

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, 1) AMENDING SECTION 4.16.110 "PROCEDURES FOR APPEAL OF PUBLIC NUISANCE AND ORDER TO ABATE" AND 2) AMENDING SECTION 4.16.140 "ABATEMENT COST APPEALS PROCEDURE" OF CHAPTER 4.16 "PUBLIC NUISANCES" OF TITLE 4 "CODE ENFORCEMENT" OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO CLARIFY THE PROCEDURES FOR THE SELECTION OF HEARING OFFICERS

WHEREAS, the City of Desert Hot Springs ("City") is a municipal corporation and a charter city; and

WHEREAS, the Community Preservation Division (formerly called Code Enforcement) of the City of Desert Hot Springs is tasked with the enforcement of the City Municipal Code ("DHSMC"), state and local laws, and health and safety regulations; and

WHEREAS, trained and certified officers of the Community Preservation Division regularly conduct inspections of properties and investigate any conditions which potentially violate the DHSMC, state or local laws, or health and safety regulations; and

WHEREAS, if violations of any applicable law are found, Community Preservation Officers may prepare and issue a document titled "Notice of Public Nuisance and Order to Abate" pursuant to DHSMC Section 4.16.020 ("Notice and Order") to give notice of specific violations and to order their abatement within a specified timeframe; and

WHEREAS, any person subject to a Notice and Order is entitled to due process and may file an appeal pursuant to DHSMC Section 4.16.100; and

WHEREAS, Section 4.16.110 of the DHSMC describes the procedures for appeals of Notice and Orders, including the selection of hearing officers by contacting the Desert Bar Association to obtain three randomly selected names from a panel of local attorneys and judges willing to serve as hearing officers; and

WHEREAS, pursuant to Section 4.16.130 of the DHSMC, the City may seek recovery of costs associated with the abatement of public nuisances through the preparation of an abatement cost report; and

WHEREAS, any person subject to an abatement cost report is entitled to due process and may file an appeal pursuant to DHSMC Section 4.16.130; and

WHEREAS, Section 4.16.140 of the DHSMC describes the procedures for appeals of any abatement cost report, including the selection of hearing officers by contacting the Desert Bar Association to obtain three randomly selected names from a panel of local attorneys and judges willing to serve as hearing officers; and

WHEREAS, it has come to the City's attention that the Desert Bar Association no longer maintains a panel of hearing officers or other pool of potential hearing officers; and

WHEREAS, in order to protect the due process rights of any person or entity that appeals a notice and order or an abatement cost report, section 4.16.110 and section 4.16.140 of the DHSMC should be amended to ensure the timely and adequate selection of impartial hearing officers and ensure the adequacy of the entire appeals procedure.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. **RECITALS**

That the foregoing recitals are true and correct and are herein adopted by this reference.

Section 2. **AMENDMENT OF SECTION 4.16.110 "PROCEDURES FOR APPEAL OF PUBLIC NUISANCE AND ORDER TO ABATE" OF CHAPTER 4.16 "PUBLIC NUISANCES" OF TITLE 4 "CODE ENFORCEMENT" OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

Section 4.16.110 ("Procedures for Appeal of Public Nuisance and Order to Abate") of Chapter 4.16 ("Public Nuisances") of Title 4 ("Code Enforcement") of the Desert Hot Springs Municipal Code is hereby amended as follows:

4.16.110 Procedures for appeal of **a notice of** public nuisance and order to abate.

A. The Administrative Hearing Officer (Hearing Officer) shall conduct all administrative appeal hearings of any timely and properly filed appeal from any notice of public nuisance and order to abate (notice and order) pursuant to the administrative appeal procedures set forth in this section. The Hearing Officer shall review all evidence, documents, and written testimony and hear all oral testimony submitted by the parties at or before the scheduled administrative appeals hearing and render all

decisions and findings in writing to the appellant with a duplicate copy to the **Code Enforcement Community Preservation** Officer or other authorized enforcement agent who issued the administrative citation or notice and order (the citing officer).

B. The Hearing Officer's authority to hear and consider appeals shall be limited to passing on only those appeals pertaining to matters within his or her subject matter jurisdiction. The Hearing Officer shall consider ~~at the hearing on the appeal~~ only those matters or issues which were specifically raised by the appellant in his or her appeal and which are relevant to the issues of the hearing. The Hearing Officer shall not have the authority to waive any requirements of the municipal code and/or any applicable statutes, rules, codes or regulations, except as otherwise provided in this section.

C. The procedures adopted in this section by the City for the selection of Hearing Officers shall not replace, substitute for, or in any way affect the administrative hearing board processes created by the uniform and national codes adopted by the City and the administrative hearings provided by the uniform and national codes shall be treated separate and apart from the administrative hearing procedures adopted in this section.

~~D. Within three days after the City has determined that a timely and complete appeal of a notice and order has been filed, the citing officer shall provide written notice by first class mail or facsimile to the Desert Bar Association requesting a Hearing Officer.~~

D. The City Manager, or his/her designee, shall select the Hearing Officer to conduct administrative hearings pursuant to this section. All hearing officers shall be impartial third parties and shall not have any pecuniary interest in the proceeding over which he or she is presiding, nor any pecuniary interest in the outcome thereof.

~~E. The Desert Bar Association will provide to the citing officer and the person or entity who filed the appeal, a notice listing three randomly selected names of Hearing Officers who are practicing and retired attorneys and judges who have agreed to join a panel from which Hearing Officers are selected by the Desert Bar Association. Each party shall have the opportunity to reject one of the three proposed Hearing Officers provided by the Desert Bar Association. In the event that two out of the three listed Hearing Officers are rejected by the parties to the hearing by the deadline stated in the notice, the remaining Hearing Officer shall become the selected Hearing Officer for purposes of presiding over that particular hearing. In the event that only one or none of the three listed Hearing Officers are rejected by the parties to the hearing by the deadline stated in the notice, the first Hearing Officer on the top of the list who has not been rejected shall become the selected Hearing Officer for purposes of presiding over that particular hearing. Once the Hearing Officer is selected, the City shall contact the~~

~~Officer to schedule a date, time, and location for the hearing within the time periods required by the City municipal code or other law or regulation.~~

EE. As soon as practicable, but allowing sufficient time for providing notice of the hearing, the Hearing Officer shall fix a date, time and place for the hearing of the appeal and shall instruct the citing officer of the same. The ~~citing officer~~ **City** shall prepare a notice of administrative appeals hearing (hearing notice), which shall be in substantially the same form as follows:

You are hereby notified that a hearing will be held before the Administrative Hearing Officer at _____ on the ____ day of _____, ____ at the hour of ____ upon the Notice of Public Nuisance and Order to Abate served upon you. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you.

FG. The ~~citing officer~~ **City** shall cause a copy of the hearing notice to be provided to each appellant either by causing a copy of the notice to be delivered to each appellant personally or by causing a copy of the notice to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal.

GH. Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by the **City citing officer.**

HI. The citing officer shall prepare an administrative hearing packet for the Hearing Officer to review prior to the hearing. The packet shall include a copy of the notice and order, a staff report and any evidence of the violation(s).

IJ. At the appeals hearing, the Hearing Officer shall hear any evidence offered either in support of appellant's claim or in support of the notice and order, provided such evidence is relevant to the issues of the hearing. The Hearing Officer has the authority to determine the relevance of any evidence to the hearing **and shall not be limited by the technical rules of evidence.** The Hearing Officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

JK. If appellant fails to attend the scheduled appeals hearing, the hearing will proceed without appellant and he or she will be deemed to have waived his or her rights to be orally heard at the appeals hearing.

KL. Each party appearing at the hearing shall have the following rights:

1. To call and examine witnesses;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses;
4. To impeach any witness regardless of which party first called the witness to testify;
5. To rebut evidence; and
6. To be represented by anyone who is lawfully permitted to do so.

LM. Following an appeal of a notice and order, the Hearing Officer may decide, **based on the applicable standard of review**

to uphold the notice and order, establish a modified schedule for compliance, or overturn the findings and determinations set forth in the notice and order, in whole or in part, and not require that the property owner or party otherwise responsible for the violation(s) take any action otherwise required by the notice and order. In the event the Hearing Officer determines to overturn the findings of the citing officer in whole, the recipient of the notice and order shall not be required to pay the administrative fine as required by the notice and order.

MN. The Hearing Officer shall prepare ~~and serve~~ a written ~~notice of~~ decision and compliance order (decision and compliance order) ~~upon the appellant and the citing officer following the appeals hearing within thirty calendar days from the date the hearing is deemed closed.~~ The decision of the Hearing Officer shall be final, except as otherwise provided by this chapter.

~~**O.** The Hearing Officer shall serve the decision and compliance order to each appellant within 30 calendar days from the date the hearing is deemed closed. The Hearing Officer shall also provide or cause to be provided a copy of the decision and compliance order to the citing officer.~~

NP. The decision and compliance order for a notice and order shall contain a brief summary of the evidence considered, findings of fact, a determination of the issues presented, the effective date of the decision, and a compliance order which shall specifically describe the actions which shall be required to be taken to remedy the code

violations indicated in the decision and compliance order and shall require the actions to be completed within a specified time period and by a specified deadline. The decision and compliance order shall further require the recipient of the notice and order to pay all applicable administrative fines no later than ten days from the date of issuance of the notice of decision and compliance order. The amount of the fine for which the recipient shall be responsible shall be as set forth in the notice and order. Payment of the administrative fine shall be ordered to be made to the issuing department or division unless otherwise directed by the City.

QQ. The Hearing Officer shall cause a copy of the decision and compliance order to be ~~provided~~ **served** to each appellant either by causing a copy of the decision and compliance order to be delivered to each appellant personally or by causing a copy to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal. A copy of the decision and compliance order shall also be provided to the ~~City citing officer.~~ **Proof of service of the decision and compliance order shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the decision and compliance order and retained by the City.**

PR. The effective date of the Hearing Officer's decision and compliance order shall be as stated therein.

QS. If, after the **deadline for compliance with a** decision and compliance order ~~becomes final~~ **passes**, the person(s) **or entities** to whom the decision and compliance order is directed shall fail, neglect or refuse to obey such order, the ~~Code Enforcement Chief~~ **Community Preservation Supervisor** or other authorized agent may:

1. Cause such person to be prosecuted for an infraction violation for the offense of contempt of Hearing Officer; and/or
2. Institute any appropriate legal action or proceeding necessary **to gain compliance or to abate or enjoin the conditions causing the nuisance.**

T. Each day the person(s) to whom the decision and compliance order is directed fails, neglects or refuses to obey such order shall constitute a new offense. A fourth violation and subsequent violations of this section within a 12-month period shall be deemed a misdemeanor.

U. **The prevailing party in any proceeding conducted pursuant to this section and associated with the abatement of a public nuisance shall be entitled to recovery of attorney's fees incurred in any such proceeding.**

Section 3.

**AMENDMENT OF SECTION 4.16.140 "ABATEMENT
COST APPEALS PROCEDURE" OF CHAPTER 4.16
"PUBLIC NUISANCES" OF TITLE 4 "CODE
ENFORCEMENT" OF THE DESERT HOT SPRINGS
MUNICIPAL CODE**

Section 4.16.140 of the Desert Hot Springs Municipal Code is hereby amended as follows:

4.16.140 Abatement cost appeals procedure.

A. All appeals from any abatement cost report shall be in writing and shall contain the following information:

1. Name(s) of each appellant;
2. A brief statement setting forth the legal or equitable interest of each appellant;
3. A brief statement in ordinary and concise language of the specific cost items protested, together with any material facts claimed to support the contentions of the appellant;
4. A brief statement in ordinary and concise language of the relief sought and the reasons why the abatement costs should be modified or otherwise set aside; and
5. The signatures of all parties named as appellants and their mailing addresses. Any appeal filed that fails to provide all of the information required by this section shall be deemed incomplete.

B. A complete and proper appeal of an abatement cost report shall be filed with the ~~Code Enforcement Community Preservation Division or other authorized enforcement agent who caused the abatement (Abatement Officer)~~ within ten calendar days from the date service of the abatement cost report is completed. Any appeal not timely filed shall be rejected.

C. A filing fee as established by City Council resolution or any amendments thereto for an appeal of abatement cost report must be paid to the City at or prior to the time of the filing of such appeal. Any appeal of the abatement cost report filed without payment of the filing fee shall be deemed incomplete.

D. Not later than five calendar days from the date the appeal is filed, the ~~Abatement Officer or designee~~ City shall determine whether the appeal is complete. If the appeal is determined to be incomplete, the ~~Abatement Officer or designee~~ City

shall immediately mail to each appellant a notice of incomplete filing which shall provide a written explanation of each reason why the appeal has been determined to be incomplete. If service of the notice of incomplete filing is completed within five calendar days from the date the appeal is filed, the ten-calendar-day time period within which to file a completed appeal of abatement cost report shall not be extended.

E. Enforcement of the abatement cost report shall be stayed during the pendency of an appeal therefrom which is properly and timely filed pursuant to this section. ***This subsection shall not be used to stay the enforcement of any separate abatement cost report related to, or arising from, the same appellant(s) or the same subject property.***

F. The City Manager, or his/her designee, shall select the Administrative Hearing Officer (Hearing Officer) to conduct administrative hearings pursuant to this section. All hearing officers shall be impartial third parties and shall not have any pecuniary interest in the proceeding over which he or she is presiding, nor any pecuniary interest in the outcome thereof.

~~***F. Within three days after the City has determined that a timely and complete appeal of a cost report has been filed, the Abatement Officer shall provide written notice by first class mail or facsimile to the Desert Bar Association requesting a Hearing Officer.***~~

~~***G. The Desert Bar Association will provide to the Abatement Officer and the person or entity who filed the appeal, a notice listing three randomly selected names of Hearing Officers who are practicing and retired attorneys and judges who have agreed to join a panel from which Hearing Officers are selected by the Desert Bar Association.***~~

~~***H. Each party shall have the opportunity to reject one of the three proposed Hearing Officers provided by the Desert Bar Association. In the event that two out of the three listed Hearing Officers are rejected by the parties to the hearing by the deadline stated in the notice, the remaining Hearing Officer shall become the selected Hearing Officer for purposes of presiding over that particular hearing. In the event that only one or none of the three listed Hearing Officers are rejected by the parties to the hearing by the deadline stated in the notice, the first Hearing Officer on the top of the list who has not been rejected shall become the selected Hearing Officer for purposes of presiding over that particular hearing.***~~

~~***I. Once the Hearing Officer is selected, the City shall contact the Officer to schedule a date, time, and location for the hearing within the time periods required by the municipal code or other law or regulation.***~~

G.J. As soon as practicable, but allowing sufficient time for providing notice of the hearing, the Hearing Officer shall fix a date, time and place for the hearing of the appeal and shall instruct the **Community Preservation Officer or other authorized enforcement agent who caused the abatement ("Abatement Officer")** ~~Abatement Officer~~ of the same. The ~~Abatement Officer~~ **City** shall prepare a notice of administrative appeals hearing (hearing notice), which shall be in substantially the same form as follows:

You are hereby notified that a hearing will be held before the Administrative Hearing Officer at _____ on the ____ day of _____, ____ at the hour of _____ upon the Abatement Cost Report served upon you. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you.

H.K. The ~~Abatement Officer~~ **City** shall cause a copy of the hearing notice to be provided to each appellant either by causing a copy of the notice to be delivered to each appellant personally or by causing a copy of the notice to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal. Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by ~~City the Abatement Officer~~.

I.L. The ~~Administrative Hearing Officer~~ (Hearing Officer) shall conduct all administrative appeal hearings of any timely and properly filed appeal from any **abatement** cost report pursuant to the administrative appeal procedures set forth in this section. The Hearing Officer shall review all evidence, documents, and written testimony and hear all oral testimony submitted by the parties at or before the scheduled administrative appeals hearing and render all decisions and findings in writing to the appellant with a duplicate copy to the Abatement Officer.

J.M. The Hearing Officer's authority to hear and consider appeals shall be limited to the City's determination that the amount of the costs set forth in the abatement cost report are accurate and reasonable, and, if the work was performed via summary abatement pursuant to Section ~~4.16.020~~ **4.16.120** of this chapter, to the City's determination that the City took the minimal and most reasonable and feasible action necessary to immediately abate the activity or activities and/or condition or conditions causing the public nuisance. The Hearing Officer shall consider at the hearing on the appeal only those matters or issues which were specifically raised by the appellant in

his or her appeal and which are relevant to the issues of the hearing. The Hearing Officer shall not have the authority to waive any requirements of the Municipal Code and/or any applicable statutes, rules, codes or regulations, except as otherwise provided in this chapter.

K.N. The procedures adopted in this section by the City for the selection of Hearing Officers shall not replace, substitute for, or in any way affect the administrative hearing board processes created by the uniform and national codes adopted by the City and the administrative hearings provided by the uniform and national codes shall be treated separate and apart from the administrative hearing procedures adopted herein.

L.O. The Abatement Officer shall prepare an administrative hearing packet for the Hearing Officer to review prior to the hearing. The packet shall include a copy of the **abatement** cost report, the summary abatement report (if applicable), a staff report and any evidence of the abatement costs. The staff report should include a summary of the code enforcement activities performed at the subject property.

M.P. At the appeals hearing, the Hearing Officer shall hear any evidence offered either in support of appellant's claim or in support of the cost report, provided such evidence is relevant to the issues of the hearing. The Hearing Officer has the authority to determine the relevance of any evidence to the hearing **and shall not be limited by the technical rules of evidence**. The Hearing Officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

N.Q. Each party ~~**appealing the abatement cost report**~~ shall have the following rights at the hearing:

1. To call and examine witnesses;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses;
4. To impeach any witness regardless of which party first called the witness to testify;
5. To rebut evidence; and
6. To be represented by anyone who is lawfully permitted to do so.

O.R. If appellant fails to attend the scheduled appeals hearing, the hearing will proceed without appellant and he or she will be deemed to have waived his or her rights to be orally heard at the appeals hearing.

~~P.S.~~ ~~At the Following the~~ conclusion of the hearing, the Hearing Officer shall render his or her decision **based on the applicable standard of review** which may include a decision to ratify the abatement cost report in its entirety and/or modify the amount of the abatement costs to be recovered and/or modify the terms of payment of the abatement costs. The recipients of an abatement cost report shall be required to pay all abatement costs that are upheld by the Hearing Officer.

~~Q.T.~~ The Hearing Officer shall prepare ~~and serve~~ a written ~~notice of~~ decision ~~upon the appellant and the Abatement Officer within thirty calendar days~~ following the **conclusion of the** appeals hearing. The decision of the Hearing Officer shall be final, except as otherwise provided by this section.

~~U.~~ ~~The Hearing Officer shall serve the notice of decision to each appellant within 30 calendar days from the date the hearing is deemed closed. The Hearing Officer shall also provide or cause to be provided a copy of the notice of decision to the Abatement Officer.~~

~~R.V.~~ The notice of decision shall contain a brief summary of the evidence considered, findings of fact, a determination of the issues presented, the effective date of the decision, and shall require the cost report recipient to pay the total sum due no later than **thirty calendar ten** days from the date of issuance of the ~~written notice of~~ decision. The amount of the cost report for which the recipient shall be responsible shall be as set forth in the cost report unless otherwise modified by the ~~written notice of~~ decision. Payment of the cost report shall be ordered to be made to the issuing department or division unless otherwise directed by the City.

~~S.W.~~ The Hearing Officer shall cause a copy of the ~~notice of written~~ decision to be ~~served provided~~ to each appellant either by causing a copy of the ~~written decision notice~~ to be delivered to each appellant personally or by causing a copy to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal. A copy of the ~~notice of written~~ decision shall also be provided to the ~~City Abatement Officer~~. The effective date of the Hearing Officer's ~~notice of written~~ decision shall be as stated therein. **Proof of service of the written decision shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the written decision and retained by the City.**

~~T.X.~~ The owner of record of the subject property shall pay all costs of abatement no later than 30 calendar days from the date the abatement cost report becomes final as provided by this section. The amount of the abatement costs for which the owner of record shall be responsible shall be as set forth in the final abatement cost report.

U.V. If the abatement costs are not paid within 30 calendar days from the date the abatement cost report becomes due pursuant to this section, the abatement costs shall become a special assessment against that parcel, which shall be imposed pursuant to the procedures set forth in this chapter and shall be subject to the penalties set forth therein.

V. The prevailing party in any proceeding conducted pursuant to this section and associated with the abatement of a public nuisance shall be entitled to recovery of attorney's fees incurred in any such proceeding.

Section 4. SEVERABILITY

That, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 6. AMENDING OF BAIL SCHEDULE

That the City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EFFECTIVE DATE

That this ordinance shall take effect thirty (30) days after its adoption.

Section 8. CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

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draft

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the ____ day of _____, 2017 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Scott Matas, Mayor

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney