

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTIONS 1-308 AND 11-307 OF THE FRESNO MUNICIPAL CODE, RELATING TO CODE ENFORCEMENT ADMINISTRATIVE CITATIONS AND SERIAL VIOLATORS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 1-308 of the Fresno Municipal Code is amended to read:

SECTION 1-308. – ADMINISTRATIVE CITATIONS AND PENALTIES.

The Council finds that there is a need for an alternative method of enforcement of violations of the Municipal Code. The Council further finds and declares that an appropriate method for enforcement for violations of the Code is the following administrative citation and civil penalty program.

(a) Administrative Citation. Any person violating any provision of the Code may be issued an administrative citation by an enforcement officer as provided in this article. A separate civil penalty for each violation of the Code may be assessed by means of one administrative citation. Violations deemed a threat to health and safety as defined in this Code or pursuant to Health and Safety Code Section 17920.3 shall be penalized as set forth in the Master Fee Schedule.

(b) Contents. Upon discovering or observing any violation of the Municipal Code, an enforcement officer may issue an administrative

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval: _____

Ordinance No.

citation, in a form approved by the ~~City Manager and~~ City Attorney, to a violator or property owner, with the following contents:

(1) Date and location of the violation(s), including the street address, if any, and the approximate time the violation(s) were observed;

(2) Section(s) of the Code violated and brief description of how the section(s) are violated; if the citation is for a violation of the Management of Real Property Ordinance set forth in Chapter 10, Article 7, the citation shall include a statement specifying the behaviors which constitute the nuisance.

(3) Description of the action required to correct the violation(s), if applicable; and if applicable, the date by which the violation must be corrected.

(4) Statement explaining the consequences of failure to correct the violation(s);

(5) Amount of penalty imposed for the violation(s);

(6) Explanation of how the penalty shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty;

(7) Right to contest the contents of the administrative citation and right of appeal, including the name and address of the City Manager for purposes of filing any notice of appeal; and

(8) Signature of the enforcement officer.

(c) Issuance. The enforcement officer shall attempt to issue the citation to the responsible party for any violation of this Code. For purposes of issuance of a citation to a business, the citation may be issued to the person in immediate control of the business on site at the time of the issuance of the administrative citation and penalty. The citation officer may, but is not required, to obtain the signature of the person upon whom the citation was issued. The lack of signature shall in no way affect the validity of the citation and subsequent proceedings.

(d) Issuance When Unable to Locate Violator. If the enforcement officer is unable to locate the violator(s) then the administrative citation shall be mailed to the responsible party and property owner, if different than the responsible party. Administrative citations issued for violations of the provisions in Chapter 10, Article 3 of the Municipal Code (Animal Shelter) shall be mailed to the violator(s) or property owners(s) by first class mail with proof of service. Proof of service shall be documented at the time of service by a declaration under penalty of perjury executed by the person effecting service, declaring the time and manner in which the service was made. All other administrative citations shall be mailed to the violator(s) or property owners(s) by certified and first class mail. The failure of any person with an interest in the property to receive such notice shall not affect the validity of any proceedings taken under this chapter. Notice by the methods described above shall become effective on the date of mailing.

(e) Imposition of Penalty. An administrative citation issued for a ~~continuing~~ violation of a building, plumbing, electrical, or other structural or zoning regulation, that does not create an immediate danger to public health or safety, may ~~not~~ be issued ~~until~~ [to] the responsible party~~], and the citation shall state the date by which the violation must be corrected, which shall be]~~ ~~has been given~~ a reasonable period of time~~], given the circumstances; 18 calendar days shall be a default time to correct, unless the circumstances indicate a shorter or greater time is appropriate. It shall be the responsibility of the person receiving the citation to correct the violation and provide proof to the city that it has been corrected, as set forth in the citation, or call for an inspection, as set forth in the citation, to verify the correction was made on or before the date specified on the citation. If the correction was fully and timely made, then the citation, or that part of the citation, shall be dismissed. If the correction was not fully and timely made, then the citation shall continue and penalties shall be deemed final, and failure to correct shall be deemed a continuing violation until the specified violations are verified as corrected by the city, with further penalties incurred as set forth in this Code. An administrative citation issued for a violation of a state law or this code that is a nuisance, for example, parking a vehicle on an unimproved surface, not otherwise a violation of a building, plumbing, electrical, or other structural or zoning regulation, may be issued to the responsible party immediately, and each successive day the violation continues shall constitute a separate violation~~

~~with further penalties incurred as set forth in this Code.] by the city to correct the violation through a notice of violation, notice and order or other type of corrective notice.~~

(f) Appeal. Any person issued an administrative citation may contest the contents of the administrative citation by filing an appeal under the City's Administrative Ordinance set forth in Article 4. If no appeal is filed within the time prescribed, the penalty shall be final and immediately payable.

(g) Penalty. Except as otherwise set forth in this Code, the Master Fee Schedule shall establish the base schedule for the amount of the civil penalty assessed for code violations, which may vary by types and numbers of violations.

(h) Failure to Correct. If the violator or property owner fails to correct the violation, subsequent administrative citations and penalties may be issued for the same violation(s) or the city may institute any other applicable action permissible under this Code to gain compliance. The amount of the penalty for each subsequent violation of the same Code provision shall increase at a rate specified in this ~~article~~ [Code].

(i) Payment of Fine Without Correction of Violation. Payment of any penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the city. The failure of any person to pay any penalty assessed by administrative citation within the time specified on the administrative citation shall result in the assessment of an

additional late fee to be charged. The amount of the late fee shall be ten percent of the total amount of the civil penalty due and owing.

(j) Collection of Penalty. The city shall collect delinquent and late fees under the provisions of the Cost and Penalty Recovery Ordinance in Chapter 1, Article 5 of the Code.

(k) Authority to Issue Administrative Citation. The following officers and employees have the authority to issue administrative citations and civil penalties: City Manager, City Attorney, Planning and Development Director, Director of Public Utilities, Public Works Director, Police Chief and Fire Chief, and Director of Parks and Recreation and any other person delegated such authority by any of the above.

(l) Payment of Penalty and Use of Proceeds. Except as otherwise provided, all civil penalties assessed shall be payable to the city.

SECTION 2. Section 11-307 of the Fresno Municipal Code is amended to read:

SECTION 11-307. – VIOLATIONS.

(a) It shall be unlawful for any person, firm or corporation or other entity to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this article. Each day that any building or lot is used, occupied or maintained contrary to any provisions of this article shall be deemed a separate offense.

(b) Violations deemed a threat to health and safety as defined in this Code or pursuant to Health and Safety Code Section 17920.3 shall be penalized as set forth in the Master Fee Schedule.

~~(c) Egregious violator. Any owner committing health and safety or building code violations in three or more occupied residential rental properties in a rolling twelve-month period shall be deemed an egregious violator.~~

~~(1) An egregious violator shall be subject to double penalties as set forth in the Master Fee Schedule for health and safety and building code violations on occupied rental residential properties.~~

~~(2) An owner will no longer be deemed an egregious violator if all health and safety or building code violations are cured, all related fines, penalties, and fees are paid, and the owner does not accrue any new health and safety or building code violations for a six-month period.~~

[(c) Serial Violator.]

(1) Definitions. For purpose of this section, the following terms shall be defined as follows:

(i) Property Owner shall mean a person or entity with an ownership interest in a property, and shall include all entities in which that person or entity has an ownership interest.

(ii) Citation shall be as defined in Section 1-308, whether resulting in bringing the property into compliance, a fine, or other remedy; Citation, for the purposes of this section alone, shall not include instances in which an issued citation results in the Property Owner prevailing upon an ultimate determination that there was no violation.

(2) Any Property Owner who receives ten or more Citations for ten or more its properties within a twelve month period shall be deemed a Serial Violator.

(3) Following the tenth Citation, each subsequent Citation of any type at any property owned by Property Owner shall be penalized as follows:

(i) \$1,000 for the first violation.

(ii) \$5,000 for the second violation.

(iii) \$10,000 for the third and each subsequent violation, and/or, the City Attorney may prosecute the third and each subsequent violation as a misdemeanor, with the maximum penalties as provided in the Charter and this Municipal Code.

(4) A Property Owner shall be considered a Serial Violator until the Property Owner has completed a twelve month period with no Citations at any of its properties.]

SECTION 3. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, MMC CRM
City Clerk

BY: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Katie Doerr Date
Chief Assistant