



Legislation Details (With Text)

File #: ID19-11287 **Version:** 1 **Name:**
Type: Ordinance **Status:** Passed
File created: 9/10/2019 **In control:** City Council
On agenda: 9/19/2019 **Final action:** 9/19/2019
Title: BILL - (for introduction) Amending Sections 1-308 and 11-307 of the Fresno Municipal Code relating to Code Enforcement administrative citations and serial violators.
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Indexes:
Code sections:
Attachments: 1. Code ord - 1-308 and 11-307 Admin Citations Penalties - Citations.pdf

Date	Ver.	Action By	Action	Result
9/19/2019	1	City Council	approved	Pass

REPORT TO THE CITY COUNCIL

September 19, 2019

FROM: MIGUEL ANGEL ARIAS, Vice President
City Council Offices

SUBJECT

BILL - (for introduction) Amending Sections 1-308 and 11-307 of the Fresno Municipal Code relating to Code Enforcement administrative citations and serial violators.

RECOMMENDATIONS

It is recommended Council approve changes to the FMC to address code enforcement serial violators and streamline the citation and compliance process.

EXECUTIVE SUMMARY

There are property owners, largely of residential rental properties, who the City finds in violation of health and safety, and nuisance and blight, regulations at many properties each year. Code enforcement personnel are constantly finding violations, issuing a notice and order each time, and the those violations may be corrected, yet many more properties with violations come to our attention, as well. The City has, in effect, become the de facto property manager for these properties. This consumes an enormous volume of City resources, just to get the property owners to do what they should have done without City involvement.

Also, the process of issuing a notice and order, allowing time to correct certain types of violations,

then having to re-inspect and only then issuing a citation if corrections are not made, is not as efficient and effective in deterring property owners from allowing illegal conditions to exist in the first place as it could be. While state law requires the City to allow a reasonable time to correct certain building code types of violations, the new proposed process would provide that, but also start the process and treat the citations as a “fix it ticket.” The citation would be issued upon finding a violation, and then the burden is on the property owner to make the corrections and either certify compliance (if that is easily determined) or call for an inspection. If compliance is found, then the citation is dismissed. If not, then the citation becomes final, with fines due and enabling the City to take abatement actions if appropriate. This would hasten the process by three to four weeks, accelerating compliance for both tenants and the neighborhood. It would save the City time and money, as well, allowing Code to pursue more potential violations.

The serial violators section would tie the two concepts together, creating a deterrent factor to allowing citations to be issued on multiple properties involving related people or entities, such that an elevated fine structure would start upon the tenth property being cited (which was not ultimately found to be no violation) in 12 months, and allowing the third subsequent violation to also be prosecuted as a misdemeanor.

BACKGROUND

The FMC requires and historical practice in code enforcement has been typically to issue a notice and order upon finding a violation at a property. Then, the City gives the owner time to make corrections, then re-inspects to determine if the corrections were made. If not, then the owner could be cited. If corrections were made, then there is no citation or any negative consequence for the owner - even though the property was out of compliance and required City resources to inspect and cause the correction to be made.

While state law requires the City to allow time to correct certain building code violations, it does not require the two stage process of notice and order and the citation. It may be far more efficient to simply write the citation upon finding a violation, and then allow the owner to make the corrections. If the corrections are timely made, the citation is dismissed. If not, then the citation is final. This will save time and resources in the process - and also may send a message that the City is more serious about both obtaining compliance and deterring owners from allowing their properties to be out of compliance in the first place.

There are some types of violations that the law does not require that the City allows time to correct before a final citation is issued. For example, parking on the lawn is a violation that is easily avoided or remedied. Code inspectors can exercise prosecutorial discretion, but if owners continually commit violations thinking they have time to make corrections before being fined, there isn't an adequate deterrent to keep them from violating and consuming code resources in the process.

There are some property owners who own hundreds or even thousands of properties in Fresno. The City is constantly finding these properties in violation, yet if corrections are timely made pursuant to the notice and order process, they might avoid being fined, but still continue to allow their properties to be out of compliance. This consumes a significant amount of City resources, and the proposed changes to the FMC could both shorten the citation process and deter these owners from allowing their properties to remain out of compliance and only make corrections after the City has had to spend far too many hours investigating and ordering them to comply, all while several more of their properties are not in compliance. These owners need to become responsible owners without the City having to constantly chase them down. The escalating fine structure, with potential for misdemeanor prosecution, may incentivize them to voluntarily cause their properties to be compliant.

ENVIRONMENTAL FINDINGS

This item is not a project for the purposes of the California Environmental Quality Act.

FISCAL IMPACT

This resolution will have no foreseeable impact on the General Fund. Greater efficiencies in code enforcement could be realized in the long run.

ATTACHMENT: Ordinance