

REVISED

REVISED

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER _____

CITY ATTORNEY

ORDINANCE NO. _____ C.M.S. **DRAFT**

ORDINANCE AMENDING CHAPTERS 1.08, "CIVIL PENALTIES", CHAPTER 1.12, "ADMINISTRATIVE CITATIONS" AND CHAPTER 1.16, "ALTERNATIVE ADMINISTRATIVE PROCEDURE FOR ABATEMENT OF CERTAIN VIOLATIONS" OF THE OAKLAND MUNICIPAL CODE FOR ENFORCEMENT OF PUBLIC NUISANCE ACTIONS

Whereas, in 1995 and 1997 the City established findings demonstrating that there existed significant property maintenance and property-related nuisance problems in the City of Oakland which could be largely addressed by local enforcement of state and local laws designed to protect the public health, safety and welfare; and

Whereas, administrative procedures to impose civil penalties and citations were instituted to address said public nuisance property problems; and

Whereas, public nuisance activities include, but are not limited to: the illegal sale, use or possession of controlled substances or other illegal drugs and substances; the illegal possession, use or sale of firearms, public urination or defecation; acts of violence affecting the community, neighborhood or considerable number of people; illegal discharge of a firearm or explosives; the making of loud, unnecessary or unusual noise which disturbs the peace and quiet of the neighborhood; intentional obstruction of pedestrians or vehicular traffic in the public right-of-way; the solicitation or occurrence of prostitution; illegal gambling; unlawful activities of a criminal street gang; drug loitering; the presence of unregistered vehicles or improperly stored, inoperative, wrecked, or dismantled vehicles on property and any activities or conduct that are detrimental to the protection, health, safety and general public welfare of the residents of the city; and

Whereas, the amendments as proposed herein shall establish broader grounds for public nuisance actions and provide a more expeditious, streamlined administrative process for the prosecution of public nuisance actions for abatement against property owners that maintain public nuisances on their properties within City boundaries;

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. Oakland Municipal Code, Title 1, Chapter 1.08 is hereby amended as follows:

1.08.010 Purpose.

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the city and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of violations of the laws, codes, ordinances and regulations identified in this chapter

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1.08.020 Scope.

- A. This chapter authorizes the administrative assessment of civil penalties to effect abatement of:
1. Any violations of provisions of the following Oakland Municipal Codes: Oakland Building Code (OMC Chapter **15.04**), Oakland Housing Code (OMC Chapter **15.08**), Uniform Fire Code (OMC Chapter **15.12**), Fire Damaged Area Protection & Improvement Code (OMC Chapter **15.16**) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter **15.64**), Oakland Planning Code (OMC Title **17**), Transient Occupancy Tax Code (OMC Chapter **4.24**), Hotel Rates & Register Code (OMC Chapter **5.34**), Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title **10**), Streets, Sidewalks & Public Places Code (OMC Title **12**), Creek Protection, Storm Water Management and Discharge Control Code(OMC Chapter **13.16**)and the Oakland Sign Code (OMC Chapter **14**);or,
 2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal: or
 3. The occurrence of any public nuisance as known at common law or in equity jurisprudence, or
 4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.
- B. Civil penalties established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

1.08.030 Violations.

- A. Violation. A violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated and the real property or structure thereon identified with the violation has been declared and remains a public nuisance.
- B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this chapter or in violation of California Civil Code Sections **3479** and **3480**, or at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.

- C. Responsible Department. The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City Manager or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.
- D. Responsible Person. The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter.

1.08.040 Authority.

- A. Whenever conditions upon a property or structure thereon constitute a violation as defined in this chapter, administrative civil penalties may be assessed to effect abatement.
- B. The City Manager, or his or her designee, is authorized to declare a public nuisance hereunder and to assess civil penalties administratively in accordance with the procedures established in this chapter. The City Manager shall appoint a Case Manager, hereunder, who will report directly to the City Manager, or his or her designee, and is authorized to coordinate and direct staff located in City departments and agencies for the purposes of prosecuting public nuisances within the scope of this Chapter, obtaining abatement and recovering fines, fees and costs. The Case Manager's authority to direct staff shall include, but is not limited to, authority to direct staff resources to undertake case investigations, gather evidence, prepare cases, issue notices, conduct hearings, provide testimonial and other relevant evidence and recover penalties, fines, fees and costs.
- C. The responsible person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to civil penalties as established in this chapter.
- D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists, or each and every day following a violation on which owner fails to demonstrate that he or she has undertaken action to abate said violations which is satisfactory to the City, shall constitute a separate and distinct offense.
- E. Separate civil penalties may be assessed for separate violations or separate dates of occurrence.
- F. Full or partial reimbursement or recovery of civil penalties and administrative expenses shall not excuse the failure to correct the violations wholly and permanently nor shall it preclude the assessment of additional civil penalties or other abatement actions by the city.
- G. Civil penalties and related administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to priority lien and special assessment of the general tax levy, or by civil and small claims action brought by the city, or both.

1.08.050 Notification.

- A. Whenever civil penalties are administratively assessed, a notification of the abatement action shall be served upon the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.

- B. The assessment notice shall be served by one or more of the following methods:
 - 1. Personal delivery with acknowledged receipt; or
 - 2. Certified mail with return receipt requested to the last known mailing address; or
 - 3. Constructive public notification, including but not limited to the following:
 - a. Publication in a newspaper of general circulation, or
 - b. Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or
 - c. Conspicuous posting on or in the vicinity of the property.

- C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.

- D. The assessment notice shall minimally identify the following factors:
 - 1. The provisions of the code or ordinance violated and the descriptive nature of the violations; and
 - 2. The locations of the violations and the dates of occurrence; and
 - 3. The remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections; and
 - 4. The dollar amount and rate of recurrence and duration of civil penalties; and
 - 5. The dates when civil penalties will begin to accrue and will cease; and
 - 6. The criteria used in determining the amount and rate of recurrence and duration of civil penalties; and
 - 7. Other consequences, as applicable, should the violations not be wholly and permanently corrected in accordance with the terms and conditions and time constraints identified; and
 - 8. The procedures for obtaining an administrative hearing regarding the assessment of civil penalties.

1.08.060 Assessment.

- A. The City Manager, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for assessing the amount, rate of recurrence, and duration of civil penalties.
- B. Civil penalties, excluding accruing interest, shall not be assessed at more than one thousand dollars (\$1,000.00) each day nor more than two hundred fifty thousand dollars (\$250,000.00) cumulatively each calendar year for an individual parcel or separate structure thereon for any related series of violations.
- C. The assessment of civil penalties may begin to accrue on the date of initial occurrence of the violation, as identified by the city.
- D. The assessment of civil penalties shall cease when all violations are wholly and permanently corrected.
- E. Civil penalties shall be assessed based upon the following factors:
 - 1. The duration and frequency of recurrence of the violation;
 - 2. The detrimental effects of the violation on the occupants of the property and the surrounding neighborhood and the community at large;
 - 3. The history of compliance efforts by the responsible person to correct the violation wholly and permanently;
 - 4. The viability of the civil penalty to effect abatement of the violation wholly and permanently;
 - 5. Other factors that serve justice.

1.08.070 Administrative expenses.

Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city.

1.08.080 Administrative hearing.

- A. The responsible person(s) may request an administrative hearing to adjudicate the assessment of civil penalties by filing such request in writing with the City Manager, or his or her designee, pursuant to standards and procedures established in the Oakland Housing Code except that alternate or additional standards may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the assessment of civil penalties for violations of codes and ordinances other than the Oakland Housing Code.
- B. The City Manager, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the assessment of civil penalties or remanding for further determination, pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City

Manager, or his or her designee, for conducting an administrative hearing and evaluating evidentiary testimony regarding the violation of codes and ordinances other than the Oakland Housing Code.

- C. In all instances, the determination regarding civil penalties resulting from the administrative hearing shall be final and conclusive.
- D. The City Manager, or his or her designee, is authorized to establish standards and procedures for adjustment of civil penalties previously assessed for extraordinary circumstances which are expressly demonstrated to serve the best interests of the city.

1.08.090 Remedies not exclusive.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's decision to select a particular remedy is not subject to appeal.

SECTION II. Oakland Municipal Code, Title 1, Chapter 1.12 is hereby amended as follows:

1.12.010 Purpose.

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the city and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of violations of the laws, codes, ordinances and regulations identified in this chapter.

1.12.020 Scope.

- A. This chapter authorizes the administrative assessment of citations to effect abatement of:
 - 1. Any violations of the following provisions of the Oakland Municipal Code: the Oakland Building Code (OMC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), Oakland Planning Code (OMC Title 17), Oakland Sign Code (OMC Chapter 146), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12) and Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16) or
 - 2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an

obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or

3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.
 4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.
- B. Administrative citations established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

1.12.030 Violations.

- A. Violation. A violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated or the real property or structure thereon identified with the violation has been declared and remains a public nuisance.
- B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this chapter or in violation of California Civil Code Sections 3479 and 3480, or at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.
- C. Responsible Department. The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City Manager or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.
- D. Responsible Person. The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter.

1.12.040 Authority.

- A. Whenever any provision of the codes and ordinances identified in this chapter has been violated, administrative citations may be assessed to effect abatement.
- B. The City Manager, or his or her designee, is authorized to declare a public nuisance hereunder and to assess citations administratively, in accordance with the procedures established in this chapter. The City Manager shall appoint a Case Manager, hereunder, who will report directly

to the City Manager, or his or her designee, and is authorized to coordinate and direct staff located in City departments and agencies for the purposes of prosecuting public nuisances within the scope of this Chapter, obtaining abatement and recovering fines, fees and costs. The Case Manager's authority to direct staff shall include, but is not limited to, authority to direct staff resources to undertake case investigations, gather evidence, prepare cases, issue notices, conduct hearings, provide testimonial and other relevant evidence and recover penalties, fines, fees and costs.

- C. The responsible person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to administrative citations as established in this chapter.
- D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists, or each and every day following a violation on which owner fails to demonstrate that he or she has undertaken action to abate said violations which is satisfactory to the City, shall constitute a separate and distinct offense.
- E. Separate administrative citations may be issued for separate violations or separate dates of occurrence.
- F. Full or partial reimbursement or recovery of administrative citations and administrative expenses shall not excuse the failure to correct violations wholly and permanently nor shall it preclude the assessment of additional administrative citations or other abatement actions by the city.
- G. Administrative citations and related administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to priority lien and special assessment of the general tax levy, or civil and small claims action brought by the city, or both.

1.12.050 Notification.

- A. Whenever administrative citations are issued, notification shall be served on the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.
- B. The notification shall be served by one or more of the following methods:
 - 1. Personal delivery with acknowledged receipt; or
 - 2. Certified mail with return receipt requested to the last known mailing address; or
 - 3. Constructive public notification, including but not limited to the following:
 - a. Publication in a newspaper of general circulation, or
 - b. Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or
 - c. Conspicuous posting on or in the vicinity of the property.

- C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.
- D. The notification shall minimally identify the following factors:
 1. The provisions of the code or ordinance violated and the descriptive nature of the violations; and
 2. The locations of the violations and the dates of occurrence; and
 3. The remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections; and
 4. The dollar amount and rate of recurrence and duration of administrative citations; and
 5. The dates when administrative citations will begin to accrue and will cease; and
 6. Other consequences, as applicable, should the violations not be wholly and permanently corrected in accordance with the terms and conditions and time constraints identified; and
 7. The procedures for obtaining an administrative hearing regarding the assessment of administrative citations.

1.12.060 Assessment.

- A. The City Manager, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for issuing administrative citations.
- B. Except as otherwise provided herein, administrative citations, excluding accruing interest, shall not be assessed at more than five thousand dollars (\$5,000.00) cumulatively per calendar year for an individual parcel or separate structure thereon for any related series of violations. The citation amount shall not exceed one hundred dollars (\$100.00) for the first issuance, two hundred fifty dollars (\$250.00) for the second issuance, and five hundred dollars (\$500.00) for all subsequent issuances for any related series of violations occurring within a calendar year. For offenses involving violations of Oakland Municipal Code Sections 8.28.060, 8.28.070, 8.28.150, 8.28.160, 13.16.100, 13.16.110, administrative citations shall not exceed seven hundred fifty dollars (\$750.00) for the first issuance, one thousand dollars (\$1000.00) for the second issuance, and one thousand five hundred dollars (\$1500.00) for all subsequent issuances for any related series of violations occurring within a calendar year.
- C. The issuance of administrative citations may begin to accrue on the date of initial occurrence of the violation, as identified by the city.
- D. The issuance of administrative citations shall cease when all violations are wholly and permanently corrected.
- E. Administrative citations shall be issued in accordance with the following factors:
 1. The duration and frequency of recurrence of the violation;
 2. The detrimental effects of the violation on the occupants of the property and the surrounding neighborhood and the community at large;
 3. The history of compliance efforts by the responsible person to correct the violation wholly and permanently;

4. The viability of the administrative citation to effect abatement of the violation wholly and permanently;
5. Other factors that serve justice.

1.12.070 Administrative expenses.

Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city.

1.12.080 Administrative appeal.

- A. The responsible person(s) may request an administrative hearing to adjudicate the issuance of administrative citations by filing such request in writing with the City Manager, or his or her designee, pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the issuance of administrative citations for violations of codes and ordinances other than the Oakland Housing Code.
- B. The City Manager, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the issuance of administrative citations or remanding for further consideration, pursuant to standards and procedures established in the Oakland Housing Code, except that alternate or additional standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony may be promulgated by the City Manager, or his or her designee, for codes and ordinances other than the Oakland Housing Code.
- C. In all instances, the determination regarding administrative citations resulting from the administrative hearing shall be final and conclusive.
- D. The City Manager, or his or her designee, is authorized to establish standards and procedures for adjustment of administrative citations previously issued for extraordinary circumstances which are expressly demonstrated to serve the best interests of the residents of the city.

1.12.090 Remedies not exclusive.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's decision to select a particular remedy is not subject to appeal.

SECTION III. Oakland Municipal Code, Title 1, Chapter 1.16 is hereby amended as follows:

1.16.010 Purpose.

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the city and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of **minor violations** of the codes and ordinances identified in this chapter.

1.16.020 Scope.

- A. This chapter permits the administrative limitation of the use of property by authorizing the recordation of notices of violation and by authorizing the revocation, suspension, and/or withholding of permits as appropriate to effect abatement of:
 - 1. Any violations of the Oakland Building Code (OMC Chapter 15.04), Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), the Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16) and Oakland Sign Code (OMC Chapter 14); or
 - 2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
 - 3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.
 - 4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.
- B. Abatement actions established in this chapter are in addition to any other administrative or legal remedy, which may be pursued by the city to address violations of the laws, codes, ordinances and regulations identified in this chapter.

1.16.030 Violations.

- A. Minor Violation. A minor violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated or the real property or structure thereon identified with the violation has been declared and remains a public nuisance.
- B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this chapter or in violation of California Civil Code Sections 3479 and 3480, at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.
- C. Responsible Department. The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City Manager or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.
- D. Responsible Person. The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter.

1.16.040 Authority.

- A. Whenever any provision of the codes and ordinances identified in this chapter has been violated, administrative limitation of property use may be enforced to affect abatement.
- B. The City Manager, or his or her designee, is authorized to declare a public nuisance hereunder and to enforce the abatement actions established in this chapter. The City Manager shall appoint a Case Manager, hereunder, who will report directly to the City Manager, or his or her designee, and is authorized to coordinate and direct staff located in City departments and agencies for the purposes of prosecuting public nuisances within the scope of this Chapter, obtaining abatement and recovering fines, fees and costs. The Case Manager's authority to direct staff shall include, but is not limited to, authority to direct staff resources to undertake case investigations, gather evidence, prepare cases, issue notices, conduct hearings, provide testimonial and other relevant evidence and recover penalties, fines, fees and costs.
- C. The Responsible Person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to abatement actions established in this chapter.
- D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists, or each and every day following a violation on which owner fails to demonstrate that he or she has undertaken action to abate said violations which is satisfactory to the City, shall constitute a separate and distinct offense.

- E. Separate abatement actions established in this chapter may be enforced for separate violations or separate dates of occurrence.
- F. Enforcement of abatement actions established in this chapter and/or full or partial reimbursement or recovery of administrative expenses shall not excuse the failure to correct violations wholly and excuse the failure to correct violations wholly and permanently nor shall it preclude initiation of additional abatement actions by the city.
- G. Administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to priority lien and special assessment of the general tax levy, or civil and small claims action brought by the city, or both.

1.16.050 Notification.

- A. Whenever the limitation of property use is enforced, a notification of the abatement action shall be served upon the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.
- B. The notice shall be served by one or more of the following methods:
 - 1. Personal delivery with acknowledged receipt; or
 - 2. Certified mail with return receipt requested to the last known mailing address; or
 - 3. Constructive public notification, including but not limited to the following:
 - a. Publication in a newspaper of general circulation, or
 - b. Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or
 - c. Conspicuous posting on or in the vicinity of the property.
- C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.
- D. The notice shall minimally identify the following factors:
 - 1. The provisions of the code or ordinance violated and the descriptive nature of the violations; and
 - 2. The locations of the violations and the dates of occurrence; and
 - 3. The remedial actions required to correct the violations; and
 - 4. Other consequences, as applicable, should the violations not be corrected; and
 - 5. The procedures for obtaining an administrative hearing regarding the enforcement of the limitation of property use.

1.16.060 Limitation of property use.

- A. Conditional and ministerial permits or approvals for existing or future work identified with an individual parcel or separate structure thereon shall be subject to the following abatement actions:
 - 1. Denial of a permit application; and
 - 2. Suspension and subsequent expiration of a permit application or issued permit; and
 - 3. Revocation of a permit application or issued permit; and
 - 4. Forfeiture of all fees.

- B. Record title for an individual parcel shall be subject to encumbrance by a notice of limitation of property use recorded with the Alameda County Recorder's Office.

- C. The City Manager, or his or her designee, is authorized to establish standards and procedures for the termination of a recorded encumbrance of the property title, including but not limited to the following factors:
 - 1. All identified violations have been corrected; and
 - 2. All required approvals, permits, and inspections have been obtained, issued and finalized; and
 - 3. All administrative expenses for abatement actions, including attorneys' fees, have been fully recovered.

1.16.070 Administrative expenses.

Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city.

1.16.080 Administrative appeal.

- A. The responsible person(s) may request an administrative hearing to adjudicate the limitation of property use by filing such request in writing with the City Manager, or his or her designee, pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the limitation of property use resulting from the violation of codes and ordinances other than the Oakland Housing Code.

- B. The City Manager, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the enforcement of this chapter or remanding for further consideration, pursuant to standards and procedures established in the Oakland Housing Code, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for codes and ordinances other than the Oakland Housing Code.

C. In all instances, the determination regarding property use limitation resulting from the administrative hearing shall be final and conclusive.

1.16.090 Remedies not exclusive.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's decision to select a particular remedy is not subject to appeal.

SECTION IV. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, held to be invalid, unconstitutional, or unenforceable by a final determination of a court of competent jurisdiction, such determination shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have enacted this chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases might be declared invalid or unenforceable.

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IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST:

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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City Council

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October 14, 2003

PUBLIC SAFETY COMMITTEE
Oakland, California

Chairperson Reid and Members of the Committee

**Re: REPORT REGARDING AN ORDINANCE AMENDING CHAPTERS 1.08
“CIVIL PENALTIES”, CHAPTER 1.12 “ADMINISTRATIVE CITATIONS”, AND
CHAPTER 1.16 “ALTERNATIVE PROCEDURE FOR ABATEMENT OF CERTAIN
VIOLATIONS” OF THE OAKLAND MUNICIPAL CODE**

Dear Members of the Public Safety Committee:

SUMMARY

The attached Ordinance amends the Oakland Municipal Code, Title 1, Chapters 1.08 Civil Penalties, Chapter 1.12 Administrative Citations and Chapter 1.16 Alternative Administrative Procedure for Abatement of Certain Violations to expand the grounds for administrative public nuisance actions and establish a public nuisance case manager.

Currently, the City may seek abatement of nuisance properties, particularly those with illegal drug activity, by way of nuisance-based litigation or by way of an administrative process designed to obtain abatement through civil penalties and/or citations. Nuisance-based litigation can prove cumbersome in handling some types of problem properties to the extent that successful cases can require a great deal of resources and focused efforts by City staff to investigate, prepare cases and participate in the litigation over an extended period of time, 1 to 2 years or even up to 10 years in some cases. Moreover, the courts may exercise equitable powers to formulate solutions that may or may not result in the best solutions for the City.

Current administrative processes set up to address nuisance properties are cumbersome to the extent that staff must concurrently make findings and send notices under several different provisions of the Oakland Municipal Code, procedures for declaration of nuisance are confusing

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and the roles of the various agencies involved in investigations, case preparations and enforcement are not well defined or directed.

The proposed amendments will expressly establish the basis for nuisance actions in OMC Chapter 1, will provide for appointment of a case manager to review cases and direct City resources accordingly and will, therefore, provide City and its staff a more expeditious, efficient and cost-effective method for dealing with nuisance properties.

Council President De La Fuente and Councilmember Jean Quan request that Councilmembers adopt the attached ordinance amendments so that the City can begin to better address the quality of life, health and safety concerns of Oakland residents.

FISCAL IMPACT

This ordinance may result in an increase in revenue through civil penalties and administrative fee assessments of nuisance properties. Whether additional staff resources may be needed is not known at this time,

BACKGROUND

Complaints of property-related nuisance activities are submitted to the City through several different avenues, including complaints to the Mayor, Council members and their aides, City departments and agencies such as CEDA Code Enforcement and OPD Beat Health and Law Corps attorneys are some of the most common sources. Additionally, City inspectors and public safety officers such as police and fire personnel in the field observe property-related nuisances in the course of their jobs. When there is substantial, current evidence of criminal or other public nuisance activity in relation to a particular property, an action for injunctive relief can be filed for abatement. When property owners agree to comply with the City's demands, these actions can be settled expeditiously.

There are numerous cases, however, in which some evidence of nuisance activity exists but further investigation is needed, in which community members may be reluctant to testify in court but would testify in a more informal setting, in which previously cited owners become repeat offenders and cases which simply need a more expeditious process than currently available in the courts.

At the request of Council President De La Fuente and Councilmember Quan a team comprised of Council Aides, the City Attorney's Office, the Neighborhood Law Corps, and the Oakland Police

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Department developed ordinance amendments to better address nuisance properties in the City of Oakland.

City's Administrative Code, Oakland Municipal Code, Title 1

Oakland Municipal Code, Chapter 1, sections 1.08 Civil Penalties, 1.12 Administrative Citations and 1.16 Alternative Administrative Procedure for Abatement of Certain Violations, altogether, authorize the imposition of civil penalties, administrative citations and property/permit use restrictions and recovery of costs to obtain abatement of violations of certain ordinances. Section 1.08, Civil Penalties, authorizes the imposition of penalties of \$1,000 per day up to \$250,000 per year, for violations. Section 1.12 authorizes issuance of citations ranging from \$100 for first offense to \$1,500 for multiple violations, up to \$5,000 per year.

Section 1.16 authorizes denial, suspension or revocation of property use applications or permits, forfeiture of fees or deposits paid and recovery of costs for violations. All sections provide for recovery of the fines, penalties and costs by property lien. Property owners receive written notice of violations, and penalties begin to accrue on the initial date of notice. Cited owners may request a hearing before an administrative hearing officer and the hearing officer's decision is final.

These administrative enforcement provisions are expressly available to enforce certain ordinances, including the Housing, Building and Planning Codes and several other health and safety provisions of the OMC such as blight, weed abatement and graffiti. Per the Housing Code, the City can declare a property "substandard" upon the occurrence of any "public nuisance as known at common law or in equity", in addition to other grounds. Once a property has been declared substandard, the City may seek abatement under any of the Chapter 1 sections above in addition to ordering the property vacated and demolished in instances of continuing or serious public nuisance conditions.

This administrative nuisance process has historically been used to abate violations of the planning, housing, building and other health and safety code sections specifically related to real property, structures or facilities. The process has not been used to abate public nuisances primarily involving criminal or nuisance conduct by residents, tenants, squatters, intruders, etc. on privately-owned property, though the Housing Code appears to provide a basis for an administrative public nuisance action in such cases. This is largely attributable to the distribution of City resources to investigate, declare and process nuisance cases over several different departments and agencies with no official mandate for coordination of these resources.

The lack of coordination among the departments is particularly acute in the handling of the public nuisance properties when there is no structural or facility violation. Under the current

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ordinance scheme, the City's Building Official must assess evidence of public nuisance and issue a "substandard" finding to initiate the administrative enforcement processes in OMC Title 1. While the Building Official is the designated official to evaluate and establish findings of nuisance based on structure, facility and zoning violations, current ordinances provide no mandate or guidance for the coordination needed to properly evaluate, make findings and abate property-based nuisances involving criminal and/or other nuisance conduct.

KEY ISSUES AND IMPACTS

The proposed ordinance amendments clearly establish administrative abatement processes similar to the processes used to abate nuisances that occur on privately-owned real property, structures and facilities. The amendments would also require the appointment of a case manager to direct the City's resources for investigation, evidence gathering, case preparation, nuisance determination, notification, hearing and other tasks necessary for administrative prosecution of any type of property-related public nuisance cases.

The proposed amendment revises sections 1.080.020, 1.12.020 and 1.16.020 of the Oakland Municipal Code, as follows:

- Expands the express list of OMC provisions for violation purposes to include: Chapter 15.12. Uniform Fire Code, Title 6. Animal Code, Title 8. Health & Safety Code, Title 9. Public Peace, Morals & Welfare Code, Title 10. Vehicles and Traffic Code, Title 12. Streets, Sidewalks & Public Places Code, Chapter 13.16. Creek Protection, Storm Water Management and Discharge Control Code (See, Sections 1.08.020.A.1, 1.12.020.A.1 and 1.16.020.A.1.); and
- Expressly incorporates provisions of state nuisance and public nuisance laws, Civil Code section 3479 and 3480 (See, Sections 1.08.020.A.2, 1.12.020.A.2 and 1.16.020.A.2.); and
- Expressly incorporates any public nuisances known at common law or in equity jurisprudence (See, Sections 1.08.020.A.3, 1.12.020.A.3 and 1.16.020.A.3.); and
- Expressly incorporates violations of state or federal law or regulations under which such violations constitute a public nuisance. (See, Sections 1.08.020.A.4, 1.12.020.A.4 and 1.16.020.A.4.); and
- Eliminates current requirement for a substandard determination by the Building Official to initiate the administrative enforcement processes for prosecution of property-related

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criminal and/or nuisance conduct cases by stating all public nuisance grounds in Chapters 1.08, 1.12 and 1.16; and

- Requires City Manager to appoint a case manager with authorization to direct staff to investigate and prepare cases, gather evidence, issue notices, conduct hearings, provide testimonial and other relevant evidence and recover fines, penalties, fees and costs. (See, Sections 1.08.040.B, 1.12.040.B and 1.16.040.B.)

SUSTAINABLE OPPORTUNITIES

Economic: This ordinance will impact the quality and value of Oakland residential neighborhoods by reducing and eliminating the number of nuisance properties that negatively impact and influence the neighborhoods.

Environmental: Improvement of the visual and atmospheric conditions of nuisance properties should lead to increasing our residential neighborhoods environmental conditions.

Social Equity: **All** residents of Oakland deserve to live in safe and beautiful neighborhoods; this ordinance will assist in achieving such conditions.

DISABILITY AND SENIOR CITIZEN ACCESS

Improving quality of life in our neighborhoods will improve the quality of life for those disabled or senior citizens residing within them.

RECOMMENDATION AND RATIONALE

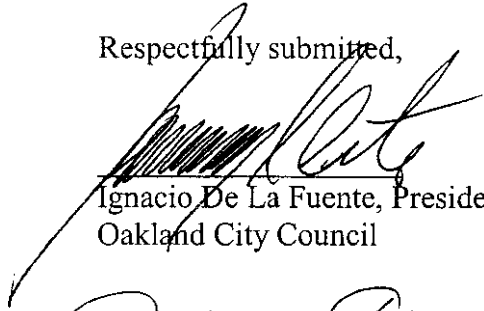
We recommend passage of this Ordinance, as it would provide an additional enforcement tool to the City, The ordinance's passage would enhance the City's ability to target and eliminate Nuisance properties as well as provide a definition to a legal concept that is often difficult to explain. With the appropriate direction and case management the application of this ordinance will result in the remediation of nuisance properties in the City of Oakland.

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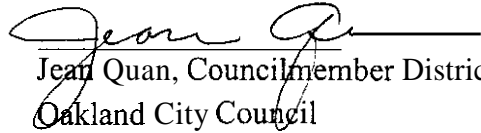
ACTION REQUESTED OF THE CITY COUNCIL

Approval of the proposed ordinance amendments as requested.

Respectfully submitted,



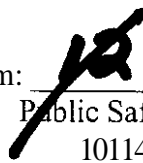
Ignacio De La Fuente, President
Oakland City Council



Jean Quan, Councilmember District 4
Oakland City Council

Prepared by: Arturo Sanchez
Aide to Councilmember Quan
Oakland City Council

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