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GOVERNMENT CODE - GOV

TITLE 4. GOVERNMENT OF CITIES [34000 - 45345] (Title 4 added by Stats. 1949, Ch. 79.)

DIVISION 3. OFFICERS [36501 - 41805] (Division 3 added by Stats. 1949, Ch. 79.)

PART 2. LEGISLATIVE BODY [36801 - 40592] (Part 2 added by Stats. 1949, Ch. 79.)

CHAPTER 10. Health and Safety [38600 - 38794] (Chapter 10 added by Stats. 1949, Ch. 79.)

ARTICLE 6. Nuisances [38771 - 38775] (Article 6 added by Stats. 1949, Ch. 79.)

38771. By ordinance the city legislative body may declare what constitutes a nuisance.

(Added by Stats. 1949, Ch. 79.)

38772. (a) The legislative body of a city, county, or city and county may provide for the summary abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material at the expense of the minor or other person creating, causing, or committing the nuisance and by ordinance may make the expense of abatement of the nuisance a lien against property of the minor or other person and a personal obligation against the minor or other person pursuant to Section 38773.2 or 38773.6.

(b) The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor. The legislative body of a city, county, or city and county may make the expense of abatement of any nuisance, resulting from the defacement by a minor of the property of another by graffiti or any other inscribed material, a lien against the property of a parent or guardian, having custody and control of the minor, and a personal obligation against the parent or guardian having custody and control of the minor pursuant to Section 38773.2 or 38773.6.

(c) Notwithstanding any other provision of law, the names and addresses of the parent or guardian having custody and control of the minor, if known, shall be reported by the probation officer of the county to the city clerk or other official designated by the legislative body of the city, county, or city and county in which the defaced property is located.

(d) As used in this section, the following terms have the following meanings:

(1) "Expense of abatement" includes, but is not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, and the law enforcement costs incurred by the city, county, or city and county in identifying and apprehending the minor or other person.

(2) "Graffiti or other inscribed material" means any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property.

(3) "Minor" or "other person" means a minor or other person who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor convicted by final judgment of a violation of Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code, or a minor declared a ward of the Juvenile Court pursuant to Section 602 of the Welfare and Institutions Code by reason of the commission of an act prohibited by Section 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

(Amended by Stats. 2000, Ch. 58, Sec. 1. Effective January 1, 2001.)

38773. The legislative body may provide for the summary abatement of any nuisance at the expense of the persons creating, causing, committing, or maintaining it and by ordinance may make the expense of abatement of nuisances a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with Section 38773.1 or 38773.5.

(Amended by Stats. 1990, Ch. 965, Sec. 1.)

38773.1. (a) The legislative body may by ordinance establish a procedure to collect abatement and related administrative costs by a nuisance abatement lien. This ordinance shall require notice prior to the recordation of the lien to the owner of record of the parcel of land or which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current.

(b) The notice shall be served in the same manner as summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Section 6062.

(c) A nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

(1) A nuisance abatement lien authorized by this section shall specify the amount of the lien, the name of the agency on whose behalf the lien is imposed, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(2) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in paragraph (1) shall be recorded by the governmental agency. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(3) A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment.

(4) Notwithstanding Section 6103, Section 27383, or any other provision of law, the county recorder may impose a fee on the city to reimburse the costs of processing and recording the lien and providing notice to the property owner. A city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

(Added by Stats. 1990, Ch. 965, Sec. 2.)

38773.2. (a) The legislative body of a city, county, or city and county may, by ordinance, establish a procedure to collect abatement and related administrative costs incurred in the summary abatement of any nuisance resulting from the defacement by a minor or other person of the property of another by graffiti or any other inscribed material. The ordinance shall require notice to the minor or other person prior to the recordation of a lien on the parcel of land owned by the minor or other person. The ordinance shall require notice to the parent or guardian having custody and control of the minor prior to the recordation of a lien on the parcel of land owned by the parent or guardian having custody and control of the minor.

(b) The notice shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the minor or other person, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the minor or other person, in a conspicuous place, for a period of 10 days. The notice shall also be published pursuant to Section 6062 in a newspaper of general circulation that is published in the county in which the property is located. If the parent or guardian having custody and control of the minor, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the parent or guardian having custody and control of the minor, in a conspicuous place, for a period of 10 days. The notice shall also be published pursuant to Section 6062 in a newspaper of general circulation that is published in the county in which the property is located.

(c) A graffiti nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located. From the date of recording, the lien shall have the force, effect, and priority of a judgment lien.

(d) A graffiti nuisance abatement lien authorized by this section shall specify the amount of the lien; the name of the agency on whose behalf the lien is imposed; the date of the abatement order; the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed; and the name and address of the recorded owner of the parcel.

(e) If the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subdivision (d) shall be recorded by the governmental agency. A graffiti nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(f) A graffiti nuisance abatement lien may be satisfied through foreclosure in an action brought by the city.

(g) Notwithstanding Section 6103, Section 27383, or any other provision of law, the county recorder may impose a fee on the city, county, or city and county to reimburse the costs of processing and recording the lien and providing notice to the property owner. The city, county, or city and county may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

(h) As used in subdivision (a), "abatement and related administrative costs" include, but are not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, and the law enforcement costs incurred by the city, county, or city and county in identifying and apprehending the minor or other person.

(i) The terms "graffiti or other inscribed material," "minor," and "other person" have the same meaning as specified in Section 38772.

(Amended by Stats. 2000, Ch. 58, Sec. 2. Effective January 1, 2001.)

38773.5. (a) As an alternative to the procedure authorized by Section 38773.1, the legislative body may by ordinance establish a procedure for the abatement of a nuisance and make the cost of abatement of a nuisance upon a parcel of land a special assessment against that parcel.

(b) A city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails. The ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

(c) Any procedure established pursuant to this section shall include notice, by certified mail, to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be collected at the same time and in the same manner as ordinary municipal 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 municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(d) A local agency that has imposed an assessment pursuant to this section may, subject to the requirements applicable to the sale of property pursuant to Section 3691 of the Revenue and Taxation Code, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

(e) Notices or instruments relating to the abatement proceeding or special assessment shall be entitled to recordation.

(Amended by Stats. 1996, Ch. 718, Sec. 2. Effective January 1, 1997.)

38773.6. (a) As an alternative to the procedure specified in Section 38773.2, the legislative body of a city, county, or city and county may, by ordinance, establish a procedure for the abatement of any nuisance resulting from the defacement by a minor or other person of property of another by graffiti or other inscribed material and make the abatement and related administrative costs a special assessment against a parcel of land owned by the minor or other person or by the parent or guardian having custody and control of the minor. The assessment may be collected at the same time and in the same manner as ordinary municipal 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 municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the abatement and related administrative costs relate has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon prior to the date on which the first installment of the taxes would become delinquent, then the abatement and related administrative costs shall not result in a lien against the real property but shall instead be transferred to the unsecured roll for collection. Notices or instruments relating to the abatement proceeding or special assessment may be recorded.

(b) The terms "abatement and related administrative costs," "graffiti or other inscribed material," "minor," and "other person" have the same meaning as specified in Sections 38772 and 38773.2.

(Amended by Stats. 2001, Ch. 159, Sec. 119. Effective January 1, 2002.)

38773.7. The legislative body, by ordinance, may provide that upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property or a person described in paragraph (3) of subdivision (d) of Section 38772 is responsible for a condition that may be abated in accordance with an ordinance enacted pursuant to Sections 38773.5 and 38773.6, except for conditions abated pursuant to Section 17980 of the Health and Safety Code, the court may order that person to pay treble the costs of the abatement.

(Amended by Stats. 2000, Ch. 58, Sec. 4. Effective January 1, 2001.)

38774. The legislative body may:

(a) Regulate the exhibition, posting, or carrying of banners, placards, posters, cards, pictures, signs, or advertisements in or on the street, or on or upon buildings, fences, billboards, or other structures; or on or upon any pole in any sidewalk, alley, street, lane, court, park, or other public place.

(b) Regulate the suspension of banners, flags, signs, advertisements, posters, pictures, or cards across, or over any sidewalk, alley, street, lane, court, park, or other public place, or such suspension from fences, poles, houses, or other structures.

(Added by Stats. 1949, Ch. 79.)

38775. The legislative body may prohibit and prevent encroachments upon or obstruction in or to any sidewalks, street, alley, lane, court, park, or other public place and provide for the removal of such encroachment or obstruction.

(Added by Stats. 1949, Ch. 79.)