

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTION 1-407 OF ARTICLE 4, CHAPTER 1 OF THE FRESNO MUNICIPAL CODE, TO REQUIRE THE ADVANCE DEPOSIT OF FINES AT THE TIME OF FILING AN ADMINISTRATIVE APPEAL

SECTION 1. Section 1-407 of the Fresno Municipal Code is amended to read.

SECTION 1-407. FILING A NOTICE OF APPEAL.

(a) Standing. Only a person who has a legal existing interest in the property, right or entitlement subject to the city order, citation, decision or determination sought to be appealed from has standing and a right to appeal under this article. A notice of appeal that fails to allege standing may be rejected as defective.

(b) Notice of Appeal. A notice of appeal shall be filed in writing in duplicate with the hearing officer within fifteen calendar days after the service of the order, citation, decision, or determination appealed from- together with an advance deposit of the full amount of the penalty. Any administrative citation penalty that has been deposited shall be refunded if it is determined, after a hearing, that the person or entity charged with the violation was not responsible for the violation or that there was no violation as charged in the administrative citation.] The appeal shall be addressed to the hearing officer and shall contain the following:

(1) The name, address, and telephone numbers of the appellant;

(2) A statement describing the appellant's legal existing interest in the property, right or entitlement subject to the city order, citation, decision or determination sought to be appealed from;

(3) A brief description of the specific order, citation, decision, or determination being appealed;

(4) A statement of the relief sought;

(5) The reasons why such relief should be granted;

(6) A statement of the Appellant, "under penalty of perjury," that the facts stated in the appeal are true of the appellant's own knowledge, except as to matters which are not within the appellant's knowledge and are not of public record, and as to those matters that the appellant believes the facts stated to be true.

[(c) Hardship Waiver for payment of advance deposit. Any person who intends to request an appeal hearing under Section 1-407 and is financially unable to make the advance deposit as required in that section, may file a request for an advance deposit hardship waiver.

(1) The request shall be filed with the director of the department issuing the administrative citation within fifteen calendar days of the date of service of such notice of citation.

(2) The requirement for depositing the full amount of the administrative citation as described in Section 1-407(b) shall be stayed unless and until the director makes a determination not to issue the advance deposit hardship waiver.

(3) The director may waive the requirement of an advance deposit, in part or in full, and issue the waiver only if the person receiving the administrative citation submits to the director proof of the person's actual financial inability to deposit with the City the full amount of the citation in advance of the hearing, as shown on a fee-waiver to be made available by the director and signed under penalty of perjury. The fee-waiver form shall conform to the requirements of Section 68511.3 of the California Government Code, or at a minimum, shall contain the same elements as the application form for waiver of court fees and costs prepared by the Judicial Council of California for use in California courts.

(4) A hardship waiver shall not be available for any penalty less than two hundred dollars (\$200.00) or for any recipient of a citation that is not a natural person.

(5) If the director determines not to issue an advance deposit hardship waiver, and the person desires to appeal, the person shall remit the deposit to the City within ten days of the date of the decision or thirty days from the date of issuance of the administrative citation, whichever is later.

(6) The director shall issue a written decision explaining the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written decision of the director shall be final.

(7) The written decision of the director shall be mailed to the person who applied for the advance deposit hardship waiver at the address provided in the application.]

~~(e)~~ [(d)] Late Appeals. Upon a showing of good cause, the hearing officer may, in his or her discretion, permit the filing of an appeal, or an amended appeal, after fifteen calendar days, in which case the appeal shall be considered in the same manner as if it had been timely filed.

~~(d)~~ [(e)] Defective Notice of Appeals. If, in the opinion of the hearing officer, the appeal or an amended appeal fails to comply substantially with the requirements of this section, the hearing officer may give written notice of such insufficiency to the appellant at any time within fifteen calendar days after the appeal is presented, stating with particularity the defects or omissions therein. Failure of the appellant to file an amended appeal within fifteen calendar days of the date of service of such notice of insufficiency shall constitute a waiver of the appeal. Failure of the hearing officer to give notice of any insufficiency within fifteen calendar days shall result in the appeal being heard on its merits, without regard to any insufficiency.

~~(e)~~ [(f)] Notice of Hearing. Upon receipt of an appeal, or if notice of insufficiency is given in accordance with this section, upon receipt of an amended appeal within the time specified, the hearing officer shall cause one copy to be stamped indicating the date of receipt thereof, and shall immediately forward the other copy to the officer or employee whose order, citation, decision, or determination is being appealed. The hearing officer shall set the appeal for hearing and shall give to the appellant and to the officer or employee whose order, citation, decision, or determination is being appealed not less than fifteen calendar days written notice of the date, time, and place of hearing. The appellant, or his/her authorized representative, may waive the fifteen calendar days written notice, so long as said waiver is in writing and received by the hearing officer. The notice of the hearing to the appellant shall include a statement as to the appellants' rights as provided in subsection 1-507(c).

~~(f)~~ [(g)] Stay of Proceedings. Unless otherwise provided by this Code, the filing of an appeal shall stay all proceedings in furtherance of the order, citation, decision, or determination appealed from until the determination of the appeal as provided herein.

~~(g)~~ [(h)] Hearing Packet. Upon receipt of the copy of the notice of appeal from the hearing officer, the employee or officer who issued the order, citation, decision or determination shall prepare a hearing packet that forms the basis of the citation, order, decision or determination. The hearing packet shall be served either within seven calendar days (if

service is by mail) or five calendar days (if personally served on the appellant) of the date set for the hearing.

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 _____, 2015.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2015
Mayor Approval/No Return: _____, 2015
Mayor Veto: _____, 2015
Council Override Vote: _____, 2015

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Melissa L. White [Date]
Supervising Deputy City Attorney

MLW:dlv [66735dlv/mlw] Ord. 1/28/15