



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Ordinance No. 1777 Entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 1 – General Provisions – by Creating and Adding Chapter 1.10, 'Administrative Enforcement Provisions'"

MEETING DATE: April 19, 2006

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1777.

BACKGROUND INFORMATION: Ordinance No. 1777 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 1 – General Provisions – by Creating and Adding Chapter 1.10, 'Administrative Enforcement Provisions'" was introduced at the regular City Council meeting of April 5, 2006.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**

This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

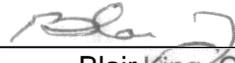
FUNDING AVAILABLE: None required.



Susan J. Blackston
City Clerk

SJB

Attachment

APPROVED: 

Blair King, City Manager

ORDINANCE NO. 1777

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LODI AMENDING LODI MUNICIPAL CODE TITLE 1 –GENERAL
PROVISIONS – BY CREATING AND ADDING CHAPTER 1.10,
“ADMINISTRATIVE ENFORCEMENT PROVISIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. CHAPTER 1.10, “ADMINISTRATIVE ENFORCEMENT PROVISIONS,” is hereby added to Lodi Municipal Code Title 1 –GENERAL PROVISIONS – as follows:

CHAPTER 1.10

ADMINISTRATIVE ENFORCEMENT PROVISIONS

Article I – Code Enforcement – Administrative Provisions

Sections:

- 1.10.010 Declaration of purpose
- 1.10.020 Definitions
- 1.10.030 Administrative enforcement authority
- 1.10.040 Authority to inspect
- 1.10.050 Code enforcement fees; purpose
- 1.10.060 Assessment of reinspection fees
- 1.10.070 Amount of reinspection fees
- 1.10.080 Code enforcement fees exemption
- 1.10.090 Notification of assessment of reinspection fees
- 1.10.100 Collection of reinspection fee

Article II – Notice of Violation

Sections:

- 1.10.110 Notice of violation: procedures
- 1.10.120 Service of notices
- 1.10.130 Proof of notice
- 1.10.140 Recordation of notices of violation; purpose
- 1.10.150 Procedures for recordation
- 1.10.160 Service of notice of violation
- 1.10.170 Procedures to appeal recordation
- 1.10.180 Appeal hearing: recordation of notice
- 1.10.190 Notice of compliance; removal procedures
- 1.10.200 Prohibition against issuance of municipal permits
- 1.10.210 Cancellation of recorded notice of violation

Article III – Administrative Citations

Sections:

- 1.10.220 Administrative citations: authority
- 1.10.230 Administrative citations: procedures
- 1.10.240 Contents of administrative citation

- 1.10.250 Appeal of administrative citation
- 1.10.260 Fines for administrative citations
- 1.10.270 Failure to pay administrative fine
- 1.10.280 Allocation of administrative fine

Article IV – Abatement

Sections:

- 1.10.290 Abatements; declaration of purpose
- 1.10.300 Authority
- 1.10.310 General provisions
- 1.10.320 Abatement of a public nuisance by the City
- 1.10.330 Summary abatement
- 1.10.340 Authority
- 1.10.350 Procedures

Article V – Administrative Penalties

Sections:

- 1.10.360 Declaration of Purpose
- 1.10.370 Authority
- 1.10.380 Procedures; issuance of notice and order
- 1.10.390 Determination of civil penalties
- 1.10.400 Recovery of civil penalties
- 1.10.410 Cancellation of code enforcement lien
- 1.10.420 Administrative costs
- 1.10.430 Failure to comply with notice and order
- 1.10.440 Civil penalties hearing

Article VI –Administrative Hearings

Sections:

- 1.10.450 Administrative hearing procedures
- 1.10.460 Procedures for requesting an appeals hearing
- 1.10.470 Procedures for notification of administrative hearing
- 1.10.480 Procedures at administrative hearing
- 1.10.490 Failure to attend administrative hearing
- 1.10.500 Administrative order
- 1.10.510 Judicial review
- 1.10.520 Failure to comply with the administrative order; misdemeanor

Article I – CODE ENFORCEMENT – ADMINISTRATIVE PROVISIONS

Section 1.10.010 Declaration of purpose.

A. The City Council finds that the enforcement of the Lodi Municipal Code and applicable state codes throughout the City is an important public service. Code Enforcement is vital to the protection of the public's health, safety, and quality of life. The City Council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative enforcement hearings and judicial proceedings. After consideration of the recommendations of the Community Improvement Division, the City Council further finds that a comprehensive code enforcement system

requires a variety of judicial remedies and administrative remedies to enforce violations of this Code and applicable state codes. The City Council also finds that there is a need to establish uniform procedures for administrative enforcement hearings conducted pursuant to this Code. It is the purpose and intent of the City Council to afford due process of law to any person who is directly affected by an administrative action. Due process of law includes: adequate notice, an opportunity to participate in the administrative hearing process and an adequate explanation of the reasons justifying the administrative action. These procedures are also intended to establish a forum to efficiently, expeditiously, and fairly resolve issues raised in any administrative enforcement action. The City Attorney is authorized to develop policies and procedures relating to the qualifications, appointment, and compensation of hearing officers, hearing officer powers, hearing procedures, scope of the hearing, subpoena powers, and other matters relating to administrative enforcement hearings.

B. The procedures established in this Chapter shall be in addition to criminal, civil, or other legal remedies established by law, which may be pursued to address violations of this Code or applicable state codes and the use of this Chapter shall be at the sole discretion of the City.

Section 1.10.020 Definitions.

- A. ADMINISTRATIVE CITATION: means a document issued by a Community Improvement Officer to a person violating the provisions of this Code or applicable state code.
- B. ADMINISTRATIVE ORDER: means an order issued by an Administrative Hearing Officer after a hearing requiring a Responsible Person to correct violations, abate a public nuisance, pay administrative fines, civil penalties, administrative costs, authorize the City to abate a public nuisance, assess a Code Enforcement Lien, or take any other action as authorized or required by this Code and applicable state codes.
- C. ASSESSMENT LIEN: means a lien recorded with the San Joaquin County Recorder's Office for the purposes of collecting outstanding administrative citation fines, civil penalties, and administrative costs imposed as part of a cost recovery, administrative or judicial code enforcement action. It shall also mean the same as a Code Enforcement Lien.
- D. CODE ENFORCEMENT LIEN: see definition of Assessment Lien.
- E. CODE ENFORCEMENT OFFICER: means a person authorized to enforce violations of the Lodi Municipal Code, adopted Uniform Codes, and applicable state codes within their City department's jurisdiction.
- F. DIRECTOR: shall include each of the directors of the following City departments: Planning and Community Development, Public Works, Parks, Recreation and Facilities, Municipal Utilities, Finance, and the Department of Public Safety and any of their designated agents or representatives within their jurisdiction.
- G. HEARING OFFICER (or Administrative Hearing Officer): means any person appointed by the City Attorney to preside over administrative hearings.

- H. NOTICE AND ORDER: means a document used in abatement actions and assessment of civil penalties involving serious code violations, which provide notice of Municipal Code, adopted Uniform Codes, or applicable state code violations and orders a Responsible Person to take certain steps to correct the violations within a definitive period of time. Civil penalties may also be imposed in conjunction with this Notice.
- I. NOTICE OF COMPLIANCE: means a document issued by a Director, which represents that a property has been brought into compliance with the criteria set forth under this Code.
- J. NOTICE OF SATISFACTION: means a document or form, which indicates that all outstanding civil penalties and costs have either been paid in full, or that the City has negotiated an agreed amount, or that a subsequent administrative or judicial decision has resolved the outstanding debt.
- K. NOTICE OF VIOLATION: means a written notice, which informs a Responsible Person of code violations present on the subject property, lists the required compliance actions, and contains specific information as required by this Code. The Notice of Violation may be recorded with the San Joaquin County Recorder's Office.
- L. OWNER: applied to a building or land, shall include any part owner, joint owner, tenant, tenant in common, joint tenant, of the whole or a part of such building or land.
- M. PERSON: unless it otherwise appears from the context as used, includes any person, firm, association, organization, partnership, business trust, company, corporation, public agency, school district, the State of California, its political subdivisions and/or instrumentalities thereof or any other entity which is recognized by law as the subject of rights or duties.
- N. PROPERTY OWNER: means the record owner of real property as listed on the last equalized assessment roll maintained by the San Joaquin County Assessor.
- O. RESPONSIBLE PERSON: means a person who a Director determines is responsible for causing, permitting, or maintaining a public nuisance or a violation of the Lodi Municipal Code, adopted Uniform Codes, or applicable state codes. The term "Responsible Person" includes, but is not limited to, a property owner, tenant, person with a legal interest in the subject property, person in possession of the subject property, or person that exercises custody and control over the subject property.
- P. SHALL is mandatory and MAY is permissive. However, the use of the word "shall" in this Chapter is not intended and shall not impose any mandatory duty to third parties by the City of Lodi, its commissions, boards, officers, agents, or employees and is not intended and shall not impose any liability on the City of Lodi, its commissions, boards, officers, agents, or employees.

Section 1.10.030 Administrative enforcement authority.

The Community Development Director, designated Community Improvement Officers, the Fire Chief, and other City Directors and/or their designated agents have the authority and powers

necessary to determine whether a violation of this Code or applicable state codes exists and the authority to take appropriate action to gain compliance with the provisions of this Code or applicable state codes. These powers include the power to issue Notices of Violation, Administrative Citations, Notices and Orders, and civil penalties, the power to inspect public and private property, and use the administrative remedies which are available under this Code, adopted Uniform Codes, or applicable state codes.

Section 1.10.040 Authority to inspect.

A Director, a Community Improvement Officer, or other duly authorized agent are authorized to enter upon any property or premises within the City to ascertain whether the provisions of this Code or applicable state codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples, or other physical evidence such as the **use** of a sound level measurement device to measure noise disturbances. All inspections, entries, examinations, and surveys shall be done in a reasonable manner. If an owner, occupant, or agent or other Responsible Person refuses permission to enter or inspect, the community Improvement Officer may seek an administrative inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure.

Section 1.10.050 Code enforcement fees; purpose.

A. The City Council finds there is a need to recover costs incurred by the City in its code enforcement efforts including time spent by City personnel inspecting and reinspecting properties throughout the City, preparing and posting the various notices that are required under this Code whenever a property is found to be in violation of a mandatory provision, processing a case file, towing inoperative vehicles, obtaining inspection warrants, and preparing for and appearing at Administrative Hearings, which procedures all become necessary when a Responsible Person fails to voluntarily correct code violations on his or her property. These additional code enforcement efforts are not usually undertaken or employed until after a Responsible Person has failed to respond on a voluntary basis to notices and/or warnings from the City or volunteers.

B. The City Council further finds the assessment of fees for the services listed in subsection **A**, **are** an appropriate method to recover costs incurred for the additional work that is undertaken by City staff when a responsible person fails to voluntarily correct code violations on his or her property in a timely manner. The assessment and collection of these code enforcement fees shall not preclude the imposition of, and shall be in addition to, any administrative or judicial civil penalties or fines for violations of this Code or applicable state codes.

Section 1.10.060 Assessment of reinspection fees.

A. Whenever a Community Improvement Officer and/or designated staff inspects, reinspects, processes a case file, prepares and posts a Notice of Intent to Abate, a Notice of Violation, Notice to Vacate, Notice and Order of Demolition, Abandoned Vehicle Abatement Notice, seeks and obtains an inspection warrant, prepares for and appears at an Administrative Hearing, or any other action as may be hereinafter designated by Resolution of the City Council, for which an action has been initiated to obtain compliance with this Code or applicable state code, a Director shall assess the appropriate code enforcement fee against the Responsible Person.

Section 1.10.070 Amount of reinspection fees.

A code enforcement fee schedule shall be established and revised as necessary by the City Council to reflect current costs. The code enforcement fee schedule shall be filed in the City Clerk's office.

Section 1.10.080 Code enforcement fees exemption,

No fee shall be charged if any of the following circumstances exist:

- A. A Notice of Compliance has been issued;
- B. It is determined that the previously identified Responsible Person has not caused the code violation; or
- C. The Responsible Person fully complies with any Notice of Violation or warning before the compliance reinspection deadline set by Code Enforcement staff.

Section 1.10.090 Notification of assessment of reinspection fees.

- A. Where the assessment of code enforcement fees is authorized under this Chapter, the Director shall provide the Responsible Person with a written notice assessing code enforcement fees. The written assessment shall contain the following information: (1) The amount of fees charged; (2) The corresponding dates when code enforcement action took place; and (3) A deadline by which the code enforcement fee must be paid.
- B. Notification of the code enforcement fee assessment shall be provided to the Responsible Person by any of the means outlined in this Chapter.
- C. Code Enforcement fees may be assessed as part of any judicial or administrative enforcement action as provided for in this Chapter.
- D. Code Enforcement fees collected pursuant to this Chapter shall not be duplicated in any other action to recover these identical costs.
- E. The failure of any Responsible Person to receive notice of the code enforcement fees shall not affect the validity of any fees imposed under this Chapter.

Section 1.10.100 Collection of reinspection fee.

The City shall collect the assessed code enforcement and late fees by the use of all appropriate legal means, including but not limited to: referral to the Finance Department for collection or assessment against the property.

Article II – NOTICE OF VIOLATION

Section 1.10.110 Notice of violation; procedures.

Whenever it is determined that a violation of this Code, adopted Uniform Codes, or applicable state codes exists, the Director, the Community Improvement Officer, or other duly authorized agent may issue a Notice of Violation to the Responsible Person(s). The Notice of Violation shall include the following information:

- A. The name of the Responsible Party;
- B. The name of the owner, if different from the Responsible Person;
- C. Street address of the property at issue;
- D. The code sections in violation;
- E. A description of the conditions which violates the applicable codes;
- F. A list of necessary corrections to bring the property into compliance;
- G. A deadline or specific date to correct the violations listed in the Notice of Violation; and
- H. A list of the potential consequences for failure to comply with the Notice including, but not limited to: criminal prosecution, civil injunction, administrative abatement, administrative citations, civil penalties, revocation of permits, recordation of the Notice of Violation, and withholding of future municipal permits.

Section 1.10.120 Service of notices.

Whenever any notice is required to be given under this Code, the notice shall be served in the following manner unless a different procedure is specifically stated to apply:

- A. Personal service or certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice shall be sent by regular mail to the Responsible Person. If a notice that is sent by certified mail is returned unsigned, then service shall be deemed effective pursuant to regular mail.
- B. Posting the notice conspicuously on or in front of the subject property.
- C. Mailings to the Property Owner shall be sent to the address listed in the last equalized assessment roll of the San Joaquin County Assessor.
- D. In the event the Responsible Person is someone other than the Property Owner, a copy of the notice shall also be mailed to the Property Owner.

Service by certified or regular mail in the manner described above shall be effective on the date of mailing.

The failure of any person with an interest in the subject property to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this Chapter.

The notice requirements in this section do not apply to initial Notices of Violation, Courtesy Notices, which may be sent by regular mail. Service of a Courtesy Notice by regular mail is effective on the date of mailing.

Section 1.10.130 Proof of notice.

Proof of giving any notice may be made by the certificate of any officer or employee of the City, or by affidavit of any person over the age of eighteen years, which shows service in conformity with this Chapter, or other provisions of law applicable to the subject matter concerned.

Section 1.10.140 Recordation of notices of violation; purpose.

The City Council finds that there is a need to give notice of pending enforcement actions to persons who may subsequently acquire the property as a means by which to ensure the violations will be corrected. An appropriate method to accomplish this is through the issuance and recordation of Notices of Violation. The procedures established in this Chapter shall be in addition to criminal, civil, or any other remedy established by law, which may be pursued to address violations of this Code or applicable state codes.

Section 1.10.150 Procedures for recordation.

A. Once a Director has issued a Notice of Violation to a Responsible Person and the property remains in violation ~~after the~~ deadline established in the Notice of Violation, the Director may record the Notice of Violation with the San Joaquin County Recorder's Office.

B. Before recordation, a Director shall provide to the Responsible Person a Notice of Intent to Record stating that a Notice of Violation will be recorded unless a written request to appeal this action is received pursuant to the procedures outlined in this Chapter. The letter shall be served in accordance with the methods set forth in this Chapter.

C. If a written request to appeal is not received within the time frame specified, the Director may thereafter cause the Notice of Violation to be recorded, if the violations remain.

D. The recorded Notice of Violation shall include the name of the Property Owner, the assessor's parcel number, the street address, the parcel's legal description, and a copy of the latest Notice of Violation.

E. Any costs associated with recording or removal of the Notice of Violation may be assessed against the property as provided for in this Chapter.

Section 1.10.160 Service of notice of violation.

A copy of the recorded Notice of Violation shall be mailed to the Responsible Person and to the Property Owner and/or any other persons who have requested copies of such Notices pursuant to any of the methods of service set forth in this Chapter.

Section 1.10.170 Procedures to appeal recordation.

A. An appeal of the Director's Notice of Intent to Record the Notice of Violation shall follow the procedures set forth in this Chapter.

B. Upon receiving a written appeal, the Director shall schedule a hearing pursuant to **the** procedures **set** forth in this Chapter. The purpose of the hearing is for the Responsible Person or Property Owner to state any reasons why a Notice of Violation should not be recorded.

C. The failure of any person to file an appeal in accordance with these provisions shall constitute a waiver of the right to an administrative hearing and shall not affect the validity of the recorded Notice of Violation.

Section 1.10.180 Appeal hearing; recordation of notice.

A. At the appeal hearing, the Hearing Officer shall only consider evidence that is consistent with the City Attorney's rules and procedures for administrative hearings, and that is relevant to the following issues:

1. Whether the conditions listed in the Notice of Violation violate the this Code or applicable state codes; and

2. Whether the Director afforded the Responsible Person with due process by adhering to the notification procedures specified in this Chapter.

B. If the Hearing Officer affirms the Director's decision, the Director may proceed to record the Notice of Violation.

C. If the Hearing Officer determines that recordation is improper, the Hearing Officer shall invalidate the Director's decision to record the Notice of Violation.

Section 1.10.190 Notice of compliance: removal procedures.

A. When the violations listed on the Notice of Violation have been corrected, the Responsible Person or Property Owner may file with the Director a written request for a Notice of Compliance on a form provided by the City.

B. Once the Director receives this request, the Director shall reinspect **the** property within ten (10) days from receipt of the request to determine whether the violations listed in the Notice of Violation have been corrected and whether all necessary permits have been issued and final inspections have been performed.

C. The Director shall provide a Notice of Compliance to the Responsible Person or Property Owner if the Director determines that:

1. all violations listed in the recorded Notice of Violation have been corrected: and
2. all necessary permits have been issued and finalized: and
3. all administrative fines or civil penalties have been paid; and
4. the party requesting the issuance of the Notice of Compliance has paid an administrative fee to reimburse the City for all administrative costs.

D. Administrative costs may include costs incurred in the investigation, inspection, reinspection, title search, appeal hearing, and any other processing costs associated with the violations specified on the Notice of Violation.

E. If the Director denies a request to issue a Notice of Compliance, the Director shall serve the requesting party, the Responsible Person, and the Property Owner with a written explanation within five (5) days from the inspection setting forth the reasons for the denial. The written explanation shall be served by any of the methods of service listed in this Chapter

F. The Director's decision denying a request to issue a Notice of Compliance constitutes the final decision in the matter and is not appealable.

Section 1.10.200 Prohibition against issuance of municipal permits.

For properties where a Notice of Violation has been recorded, the City may withhold permits for repair, construction, and/or alteration on the affected property until a Notice of Compliance has been issued by the Director. The City may not withhold permits, which are necessary to obtain a Notice of Compliance or which are necessary to correct serious health and safety violations.

Section 1.10.210 Cancellation of recorded notice of violation.

The Director shall record or cause to be recorded the Notice of Compliance with the San Joaquin County Recorder's Office. The recordation of the Notice of Compliance shall have the effect of canceling the recorded Notice of Violation.

Article III –ADMINISTRATIVE CITATIONS

Section 1.10.220 Administrative citations; authority.

A. Any person violating any provisions of this Code, adopted Uniform Codes, or applicable state code may be issued an Administrative Citation by a Community Improvement Officer as provided in this Chapter.

B. Each and every day a violation of this Code, adopted Uniform Codes, or applicable state code exists constitutes a separate and distinct offense.

C. An administrative fine shall be assessed by means of an Administrative Citation issued by the Community Improvement Officer and shall be payable directly to the City unless otherwise noted on the Citation.

D. Fines assessed by means of an Administrative Citation shall be collected in accordance with the procedures specified in this Chapter.

Section 1.10.230 Administrative citations; procedures.

A. Upon discovering any violation of this Code, adopted Uniform Codes, or applicable state codes, a Community Improvement Officer may issue an Administrative Citation to a Responsible Person in the manner prescribed in this Chapter. The Administrative Citation shall be issued on a form approved by the City Attorney.

B. If the Responsible Person is a commercial business, the Community Improvement Officer shall attempt to locate the business owner and issue the business owner an Administrative Citation. If the Code Enforcement Officer can only locate the manager of the commercial business, the Administrative Citation may be given to the manager of the business. A copy of the Administrative Citation shall also be mailed to the business owner or Responsible Person in the manner prescribed in this Chapter.

C. The Administrative Citation shall be signed by the issuing Code Enforcement Officer.

D. Method of Service.

1. Signature. Once the Responsible Person is located, the Code Enforcement Officer shall attempt to obtain the signature of that person on the Administrative Citation. However, if the Responsible Person refuses or fails to sign the Administrative Citation, it shall not affect the validity of the citation and subsequent proceedings.

2. If the Community Improvement Officer is unable to locate the Responsible Person, then the Administrative Citation shall be mailed to the Responsible Person in the manner prescribed in this Chapter.

3. Posting. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently mailed to the Responsible Person in the manner prescribed by this Chapter.

E. A copy of the Administrative Citation shall thereafter be mailed to the Responsible Person and to the owner of the property if different from the Responsible Person in the manner prescribed by this Chapter. The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this Chapter.

Section 1.10.240 Contents of administrative citation.

Any Administrative Citation that is issued shall contain all of the following information:

A. The date and location of the violations and the approximate time the violations were observed;

B. The code sections violated and a brief description of how the sections are violated;

C. Where appropriate, the action required to correct the violations;

D. Set forth a deadline by which the violations must be corrected and the consequences of failing to comply;

E. The amount of fine imposed for the violations, if any;

F. An explanation as to how the fine shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the fine; and

G. Identify all rights and procedures of appeal.

Section 1.10.250 Appeal of administrative citation.

An appeal from the issuance of an Administrative Citation shall follow the procedures set forth in this Chapter.

Section 1.10.260 Fines for administrative citations.

A. If the Responsible Person fails to correct the violation, subsequent Administrative Citations may be issued for the same violations. The amount of the fine shall increase at a rate specified in subsection (B) below.

B. The fines assessed for each Administrative Citation issued for the same violations shall be as follows:

- | | |
|---|----------|
| 1. First Administrative Citation: | \$100.00 |
| 2. Second Administrative Citation: | \$250.00 |
| 3. Third and subsequent Administrative Citation(s): | \$500.00 |

C. Payment of the fine shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City.

D. All fines assessed shall be payable to the City of Lodi, unless otherwise directed on the citation.

E. The Community Development Director is authorized, under direction and upon approval of the City Attorney, to establish policies and procedures for the certification, decertification, and conduct of the Community Awareness and Responsibility Education Classes, to establish that persons receiving a fine under an Administrative Citation have the option of attending a certified Community Awareness and Responsibility Education Class prior to the citation becoming delinquent in lieu of paying the fine. A person may not use this option more than once in any twelve (12)-month period.

F. For all delinquent, unpaid Administrative Citation fines, there shall be a penalty imposed in the amount of ten percent (10%) of the citation fine amount and an additional one percent (1%) per month of the total amount of such fine for each month during the time that said fine remains unpaid after its delinquency date. The delinquency date for an Administrative Citation fine shall be sixty (60) days following the imposition of the fine, or the appeal determination of the Administrative Hearing Officer, whichever is later.

Section 1.10.270 Failure to pay administrative citation fine.

The failure of any person to pay the fines assessed by an Administrative Citation within the time specified on the Citation may result in the Director referring the matter to the Finance Department or other designated agent for collection. Alternatively, the Director shall pursue any other legal remedy to collect the fines including, but not limited to, those remedies provided in Title 1, Chapter 1.08 of this Code.

Section 1.10.280 Allocation of administrative citation fines.

Administrative fines collected pursuant to this Article shall be deposited into the Special Revenue Fund.

Article IV – ABATEMENT

Section 1.10.290 Abatements; declaration of purpose.

The City Council finds that it is necessary to establish appropriate procedures for the administrative and summary abatement of public nuisances and code violations. The procedures established in this Chapter are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address violations of this Code or applicable state codes. This Chapter governs all other nuisance abatement procedures established in other chapters of this Code unless other procedures are specifically stated to apply.

Section 1.10.300 Authority.

Any condition caused, maintained, or permitted to exist in violation of any provisions of this Code or an applicable state code, which constitutes a public nuisance, may be abated by the City pursuant to the procedures set forth in this Article.

Section 1.10.310 General procedures.

A. Abatement Notice

1. Whenever the Director determines that public or private property or any portion of public or private property is a public nuisance as generally defined in Section 15.30.030 or as declared in any other specific section of this Code, including adopted Uniform Codes or applicable state codes, an Abatement Notice may be issued to the Responsible Person to abate the public nuisance.

2. The Abatement Notice shall contain a description of the subject property in general terms reasonably sufficient to identify the location of the property. It shall refer to specific sections of this Code, adopted Uniform Codes, or applicable state code violations, which render the property a public nuisance.

3. The Abatement Notice shall describe the action required to abate the public nuisance, which may include, but is not limited to: corrections, repairs, demolition, removal, obtaining the necessary permits, vacation of tenants or occupants, or other appropriate action and shall establish time frames by which each action must occur.

4. The Abatement Notice shall explain the consequences should the Responsible Person fail to comply with the terms of the notice.

5. The Abatement Notice shall identify all applicable hearing and appeal rights.

B. Service of Abatement Notice

1. The Abatement Notice shall be served by any of the methods of service listed in this Chapter.

Section 1.10.320 Abatement of a public nuisance by the City.

- A. Once the Director follows the procedures set forth herein and the time for compliance has lapsed, if the violations remain, the nuisance conditions may be abated by City personnel or by a private contractor.
- B. City personnel or a private contractor can enter upon private property in a reasonable manner as provided by law to abate the nuisance conditions as specified in the Abatement Notice or Abatement Order.
- C. If the Responsible Person abates the nuisance conditions before the City performs the actual abatement pursuant to an Abatement Notice or Abatement Order, the Director may still assess all costs incurred by the City against the Responsible Person pursuant to the procedures set forth herein.
- D. When abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the Director. The report shall contain the names and addresses of the Responsible Persons of each parcel, the name and address of the Property Owner, if different from the Responsible Person, the tax assessor's parcel number, and a legal description of the property, if the Responsible Person is an owner.
- E. The Director shall schedule a confirmation of costs hearing before an Administrative Hearing Officer pursuant to the procedures set forth in this Chapter, unless waived in writing by all Responsible Persons.
- F. All administrative and actual costs incurred by the city in abating the violations may be assessed and recovered against the Responsible Person pursuant to the provisions set forth in this Chapter.

Section 1.10.330 Summary abatement.

This Article governs the procedures relating to summary abatement of public nuisances.

Section 1.10.340 Authority.

Whenever the Director determines that an imminent **health** and safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the Responsible Person:

- A. Order the immediate evacuation of any tenants and prohibit occupancy of the subject property until all repairs are completed; or
- B. Post the premises as unsafe, substandard, or dangerous; or
- C. Board, fence, or secure the building or site; or
- D. Raze and grade that portion of the premises or site to prevent further collapse and remove any hazard to the general public; or

E. Make any minimal emergency repairs as necessary to eliminate any imminent health and safety hazard; or

F. Take any other action as appropriate under the circumstances.

Section 1.10.350 Procedures.

A. The Director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by the City during the summary abatement process shall be assessed, collected, and recovered against the Responsible Person through the procedures outlined in this Chapter.

B. The Director may also pursue any other administrative or judicial remedy established by law to abate any remaining public nuisance.

Article V – Administrative Penalties.

Section 1.10.360 Declaration of purpose.

The City Council finds that there is a need for an alternative method of enforcement for enforcing more serious violations of this Code, adopted Uniform Codes, and applicable state codes. The City Council further finds that the assessment of civil penalties through an administrative hearing procedure for code violations is a necessary alternative method of code enforcement. The administrative assessment of civil penalties is in addition to any other administrative or judicial remedy established by law, which may be pursued by the City to address serious violations of this Code, adopted Uniform Codes, or applicable state codes.

Section 1.10.370 Authority.

A. Any person violating any provision of this Code, adopted Uniform Codes, or applicable state code may be subject to the assessment of civil penalties pursuant to the administrative procedures provided in this Chapter.

B. Each and every day a violation of any provision of this Code or applicable state code exists constitutes a separate and distinct violation.

C. Civil penalties may be directly assessed in conjunction with a Notice and Order issued by the Director, or affirmed by a Hearing Officer. Civil penalties assessed shall be collected in accordance with the procedures specified in this Chapter.

D. Civil penalties for violations of any provision of this Code, adopted Uniform Codes, or applicable state codes shall be assessed at a daily rate determined by the Director or Hearing Officer pursuant to the criteria listed in this Chapter. Except as authorized pursuant to State and Federal laws, the maximum civil penalty shall be \$1,000 per violation per day with the maximum amount of civil penalties not exceeding \$100,000 per parcel or structure for any related series of violations occurring within the twelve (12)-month period immediately proceeding the latest violation.

Section 1.10.380 Procedures; issuance of notice and order.

- A. Whenever the Director determines that a violation of one or more provisions of this Code, adopted Uniform Codes, or applicable state codes has occurred or continues to exist, a civil penalty may be issued in conjunction with a Notice and Order to the Responsible Person.
- B. The Notice and Order shall refer to all code sections violated and describe how each section is or has been violated.
- C. The Notice and Order shall refer to the dates and locations of the violations.
- D. The Notice and Order shall address the action required to correct the outstanding violations and establish time frames for completion.
- E. The Notice and Order shall establish a daily amount of civil penalties. The Director shall determine the daily amount of civil penalties pursuant to the criteria in set forth in this Article.
- F. The Notice and Order shall identify a date when the civil penalties began to accrue and a date when the assessment of civil penalties ended, unless the violation is continuous. In the case of a continuous violation, there shall be an ongoing assessment of penalties at the daily rate established in the Notice and Order until the violations are corrected.
- G. If a Director determines that the violations are continuing, the Notice and Order shall demand that the Responsible Person cease and desist from further action causing the violations, or take affirmative action to cease from maintaining or permitting the violation to exist, and commence and complete all action to correct the outstanding violations under the guidance of the appropriate City Departments.
- H. The Notice and Order shall enumerate any other consequences should the Responsible Person fail to comply with the terms and deadlines as prescribed in the Notice and Order.
- I. The Notice and Order shall identify appropriate hearing procedures as required by this Chapter.
- J. The Notice and Order shall be served upon the Responsible Person by any one of the methods of service listed in this Chapter.
- K. The Notice and Order shall identify the factors used by the Director in determining the duration and the daily amount of civil penalties.
- L. More than one Notice and Order may be issued against the same Responsible Person if it encompasses either different dates or different violations.

Section 1.10.390 Determination of civil penalties.

- A. In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered the violations as evidenced by the issuance of a Notice of Violation or any other written correspondence.

B. The assessment of civil penalties shall end when all action required by the Notice and Order has been completed.

C. In determining the amount of the civil penalty to be assessed on a daily rate, the Director may consider some or all of the following factors:

1. The duration of the violation.
2. The frequency or recurrence of the violation.
3. The seriousness of the violation.
4. The history of the violation.
5. The Responsible Person's conduct after issuance of the Notice and Order.
6. The good faith effort by the Responsible Person to comply.
7. The economic impact of the penalty on the Responsible Person.
8. The impact of the violation upon the community.
9. Any other factors that justice may require.

Section 1.10.400 Recovery of civil penalties

The Director may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including, but not limited to, the recordation of a Code Enforcement Lien pursuant to the procedures set forth in this Chapter. If unable to collect the obligation, the Director may refer the obligation to the City Attorney to file a court action to recover these penalties and costs.

Section 1.10.410 Cancellation of code enforcement lien.

Once payment in full is received for the outstanding civil penalties and costs or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the Director shall, within ten (10) days from the date payment is made or decision is final, record a Notice of Satisfaction with the San Joaquin County Recorder's Office. The Notice of Satisfaction shall include the same information as provided for in the original Code Enforcement Lien. Such Notice of Satisfaction shall cancel the Code Enforcement Lien.

Section 1.10.420 Administrative costs.

The Director or Hearing Officer is authorized to assess any reasonable administrative costs. Administrative costs may include scheduling and processing of the hearing and all subsequent actions.

Section 1.10.430 Failure to comply with notice and order.

The Director shall request the City Attorney to appoint a Hearing Officer and the Director shall establish a date, time, and place for the civil penalties hearing in accordance with this Chapter when the Responsible Person fails to comply with the terms of the Notice and Order. Failure to comply includes failure to pay the assessed civil penalties, failure to commence and complete corrections by the established deadlines, or failure to refrain from continuing violations of this Code, adopted Uniform Codes, or applicable state codes.

Section 1.10.440 Civil penalties hearing.

A. The procedures for the civil penalties hearing are the same as the hearing procedures set forth in this Chapter.

B. The Hearing Officer shall only consider evidence that is relevant to the following issues: (1) whether the Responsible Person has caused or maintained a violation of this Code or applicable state code that existed on the dates specified in the Notice and Order; and (2) whether the amount of civil penalties assessed by the Director pursuant to the procedures and criteria outlined in this Chapter was reasonable.

Article VI – Administrative Hearings

Section 1.10.450 Administrative hearing procedures.

These sections establish the procedures for the use of Administrative Hearing Officers and the procedures governing administrative hearings.

A. Qualifications of Administrative Hearing Officer. The City Attorney shall promulgate rules and procedures as are necessary to establish a list of qualified persons who are capable of acting on behalf of the City as Hearing Officers.

B. Appointment of Administrative Hearing Officer. Hearing Officers presiding at administrative hearings shall be appointed by the City Attorney and compensated by the City. The City Attorney shall develop policies and procedures relating to the appointment and Compensation of Hearing Officers.

C. Disqualification of Hearing Officer. Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. Rules and procedures for the disqualification of a Hearing Officer shall be promulgated by the City Attorney.

D. Powers of Hearing Officer.

1. The Hearing Officer may continue a hearing based on good cause shown by one of the parties to the hearing or if the Hearing Officer independently determines that due process has not been adequately afforded.

2. The Hearing Officer, upon receipt of a written request which is submitted no later than five (5) days before the hearing, shall subpoena witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena. The City Attorney shall develop policies and procedures relating to the issuance of subpoenas in administrative hearings, including the form of the subpoena and related costs.

3. The Hearing Officer has continuing jurisdiction over the subject matter of an administrative hearing for the purposes of granting a continuance, ensuring compliance with an Administrative Order, modifying an administrative order, or where extraordinary circumstances exist granting a new hearing.

4. The Hearing Officer has the authority to require the Responsible Person to post a code enforcement performance bond to ensure compliance with an Administrative Order.

E. Failure to Obey Subpoena. It is unlawful for any person to refuse to obey a subpoena issued by a Hearing Officer.

Section 1.10.460 Procedures for requesting an appeals hearing.

A. A person served with one of the following documents, order or notices may file an appeal within ten (10) calendar days from the service of the notice:

1. Any civil penalty notice and order issued;
2. An administrative citation issued pursuant to this Chapter;
3. An application for a waiver of fees.

B. The appeal shall be made in writing stating the grounds for the appeal and filed with the Director on or before the tenth day after service.

Section 1.10.470 Procedures for notification of administrative hearing.

A. Where an administrative remedy or proceeding provides for an appeal procedure, the Director shall request the City Attorney to appoint a Hearing Officer and to schedule a day, time, and a place for the hearing.

B. Written notice of the time and place of the hearing shall be served at least ten (10) calendar days prior to the date of the hearing to the Responsible Person.

C. The format and contents of the hearing notice shall be in accordance with rules and policies promulgated by the City Attorney.

D. The notice of hearing shall be served by any of the methods of service listed in this Chapter.

Section 1.10.480 Procedures at administrative hearing.

A. Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The procedure and format of the administrative hearing shall follow the procedures promulgated by the City Attorney.

B. The City bears the burden of proof at an administrative hearing to establish the existence of a violation of this Code, adopted Uniform Codes, or applicable state codes.

C. The standard of proof to be used by the Hearing Officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.

D. Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his case.

Section 1.10.490 Failure to attend administrative hearing.

Any Responsible Person who requests a hearing or whose actions are the subject of an administrative hearing and who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that the hearing was properly noticed.

Section 1.10.500 Administrative order.

A. The decision of the Hearing Officer shall be entitled "Administrative Order" and shall be issued in accordance with this Chapter and the rules and procedures promulgated by the City Attorney.

B. Once all evidence and testimony are completed, the Hearing Officer shall issue an Administrative Order, which affirms, modifies, or rejects the Director's action. In the case of a notice and order of civil penalty, the Administrative Order may affirm, modify, or reject the daily rate or duration of the civil penalties depending upon the review of the evidence and may increase or decrease the total amount of civil penalties and costs assessed.

C. The Hearing Officer may issue an Administrative Order that requires the Responsible Person to cease from violating this Code, adopted Uniform Codes, or applicable state codes and to make necessary corrections within a specific time frame.

D. As part of the Administrative Order, the Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the Responsible Person's ability to complete compliance by specified deadlines.

E. The Hearing Officer may issue an Administrative Order, which imposes additional civil penalties that will continue to be assessed until the Responsible Person complies with the Hearing Officer's decision and corrects the violation.

F. The Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the Administrative Order.

G. The Administrative Order shall become final on the date of service of the Order.

H. The Administrative Order shall be served on all parties by any one of the methods listed in this Chapter.

Section 1.10.510 Judicial review

Once an Administrative Order becomes final as provided in this Chapter, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure Section 1094.6 or as may be amended hereafter.

Section 1.10.520 Failure to comply with the administrative order misdemeanor.

A. After the Hearing Officer issues an Administrative Order, the Director shall monitor the violations and determine compliance.

B. Upon the failure of the Responsible Person to comply with the terms and deadlines set forth in the Administrative Order, the Director may use all appropriate legal means to recover the civil penalties, administrative costs, and obtain compliance with the Administrative Order, including seeking an injunction.

C. Failure to comply with an Administrative Order constitutes a misdemeanor.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner, which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons *or* property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance or a summary thereof as may be permitted by law shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 19th day of April, 2006



SUSAN HITCHCOCK
Mayor

Attest:



SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1777 was introduced at a regular meeting of the City Council of the City of Lodi held April 5, 2006, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held April 19, 2006, by the following vote:

AYES: COUNCIL MEMBERS - Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

NOES: COUNCIL MEMBERS - None

ABSENT: COUNCIL MEMBERS - None

ABSTAIN: COUNCIL MEMBERS - None

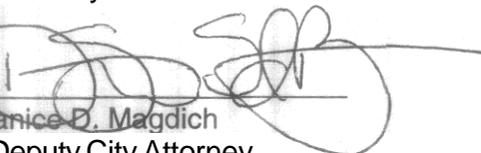
I further certify that Ordinance No. 1777 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk



Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

By 
Janice D. Magdich
Deputy City Attorney