

## SECTION 882

### LEGAL PROCEDURE

Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Division and any use of land, building, or premises established, conducted, or operated or maintained contrary to the provisions of this Division shall be and the same is hereby declared to be unlawful. The provisions of this Division may be enforced by a criminal proceeding or by a civil action or proceedings for the abatement and removal and the enjoining thereof in the manner prescribed by law. The remedies provided herein shall be cumulative. The provisions of this Division shall be enforced by the Director.

(Amended by Ord. 490.100 adopted 7-16-74; amended by Ord. T-252 adopted 12-9-80)

### SECTION 882.1 - SUMMARY ABATEMENT OF ZONING VIOLATIONS

Upon making a finding that an immediate threat or danger exists to the public health, safety or welfare of the occupants or the public, the Director, in consultation with other appropriate governmental officials or agencies, may order a summary abatement of zoning violations. Upon such finding, the Director may require immediate action on the part of the property owner to abate zoning violations of this Division.

- A. NOTICE The Director shall make a reasonable attempt to notify the occupants and property owner(s), either by telephone or by personally visiting the property, of the zoning violation(s) that require immediate abatement.
- B. ABATEMENT BY THE COUNTY If the Director finds that an immediate threat to public health, safety or welfare exists, and that it is unhealthy or hazardous to delay abatement action, he or she may order county staff, contractors, or designated agents to abate the condition. Abatement may include, but is not limited to, the cleanup and disposal of rubbish or other materials which threaten public health or the maintenance standards of section 850.B.6.
- C. ABATEMENT COSTS The property owner or occupant shall be liable for all costs associated with this abatement, including but not limited to administrative, labor, material and other costs incurred in the physical abatement, in addition to the costs recoverable under Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law. All costs incurred as described in this section 882.1 shall be recovered from the property owner or occupant according to the procedure beginning with section 882.2-E.

(Added by Ord. T-062-333 adopted 5-2-00)

### SECTION 882.2 - ADMINISTRATIVE ABATEMENT PROCEDURE

Violation of any provision of this Division may be abated according to the following procedure, which is in addition to, or in lieu of, the other enforcement procedures within this Division.

- A. NOTICE OF ABATEMENT Upon making a reasonable determination that violations of this Division exists, the Director shall notify the occupant(s), the property owner(s), any mortgagees of record and beneficiaries under any deed of trust relating to such property of record, and any lessees and other estate holders of record, that zoning violation(s) exists upon such persons' property. This Notice of Abatement and Order shall be by means of certified or registered mail return receipt requested. The Notice

of Abatement and Order shall be sent to the property owner(s) as the owner(s)' name(s) appear on the last equalized assessment roll. If the address of any person is unknown to the Director, then a copy shall be posted on the property and published in a newspaper of general circulation at least once in accordance with Government Code section 6061.

1. Contents of Notice of Abatement and Order

- a. The Notice of Abatement and Order shall describe the condition which constitutes the violation of this zoning ordinance; and
- b. The Notice of Abatement and Order shall order that the conditions constituting the zoning violation(s) be abated by demolition, securing, removal, cleanup, repair or other means within a reasonable time as determined by the Director, however not to exceed thirty (30) days from the date such notice is mailed; and
- c. The Notice of Abatement and Order shall contain instructions to the property owner, tenant, lessee and occupant describing procedures for scheduling a hearing for the purpose of presenting information as to why the Property should not be considered a violation of this Division, or why the noticed person believes he or she is not responsible therefor; and
- d. The Notice of Abatement and Order shall state that if the abatement efforts described therein are not completed within the number of days specified, or a hearing has not been requested in accordance with section 882.2.B, or a time extension has not been granted to complete the abatement, the County may abate the nuisance without further notification and the owner may be responsible for all costs associated with the investigation and abatement of the violations of this zoning ordinance as set forth above in section 882.1.C.
- e. The Notice of Abatement and Order shall state that if the owner fails to request a hearing, all rights to appeal any action by the County to abate the violation(s) of this zoning ordinance are waived.

B. HEARING AND DETERMINATION; EXTENSIONS

At the time fixed in the Notice of Hearing on Abatement, the Board of Supervisors or the person(s) designated Hearing Officer(s) shall proceed to hear testimony from any interested person regarding the specified condition deemed by the Director to be a violation of this Division, the estimated cost of its removal or other remedial work, and any other matter which the Board of Supervisors or the Hearing Officer may deem pertinent thereto. The Board or the Hearing Officer may adjourn or continue the hearing from time to time.

1. Determination After Hearing: Upon the conclusion of the hearing, the Board of Supervisors or the Hearing Officer will make a determination based on the evidence presented at the hearing. In the event that the hearing body determines the condition is a violation of this Division, it may direct the property owners, or occupant(s) or both, to abate the same within thirty (30) days after posting and mailing a Notice of Determination and Order of Abatement.
  - a. Notice by Posting: After the determination of the hearing body directing the abatement of zoning violations, the Director shall conspicuously post a copy of the Notice of Determination and Order of Abatement on the Property and shall mail a copy thereof to the occupants(s) and to the owner(s) of such Property as well as to

the mortgagees of record and trust deed beneficiaries of record, and any other person, if any, determined by the Board of Supervisors to be a Responsible Party.

- b. Notice to Property Owner(s): Notice to the property owner(s) shall be deemed complete upon mailing the Notice of Determination and Order of Abatement as the owner's name(s) appear on the last equalized assessment roll.

2. Continuation of the Hearing: The Board of Supervisors or the Hearing Officer may grant reasonable extensions of time to abate the zoning violation(s) upon good cause shown for such extension.

C. FAILURE OF PROPERTY OWNER OR OCCUPANT TO ABATE: AUTHORITY TO ABATE ZONING VIOLATION(S)

If the occupant or property owner fails to abate the zoning violation(s) within the time specified by the Hearing officer, Board of Supervisors, or the Director, and is not granted a time extension, the Director is authorized to abate the zoning violation(s) described in the Notice of Determination and Order of Abatement and collect abatement expenses in the manner described in section 882.2.E, et seq.

D. RIGHT TO APPEAL DECISION

1. Any interested party may appeal the decision of the Hearing Officer to the Board of Supervisors by filing a written notice stating the grounds upon which such party is appealing. Such appeal shall be filed with the Director within the thirty (30) day period of notice to abate the zoning violation(s). Requests for appeal will require the remittance of any applicable fee. The appeal shall set forth the following:
  - a. A brief statement setting forth the applicant's ownership interest in the subject property wherein the zoning violation(s) exists, including identification of the property by street address and assessor's parcel number (APN).
  - b. A brief statement of the material facts which the applicant claims support his or her contention that no zoning violation(s) exist and why abatement expenses should not be imposed as prescribed in this section; and
  - c. An address at which the applicant agrees notice of any additional proceedings or an order(s) relating to this abatement or the imposition of the abatement expense may be received by first class mail, postage prepaid.
2. The filing of appeal shall stay the effectiveness of the Order of Abatement until such time as the case has been decided by the Board of Supervisors, which decision shall be rendered in accordance with the procedure in section 882.2-B.1.
3. Any interested person being aggrieved by the determination and final actions of the Hearing Officer or Board of Supervisors zoning violation abatement proceeding may, within thirty (30) days after the date of notice to the property owner(s) of the decision, bring an action in a court of competent jurisdiction to contest the validity of the proceeding.

E. SALE OF MATERIALS OBTAINED IN ABATEMENT OF ZONING VIOLATION

Any materials obtained from the abatement violations of this zoning ordinance may be sold by the county at public sale to the highest responsible bidder after not less than ten (10) days

notice of the intended sale, published at least once in a newspaper of general circulation in the county, either before or after the zoning violation is abated.

1. Abatement Expense Statement – posting: The Director shall cause to be conspicuously posted on the property from which the violation was abated a statement of abatement expenses, verified by the Director, showing the expenses of abatement, together with a notice of the time and place that the statement will be submitted to the Board of Supervisors for approval and confirmation.
2. Notice to Owners of Abatement Expense: A copy of the Abatement Statement shall be mailed to the property owner(s) in the manner prescribed in section 882.2-A. The time for submitting the Abatement Statement to the Board of Supervisors for confirmation shall not be less than ten (10) days from the posting and mailing of said Abatement Expense Statement.
  - a. The Abatement Expense Statement shall state the time and place the Board of Supervisors shall consider objections or protests, if any, which may be raised by any person liable to be assessed for the cost of such abatement work, and any other interested person.

F. ABATEMENT EXPENSE STATEMENT – HEARING

At the time fixed for hearing objections or protests to the Abatement Expense Statement the Board of Supervisors shall consider the Statement together with any objections or protests which may be raised. The Board of Supervisors may make such revision, correction or modification in the Statement as it may deem just. The Board's decisions on the Statement, protests and objections shall be final and conclusive. The Board may adjourn or continue the hearing from time to time. Notice of the Board's decision shall be mailed to owner(s) in accordance with the provisions of 882.2-A.

G. COLLECTION OF UNRECOVERED COSTS

1. In the event that the cost of abating the zoning violation(s) exceeds the proceeds received from the sale of materials, if any, such unrecovered costs, if not paid within ten (10) days after the Board of Supervisors' decision, shall constitute a special assessment on the real property from which the zoning violation(s) was abated.
2. Immediately upon the confirmation of the assessment by the Board, the Director shall execute and file in the office of the County Recorder of Fresno County a Notice of Abatement Lien in the amount no greater than the total cost of abatement appearing in the Abatement Statement earlier approved by the Board of Supervisors. The Notice of Abatement Lien shall be in substantially the following form:

## NOTICE OF ABATEMENT LIEN

Pursuant to the authority vested in the Director by the provisions of [    ] the ZONING Ordinance of the County of Fresno, said Director of the Planning and Resource Management did on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, cause the premises on the property hereinafter described to be abated in order to abate a zoning violation(s) on said real property, and the Board of Supervisors of the County of Fresno did on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, assess the cost of such abatement upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the said County of Fresno does hereby claim a lien on said real property for the net expense of the doing of said abatement in the amount of said assessment, to wit; the sum of \$ \_\_\_\_\_, and the same shall be a lien upon said real property until the sum has been paid in full and discharged of record.

The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the County of Fresno, State of California, and particularly described as follows:

### (DESCRIPTION OF PROPERTY)

Dated: This \_\_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
Director of Planning & Resource Management Department,  
County of Fresno

3. Upon recordation, the Notice of Abatement Lien shall have the same effect as recordation of an abstract of money judgment. The Notice of Abatement Lien shall have the same priority as a judgment lien recorded against real property and continues in effect until released. Upon the order of the Board of Supervisors, or upon the order of the Director who is authorized to act on behalf of the Board of Supervisors in the releasing or subordination of liens under section 882.2-G.2, any Abatement Lien created under this Chapter may be released or subordinated in the same manner as a judgment lien on real property may be released or subordinated.
4. The Notice of Abatement Lien after recording shall be delivered to the Auditor of Fresno County, who shall enter the amount thereof on the county assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The Notice of Abatement Lien shall be delivered to the Auditor before the date fixed by law for the delivery of the assessment book to the County Board of Equalization.
5. Thereafter the amount set forth in the Abatement Lien shall be collected at the same time and in the same manner as ordinary county taxes are collected and shall be subject to the same penalties and to the same procedure for sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes shall be applicable to such special assessment, except if any real property to which such cost of abatement relates has been transferred or conveyed to a bona fide purchaser

for value, or a lien of a bona fide encumbrancer for value has been created and attaches to the real property prior to the date upon which the first installment of county taxes would become delinquent, then such cost of abatement shall not result in a lien against that real property but shall be transferred to the unsecured roll for collection.

6. From the date of recording the Notice of Abatement Lien, all persons shall be deemed to have notice of the contents thereof.

#### H. REFUND OF EXCESS RECEIPTS FROM SALE OF MATERIALS

In the event that the amounts received from the sale of materials exceed the expenses of removing or otherwise abating the zoning violation(s), such excess shall be deposited with the Treasurer of the county to the credit of the owner of such Property or to such other person legally entitled thereto. Such excess shall be payable to the owner or such other person upon evidence of ownership, satisfactory to the Treasurer.

#### I. REFUND OF ERRONEOUS TAX LEVY

The Board may order a refund of all or part of a tax paid pursuant to this Chapter if it finds that all or part of the tax has been erroneously levied. A tax or part thereof shall not be refunded unless a claim is filed with the Clerk to the Board of Supervisors on or before November 1 after the tax became due and payable. The claim shall be verified by the person who paid the tax, or his/her guardian, executor or administrator.

#### J. REMEDIES OF PRIVATE PARTIES

The provisions of this Chapter shall in no way affect the right of the owner, lessee or occupant of any such property to recover all costs and expenses required by this article from any person causing such zoning violation.

#### K. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have adopted this ordinance and Chapter and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases or portions be declared invalid or unconstitutional. If for any reason this or any part thereof shall be declared invalid or unconstitutional, then all other provisions thereof shall remain valid and enforceable.

(Added by Ord. T-062-333 adopted 5-2-00)