shall be in accordance with the California Landscape Water Management Program as described in the Landscape Irrigation Auditor Handbook. (§ 1, Ord. 863, eff. February 5, 1993)

Sec. 10-2.09 Public education.

The City provides information to owners of all new, single-family residential homes regarding the design, installation, and maintenance of water efficient landscapes. Publications regarding landscaping and irrigation systems are provided through the Park and Recreation Commission; said information includes the efficient use of landscape water. (§ 1, Ord. 863, eff. February 5, 1993)

Sec. 10-2.10 Model homes.

(a) At least one model home that is landscaped in each project consisting of eight (8) or more homes shall demonstrate via signs and information publications, the principles of water efficient landscapes described in this chapter. (§ 1, Ord. 863, eff. February 5, 1993)

(b) Plant Materials. Each “water efficient” model home to be landscaped shall contain exclusively low-water use plant material.

(c) Irrigation System. Each “water efficient” model home shall contain exclusively an irrigation system that provides a high-efficiency water application method.

(d) Signs. Each development with “water efficient” model homes shall provide the following information to potential buyers:

One (1) Front Yard Sign: A four- (4) square foot sign shall be located in the front yard of each “water efficient” model such that it is clearly visible to buyers. The sign shall indicate that the model features a water efficient landscape and irrigation elements such as hydrozones, irrigation equipment, and other elements which contribute to the overall water efficient theme.

Sec. 10-2.11 Fees.

Landscape and irrigation plan review and inspection fees shall be paid to the City at the Community Development Department when landscape and irrigation plans are submitted. The amount of the fee is established by City

Council resolution as recommended by the Park and Recreation Commission. (§ 1, Ord. 863, eff. February 5, 1993)

10-2.12 Inspection.

Upon installation of landscaping and irrigation systems, the installer must contact the Public Works Department to request an inspection for compliance with the approved landscape and irrigation plans. The landscape and irrigation installation must conform to the approved plans before a certificate of occupancy will be issued by the Public Works Department.

10-2.13 Administrative remedies.

Title 1, Chapter 2, of this Code established the administrative enforcement of remedies for violations of this Code and applicable state codes. The general remedies include administrative abatement, summary abatement, civil penalties, administrative citations, recordation of notices of violation and mediation. The City of Los Banos may pursue any of these administrative remedies for violations of this chapter.

Section 2. The City Council of the City of Los Banos does hereby add the following as Chapter 3 to Title 10 of the Los Banos Municipal Code.

Sections:

In General

- 10-3.100 Purpose and Intent.**
- 10-3.101 Definitions Used Within this Chapter.**

Remedies

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- 10-3.117 Boarded Buildings; Declaration of Purpose.
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Defacement of Property

- 10-3.131 Purpose.
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- 10-3.133 Graffiti Declared a Public Nuisance.
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- 10-3.139 Reward
- 10-3.140 Cumulative Remedies.

In General

Sec. 10-3.100 Purpose and Intent.

The City has a history and reputation for well-kept properties; and property values and the general welfare of the community are founded, in part, upon the appearance and maintenance of private properties. The purpose of this chapter is to promote the health, safety, economic, aesthetic and general welfare of the citizens of the City, and to protect neighborhoods against nuisances, blight and deterioration by

establishing requirements for all building exteriors, whether residential or nonresidential, or structures of whatever kind, and establishing requirements for the maintenance of all land, whether improved or vacant.

Owners and occupants of some properties within the City permit conditions to exist which are below the minimum conditions required by this Code and therefore injurious and inimical to the public health, safety, and welfare of the residents of the City and contribute substantially and increasingly to the deterioration of residential neighborhoods and commercial areas.

The abatement of certain uses and abuses of property as described in this chapter reasonably relates to the proper exercise of police power to protect the health, safety, and general welfare of the public.

Abatement of conditions less than those required by this Code will promote health, safety, and welfare of the residents of the City because maximum use and enjoyment of property in close proximity to another depends upon maintenance of both properties.

This chapter shall apply to all buildings, structures and lands within the City without regard to use, date of construction or alterations.

Sec. 10-3.101 Definitions Used Within this Chapter.

(a) "Building/structure" means and includes, but is not limited to, any house, garage, carport, duplex, apartment, condominium, mobile home, storage shed, any commercial establishment, warehouse, fence, wall or other structures affixed to or upon real property, or any assemblage of materials on private property of another for the purpose of human habitation.

(b) "City" means the area within the territorial city limits of the City of Los Banos and all territory outside of the City over which the City has jurisdiction by virtue of ordinance or law.

(c) "City Manager" means the Manager of the City, or any person or persons designated by the City Manager to act in his/her stead in connection with this chapter.

(d) "Director" means and includes each of the directors of the City departments which are now or may in the future be charged with the enforcement of this Code.

(e) "Enforcement officer" means any City employee designated by any Director or by the City Manager to enforce the provisions of this Code. Such employees may be employed in any City department.

(f) "Hearing officer" means the City's City Manager or any person appointed by the City Manager to preside over administrative enforcement hearings held pursuant to this chapter.

(g) "Person" means any natural person, firm, association, business, or organization, corporation, partnership, trust, estate, or any other legal entity recognized by law as the subject of legal rights or duties.

(h) "Property" means any parcel of land which is identified in the secured roll of the Merced County Assessor, all residential, commercial and other real property, including but not limited to front yards, side yards, backyards, driveways, walkways, alleys, sidewalks, and shall include any building or structure whether fixed or moveable, located on such property.

(i) "Property owner" means the record owner of real property as listed in the most current equalized assessment role as maintained by the Merced County Assessor.

(j) "Responsible party" means any occupant, lessor, lessee, manager, licensee, or other person having control over a structure or parcel of land. A responsible party may be a property owner.

(k) "Violation" means a violation of this Code by any property owner or any responsible party.

(l) "Visual blight" means any unreasonably or unlawful condition or use of premises or of a building exterior which by reason of its appearance as viewed at ground level from the public right-of-way or from neighboring premises, is detrimental to the surrounding area and the property of others, or is detrimental to the health, safety and welfare of individuals residing within the community.

Remedies

Sec. 10-3.102. Civil Violations.

(a) In addition to any other remedy provided by this Code, any provision of this chapter may be enforced by injunction issued by the Superior Court upon a suit brought by the City.

(b) As part of a civil action filed to enforce provisions of this chapter, a court may assess a maximum civil penalty of two thousand five hundred dollars (\$2,500.00) per violation of this chapter for each day during which any person commits, continues, allows or maintains a violation of any provision of this chapter.

Sec. 10-3.103. Criminal Violations.

(a) It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this chapter. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation constituting a misdemeanor under this Code may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this chapter, unless provision is otherwise herein made, shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this Code, unless provision is otherwise herein made, shall be punishable by a fine only as follows: Upon a first conviction, by a fine of not exceeding two hundred fifty dollars (\$250.00) and for a second conviction or any subsequent conviction within a period of one (1) year, by a fine of not exceeding five hundred dollars (\$500.00).

(b) Each such person shall be charged with a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall, upon conviction, be punished accordingly.

Sec. 10-3.104. Administrative Remedies.

This Code established the administrative enforcement of remedies for violations of this Code and applicable State Codes. The general remedies include administrative abatement, summary abatement, civil penalties, administrative citations, recordation of notices of violation and mediation. The City may pursue any of these administrative remedies for violations of this chapter.

Sec. 10-3.105. Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council declares that it would have adopted such section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one (1) more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Property Conditions Constituting a Nuisance

Sec. 10-3.106. Public Nuisance Defined.

A public nuisance consists of doing any act, or permitting or allowing any condition or thing to exist, occur, or accumulate upon any property within the City that is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property and endangers the health or safety of others.

Sec. 10-3.107. Alleys.

(a) It is unlawful for any person who owns, leases, occupies, or has charge, control, or possession of any property in the City to place or allow to remain in any alley abutting said property, from ground level up to a height of twelve (12) feet above the alley surface.

(b) Any remedy utilized by the City to correct or abate a violation of this section shall, whenever possible, be initially directed to any person who controls, occupies or is in possession of the property in violation. This does not preclude the City from pursuing any remedy available to it against the lessor, manager, or property owner in order to correct or abate the violation.

Sec. 10-3.108. Sidewalk Encroachment.

It is unlawful, and constitutes a public nuisance to place wires, cables, hoses, including unattended garden hoses, and other objects across or on public sidewalks in such a manner that they may cause a tripping or other hazard for those using the sidewalk, or otherwise substantially impair the public use of the sidewalk.

Sec. 10-3.109 Fences and Walls.

It is unlawful, and constitutes a public nuisance, to allow on property in public view within the City, exterior perimeter walls and fences that either are structurally unsound so as to constitute a hazard to persons or property or are partially destroyed

or permitted to remain in a state of partial construction for a period of one hundred eighty (180) days or more, and which by reason of such condition are either defective or are in such a condition of deterioration or disrepair that they are considered visual blight, as defined in 10-3.101.

Sec. 10-3.110 Unsecured Buildings.

It is unlawful and constitutes a public nuisance for any responsible party or owner of any property in the City to fail to install, or to fail to use, reasonable security measures to prevent unauthorized entry into any vacant or uninhabited building upon such property. Except when the owner of responsible party is personally upon the property, all exterior openings, such as doors and windows, affording entry into any building upon such property shall be reasonably secured against unauthorized entry into such building.

Nuisance Vegetation and Junk

Sec. 10-3.111 Definitions.

(a) As used in this section, "nuisance vegetation" means any of the following:

(1) Dry grass, stubble, hay, brush, any dry or dead plant, bush, shrub, tree, or other dry vegetation which present a visual blight upon the area, which may harbor insect or rodent infestations or which may likely become a fire hazard or result in a condition which may threaten the health and safety or the economic welfare of adjacent property owners or occupants;

(2) Any plant or grass, whether growing or dormant, which bears downy or winged seeds;

(3) Poison oak (*Rhus diversiloba*) or poison ivy (*Rhus toxicodendron*);

(4) Mistletoe (*Phoradendron flavescens*) or other parasitic or injurious growth capable of spreading to healthy trees and plants at any time during its germination or growth cycle;

(5) Puncture vine (*Tribulus terrestris*);

(6) Overgrown vegetation, whether living, dormant, dead, cultured or uncultured, which encroaches into the public right-of-way or renders that right-of-way unsafe by blocking vision or can otherwise be hazardous to pedestrian or vehicular traffic or which is capable of harboring insects, rats, mice, or other vermin, or other similar conditions which are dangerous to the public health or welfare or which are hazardous to pedestrian or vehicular traffic. Grass or weeds must not grow to a height or bulk that creates a traffic, pedestrian, or fire hazard or which is a blight on the neighborhood, and in no event taller than eight (8") inches above ground level;

(7) Any tree or other vegetation which is dead, decayed, infected, diseased, infested with or in danger of becoming infested with, objectionable insects, scale, or fungus, or which is otherwise a hazard to public safety and welfare.

(8) Any tree, plant, vine, or foliage, whether living, dormant, or dead, that is otherwise noxious, dangerous, or injurious to people or to City trees, or that interferes with the maintenance or inspection of a City tree;

(9) Tumbleweeds (amaranths) and other similar vegetation which characteristically break away from their roots at maturity and can be blown by the wind to create hazards to pedestrian or vehicular traffic.

(b) As used in this section, "junk" means any of the following objects or materials upon a property if such object or material is left, placed, kept, exposed, or stored in public view for more than one-half (1/2) of any continuous ten (10) day period. Materials described below which are upon the property of a properly zoned business and which constitute lawfully stored or displayed merchandise or services of said business are excluded from this article.

(1) An accumulation of dirt, soil, rock, gravel, bark, humus, sod, or other similar natural materials; providing, however, the accumulation of such material which is an integral part of an organized landscape design, or which is part of an incomplete project, is excluded from this definition if the excess or the residue of such accumulation is completely removed from the property by the completion of the building or landscaping project. A project shall be deemed completed if there is no obvious change to the accumulation or to the project in any thirty (30) day period;

(2) Construction or packing material or supplies, including but not limited to, lumber, dry wall, roofing tile, cement, nails, pallets, plywood, scrap lumber, or other building materials, products, or supplies; electrical, irrigation or plumbing supplies; provided, however, that a reasonable quantity of these materials and supplies is excluded from this definition during active construction upon the subject property. A project shall be deemed active if there is obvious change to the accumulation or to the project in any thirty (30) day period;

(3) Firewood longer than thirty-six (36) inches in length and greater than twenty-four (24) inches in diameter, all firewood that is not stacked;

(4) An accumulation of aluminum cans, newspapers, plastic bottles, glass, cardboard or cardboard boxes, or an accumulation of other recyclable materials that has been stored in public view for more than one-half (1/2) of any continuous ten (10) day period;

(5) Any appliance, tool, equipment, furniture, furnishing, or other item of personal property including, but not limited to, any couch, love seat, sofa, sofa bed, recliner, hassock, upholstered chair, mattress, bed springs, box springs, bed frame, headboard, desk, dresser, bureau, cabinet, television, radio, stereo, stove, refrigerator, freezer, dish washer, washing machine, dryer, shopping cart, sinks, toilets, or any similar item, whether or not any such item is broken or abandoned, resting or being stored on the premises in public view for more than one-half (1/2) of any continuous ten (10) day period;

(6) Any item or items or personal property, of any size and of any quantity, which are littered on or scattered upon or about the property in a random, haphazard, aimless, disarrayed, or disorganized manner, so as to cause a public nuisance for more than one-half (1/2) of any continuous ten (10) day period.

Sec. 10-3.112. Nuisance Vegetation and Junk Prohibited.

It is unlawful and shall constitute an abatable nuisance for any person owning, leasing, occupying, or having charge, control, or possession of any property in the City

to maintain or permit to exist upon such property any nuisance vegetation or junk, regardless of the source or origin of such material.

Sec. 10-3.113. Dumping Prohibited.

(a) It is unlawful and shall constitute an abatable nuisance for any person to abandon or dump any nuisance vegetation or junk upon public property, upon any public street, sidewalk, or alley, upon any private property, thereof in the City. The unauthorized leaving of nuisance vegetation or junk upon such property is unlawful and punishable as an infraction or misdemeanor.

(b) It is unlawful for any person to abandon or dump any garbage, trash, rubbish, nuisance vegetation, or junk into any garbage container without the express permission or consent of the person owning or renting or having legal control of same.

Sec. 10-3.114. Duty of Removal.

It is hereby made the duty of every owner of real property in the City to keep said property free and clear of all junk, nuisance vegetation, and any other material prohibited thereon by this Code which from any cause whatsoever has accumulated upon said property. It is hereby made the duty of every property owner to lawfully destroy or remove all such prohibited materials from his or her private property, from the abutting half of the street and/or alley, from the sidewalk space thereupon, and between the sidelines thereof as extended. Failure of any property owner so to do is unlawful and punishable civilly, criminally or administratively and creates a nuisance subject to penalty or abatement as provided in this chapter.

Sec. 10-3.115. Imposition and Collection of Reinspection Fees.

(a) The City Council has authorized reinspection fees for all third (3rd) and subsequent reinspection of properties or activities regulated under this chapter when, upon reinspection, the City determines the properties or activities previously found not in compliance with the provisions of this chapter continue not to be in compliance.

(b) Reinspection fees shall be charged according to the following schedule:

(1) Third (3rd) and fourth (4th) reinspection:

2007 – 2008	34.00
2008 – 2009	35.00
2009 – 2010	36.00
2010 – 2011	37.00

(2) Fifth (5th) and all subsequent reinspection:

2007 – 2008	104.00
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2008 – 2009	107.00
2009 – 2010	110.00
2010 – 2011	114.00

(c) Where the assessment of reinspection fees is authorized under this section, the City shall provide the responsible party with a written notice stating:

- (1) The amount of reinspection fees assessed.
- (2) The dates on which all inspections and reinspections took place; and
- (3) The deadline for payment of such fees.

(d) Code enforcement fees collected pursuant to this chapter shall not be duplicated by any other action to recover these fees.

(e) Failure of the responsible party to receive notice of reinspection fees shall not affect the validity of any fees imposed under this chapter.

(f) The reinspection fee schedule is established and will be revised as necessary by the City Council to reflect current costs incurred for the additional work undertaken by City staff when the responsible party fails to correct code violations identified in this chapter in a timely manner.

(g) The City shall collect the assessed reinspection fees by the use of appropriate legal means, including but not limited to, referral to the Finance Department for collection or assessment against the property.

Regulation of Vacant and Boarded Buildings; Public Nuisance

Sec. 10-3.116 Vacant Buildings; Declaration of Purpose.

The Council finds that neglected, vacant buildings are a major cause of blight in residential and nonresidential neighborhoods. Vacant buildings often attract transients and criminals, including drug users and prostitutes. Use of vacant buildings by transients and criminals, who may employ primitive cooking or heating methods, creates a risk of fire for the vacant building and adjacent properties. Vacant properties are often used as dumping grounds for drug paraphernalia, furniture, tires, garbage, junk and debris and are often overgrown with weeds and grass creating a wide variety of health and safety concerns. In addition, vacant buildings which are simply boarded up for long periods of time with plywood or other materials to prevent entry by transients or vandals very often discourage economic development, disrupting neighborhood stability, retarding appreciation of property values and promote visual blight conditions, all of which interfere with the rights of neighboring property owners and occupants to the full use and enjoyment of their property.

The City currently expends resources monitoring and responding to vacant buildings, because of the numerous health, welfare, safety and economic problems caused by neglected, vacant buildings. There is already a substantial cost to the City for monitoring neglected, vacant buildings (whether or not those buildings are boarded up) as well as substantial toll on the citizens who are affected by the nuisance

conditions created, therefore the City Council finds there is an urgent need to refine the process by which these buildings are monitored and remediated.

Sec. 10-3.117 Boarded Buildings; Declaration of Purpose.

Boarded buildings are a major cause and source of crime and blight in both residential and nonresidential neighborhoods. In addition, vacant buildings which are boarded and unkept, and which are vacant for long periods of time, discourage economic development and retard appreciation of property values.

Sec. 10-3.118 Vacant Building; Defined.

For the purposes of this chapter, the term “vacant building” means an unoccupied or an illegally occupied structure or an occupied structure without adequate facilities/utilities.

Sec. 10-3.119 Boarded Building; Defined.

For the purposes of this chapter, the term “boarded building” means an unoccupied building some or all of whose doors and windows and other openings have been covered with plywood or other materials for the purpose of preventing entry into the building.

Sec. 10-3.120 Violation.

Every owner or responsible person shall maintain their vacant or boarded building in accordance with all of the requirements set forth herein. Failure to do so constitutes a violation of this Code and a public nuisance.

Sec. 10-3.121 Method of Boarding.

All windows, doors and openings shall be secured as per the board up specifications maintained by the City’s Building Department. All plywood used must be five-eighths (5/8) inch except the security door which shall be three-fourths (3/4) inch.

Sec. 10-3.122 Boarded or Vacant Building; Time Period Maintenance.

No responsible party shall allow a building to stand vacant for more than sixty (60) days, unless one (1) of the following applies:

(a) The building is the subject of an active building permit and the owner is progressing diligently to repair the premises for occupancy.

(b) The building meets all applicable codes in existence at either the time of its construction or at the time of its alteration or modification and is actively being offered for sale, lease, or rent;

(c) The building is being maintained in a safe and orderly manner and does not contribute to blight conditions;

(d) Maintenance in a safe and orderly manner shall include:

(1) Maintenance of any landscaping and plant materials in good condition,

(2) Maintenance of the exterior of the building, including but not limited to paint and finishes, in good condition,

(3) Regular removal of all exterior trash, debris and graffiti,

(4) Maintenance of the building in continuing compliance with all applicable codes and regulations.

Sec. 10-3.123 Vacant Building Monitoring Fee.

(a) Fee Imposed. There is hereby imposed upon every owner of a vacant building an annual vacant building monitoring fee in an amount to be set by resolution of the City Council. The fee shall not exceed the estimated reasonable cost of monitoring the vacant building. The fee shall be payable as to any building, residential or nonresidential, which:

(1) Is boarded up by voluntary action of the owner or as the result of enforcement activities by the City; or

(2) Is vacant for more than sixty (60) days for any reason.

(b) Fee Waiver. The vacant building monitoring fee may be waived by the Building Official upon a showing by the owner that:

(1) The owner has obtained a building permit and is progressing diligently to repair the premises for occupancy; or

(2) The building meets all applicable codes and is actively being offered for sale, lease, or rent; or

(3) Imposition of the fee would impose a substantial economic hardship on the owner or would hinder the rehabilitation of the building.

(c) Procedure.

(1) The vacant building monitoring fee shall be billed to the owner of the property and mailed to the owner's address as set forth on the last equalized assessment roll of the County Assessor.

(2) Any owner billed may apply for a waiver on the grounds set forth in subsection (b) of this section by submitting a written statement of the grounds for the waiver, and the owner's daytime telephone number, to the Building Official within thirty (30) days after the billing is mailed to the owner. The Building Official shall review the written statement and may contact the owner to discuss the application for waiver. The Building Official shall prepare a written decision which shall be mailed to the owner.

(3) Any owner who disagrees with the decision of the Building Official may submit a written notice of appeal to the Building Official within fifteen (15) days of receipt of the decision. Failure to timely appeal the decision of the Building Official relating to a denial of a waiver constitutes a waiver of all rights to an administrative hearing and determination of the matter subject only to review pursuant to California Code of Civil Procedure Section 1094.5.

(4) If the fee is not paid within sixty (60) days after billing, or within sixty (60) days after the decision of the Building Official or after the decision upon appeal by the owner becomes final, the fee may be specially assessed against the property involved and made a personal obligation of the owner. If the fee is to be specially assessed against the property, a hearing officer, as designated by the City Manager, shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.

(5) The designated hearing officer may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth the last known address of the record owner or possessor, a description of the real property subject to the lien, and the amount of the fee.

Nuisance; Creating Behaviors

Sec. 10-3.124 Findings.

The City Council finds as follows:

(a) Just as the physical conditions of properties within the City can constitute public and private nuisances, so too the behavior of persons on properties within the City can constitute public and private nuisances. Examples of behavior which can constitute nuisances include large and noisy gatherings, noisy activities during late-night hours, use or sale of controlled substances on premises, and the coming and going of persons with the intent to purchase controlled substances.

(b) It is as important for the public health, safety and welfare for interested residents of the City or the City itself to be able to abate nuisance-creating behaviors as it is to abate nuisance-creating physical conditions.

(c) The owners of properties within the City are responsible to monitor their properties and to take appropriate action if a nuisance exists thereon, whether that nuisance be created by existing physical conditions or by nuisance-creating behaviors. Such nuisances can be avoided with adequate property management. If a property owner does not fulfill his or her responsibilities, it is necessary for the safety, health, and welfare of neighborhoods and the City as a whole that interested persons or the City be able to undertake abatement action. An abatement remedy for nuisance-created behaviors is needed.

(d) Neighborhood health and safety must be protected in a way which does not promote housing discrimination or promote evictions based on prejudice, unfounded fears or personal animosities.

(e) Nothing in the ordinance codified in this chapter exempts property owners from strict compliance with state housing law on evictions, retaliatory conduct or discriminatory conduct or privacy.

Sec. 10-3.125 Purpose.

(a) The purpose of this section is:

(1) To set forth and make enforceable minimum standards for the management of human behavior on residential properties and to protect the public health, safety, and welfare, and

(2) To put in place a remedy which will permit aggrieved persons or the City to take effective, efficient judicial or administrative action against property owners who permit nuisance-creating behaviors to occur on their properties on a continuing basis, in order to compel such owners to abate the nuisance-creating behaviors.

(b) Provisions of this chapter are intended to be supplementary and complementary to all of the other provisions of this Code and State law and all remedies

set forth herein shall be cumulative to other remedies which may be available under the Code or State law.

Sec. 10-3.126 Application.

(a) The provisions of this chapter shall apply generally to all property throughout the City wherein any of the nuisances hereinafter specified, are found to exist; provided, however, that any condition which would constitute a violation of this chapter, but which is duly authorized under any specific City, State or Federal statute, shall not be deemed to violate this chapter.

(b) The provisions of this chapter shall not apply to activities which constitute a bona fide exercise of constitutional rights.

Sec. 10-3.127 Responsibility for Proper Property Management.

(a) Every owner of real property within the City and every person responsible for the management of real property within the City is required to manage the property in a manner that does not violate the provisions of this Code. The owner shall remain liable for violations thereof regardless of any contract or agreement with any third party regarding the management or control of property.

(b) Every responsible party or owner of real property in the City is required to behave on the property, and supervise anyone on the property, in a manner so as not to violate the provisions of this Code.

Sec. 10-3.128 Generally.

It is hereby declared a public nuisance and a violation of this Code for any responsible party or owner of any premises in this City to permit their premises to be used in such a manner that any one (1) or more of the activities described in the following subsections are found to occur repeatedly thereon:

(a) The illegal sale of controlled or illegal drugs or substances;

(b) The illegal use of controlled substances and other illegal drugs or substances;

(c) The frequent gathering, or coming and going, of people who have an intent to purchase or use controlled substances or other illegal drugs or substances on the premises;

(d) The occurrence of prostitution;

(e) Unlawful activities of a criminal street gang (as defined in Penal Code Section 186.22);

(f) The making or continuing, or causing to be made and continued, of any loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood or which causes discomfort or annoyance to more than one reasonable person of normal sensitivity residing in the area. This section shall only become effective when the Police Department has documented more than three (3) calls for service over any ninety (90) day period to the same address and/or dwelling in relation to making or continuing, or causing to be made and continued, any loud unnecessary and unusual noise which disturbs the peace and quiet of the neighborhood;

(g) The firing of gunshots or brandishing of weapons by a resident of the premises, or by a guest of a resident;

(h) The use of property to provide shelter to or seclusion of any action, act, or occurrence which is a crime under Federal, State, or local laws. To provide such shelter shall be to harbor a public nuisance, and shall be unlawful.

Sec. 10-3.129 Administrative Enforcement Action.

(a) Whenever an enforcement officer has inspected any premises and determined that the premises are in violation of this chapter, that officer may issue a notice and order to abate the nuisance.

(b) No notice and order is required to be issued hereunder if the owner is making good faith efforts to abate the nuisance. Indicia of good faith may include prompt responses to City communications and requests, cooperation with enforcement officers, active professional property management, and taking steps to repair physical conditions which contribute to the nuisance.

(c) (1) Whenever an enforcement officer issues a notice and order pursuant to this chapter to an owner or responsible party for rental residential property regarding a nuisance that exists at their property, the officer shall concurrently issue a written notice to the tenants of the property who may also be deemed violators by that officer. The notice shall generally describe the nuisance and the City's remedies under this Code. The notice shall also state that tenants may contact the officer to provide or receive information about their building. Notice to the tenant or unit need not be given when the enforcement officer determines that doing so would endanger persons or compromise an ongoing police investigation.

(2) The enforcement officer shall follow reasonable procedures intended to provide all tenants with notice of subsequent proceedings and actions pursuant to this chapter, but failure of any tenant to receive such notice shall not invalidate any subsequent action taken by the City.

(d) After the time for abatement set forth in the notice and order has expired, the enforcement officer shall determine whether the owner has taken the action ordered by the officer and whether the nuisance has been abated. If the officer determines that the nuisance has been abated, the owner and any occupants other than the owner shall be notified in writing of such determination and the compliance order shall be void thereafter.

(e) If the enforcement officer determines that the nuisance has not been abated and no written appeal has been received within the time specified in the notice and order, the compliance order shall become final except for the appropriate assessment of administrative penalties and costs against an owner or responsible party, which assessment only may be appealed and heard by a hearing officer if a written appeal is received by the Director within fifteen (15) days of the assessment. If an appeal is received, the Director shall set a hearing before a hearing officer.

10-3.130 Remedies.

(a) The administrative enforcement procedure described in Section 10-3.121 notwithstanding, the City Attorney may, in addition to or alternatively to that procedure, bring a civil action for injunctive relief and seek civil penalties in an amount not to exceed twenty thousand dollars (\$20,000.00) against any owner or responsible party who violates this Code.

(b) Any person affected by a public nuisance described in this article may bring a civil action for injunctive relief and damages against any owner or responsible party who violates this Code.

(c) In any civil action brought pursuant to this chapter, the court may award reasonable attorneys' fees and costs to the prevailing party.

Defacement of Property

Sec. 10-3.131 Purpose.

The purpose of this legislation is to provide programs for removal of graffiti from public and private property within the City and to establish regulations designed to prevent and control the spread of graffiti in Los Banos. The City Council finds and determines that the increase of graffiti on both public and private buildings, structures, and in other places, creates a condition of blight within the City which can result in the deterioration of property values, business opportunities, and enjoyment of life for persons using adjacent and surrounding properties. The Council further finds and determines that graffiti is inconsistent with the City's property maintenance goals, crime prevention programs, and aesthetic standards, and, unless graffiti is quickly removed from public and private properties, other properties soon become the targets of graffiti.

Sec. 10-3.132 Definitions.

As used in this section:

(a) "Graffiti" means any inscription, word, figure, or design that is marked, etched, scratched, drawn, sprayed, painted, pasted or otherwise affixed to, or on, any surface to the extent that same was unauthorized by the owner thereof, or, despite authorization, is otherwise deemed by the City Council to be a public nuisance.

(b) "Property" means real or personal property, whether publicly or privately owned, within the City.

(c) "Pressurized container" means any can, bottle, spray device or other mechanism designed to propel liquid which contains ink, paint, dye or other similar substance which is expelled under pressure, either through the use of aerosol devices, pumps or similar propulsion devices.

(d) "Ink marker" means any broad-tipped marker pen with a tip of one-quarter (1/4) inch or greater in width.

(e) "Paint stick" means any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface and upon application leaving a mark upon property of at least one-quarter (1/4) inch or greater in width.

(f) "Graffiti implement" means a pressurized container, ink marker or a paint stick.

(g) "Responsible party" means any person who is the owner of property, or who has primary responsibility for control over property, or who has primary responsibility for the repair and maintenance of property.

Sec. 10-3.133 Graffiti Declared a Public Nuisance.

The City Council hereby declares that graffiti is a public nuisance and is subject

to punishment as prescribed in this Code.

Sec. 10-3.134 Graffiti Prohibited.

(a) It is unlawful for any person to apply graffiti upon any property within the City.

(b) It is unlawful for any person owning or otherwise being in control of any property within the City to maintain, permit or allow any graffiti to remain upon such property when the graffiti is visible from the street or other public or private property.

Sec. 10-3.135 Assisting In or Encouraging Violations.

It is unlawful for any person to assist, aid, abet or encourage another to violate the provisions of this article by words or overt act.

Sec. 10-3.136 Punishment Provisions.

(a) Each penalty imposed for a violation of this article shall be (1) a penalty of one hundred twenty-five dollars (\$125.00) for a first violation; (2) a penalty of two hundred fifty dollars (\$250.00) for a second violation within a year; (3) a penalty of five hundred dollars (\$500.00) for each additional violation within one (1) year.

(b) Where there has been a conviction, or guilty or nolo contendere plea of a violation of this article, the court shall, in addition to any penalty imposed pursuant to this article, and at the City's option, order the defendant to complete community service, including graffiti removal service, of not less than six (6) hours and no more than forty-eight (48) hours for a first conviction. Upon the second and subsequent conviction, a person shall be required, at the City's option, to perform community service, including graffiti removal service of not less than forty-eight (48) hours and no more than ninety-six (96) hours. A defendant shall be ordered to complete community service during a time other than during his or her hours of school attendance or employment.

(c) Where there has been a conviction, or guilty or nolo contendere plea of a violation of this article, the court shall, in addition to any punishment imposed pursuant to this article, and at the victim's option, order the defendant to perform the necessary labor to clean up, repair, or replace the property damaged by that person.

(d) Where there has been a conviction, or guilty or nolo contendere plea of a violation of this article, the court shall, in addition to any punishment imposed pursuant to this chapter, and at the victim's option, and as restitution, order the defendant to pay for any related costs incurred for the clean up, repair, or replacement of the property damaged by that person.

(e) If a minor is personally unable to pay any penalty or restitution levied for violating any provision of this section, the parent or legal guardian of the minor shall be liable for payment of the penalty and restitution.

Sec. 10-3.137 Removal of Graffiti.

(a) Right of City to Require Removal by Responsible Party. It is unlawful for any responsible party to permit property that has been defaced with graffiti to remain so defaced for a period of three (3) calendar days after having been given notice of the violation of this section.

(b) Consent to Enter; Abatement Upon Failure to Obtain Consent.

(1) Securing Responsible Party's Consent. Prior to entering upon private property or property owned by a public entity other than the City for the purpose of removal of graffiti, the City shall attempt to secure the consent of the responsible party.

(2) Failure to Obtain Responsible Party's Consent. If a responsible party fails to remove the offending graffiti within the time herein specified or if the responsible party has refused to give consent to the City for entry on terms acceptable to the City consistent with the provisions of this section, the City may commence abatement of graffiti nuisance and recovery of expense of abatement proceedings for the removal of the graffiti according to the procedures herein.

Sec. 10-3.138 Abatement of Graffiti Nuisance and Recovery of Expense of Abatement.

(a) Abatement of graffiti nuisance and recovery of expense of abatement proceedings commenced against a responsible party shall be according to the following procedure:

(1) If a hearing is requested by the responsible party, the City Manager, or his or her designee ("hearing officer"), shall give the responsible party not less than forty-eight (48) hours' notice of a hearing to be held by the hearing officer for the purpose of showing cause why the public nuisance should not be abated by the City. Following notice, the hearing shall be held by the hearing officer at the time, date and place designated and at such hearing the responsible party may be heard and provided with the opportunity to show cause why the nuisance should not be abated. Following the hearing, the hearing officer shall determine whether abatement of the nuisance shall be commenced.

(2) If the hearing officer determines that abatement of the nuisance shall be commenced, the City may enter upon the property and cause such nuisance to be removed in the manner determined most appropriate by the City.

(3) If a hearing has not been requested by the responsible party, the City may enter upon the property and cause such nuisance to be removed in the manner determined most appropriate by the City.

(4) Upon removal of the public nuisance, the City may provide an accounting of the expense of abatement along with a demand for payment to the responsible party.

(5) If payment is not made within thirty (30) days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of one hundred dollars (\$100.00) plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1 ½) percent per month until paid.

(6) In the event the expense of abatement has not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest therein, shall constitute a lien pursuant to Government Code Sections 38773 and 38773.1 against the property of the responsible party. Prior to recording a notice of lien, the hearing officer shall provide notice pursuant to Government Code Section 38773.1. Any such lien not paid by June 30th of each year shall, upon adoption of a resolution by the City Council, be collected along with, and in the same manner as, the general property taxes. The lien property shall

be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.

(7) As an alternative to a lien and pursuant to Government Code Section 38773.5, the expense of abatement may constitute a special assessment against a parcel of land owned by the responsible party. The assessment shall be collected as provided for in Government Code Section 38773.5.

(8) In addition to any other remedy provided herein or available at law, expense of abatement pursuant to Government Code Sections 38773, 38773.1 and 38773.5 shall constitute a personal obligation against the responsible party.

(b) The recovery of expense of abatement of any nuisance resulting from the defacement of property by graffiti or any other inscribed material by a minor who has created, caused, or committed the nuisance shall be according to the following procedure:

(1) The City Manager, or his or her designee ("hearing officer"), shall give the minor and the parent or guardian having custody and control of the minor not less than forty-eight (48) hours' notice of a hearing to be held by the hearing officer for the purpose of showing cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following notice, the hearing shall be held by the hearing officer at the time, date and place designated and at such hearing the minor and the parent or guardian having custody and control of the minor may each be heard and provided with the opportunity to show cause why the City should not recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor. Following the hearing, the hearing officer shall determine whether the City should recover expense of abatement from the minor and the parent or guardian having custody and control of the minor.

(2) If the hearing officer determines that the City should recover the expense of abatement from the minor and the parent or guardian having custody and control of the minor, the City may provide an accounting of the expense of abatement along with a demand for payment to the minor and the parent or guardian having custody and control of the minor.

(3) The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor for the expense of abatement pursuant to Government Code Sections 38772, 38773.2, and 38773.6. If payment is not made within thirty (30) days from the date of the accounting and demand for payment, the payment shall be deemed delinquent and shall be subject to a penalty assessment of one hundred dollars (\$100.00) plus interest on the unpaid amount plus penalty, which interest shall accrue at the rate of one and one-half (1 ½) percent per month until paid.

(4) In the event the expense of abatement has not been paid within thirty (30) days from the date of issuing an accounting and demand for payment, the amount unpaid including any penalty and interest therein, shall constitute a lien pursuant to Government Code Sections 38772 and 38773.2 against the property of the minor and against the property of the parent or guardian having custody and control of the minor. Prior to recording a notice of lien, the hearing officer shall provide notice pursuant to Government Code Section 38773.2. Any such lien not paid by June 30th of each year shall, upon adoption of a resolution by the City Council, be collected along with, and in

the same manner as, the general property taxes. The lien property shall be subject to the penalties, procedures, and sale in case of delinquency as provided in the Civil Code of California.

(5) As an alternative to a lien and pursuant to Government Code Section 38773.6, the expense of abatement shall constitute a special assessment against a parcel of land owned by the minor or by the parent or guardian having custody and control of the minor. The assessment shall be collected as provided for in Government Code Section 38773.6.

(6) In addition to any other remedy provided herein or available at law, the expense of abatement pursuant to Government Code Section 38772 shall constitute a personal obligation against the minor and a personal obligation against the parent or guardian having custody and control of the minor.

Sec. 10-3.139 Reward.

The City hereby offers a reward of one hundred dollars (\$100.00) or such other sum as Council may direct for information leading to the arrest and conviction of any person injuring, defacing, or destroying property by the application of graffiti.

Sec. 10-3.140 Cumulative Remedies.

The procedures set forth in this chapter are not exclusive and nothing contained herein shall be deemed to preclude the City Attorney from initiation of any civil or criminal action or from the pursuit of any available remedy.

Section 3. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Villalta and seconded by Council Member Brooks on the 3rd day of October, 2007.

Passed on the 7th day of November, 2007 by the following vote:

AYES: Council Members Faria, Sousa, Villalta, Mayor Jones
NOES: None
ABSENT: Council Member Brooks

APPROVED:

/s/ Tommy Jones
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee
Lucille L. Mallonee, City Clerk