

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING ARTICLE 6.5 OF CHAPTER 10 TO THE FRESNO MUNICIPAL CODE AUTHORIZING CITIZENS TO FILE ADMINISTRATIVE COMPLAINTS FOR MUNICIPAL CODE VIOLATIONS INVOLVING PUBLIC NUISANCES.

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

SECTION 1. Article 6.5 is added to the Fresno Municipal Code to read:

ARTICLE 6.5

CITIZEN ADMINISTRATIVE COMPLAINT ORDINANCE.

Section		Title.
	10-6.500	Title.
	10-6.501	Purpose.
	10-6.502	Definitions.
	10-6.503	Public Nuisance.
	10-6.504	Administrative Complaint Procedure.
	10-6.505	Filing the Administrative Complaint.
	10-6.506	Mediation.
	10-6.507	Conduct of Hearing.
	10-6.508	Hearing Officer Authority.
	10-6.509	Determination.
	10-6.510	Penalties.
	10-6.511	Enforcement of Determination.
	10-6.512	Remedies of Private Parties.
	10-6.513	Suspension of Filing Administrative Complaints.
	10-6.514	Severability.

SECTION 10-6.500. TITLE. This Article shall be known as the City of Fresno Citizen Administrative Complaint Ordinance.

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:

WED

Ordinance No.

SECTION 10-6.501. PURPOSE. The Council finds that there is a need for an alternative method of enforcing code violations. Establishing a program allowing private citizens to file administrative complaints for certain enumerated public nuisances will enhance compliance with code regulations to protect the public's health, safety, and quality of life. This program is voluntary, and does not take the place of existing methods for enforcement of violations of the Municipal Code.

SECTION 10-6.502. DEFINITIONS. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this Section shall govern the construction, meaning, and application of words and phrases used in this Article.

(a) "Administrative Complaint" shall mean a pleading in a form approved by the City Manager and City Attorney, alleging a public nuisance in violation of this Article.

(b) "Director" shall mean the City's Planning and Development Director or designee.

(c) "Filing Fee" shall mean the fee paid to the Director for filing the Administrative Complaint or the Response, in the amount designated in the Master Fee Schedule.

(d) "Indigent Person" shall mean any natural person eligible for county relief and support, under section 17000 et seq., of the California Welfare and Institutions Code. Any Petitioner, Respondent, or Record Owner may request "Indigent" status by submitting supporting

documentation to the Director. The filing fee will be waived for any Person the Director determines qualifies as an "Indigent."

(e) "Mediation" refers to a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal, and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable written agreement. In Mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

(f) "Notice to Cure the Public Nuisance" refers to the notice Petitioner must serve on Respondent and Record Owner, giving them notice that they have 30 days to cure the Public Nuisance. The time period may be extended at the discretion of the Director. Petitioner may file the Administrative Complaint after the expiration of the compliance deadline.

(g) "Person" shall mean a natural Person.

(h) "Petitioner" shall mean any Person at least 18 years of age who resides in the City, who owns real property in the City, or has a City business license.

(i) "Proof of Service" shall mean a form approved by the City Attorney, completed by a Person at least 18 years of age, declaring the

time and manner in which the Administrative Complaint or Response was served on Petitioner, Respondent, or Record Owner.

(j) "Public Nuisance" shall mean any of the conditions personally observed on the property described in Section 10-6.503.

(k) "Record Owner" shall mean the Person to whom land is assessed on the last equalized assessment roll of the county.

(l) "Response" shall mean a pleading in a form approved by the City Manager and City Attorney, contesting a Public Nuisance in violation of this Article.

(m) "Respondent" shall mean the Person alleged to be the Responsible Party.

(n) "Responsible Party" shall mean the Person or entity as determined by the Code or law as being responsible for creating, causing, committing, or maintaining the condition in violation of the Code or law and/or responsible for the abatement of a Public Nuisance, as defined in this Article.

(o) "Subject Property" shall mean the real property that is the subject of any enforcement or abatement action.

SECTION 10-6.503. PUBLIC NUISANCE. A Petitioner may file an Administrative Complaint for any Public Nuisance located on the Subject Property that are set forth below:

(a) Rubbish or junk, in violation of Section 10-605(a).

(b) Weeds in violation of Section 10-605(d).

(c) Dead, decayed, or hazardous trees, residue from a fire, or demolition in violation of Section 10-605(e).

(d) Any attractive nuisance as defined in Section 10-605(f).

(e) Obstructions upon any public sidewalk, median island, street, alley, or public easement in violation of Section 10-605(g).

(f) Yard landscaping creating a fire hazard, obstruction to traffic, or otherwise a blight to the neighborhood in violation of Section 10-605(i).

(g) Keeping wild animals and/or bees in violation of Section 10-202.

(h) Parking or storing any operable vehicle upon an unpaved surface in violation of Section 10-605(h).

(i) A residential vacant building in violation of Section 10-617.

(j) A residential Blighted Building in violation of Section 10-605(m).

(k) A residential building or structure erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted, or demolished without first obtaining all required permits in violation of Section 11-308.

(l) Loud, unnecessary or unusual noise, including but not limited to animals or fowl creating, generating, or emitting any cry or behavioral sound as described in Chapter 10, Article 1 of this Code in violation of Section 10-708(e).

(m) The unlawful discharging of a firearm or brandishing of a weapon in violation of Section 10-708(f).

(n) Temporary and portable signs in violation of Section 12-1711(i).

#### SECTION 10-6.504. ADMINISTRATIVE COMPLAINT PROCEDURE.

(a) Petitioner shall serve the Notice to Cure Public Nuisance on Respondent and Record Owner by first class mail, to allow them 30 days from the date of service of the Notice to Cure the Public Nuisance. Date of service shall be three days after deposit into the U.S. Mail. The Director in his or her sole discretion may extend the compliance deadline.

(b) If the Public Nuisance is not corrected during the compliance period, Petitioner may file an Administrative Complaint with the Director.

(c) The Petitioner shall not have the right to enter upon any property that requires the consent of the owner, agent, or occupant to be lawfully on the premises.

(d) The Petitioner shall not have the powers of a law enforcement officer, Fire Chief, or Fire Marshal located in Chapter 10, Article 5 of this Code.

(e) An enforcement officer, as defined in Section 1-302, may enforce the Public Nuisance under this Article, at any time.

(f) Record Owners remain liable for violations of duties imposed by this Article even though an obligation is also imposed on the occupants of the Subject Property. Buildings, structures, premises and parts thereof

shall be maintained in a nuisance-free condition. The Record Owner or his or her designated agent shall be responsible for such maintenance.

**SECTION 10-6.505. FILING THE ADMINISTRATIVE COMPLAINT.**

(a) Contents: The Administrative Complaint shall contain the following information:

(1) Name and address of the Record Owner of the Subject Property;

(2) Street address of the Subject Property;

(3) The Code section of the Public Nuisance listed in Section 10-6.503;

(4) A copy of the Notice to Cure the Public Nuisance along with a statement that the Notice was sent to Respondent and Record Owner by first class mail, with the date when the Notice was deposited in the U.S. Mail, and the date when the compliance period expired.

(5) A statement, describing in sufficient detail, that a Public Nuisance exists on the Subject Property, based on Petitioner's personal observations of the Subject Property. Petitioner shall state whether the Public Nuisance remains on the Subject Property, after the expiration of the compliance deadline.

(6) Signature of Petitioner, declaring under penalty of perjury that the allegations contained in the Administrative

Complaint are true. Any false statements shall subject Petitioner to criminal prosecution.

(b) Filing:

(1) Petitioner shall pay the Filing Fee for filing the Administrative Complaint, unless the Director determines that Petitioner qualifies as an "Indigent."

(c) Service of the Administrative Complaint:

(1) Petitioner shall serve the Administrative Complaint on Respondent and Record Owner by first class mail.

(2) Date of service shall be three days after deposit into the U.S. Mail.

(3) The Person serving the Administrative Complaint shall complete a Proof of Service declaring under penalty of perjury the time and manner of service on the Respondent and Record Owner.

(d) Filing of Proof of Service. Proof of Service shall be filed with the Director within twenty (20) calendar days from the date of filing the Administrative Complaint. If the Proof of Service is not filed within the time prescribed, the Director shall dismiss the Administrative Complaint.

(e) The Hearing Officer shall set the hearing to a date no later than sixty (60) days from the date of filing the Proof of Service. The Hearing Officer may, due to reasonable circumstances, extend the hearing date. The Hearing Officer shall notify the Petitioner, Respondent, and



Record Owner, of the date, time, place of the hearing, by depositing in the U.S. Mail, the notice at least thirty (30) days prior to the hearing date.

(f) If Respondent does not desire to contest the Administrative Complaint, the Hearing Officer may assess a penalty as provided in Section 10-6.510 and direct Respondent to correct the Public Nuisance within a designated time period. The Hearing Officer may add Petitioner's Filing Fee to the penalty assessed, and that amount will be returned to the Petitioner when City collects that amount from Respondent.

(g) If Respondent desires to contest the Administrative Complaint, Respondent shall file a Response with the Director, no less than ten (10) days prior to the hearing date. Respondent shall pay the Filing Fee to file the Response, unless the Director determines that Respondent qualifies as an "Indigent."

(h) Service of the Response:

(1) Respondent shall serve the Response on Petitioner by first class mail.

(2) The date of service shall be three days after deposit into the mail.

(3) The Person serving the Response shall complete a Proof of Service declaring under penalty of perjury the time and manner of service on the Petitioner.

(i) Filing Proof of Service. Proof of Service of the Response shall be filed with the Director within five (5) calendar days from the date

the Response is filed with the Director. Failure to file the Proof of Service within the time prescribed shall terminate the scheduled hearing and the Hearing Officer may assess penalties against the Respondent and Record Owner for maintaining a Public Nuisance on the Subject Property.

#### SECTION 10-6.506. MEDIATION.

(a) This Section shall be construed to encourage the fair and expeditious resolution of disputes.

(b) Petitioner, Respondent, or Record Owner may initiate Mediation by filing a request for Mediation with the Director at any time after the expiration of the 30-Day Notice to Cure, or other compliance deadline set by the Director.

(c) If all the parties agree in writing to the Mediation, any Filing Fees previously paid shall be returned to the Parties after the Mediation ends in a resolution. Petitioner, Respondent, or Record Owner shall pay the Mediation Fee to the Director, in the amount set in the Master Fee Schedule.

(d) The mediator will be selected by the City Manager in coordination with the City Attorney.

(e) The mediator will determine the manner in which the issues in dispute shall be framed and addressed. The mediator may request a pre-mediation statement outlining facts, issues, and perspectives in advance of the Mediation session. At the discretion of the mediator, such

statements or other information may be mutually exchanged by the parties.

(f) Confidentiality shall be governed by California Government Code Section 11420.30, and Evidence Code Sections 703.5 and 1115 through 1128, as may be amended.

(g) Agreements resolving the mediated dispute shall be written, signed, and dated by the parties or authorized representatives.

(h) Any party or the mediator may terminate the Mediation at any time by written notice to the mediator and the parties. If any party or the mediator terminates the Mediation, or if Mediation does not result in resolution, the parties shall resume the same status as before Mediation and shall proceed as if Mediation had not taken place.

#### SECTION 10-6.507. CONDUCT OF HEARING.

(a) Continuance. Upon good cause shown, the hearing officer may continue the hearing by written notice before the scheduled hearing or orally at or during the hearing. Failure of the parties to exchange documents in advance of the hearing does not constitute good cause, and is not a basis for a continuance.

(b) Hearing. The Petitioner shall present evidence in support of statements made in the Administrative Complaint. The Respondent, Record Owner, or any representative authorized in writing to represent the Respondent or Record Owner may then present evidence opposing the contentions made in the Administrative Complaint and in support of

statements made in the Response. The hearing shall be informally conducted. The hearing officer shall call each hearing and conduct the hearing in an orderly manner. The hearing officer shall maintain control over the order of evidence and order of witnesses called. The hearing officer shall maintain processes and procedures to facilitate an efficient and effective handling of multiple hearings.

(c) Rights of parties. The Petitioner, Respondent, Record Owner, or witness at the hearing may be represented by an attorney or other Person of the parties' choice. The Petitioner, Respondent, and Record Owner have a right to appear, testify, present evidence, examine and cross-examine witnesses, and present written or oral arguments. Additionally, the Petitioner, Respondent, or Record Owner may request, and the Hearing Officer may allow the parties, to submit written briefs, either before, during, or after the hearing.

(d) Evidence. All administrative hearings shall be governed by the following rules of evidence:

(1) Oral evidence shall be taken only on oath or affirmation which shall be administered by the hearing officer. Only credible testimony shall be considered by the hearing officer.

(2) Each party may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues. If the appellant does not testify in

his/her own behalf, the appellant may be called and examined as if under cross-examination.

(3) Such hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law rule or statute which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(4) Copies of the reports and records of any governmental agency, division, or bureau will be accepted as evidence in lieu of the original thereof.

(e) Scope. The hearing shall be limited to allegations in the Administrative Complaint and any specific requirements of this Code. The Hearing Officer may expand the scope based on a finding that it is necessary for a fair process.

(f) Burden of Proof; Burden of Evidence. The burden of proof and production of evidence shall be with the Petitioner. Except where

otherwise provided in the Code, the burden of proof shall be preponderance of the evidence.

(g) Open to the Public. All hearings shall be open to the public. Any interested Person shall have the right to speak at the hearing subject to the Hearing Officer's right to exclude irrelevant and unduly repetitious evidence. Notwithstanding the above, the parties have the right to petition the Hearing Officer, who may, in his or her discretion, accept submission of evidence outside the presence of the public, if such evidence would not be disclosable under the Public Records Act, California Government Code §§ 6250, et seq.

(h) Waiver of Rights. The failure to raise an objection to the Hearing Officer either before or during the hearing of any defect in notice or procedure provided under the Code or at law or in equity shall be deemed a waiver of the defect.

(i) Failure to Appear. If the Respondent or Record Owner fails to appear at the hearing, the Hearing Officer, in his or her discretion, may conduct the hearing to a conclusion, and dismiss or uphold the Administrative Complaint. If the Petitioner fails to appear at the hearing, the Hearing Officer shall dismiss the Administrative Complaint. If the Administrative Complaint is upheld, the allegation(s) in the Administrative Complaint shall become final and effective on the date of the Hearing Officer's determination. Alternatively, upon a showing of good cause, the Hearing Officer may set aside his or her determination on the

Administrative Complaint based on the failure to appear by Petitioner, Respondent, or Record Owner, and may reschedule the hearing.

(j) Recording. The proceedings at the hearing shall be recorded to a cassette tape, CD-ROM, video tape, DVD, or similar media. The proceedings may also be recorded by a certified shorthand reporter at the cost of the requesting party.

(k) Ex parte communication. Other than at the hearing, there shall be no direct oral communication between a party and the Hearing Officer on any matter related to the hearing without both parties being present. Any party providing written communication to the Hearing Officer shall provide a copy of that communication to the other party.

(l) The Hearing Officer shall dismiss an Administrative Complaint if it fails to state a Public Nuisance pursuant to this Article.

(m) The City Attorney shall retain prosecutorial responsibilities, including dismissal of the Administrative Complaint for lack of supporting legal foundation. The Hearing Officer shall notify the City Attorney before any penalties may be imposed pursuant to this Article.

#### SECTION 10-6.508. HEARING OFFICER AUTHORITY.

(a) The Hearing Officer shall have authority as provided in Section 1-409 of this Code.

#### SECTION 10-6.509. DETERMINATION.

(a) Determination. Unless otherwise agreed by the parties, within twenty-one (21) days of the conclusion of the hearing, after the

Hearing Officer has considered all evidence presented and the relevant standard of review, the Hearing Officer shall issue a determination of the Administrative Complaint in writing. The determination shall include a statement of the issues, findings of fact, a summary of the relevant evidence, a resolution of the credibility of witnesses where there is conflicting testimony, and the final determination and order. Alternatively, the determination may be issued orally at the conclusion of the hearing, so long as it is accompanied by a written determination within seven days of the hearing.

(b) Notice of Code of Civil Procedure Section 1094.6. The written decision shall include a notice that the Responsible Party has ninety (90) days to pursue a petition for a writ of administrative mandamus under Code of Civil Procedure Section 1094.6.

(c) Effective. Unless otherwise provided in the Code or the Hearing Officer's determination, the determination shall be effective upon issuance, whether at the hearing or upon serving notice of the written decision pursuant to Section 1-213.

(d) Finality. The Hearing Officer's determination shall be a final agency action for purposes of an appeal to the Superior Court, and have the same legal effect as a decision under Section 1-410.

(e) Continuing Jurisdiction to Enforce Determinations. The Hearing Officer may maintain continuing jurisdiction to enforce a



determination and impose additional conditions or penalties as provided in Section 1-411 or to take action upon direction of a court of law.

**SECTION 10-6.510. PENALTIES.**

(a) Remedies. The City may impose any remedies available under this Code, including any cost and penalty recovery under Article 5, Chapter 1.

(b) All penalties recovered under this Article shall be placed in the City "Blighted Building Fund" pursuant to Section 1-516.

(c) The City shall return the Filing Fee to the prevailing party at the hearing, unless the prevailing party was granted a fee waiver.

(d) This Article shall not be interpreted to provide for the recovery of attorney's fees, costs, or any other expenses incurred by Petitioner for action taken pursuant to this Article.

**SECTION 10-6.511. ENFORCEMENT OF DETERMINATION.** Upon finding a violation of the Hearing Officer's determination, City may enforce the Hearing Officer's determination under any remedies available under this Code.

**SECTION 10-6.512. REMEDIES OF PRIVATE PARTIES.** The provisions of this Article shall in no way adversely affect the right of the Petitioner or Responsible Party to pursue any remedies available under state law, or to recover all costs and expenses incurred under this Article from any Person causing such Public Nuisance in a separate court action.

**SECTION 10-6.513. SUSPENSION OF FILING ADMINISTRATIVE COMPLAINTS.** The City Manager may suspend the filing of the Administrative

Complaints at any time if the City Manager determines that the number of Administrative Complaints filed exceeds the City's capacity to adequately conduct hearings on the Administrative Complaints, or for any other reason.

SECTION 10-514. SEVERABILITY. If any section, sentence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Article. The Council hereby declares that it would have passed this ordinance and adopted this and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 2. 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.

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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 \_\_\_\_\_, 2014.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2014  
Mayor Approval/No Return: \_\_\_\_\_, 2014  
Mayor Veto: \_\_\_\_\_, 2014  
Council Override Vote: \_\_\_\_\_, 2014

YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Mary Raterman-Doidge Date  
Deputy

BMC:MRD:prn [62379pm/ord] 07-15-14