

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

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,  
AMENDING SECTIONS 10-701 – 10-716 OF THE FRESNO  
MUNICIPAL CODE

SECTION 1. Sections 10-701 – 10-716 of the Fresno Municipal Code are amended to read:

SECTION 10-701. TITLE.

This article shall be known as the "Management of Real Property Ordinance."

SECTION 10-702. FINDINGS.

(a) Just as the physical conditions of structures and properties within the City can constitute public nuisances, so can too the behavior of persons on properties within the City constitute public nuisances. The abatement of behavioral nuisances is as important to the City in its fight against blight, decay, deterioration and crime as is the abatement of other nuisances created by physical conditions.

(b) The owners of real properties within the City are primarily responsible for monitoring their properties and for taking appropriate action if a nuisance exists thereon, whether that nuisance be created by existing physical conditions or by nuisance creating behaviors, or the combination of conditions. Many nuisances can be avoided with active property management. Lack of proper management of real property can create an environment which is conducive to behaviors which become a nuisance with

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: CR

Ordinance No.

repetition and lack of abatement and corrective measures. If a property owner does not fulfill the owner's responsibilities, it is necessary for the safety, health and welfare of the neighborhoods, and the City as a whole, that the City be able to undertake abatement action.

(c) Because of the profound impact and effect behavioral nuisances have on the community, individuals and crime, the Council, in adopting this ordinance finds the civil penalties imposed for a violation of this ordinance are justified and necessary to protect the health, property, and integrity of this community.

(d) Nothing in this ordinance exempts property owners from compliance with state or federal laws, including, but not limited to, laws on housing, eviction, retaliatory conduct, discriminatory conduct, or invasion of privacy, nor with City laws relating to housing or relocation.

#### SECTION 10-703. PURPOSE.

(a) The purpose of this article is:

(1) To set forth and enforce minimum standards relating to the management of activities conducted or conditions on real property to protect the public health, safety and welfare; and

(2) To put in place remedies which will permit the City to take effective, efficient administrative or other legal action against property owners and other responsible parties who cause, permit or suffer nuisance creating behaviors or conditions to occur on their properties on a continuing basis,

in order to compel such parties to abate the nuisance creating behaviors or conditions and control the environment, both physical and behavioral, on such real properties.

(b) The provisions of this article are complementary, cumulative, supplementary, and additional to any other legal remedies available, whether found in this code, state or federal laws, regulations, or case law.

(c) It is not the intent nor purpose of this article to subject owners or property managers to any legal liability resulting from an occupant's actions away from an occupant's residence, unless it can be shown that the problem occupant is also creating a nuisance or committing a crime at the occupant's residence.

#### SEC. 10-704. DEFINITIONS.

(a) "Administrative expenses" shall include, but not be limited to:

(1) The cost of any hearings before the Hearing Officer;

(2) Personnel costs, both direct and indirect, including attorney's fees;

(3) The costs incurred in documenting the nuisance, including the actual expenses and costs of the City in conducting inspections and in the preparation of notices, administrative citations and orders.

(b) "Director" shall mean the Police Chief and/or the City Attorney, and any of their designees.

(c) "Enforcement officer" means any person authorized by the Director pursuant to Section 10-707 to enforce violations of this article. Although this

ordinance assumes code enforcement and police officers will continue to cooperate in protecting Fresno residents' quality of life, this ordinance does not authorize code enforcement officers to enforce criminal laws.

(d) "Habitual" shall mean patterns or occurrences evidenced by frequent repetition or regularity, or that evidence a mode of practice or usage.

(e) "Hearing officer" shall mean any person designated under the provisions of the code to preside over the administrative hearings in accordance with the provisions of Chapter 1, Article 4, of the Fresno Municipal Code.

(f) "Appellant Representative" may be a representative selected by a recipient of an administrative citation, including but not limited to a representative from any one of the following organizations: California Apartment Association-Greater Fresno Division; Institute of Real Estate Management, the Fresno Chamber of Commerce, Centro La Familia; Centro Binacional Para el Desarrollo Indigena Oaxaqueño; Fresno Center for New Americans; Central California Legal Services.

(g) "Occupant" shall mean any person or entity in actual possession of or inhabiting real property.

(h) "Owner" and "property owner" shall mean the owner or owners of record of the subject real property as shown on the latest equalized assessment role of Fresno County or as otherwise actually known to the Director.

(i) "Property manager" shall mean a third party hired or retained by an owner or occupant to engage in the operation, control, or oversight of real property.

(j) "Real property" shall mean any lot or parcel of land for which the owner has legal ownership or exercises custody or control thereof.

(k) "Responsible parties" under this section shall include owners; occupants; property managers; and home owners' associations, in the case of condominium developments.

#### SECTION 10-705. SCOPE.

This article shall apply generally to all real property throughout the City of Fresno wherein any of the nuisances hereinafter specified are found to exist.

#### SECTION 10-706. JOINT RESPONSIBILITY.

(a) Every responsible party owning, possessing, or having charge or control of real property within the City is required to manage that property and control the environment thereon in a manner so as not to violate the provisions of this article, and every responsible party shall, in the discretion of the hearing officer, be jointly and severally liable for violations thereof regardless of any contract or agreement among them or with any third party regarding the property.

(b) Every responsible party is required:

(1) To comply with all laws applicable to the property.

(2) To supervise anyone utilizing, using, or occupying the property, with or without the consent of the owner, consistent with this article.

(3) To maintain the property in a manner so as not to violate the provisions of this article. Nothing in this ordinance is intended to replace or supersede the routine interior inspection program by which the City enforces state and local standards of habitability for rental housing.

#### SECTION 10-707. AUTHORITY.

The Director shall have the responsibility to administer and enforce the provisions of this article. The Director shall have the authority to designate employees as enforcement officers in conformance with this article to assist in the enforcement responsibilities, including the issuance of administrative citations pursuant to Section 1-308 et seq. of this article.

#### SECTION 10-708. UNLAWFUL NUISANCES.

It is hereby declared a public nuisance and a violation of this article for a responsible party owning, possessing, or having charge or control of any real property in the City to permit, with actual knowledge or upon notice pursuant to this article, any of the following activities to habitually occur on the real property of the owner[. This list is inclusive, and subsequent violations of any of the following subsections may lead to a subsequent citation]:

(a) The illegal sale, use, cultivation or possession of controlled substances or other illegal drugs and substances.

(b) The gathering, or coming and going, of people who engage in any criminal activity on the premises including, but not limited to, the purchase or use of controlled substances.

(c) The occurrence of prostitution.

(d) Unlawful activities of one or more validated gang members. "Validated gang member" as used in this subsection means a person who is known to law enforcement, using Fresno Police Department's "10 Criteria for Gang Validation," to be a member of a "criminal street gang" as that term is defined in California Penal Code section 186.22, subdivision (f).

(e) 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 any reasonable person of normal sensitiveness residing on the property or in the area. The standards set forth in Fresno Municipal Code Chapter 10, Article 1 shall be utilized in determining whether a violation of this subsection exists.

(f) The unlawful discharging of a firearm or brandishing of a weapon by any person.

(g) The [F]requent response [and/or Calls For Service] by the Fresno Police Department to the real property or the adjacent area including public property or common areas of an apartment complex or condominium development (but not the real property of another) as a result of any person or persons causing any combination of the following calls as indicated in the

City of Fresno Police Department Incident Code Identifier:

- (1) Animal disturbances, including but not limited to competitive fighting between animals.
- (2) Violent or non-violent criminal acts, charged or not, including, but not limited to rapes, assaults, battery, homicides, shootings, identity theft, fraud, possession of stolen property, burglary, and theft.
- (3) Illegal consumption of intoxicants in public view.
- (4) Gaming activities.
- (5) Juvenile or domestic disturbances, excluding domestic violence calls for service.

"Frequent" as used in this subsection means such response is occurring more than 1.50 times than the average number of such responses for property of a similar size and character in the same "policing district" established by the Police Chief.

["Calls for Service" as used in this subsection means dispatched calls made through a call to 911, FPD's non-emergency line, or the detective assigned to the area, but they do not require an officer to respond to the property. Calls for Service are a level of police activity in a defined area during a specific time frame.]

- (h) The presence of graffiti or other defacing words, letters, or drawings, trash and debris on the property for a 48 hour period. Unless the specific individuals responsible for the graffiti, trash or debris can be identified,

violation of this subsection is citable to the property owner and/or property manager and/or home owner's association only.

(i) The presence of abandoned vehicles or improperly stored inoperative, wrecked, or dismantled vehicles on the property, except as permitted in Article 6, Chapter 10. Unless the specific individuals responsible for the abandoned, wrecked or dismantled vehicles can be identified, violation of this subsection is citable to the property owner and/or property manager and/or home owner's association only.

(j) [Frequent verified complaints of] ~~V~~[v]iolations of Article 3, Chapter 11 (Housing Regulations), Article 4, Chapter 11 (Dangerous Building Ordinance), Article 5, Chapter 10 (Fire Prevention Ordinance) or Article 6, Chapter 10 (Public Nuisance Abatement Ordinance) of the Fresno Municipal Code, occurring on any one or more properties of the same owner within the City of Fresno.

["Frequent" as used in this subsection means five or more verified complaints at the same property or five or more verified complaints at different properties owned by the same owner.]

(k) The illegal sale, use, or possession of firearms.

(l) The harboring, boarding, or concealing of a person for which there exists an outstanding warrant for arrest.

(m) The illegal subletting and/or subdividing of dwelling units in violation of building codes and occupancy standards.

SECTION 10-709. NOTICE TO RESPONSIBLE PARTIES.

The Director shall, within a reasonable period of time from the date of occurrence of any activity listed in Section 10-708, notify the known responsible parties of the unlawful activity. Said notice shall include the location of the property, the name of the person(s) conducting the unlawful activity (if known and appropriate), a description of the illegal activity, suggested remedies and a warning of the enforcement of this article if the activity described is not abated within the time prescribed in the notice. The notice shall be served on the owner of the property, via regular mail, at the address listed on the latest tax assessment roll and known address(es) of additional responsible parties. Within five (5) days of the date of mailing the notice under this subsection, the owner shall provide a copy of the notice to all other responsible parties.

#### SECTION 10-710. VIOLATION.

Any violation of this article may be enforced by any of the following procedures:

- (a) Institution of legal action by the City Attorney.
- (b) By issuance of administrative citations with civil penalties in lieu of criminal prosecution (but not prohibiting civil injunctive action) as follows:
  - (1) First violation, One Thousand Dollars (\$1,000), plus any abatement, actual, administrative and enforcement costs and administrative expenses incurred;
  - (2) On a second violation of this article within a rolling 12 month period,

Ten Thousand Dollars (\$10,000), plus any abatement, actual, administrative and enforcement costs and administrative expenses incurred;

(3) On a third or subsequent violation of this article within a rolling 12 month period, between Ten Thousand Dollars (\$10,000) and Fifty Thousand Dollars (\$50,000), plus any abatement, actual, administrative and enforcement costs and administrative expenses incurred.

**SECTION 10-711. PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE CITATIONS.**

(a) Administrative citations shall be issued consistent with the procedures set forth in Section 1-308 of the Fresno Municipal Code.

(b) If an appeal is filed pursuant to Section 1-308(f), in addition to the procedures for hearing set forth in Chapter 1, Article 4, of the Fresno Municipal Code, an "Appellant Representative" selected by the appellant, shall have the opportunity to serve as an advisor to the hearing officer. The hearing officer shall consider the information provided by such advisor regarding any relevant issue, including but not limited to industry standards of practice, as well as the reasonableness of any remedy. The hearing officer shall allocate responsibility for payment of fines and fees proportionally, based on evidence of relative fault for the nuisance condition and for accrual of abatement, actual, administrative and enforcement costs.

**SECTION 10-712. COSTS AND EXPENSES INCURRED.**

In addition to any administrative penalty assessed for a violation of this article, any responsible party found in violation of this article will be charged abatement, actual, administrative and enforcement costs as defined in Section 1-503, as well as administrative expenses as defined in Section 10-704, calculated to recover the total costs incurred by the City in enforcing this article.

**SECTION 10-713. COLLECTION OF PENALTIES.**

The City may collect abatement, actual, administrative and enforcement costs, as well as penalties and administrative expenses under the provisions of Chapter 1, Article 5 of this Code.

**SECTION 10-714. USE OF FEES, FINES AND PENALTIES.**

All costs and penalties received by the City pursuant to this article shall be used exclusively for administration and enforcement of this article and Articles 3 and 4 of Chapter 11 of the Fresno Municipal Code.

**SECTION 10-715. RELOCATION COSTS.**

The owner shall be required to reimburse the City for any costs or expenses associated or incurred with the relocation of occupants resulting from the enforcement of this Article.

**SECTION 10-716. 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 article 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.

\* \* \* \* \*

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

I, TODD STERMER, 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 \_\_\_\_\_ 2022.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2022  
Mayor Approval/No Return: \_\_\_\_\_, 2022  
Mayor Veto: \_\_\_\_\_, 2022  
Council Override Vote: \_\_\_\_\_, 2022

TODD STERMER, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy Date

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

BY: \_\_\_\_\_  
Christina Roberson Date  
Assistant City Attorney

