Chapter 9.09

PUBLIC PAY TELEPHONE REGULATIONS

Sections:

9.09.010 Prohibitions.
9.09.020 Nuisance declaration.
9.09.030 Abatement generally.
9.09.040 Appeal.
9.09.050 Time limit for compliance.
9.09.060 Abatement by the City.
9.09.070 Notice of hearing on report of costs.
9.09.080 Action upon report at hearing.
9.09.090 Imposition of lien.
9.09.100 Collection of costs prior to hearing.
9.09.110 Replacement.
9.09.120 Alternative prosecution.
9.09.130 Severability.

Section 9.09.010 Prohibitions.

It is unlawful for any person to install, locate or maintain a public pay telephone on unimproved or improved public or private property, contrary to the provisions in this chapter and Titles 13, 16 and 19 of this Code. (Ord. 6278 § 1 (part), 1996)

Section 9.09.020 Nuisance declaration.

Any public pay telephone which is installed, located, maintained or operated in violation of Section 9.09.010 is declared to be a public nuisance if it is used as an instrumentality for, or contributes substantially by its presence to, any of the following activities:

A. Selling or giving away controlled substances, as defined in Division 10 of the California Health and Safety Code; soliciting, agreeing to engage in, or engaging in any act of prostitution or other criminal activity;

B. Consumption of alcoholic beverages on outdoor public or private property in violation of Chapter 9.05 of this code, and except where outdoor consumption of alcoholic beverages is specifically authorized pursuant to a license issued by the Department of Alcoholic Beverage Control;

C. Loitering on public or private property under such circumstances that a reasonable person would conclude that the person who remains on the property does not have a purpose connected with the usual and ordinary use to which such property is put, does not have a bona fide intent to exercise a constitutional right, and is causing public inconvenience or annoyance;

D. Making excessive noise. (Ord. 6278 § 1 (part), 1996)

Section 9.09.030 Abatement generally.

A. Notification of Nuisance. Whenever the Chief of Police or the Chief's designee determines that any public pay telephone constitutes a public nuisance within the meaning of Section 9.09.020, the Chief of Police or such designee shall give written notice (notice to abate) to the record owner of the property upon which the pay telephone is located, or if available, the owner or other interested party of the pay telephone, stating (1) the general facts upon which the nuisance determination was made; (2) a reasonable time limit to abate the nuisance; and

(3) the right to appeal. The notice shall direct the abatement of the nuisance and refer to this chapter for particulars. The notice served shall contain a description of the property by address or other identifiable characteristics on which the pay telephone is located.

B. Manner of Giving Notice. The notice required by this chapter may be served in any one of the following manners:

1. By personal service on the pay telephone owner, if known, or the property owner upon whose property such pay telephone is located, as shown on the last available County of Riverside tax assessment roll; or

2. By certified mail addressed to the pay telephone owner, if known, or the property owner upon whose property such pay telephone is located, as shown on the last available County tax assessment roll. (Ord. 6278 § 1 (part), 1996)

Section 9.09.040 Appeal.

Within ten days from the date of giving notice, the property or pay telephone owner may file an appeal of the nuisance finding to the City Manager. Such appeal shall be in writing and shall identify the property upon which the pay telephone is located. Such notice shall be served upon the City Clerk within the time set forth above.

The City Manager shall then appoint a hearing officer to hear the appeal, which hearing officer shall not be an employee of the Police Department. The appeal must be heard within sixty days from the filing of the notice of appeal or at such later date agreed upon by the appellant. Notice of the date of the hearing shall be no sooner than five days from the date when notice of the hearing is given to the pay telephone or property owner and to the Police Chief or the Chief's designee. The decision of the hearing officer is final. (Ord. 6278 § 1 (part), 1996)

Section 9.09.050 Time limit for compliance.

The property or pay telephone owner must abate the nuisance within the period of time set forth in the notice to abate, or, in the case of an appeal, within ten days from the finding of the hearing officer or such longer period as may be determined by the hearing officer. Unless an emergency situation exists, the property or pay telephone owner shall be given at least ten days to abate the nuisance. (Ord. 6278 § 1 (part), 1996)

Section 9.09.060 Abatement by the City.

If the nuisance is not abated by the violator within the time limits set forth above, the City, by its employees or any hired contractor, may cause the nuisance to be abated. The Police Chief or the Chief's designee shall thereafter cause a report of the action and an accurate account of cost to be filed with the City Clerk. (Ord. 6278 § 1 (part), 1996)

Section 9.09.070 Notice of hearing on report of costs.

Upon the filing of the report of costs by the Chief of Police or the Chief's designee, the City Clerk shall thereupon set the report and account for hearing by the City Council at the first regular or adjourned regular meeting which will be held at least seven calendar days after the date of filing, and shall post a copy of such report and account and notice of the time and place of hearing in a conspicuous place at or near the entrance of the Council chambers. Notice of the time, date and place of the hearing will be given by mail to the property owner and telephone owner, if known. (Ord. 6278 § 1 (part), 1996)

Section 9.09.080 Action upon report at hearing.

A. The City Council shall consider the report and account submitted by the Chief of

Police or the Chief's designee at the time set for hearing, together with any objections or protests by any interested parties. Any owner of land or person interested therein may present a written or oral protest or objection to the report and account. At the conclusion of the hearing, the City Council shall either approve the report and account as submitted or as modified or corrected by the City Council.

B. The amounts so approved shall be liens upon the respective lots or premises, and the City Council shall adopt a resolution assessing such amounts as liens upon the respective parcels of land as they are shown upon the last available assessment roll. The resolution shall also describe the condition of the property which constituted the nuisance. (Ord. 6278 § 1 (part), 1996)

Section 9.09.090 Imposition of lien.

The City Clerk shall prepare and file with the County Auditor a certified copy of the resolution of the City Council assessing the costs of abatement as a lien on the land, adopted pursuant to the preceding section. The County Auditor shall enter each assessment on the County tax roll upon the parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes; and if delinquent, the amount is subject to the same penalties and procedure of foreclosure and sale as is provided for ordinary municipal taxes. (Ord. 6278 § 1 (part), 1996)

Section 9.09.100 Collection of costs prior to hearing.

The Finance Department of the City may accept payment of any amount due at any time prior to the City Council hearing on the report and account. (Ord. 6278 § 1 (part), 1996)

Section 9.09.110 Replacement.

A. If any public pay telephone constitutes a public nuisance because it is used for one or more of the activities set forth in Section 9.09.020, procedures provided for administrative abatement shall be followed, as set forth above.

B. The abatement notice issued under Section 9.09.030 shall specify that abatement will require removal of the public pay telephone, and will prohibit its replacement on the same parcel or any contiguous parcel owned by the same property owner for a period of up to one year from the date of removal.

C. Any decision of the hearing officer ordering abatement shall specify that it is unlawful for any public pay telephone to be installed on the same parcel or on any contiguous parcel owned by the same property owner for a period of up to one year from the date of removal. (Ord. 6278 § 1 (part), 1996)

Section 9.09.120 Alternative prosecution.

In addition to the administrative procedure set forth above, the City may commence a criminal prosecution against any violator of this chapter either as a misdemeanor or infraction as allowable under Section 1.01.110 of the code. (Ord. 6278 § 1 (part), 1996)

Section 9.09.130 Severability.

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

may be declared invalid or unconstitutional. (Ord. 6278 § 1 (part), 1996)